



PROCUREMENT REVIEW OF THE CONNECTICUT PORT AUTHORITY

Connecticut State Contract Standards Board - Special Committee of Inquiry

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Introduction

It is the mission of the Connecticut State Contracting Standards Board (SCSB) to require that state contracting and procurement are understood and carried out in a manner that is transparent, cost effective, efficient, and consistent with state and federal statutes, rules, and regulations. The SCSB is required by statute to audit and certify procurement practices of state contracting agencies and assist state agencies in improving contracting practices.

The Connecticut Port Authority was established by Public Act 15-5, June Special Session, effective July 1, 2015. Pursuant to Chapter 12, Section 1-120, CPA is classified as a quasi-public agency. The authority manages three deep water ports (and several coastal and river harbors that make important contributions to the state's economy. The CPA states their mission is to, "grow Connecticut's economy and create jobs by strategically investing in the state's three deep water ports and small harbors to enable each to maximize its own economic potential."

At its December 11, 2020 meeting, SCSB Executive Director David Guay presented a complaint from a member of the public requesting the SCSB to review the Connecticut Port Authority's (CPA) development at the State Pier in New London (Exhibit 1). The complaint was supported by material received by the complainant by a Freedom of Information Request to the CPA. On January 8, 2021, the SCSB voted to form a Special Committee of Inquiry (Committee) to examine the procurement processes for the investment, development, and operation of the State Pier.

At the February 2, 2021 SCSB meeting, the Committee presented their initial review of the CPA materials available and recommended the Board to further investigate procurement matters of the CPA at the State Pier. Following the February 2, 2021 SCSB meeting, Executive Director David Guay requested a formal opinion from the Attorney General's Office regarding the State Contracting Standards Board's authority over the Connecticut Port Authority (Exhibit 2). Attorney General Tong issued an opinion to the SCSB on February 25, 2021 stating, "the Board's jurisdiction with respect to the Port Authority would primarily be limited to regulating a bidder's contest...that did not involve real property" and that the "General Assembly would have to change the statutes to expand the Board's oversight" (Exhibit 3).

Public Act 21-2 amended Connecticut General Statutes to define the Connecticut Port Authority as "a state contracting agency for the purposes of chapter 62 except for the provisions of section 4e-16, and shall be subject to the authority of the State Contracting Standards Board established under section 4e-2", effective June 23, 2021 (Exhibit 4). This statutory change is in effect until 2026. The Act also requires the CPA to report quarterly on its operations, contracts, finances, and projects to the Office of Policy and Management (OPM) as well as the Department of Administrative Services (DAS) for review.

On January 19, 2022, the Committee forwarded the draft report to the CPA for a response by the close of business on January 28, 2022. The draft report was also sent to members of the SCSB that are not on the Committee. The submittal of the report included three questions to the CPA, the responses to which have been incorporated into the report. On January 20, 2022, John Henshaw, Executive Director of the CPA, responded to the Committee's questions and stated the CPA's position that the project at the State Pier was not a public-private partnership. On January 27, 2022, Mr. Henshaw requested the exhibits for the draft report. On the same date, Mr. Henshaw clarified his request that he only wanted the exhibits not provided by CPA to the Committee. On January 28, 2022, the Committee forwarded the exhibits to Mr. Henshaw.

On January 21, 2022, the Attorney General's Office Special Litigation division (AG) requested a copy of the draft report. On January 24, 2022, the Committee provided the AG's Office with a copy of the draft report and asked that any comments to the draft report be submitted by the close of business on January 28, 2022. On January 25, 2022, the AG's Office requested exhibits to the draft report. On January 26, 2022, the exhibits were provided by the Committee to the AG's office. On January 28th, the AG's office submitted their comments through edits made to the draft document. These are attached as Appendix A.

On January 28, 2022, the Secretary of OPM, Melissa McCaw, contacted Lawrence Fox, Chairperson of the SCSB, to ask for an extension to respond to the report in conjunction with CPA. Secretary McCaw stated OPM was going to assist CPA in responding to the draft report. Secretary McCaw requested and Mr. Fox agreed to extend the response date from the close of business on January 28th to the close of business on January 31, 2022. The joint response from CPA and OPM is attached as Appendix B.

This report provides the findings and recommendations of the Special Committee's review and investigation of the Connecticut Port Authority's procurement practices and the State Pier development project. This report is not about the decision to reconstruct the State Pier in New London. This report is not about the decision to enter into an agreement to use the "new" State Pier as a staging area for the assembly and deployment of wind turbines to produce clean electricity for Connecticut. Such decisions rest with the CPA. This report is about the procurement practices of the CPA and its accountability to the citizens of Connecticut.

While the recommendations are based on the investigation of the CPA, these recommendations may also be applicable to state agencies and other quasi-public agencies. The General Assembly may want to seek legislative changes to Connecticut State Statutes based upon these recommendations. The SCSB in adopting these recommendations will work with any interested party in furthering the goal of transparent and competitive procurement processes throughout State government and its political subdivisions. **Any limitation of this report may be attributed to the lack of staffing of the SCSB.**

Procurement Review

The State Contracting Standards Board has been charged by the legislature with the responsibility to review, certify and periodically recertify state contracting agencies' procurement processes. With the designation of the Connecticut Port Authority as a state contracting agency, the Special Committee reviewed the procurement practices of the CPA from its inception. The procurement practices are currently contained within the CPA's operating procedures. It is acknowledged that prior to the designation of the CPA as a state contracting agency, the procedures adopted by the CPA Board and later procedures created in consultation with OPM were created for a quasi-public agency. The areas of deficiency are through a lens of what needs to be rectified now that the CPA is a state contracting agency, as well as general comments on best practices.

The original operating procedures contain the following procurement related sections: "Acquisition and Conveyance of Interest in Real Property"; "Contracting for Personal Services and Personal Property"; "State Contracting Requirements" (Exhibit 5). The review of the original procedures was necessary because these were the procedures that were in effect at the inception of the State Pier development project.

The procurement procedures for "Acquisition and Conveyance of Interest in Real Property" simply reads,

The Board of the Port Authority shall determine the procurement procedures necessary and desirable on a case-by-case basis for transactions involving investments in, or the acquisition or conveyance of any interest in real property as the Board determines to be in the best interest of the Port Authority and in furtherance of the purposes of the Port Authority pursuant to the Act.

This policy, which is not actually a procedure or a set process, gives wide discretion to the Board and provides no means by which to evaluate transactions. There are no accountability or transparency measures in place, which raises concerns considering the substantial amount of public dollars that are spent on such transactions, as well as the legal vulnerabilities that the CPA would be susceptible to were a transaction to be disputed.

The section on "Contracting for Personal Services and Personal Property" procurement procedure establishes the following:

1. The Executive Director has responsibility and discretion over all procurements of personal services and personal property under \$50,000 in a fiscal year, as well as sole-source procurements.
2. All solicitations greater than \$50,000 in a fiscal year require a "competitive negotiation where proposals are solicited from at least three (3) qualified parties."
3. The Port Authority may continue to use contracted professionals while working in conjunction with other state agencies or quasi-public authorities.
4. The Port Authority must solicit proposals every three (3) years for "financial, legal, bond, underwriting and other professional services required by the Port Authority on a

regular and ongoing basis”. The CPA may not use the same financial audit person or firm for more than six (6) consecutive years.

Again, there is a great deal of latitude regarding procurement. In this case, the discretion for contracting is with the Executive Director. Of particular concern is the ability to use sole-source procurements whenever it is deemed necessary for a procurement valued under \$50,000. If the Executive Director determines it is not possible to competitively bid work for over \$50,000, then the competitive negotiation requirement can be waived as well. This section does not give a procedure or details on what mechanisms of solicitation can or should be used, nor does it require the CPA to pursue any type of results-based contracting. This policy does not lend itself to consistency nor transparency, as is expected and required of all other government contracting agencies.

The “State Contracting Requirements” states the broad requirement that the Connecticut Port Authority shall be subject to all state procurement and contracting that are applicable to quasi-public agencies and provides a list specifically calling out sections relating to campaign contributions, contractor affidavits, prohibitions on finder’s fees, whistleblower protections and non-discrimination requirements. Procurement requirements are provided for in numerous state statutes and various regulations. The considerable effort to define and identify all these requirements for each procurement activity is certainly necessary by law and for best practices, however, the CPA clearly does not have the resources to achieve this on their own. Further, a simple acknowledgement that the CPA is to follow all applicable laws and regulations is not a procedure which can be evaluated and certified by the SCSB.

Following a whistleblower complaint and reports of improper conduct¹ at the Connecticut Port Authority, the Governor directed OPM to provide support to the CPA (Exhibit 6 – Mounds testimony). In December 2019, a consulting firm, Whittlesey Advising, engaged by OPM issued a report of observations and considerations evaluating the organizational structure, policies, procedures, practices and internal controls related to the Connecticut Port Authority’s financial management and administrative systems (Exhibit 7). This included procurement practices. The following considerations were issued by the firm following their review of the CPA:

1. Develop a policy for the two different types of procurement methods; purchase order only and contracting process.
2. Develop a workflow process explaining how each employee will be involved in the process and the key responsibilities of each employee.
3. Develop an approval process that requires different levels of approval depending on the size of the procurement. This approval process should be clearly defined and evaluated on a periodic basis.
4. Develop a policy and procedures for the Executive Director to obtain board approval for exceptions to the procurement policies.

¹ The whistleblower complaint is currently under investigation by the Attorney General’s office. The Auditors of Public Accounts also released reports indicating issues with financial recordkeeping.

5. In addition to the \$50,000 RFP threshold, CPA should consider implementing lower thresholds that mandate obtaining written quotes. This would be more in line with other state quasi-public agencies.
6. CPA should consider including, in its procurement policy, provisions regarding written justifications for sole source purchases and provisions regarding notification to the board of such purchases.
7. CPA should consider implementing an additional board approval requirement to ensure unbudgeted expenditures are appropriately authorized and the board remains informed on unbudgeted expenditures.
8. CPA should consider including a restrictive clause in its own procurement policies to not enter into any contract to purchase or acquire goods/services with an entity that is owned or controlled by any member of the board or any employee of the quasi-governmental agency or any immediate family. This is to ensure there are no related party transactions that would otherwise not occur had the related party been an outside entity.

Following the issuance of the Whittlesey Advising report, the CPA amended and adopted their Operating Procedures in April 2020 (Exhibit 8). These amended procedures are the most current Operating Procedures for the CPA. The revision includes a preamble stating a purchasing philosophy that promotes competitive bidding whenever possible. This preamble also requires that “all parties involved in the negotiation, performance, or administration of purchases to act in good faith to advance the competitive principles that underlie it” and prohibits acts to deliberately evade competitive bid, such as splitting up contracts or purchase orders. The Operating Procedures also references state ethics laws and conflict of interest policies.

The second section, titled “Acquisition and Conveyance of Interest in Real Property” states that the procurement procedure for such transactions is to have the CPA Board determine on a case-by-case basis prior to the commencement of the transaction what the procedure will be. Board approval is necessary for any real estate procurement or transaction in excess of \$50,000. The change in this policy from the previous version is that the Board will approve transactions in excess of \$50,000 which was not previously stipulated. However, the absence of a defined procedure still remains.

The procurement procedures in the third section, titled “Purchase of Personal Services, Personal Property and Other Goods and Services” includes definitions for “public solicitation” and “thresholds”; requirements for purchases between \$5,000 and \$50,000; requirements for purchases greater than \$50,000; exceptions to the requirements for verbal or written quotes or public solicitation; other allowable procurement methods; the CPA Board’s actions regarding contracts over \$50,000 and amendments; policy for non-budgeted expenditures over \$5,000; and a policy for contracting with individuals.

The threshold definition states that the thresholds listed in the procurement procedures are based on the expected “net” costs to the CPA, meaning, the cost less actual or anticipated “rebates, reimbursements or credits owed or received under any contract or agreement related to such personal property, personal services or goods and services.” This is not a typical

understanding of contract cost. This interpretation of contract cost could be perceived as a means to avoid threshold requirements or other measures required by state statutes or regulations.

The exemptions to threshold requirements and competitive procurement can be waived by the Executive Director if one of three criteria are met. The criteria include “unusual condition or contingency,” emergency situations, or the type of contract or agreement does not lend itself to competitive procurement as determined by the Executive Director. There is no description of how these determinations are made nor how the contract is negotiated, administered and controlled for results-based accountability and transparency.

Other procurement vehicles made available include using Department of Administrative Services master contracts, purchases from federal, state or municipal surplus property programs, and “purchases by, from, in conjunction with, or on behalf of other Connecticut quasi-public agencies, state agencies or political subdivisions of the State of Connecticut, any other state, the federal government, or inter-governmental purchasing groups or cooperatives.” While it is useful to understand sources that the CPA can utilize for procurement, there is no established procedures to determine when these other mechanisms may be used, what thresholds may or may not apply, and how the CPA would track and report the negotiation, execution and performance of these contracts or purchases.

The section on contracting with individuals directs the Port Authority to consult the website of the Internal Revenue Service and State of Connecticut Comptroller’s Office to determine if the duties and activities are those of an employee or an independent contractor. This inclusion may be the result of a repeated finding by the state Auditors of Public Accounts related to the hiring and payment of interns as consultants (Exhibit 9).

The last section of the procurement policy in the Operating Procedures requires record retention for all solicitations, selections, negotiations, contract execution and management, and closeout. It does not state who at the CPA is responsible for maintaining this comprehensive file, however, this is a best practice and would be helpful for the CPA to have in place.

Of the eight considerations for procurement given in the Whittlesey Advising consulting report, the 2020 revision of the Connecticut Port Authority’s Operating Procedures adopted or incorporated three of the considerations in whole or in part. There was incorporation of additional thresholds, incorporation of requirements to obtain verbal or written quotes, and incorporation of reporting unbudgeted expenditures to the Board. Overall, the procurement policy provides wide discretion to the Executive Director, who is also acting as the Procurement Officer. There is still a lack of procedural steps for procurements. Given the size of the contracts that the Connecticut Port Authority is tasked with administering, it is imperative for both the CPA and potential bidders to understand how a solicitation will be handled each time.

The section on State Contracting Requirements remains identical to the previous version of the CPA Operating Procedures. This does not constitute a procurement procedure.

The CPA refers to their Operating Procedures as their procurement process, but it is inadequate. The Connecticut Port Authority doesn't have a formalized process, certainly not one

which can be audited and certified. During discussions, the Committee encouraged the CPA to engage in discussions with OPM toward establishing a viable formalized process (Exhibit 10). This could be in the form of adopting the OPM Procurement Standards as their procurement procedure and would lend considerable formality to their process. Specifically, the sections dealing with Personal Service Agreements which discuss creating RFPs, determining contractor qualifications, proposal format and other critical information.

The Connecticut Port Authority entered into a Memorandum of Understanding with OPM beginning in September 2019 to allow the CPA to utilize certain OPM staff and consultants hired by OPM to review and make recommendations to a variety of subjects, including procurement (Exhibit 11).

State Pier Development

Quasi-public agencies operate in a unique space. The actions being reviewed occurred prior to the Connecticut Port Authority being defined as a state contracting agency. From the inception of the State Pier development project, there were some violations of CPA's Operating Procedures, questionable practices, and potential violations of state statutes and regulations. The purpose of this portion of the Committee investigation and inclusion in the report on procurement practices is in response to the numerous complaints made to the State Contracting Standards Board. The CPA is now defined as a state contracting agency for the purposes of Chapter 62, with some exceptions, per Public Act 21-2. Recommendations from this portion of the investigation are for the CPA moving forward as a state contracting agency.

The Connecticut Port Authority assumed custody and control of State Pier in New London from the CT Department of Transportation in July 2016. CPA reports receiving final ownership of State Pier in 2020, after the execution of the Harbor Development Agreement.² In November 2017, the Board of the Connecticut Port Authority authorized the hiring of Mott McDonald to develop and evaluate respondents to a Request for Qualifications related to the State Pier. The RFQ was released in February 2018 (Exhibit 12). In April 2018, the CPA Board authorized the hiring of Seabury Maritime Capital to issue an RFP for the operation of State Pier. In August 2018, Gateway New London was selected from this RFP process. The resulting public-private partnership, the Harbor Development Agreement, was executed February 11, 2020.

The CPA Board approved hiring Mott McDonald to develop, administer and evaluate responses from a Request for Qualifications (RFQ) at its November 1, 2017 Board meeting. Board member Henry Juan, a managing partner at competing firm Seabury Maritime Capital, abstained from the vote (Exhibit 13). Henry Juan resigned from the Board on February 7, 2018.³

² See Appendix B. Additionally, Public Act 15-5, effective July 1, 2015 directed the Department of Transportation to begin the transfer of State Pier to CPA.

³ Information provided by John Henshaw in an email dated January 31, 2022.

The RFQ was released February 9, 2018. The RFQ was looking for respondents with a proven background in managing maritime ports to develop, operate, and/or maintain the New London State Pier facilities. The RFQ stated, “State legislation concerning public-private partnerships is not currently active.⁴ If such legislation becomes active again, the Project may be submitted for approval as a public-private partnership project, in accordance with C.G.S. § 4-256.” There were five respondents: Metro Port, PortsAmerica, Logistec, Gateway Terminal, and DRVN Enterprises. Logistec at the time had been the managing operator at State Pier. Each of the respondents scored well by the evaluators, aside from DRVN Enterprises. Those that scored well were invited to respond to the subsequent Request for Proposals.

Following the completion of the RFQ process, and with a short list of qualified respondents, the CPA released a Request for Proposals (RFP) for “Strategic Advisory Services” to develop and assess the RFP for the development, operation and/or maintenance of State Pier (Exhibit 14). This solicitation garnered responses from Mott McDonald and Seabury Maritime Capital (Exhibits 15 and 16). While the solicitation received fewer than three bids, the CPA Board moved to hire Seabury Maritime Capital for the work, despite the requirement by the CPA Operating Procedures to have at least three bids and the potential conflict of interest. The last meeting that Mr. Henry Juan attended as a Board member is recorded as January 3, 2018.

Mr. Juan, according to his LinkedIn profile, worked as a managing director for Young America Capital from 2014 to 2017 (Exhibit 17). Mr. Juan was appointed to the CPA Board in 2016. In February 2017, Mr. Juan was hired by Seabury Maritime Capital. Mr. Juan did not recuse himself for all discussions and votes regarding the State Pier and its development upon his employment with Seabury Maritime Capital. Abstaining from voting is not sufficient to avoid an appearance or an actual conflict of interest.

The RFP for Strategic Advisory Services, released March 9, 2018, initially required responses by March 23, 2018. Subsequent amendments to the RFP moved the deadline to April 11, 2018. Amendment 1 to the Strategic Advisory Services RFP was released after timely responses from Mott McDonald and Seabury Maritime Capital were received (Exhibit 18). Amendment 1 adds to the scope of work a second RFP, “to be run in parallel with the above terminal operator RFP process – for interested deep-water wind energy development at the State Pier Facility”, and to review, evaluate and provide guidance on the selection of the best respondent to that RFP. Amendment 1 also includes the prohibition, “success fees or similar fee arrangements will not be acceptable” to the RFP. Mott McDonald’s first and amended responses did not propose a success fee. Seabury Maritime Capital’s first response proposed success fees, but the amended response did not (Exhibits 19 and 20). Typically, a submission that omits

⁴ This is not factually correct. The statute lapsed in 2016, and was reinstated in 2017 and extended to 2020. At the time of the RFQ release, up until approximately a month prior to final execution of the Harbor Development Agreement, public-private partnerships and quasi-publics were subject to Chapter 55d, 4-256.

required information or includes prohibited actions would be considered a non-responsive submission, and excluded from evaluation.

The CPA Board approved the hiring of Seabury Maritime Capital to review responses to the RFQ, develop an RFP for a procurement process to identify a qualified terminal operator for the State Pier Facility, review and evaluate the RFP responses, and to provide legal, investment, debt, or financial advice to the Authority on the final management agreement at the May 23, 2018 Board meeting (Exhibit 21).

The initial contract with Seabury Maritime Capital was executed May 15, 2018 and contains provisions and fee schedule for success fees. The success fee, as described in the contract, is for “Financial Advisory Services”, to be paid “in connection with assisting the Authority in arranging or closing a Transaction.” Transactions defined in the contract include operating transactions, equity transactions, and debt transactions. There are two success fee schedules: one for the value of a transaction for a facility development and one that reduces fees if the successful respondent was on the shortlist of respondents determined by the RFQ (Exhibit 22).

There are two subsequent amendments to the contract, the first dated November 10, 2018 and the second dated February 1, 2019, both to extend the term of the contract and make changes to the payment and fee structure. The two amendments establish hourly rates for work in addition to the monthly rate, and requires any success fee to be reduced by the aggregate of such hourly fees (not to exceed \$10,000) (Exhibit 23 and Exhibit 24). A dispute over the amount of success fee to be paid to Seabury Maritime Capital resulted in a settlement agreement payment of \$523,000 to Seabury Maritime Capital on July 21, 2020 (Exhibit 25).

The second amendment to the Strategic Advisory Services Agreement is dated effective February 1, 2019 but signed February 26, 2019. Again, the CPA executed an agreement effective on a date prior to the actual execution by a CPA official. This is not an acceptable practice.

The Connecticut Port Authority, in consultation with Seabury Maritime Capital, released a Request for Proposals in June 2018 to “improve, develop, finance and/or operate via long-term Operating Agreement the State Pier at the Port of New London in Connecticut” (Exhibit 26). This would be the first RFP required by the Strategic Advisory Services contract. Submissions for the State Pier Development RFP were initially due August 10, 2018. On August 7, 2018 the submission deadline was extended to August 31, 2018 via an amendment to the RFP (Exhibit 27). There is no language in the State Pier Development RFP about the opportunity or possibility of a public-private partnership.

The RFP received submissions from Gateway Terminals, Logistec, and World Wide Terminals. Each of the evaluators scored Gateway Terminals substantially higher than the other respondents and was selected to operate the State Pier on behalf of the CPA (Exhibit 28).

While each of the submissions referenced experience and capabilities to handle wind-energy components and traditional cargo commerce, Gateway Terminals was the only respondent to bring a wind-energy partnership with them to the agreement. Gateway Terminals entered a response with support from Orsted-Eversource to bring wind-energy operations and cargoes to the State Pier via their venture Bay State Wind (Exhibit 29). On January 7, 2019 a concession agreement between Gateway New London LLC and the Connecticut Port Authority was executed for a period of 20 years, with two 10-year extension options (Exhibit 30).

On February 11, 2020, the Harbor Development Agreement (HDA) was executed by the Connecticut Port Authority, Gateway New London LLC, and Northeast Offshore LLC (NEO)⁵. This is a public-private partnership committing state bonded funds, resources and assets to the development of the State Pier in New London for use by Orsted-Eversource and their affiliates to assemble and deploy wind turbine generators (Exhibit 31).

Specifically, the HDA describes the scope of work for NEO and CPA as including, “the coordination and direction of the design services, engineering, labor... construction management” and gives NEO “consultation rights for selection and administration of design, engineering and construction contracts.” NEO has obtained Moffat & Nichol as the “designer” by way of a “Design Agreement” paid for by NEO but substantially controlled by CPA. Additionally, the agreement gives NEO, “exclusive rights to utilize the Site for its offshore wind activities under the terms and conditions set forth in [the] Harbor Development Agreement and Sublease Agreement.”

Chapter 55d, section 4-256 defines a public-private partnership as, “the relationship established between a state agency and a private entity by contracting for the performance of any combination of specified functions or responsibilities to design, develop, finance, construct, operate or maintain one or more state facilities”, provided the agency can provide that the funding will be sufficient to cover costs.⁶ The CPA has contracted with Gateway Terminals and NEO to operate, finance and design the development of State Pier in a manner that serves NEO’s needs as a wind-energy operator, and to operate the pier as a wind turbine generator assembly hub for Orsted-Eversource’s several wind farm projects. The contract length is 20 years with options to extend out to 40 years, which is common practice with public-private partnerships. CPA is entitled to some of the revenues from the operation of the port by Gateway Terminals, in addition to set fees. Gateway Terminals and NEO provided capital contributions towards the development, in exchange for the ability to commit the entire State Pier facility to wind-turbine generator assembly. There is no statutory requirement or permission to transfer ownership of a state asset to the private partner.

⁵ Northeast Offshore LLC is a subsidiary of Orsted-Eversource.

⁶ Public Act 21-99 removed the twenty-five percent limit on state investment and restricted the authorization of public-private partnerships to the Department of Transportation.

Per Connecticut General Statutes Chapter 55d Section 4-256, there is a requirement that public-private partnerships be approved by the Governor and “the joint standing committees of the General Assembly having cognizance of matters relating to finance, revenue and bonding and appropriations and the budgets of state agencies. Said committees shall hold public hearings on any such submission.” There was no such public hearing for this project prior to execution of the agreement. The agreement requires the State of Connecticut to pay for any project costs exceeding the initial investment of \$30 million made by the private partners.

Chapter 55d Public-Private Partnerships was enacted by Public Act 11-1 of the October 2011 Special Session of the Connecticut General Assembly (Exhibit 32). The Public Act originally had a sunset provision for approving public-private partnerships of January 1, 2016. Public Act 17-149 extended that sunset provision to January 1, 2020. Public Act 21-99 reinstated public-private partnerships, but limits their use to the Department of Transportation. Prior to Public Act 21-99, all quasi-public agencies were covered by the governing statutes of public-private partnerships. There is no record that the CPA followed or attempted to follow the approval and notification process of the statute, despite the project being in progress for close to two years before the statute lapsed. The HDA, which is a public-private partnership, was executed a month after the lapse of the public-private partnership statute.

The Connecticut Port Authority has a Memorandum of Agreement with the Department of Administrative Services and Office of Policy and Management for “the oversight of design, construction, construction management, and business, legal and procurement services related to the New London State Pier Project”. One of the reasons listed was a lack of staffing in the CPA for the necessary paperwork and due diligence for the project. CPA will be paying the state agencies for their employees work on behalf of the CPA.

Conclusions

The Committee reviewed an extensive number of documents related to the operating of the Connecticut Port Authority and the State Pier development project. These documents were obtained from the CPA, FOI requests made by the public, and information published online. The Committee also reviewed audits performed by the State Auditors of Public Accounts, relevant state statutes, guidance documents from OPM, and materials and recordings of CPA meetings. The Committee conducted interviews with members of the public who submitted complaints to the SCSB, as well as the Chairman of the Connecticut Port Authority Board, David Kooris, and Executive Director, John Henshaw. To confirm authority and compliance with state statutes, the SCSB had sought an opinion from the Attorney General’s office and subsequently received limited legislative authority over CPA. Under its existing authority, the SCSB has referred a suspected collusion issue to the Attorney General’s office related to contracts executed by the Connecticut Port Authority.

There were several issues and/or violations found in the review of the Connecticut Port Authority and the State Pier development project. First, the CPA violated their own Operating Procedures by continuing to move forward on a solicitation that resulted in fewer than three responsive bids. When discussing this with Chairman Kooris and Executive Director Henshaw, the response was that the Authority often finds it difficult to receive three responsive bids, for a number of reasons.

Second, there is the circumspect award of a contract to a firm who had a managing partner that was also a member of the Connecticut Port Authority Board. This Board member, Henry Juan, was aware of the work that the CPA sought to have performed prior to the issuance of the RFP, was likely aware that the CPA was dissatisfied with Mott McDonald's work on the State Pier RFQ⁷ and could have had a special knowledge of the likelihood that the CPA would enter into a contract that contained success fees (Exhibit 33). This type of fee structure was not proposed by Mott McDonald, and was specifically prohibited in an amendment to the Strategic Advisory Services RFP. Even after the prohibition of success fees in the RFP Amendment, and the removal of such in the amended response from Seabury Maritime Capital, the resulting contract contained a success fee structure.

Third, the State of Connecticut has prohibitions on finder's fees and restrictions on consultant fees. It is not in the expertise of the SCSB to determine whether or not the success fee was legal. It is an issue that ought to be clarified by the Attorney General or State Treasurer's Office. Despite the CPA claiming that success fees are common in their industry, the SCSB does not believe that they are appropriate for government contract work (Exhibit 34). If the Attorney General's office finds that Connecticut statutes do not bar success fees in this situation then the General Assembly may wish to examine this issue as a matter of public policy.

Fourth, the Harbor Development Agreement is a public-private partnership, as stated in the contract itself.

The enabling statutes for the CPA do not give specific authority to execute public-private partnerships. There is no record that the CPA had the statutory authority to execute a public-private partnership after January 1, 2020.

There needs to be significant improvements and clarifications made to the Connecticut Port Authority's procurement practices and procedures. While the CPA itself does not have a large staff, it is responsible for hundreds of millions of dollars in contracts, state assets, and bond funds. As such, internal transparency and accountability controls must be at the forefront of the CPA's actions, and should be reflected as such in its Operating Procedures and policies.

⁷ During the November 3, 2021 interview between CPA and the Committee, Chairman Kooris stated that the CPA was dissatisfied with Mott McDonald's performance on the RFQ. See Exhibit 33.

Recommendations

1. The CPA should develop a comprehensive procurement procedure.

A procedure must include the specific type of procurement (e.g. legal services, services costing \$20,000 or more); the individual(s) responsible for administering the procurement and executing the contract; circumstances of exception, if any; limitations to the process (e.g. RFP must be open for a minimum of 30 days for small procurements, must be open for 60 days for larger/more involved projects, must have at least three bids, weighting must be published in RFP) and how to proceed when its criteria cannot be met. Procedure must also include applicable state statutes and broadly how the CPA would handle common areas of concern (e.g. Board member employed by an interested RFP respondent, communications between CPA and bidders). Further, this procedure should include the procedures and policies that the CPA is actually using in their operations.

The SCSB will collaborate with CPA in drafting their procedure manual. Once adopted by the CPA Board, the SCSB will be able to audit and certify the CPA's procurement practices.

2. Contracts should not be executed prior to Board approval.

The Strategic Advisory Services contract was executed May 15, 2018 with Board approval given May 23, 2018. Additionally, the second amendment to the Strategic Advisory Services contract was dated effective February 1, 2019 but signed February 26, 2019 by the CPA Executive Director. This is an impermissible action. The process of approving contracts prior to execution should be detailed in the procurement procedure. The procurement procedure should also explicitly state that work cannot begin or be billed for prior to the date of execution of a contract.

3. The procurement procedure should include specific limitations on communications with prospective bidders and respondents to requests for proposals.

It is understood that members of the CPA Board have personal and business connections to the maritime industry, and that there have been and likely will continue to be instances where members of the Board would have personal or business connections to prospective bidders to work conducted by the CPA. The CPA should adopt ethics and communications standards that include limitations on communications and participation of such implicated members to eliminate a real or the appearance of a conflict of interest. Such members should recuse themselves from discussions related to the work. Abstaining from votes is not sufficient.

4. The CPA should obtain proper authority to enter into a public-private partnership.

The statutes enabling state agencies and quasi-public agencies to enter in public-private partnerships lapsed on January 1, 2020. The Harbor Development Agreement was executed on February 11, 2020. The Connecticut Port Authority did not have statutory authority to enter into this type of contract. In order to utilize public-private partnership contracts, the CPA should seek a statute change by the legislature to allow for the CPA to enter into such agreements.

The SCSB did not have the authority in February 2020 to review the public-private partnership entered into by CPA, Gateway New London LLC and Northeast Offshore, LLC as provided for

in C.G.S. Chapter 55d, section 4-256. The lawfulness of this agreement rests with the Attorney General.

5. Success fee payment structures should not be utilized in government contracts.

Success fee payments are not defined or regulated in state statute. Payment for services rendered should be paid on a transparent fee structure for services rendered, in whole. Fees for completing the work that the contractor was already paid a fee to complete is not a best practice.

6. Systemic changes to State government procurement.

The underlying issues discussed in this report are endemic to state agencies and quasi-publics throughout the state. The state needs to pursue consolidation and centralization of procurement processes and streamline agencies' ability to procure and contract for services in a manner that is cost-effective, transparent and delivers results to the residents of Connecticut.

State Pier Contract Timeline

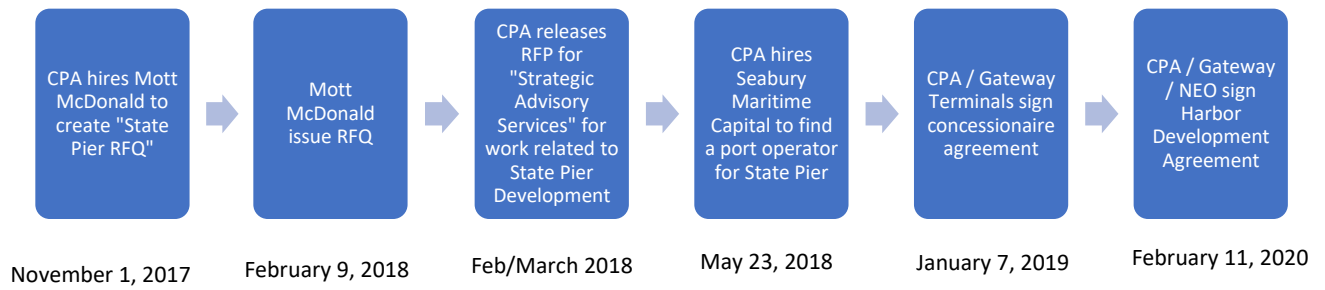


Exhibit Table			
Exhibit Number	Document Title	Relevant Entities	Document Date
1	SCSB December 11, 2020 Meeting Minutes	SCSB, CPA	12/11/2020
2	SCSB letter to Attorney General Tong seeking opinion	SCSB, AG	2/9/2021
3	Attorney General Tong's Formal Opinion	SCSB, CPA, AG	2/25/2021
4	Public Act 21-2	CPA, CSB, CGA	6/23/2021
5	CPA Original Operating Procedures	CPA	3/1/2017
6	Paul Mounds Testimony		8/20/2019
7	Whittlesey Advising Consulting Report on CPA	OPM, CPA, Whittlesey	12/12/2019
8	CPA Amended Operating Procedures	CPA	4/27/2020
9	FY 2016 2017 State Auditors Report	SAPA, CPA	5/17/2019
10	December meeting with CPA	CPA, CSB	12/3/2021
11	CPA MOU with OPM	CPA, OPM	9/6/2019
12	New London State Pier Request for Qualifications (RFQ)	CPA	2/9/2018
13	CPA Board of Directors Meeting Minutes	CPA	11/1/2017
14	(RFP) for "Strategic Advisory Services"	CPA	3/1/2018
15	Mott MacDonald RFP 1 st Response	Mott McDonald	3/22/2018
16	Seabury RFP 1 st Response	Seabury	3/23/2018
17	Henry Juan's Resume on LinkedIn	Printed on 1/17/2022	
18	Amendment 1 to Strategic Advisory Services RFP	CPA	4/2018
19	Seabury 1 st Response to RFP	Seabury	3/23/2018
20	Seabury 2 nd Amended Response	Seabury	04/11/2018
21	CPA Board of Directors Meeting Minutes	CPA	5/23/2018
22	CPA and Seabury Consulting Services Agreement	CPA, Seabury	5/15/2018
23	Amendment 1 to Consulting Services Agreement	CPA, Seabury	11/10/2018
24	Amendment 2 to Consulting Services Agreement	CPA, Seabury	2/1/2019
25	CPA Success Fee Settlement with Seabury	CPA, Seabury	07/2020
26	CPA and Seabury RFP	CPA, Seabury	6/7/2018
27	Amendment 2 to RFP: Deadline Change	CPA	6/7/2018
28	CPA Evaluations of State Pier RFP Responses	CPA	10/2018
29	Gateway Terminals RFP Response	Gateway, Eversource-Orsted	8/31/2018
30	CPA and Gateway New London Concession Agreement	CPA, Gateway	1/7/2019
31	Harbor Development Agreement	CPA, Gateway, Northeast Offshore	2/11/2020
32	CGS Chapter 55d Section 4-256	CT General Assembly	
33	CSB Meeting with CPA (including David Kooris)	CPA, CSB	11/3/2021
34	John Henshaw's email concerning success fees	CPA, CSB	09/24/2021

Appendix A:
Attorney General Comments on Draft Report,
submitted January 28, 2022

PROCUREMENT REVIEW OF THE CONNECTICUT PORT AUTHORITY

Connecticut State Contracting Standards Board

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Introduction

It is the mission of the Connecticut State Contracting Standards Board (SCSB) to require that state contracting and procurement are understood and carried out in a manner that is transparent, cost effective, efficient, and consistent with state and federal statutes, rules, and regulations. The SCSB is required by statute to audit and certify procurement practices of state contracting agencies and assist state agencies in improving contracting practices.

The Connecticut Port Authority was established by Public Act 15-5, June Special Session, effective July 1, 2015. Pursuant to Chapter 12, Section 1-120, CPA is classified as a quasi-public agency. The authority manages three deep water ports (and several coastal and river harbors that make important contributions to the state's economy. The CPA states their mission is to, "grow Connecticut's economy and create jobs by strategically investing in the state's three deep water ports and small harbors to enable each to maximize its own economic potential."

At its December 11, 2020 meeting, SCSB Executive Director David Guay presented a complaint from a member of the public requesting the SCSB to review the Connecticut Port Authority's (CPA) development at the State Pier in New London (Exhibit 1). The complaint was supported by material received by the complainant by a Freedom of Information Request to the CPA. On January 8, 2021, the SCSB voted to form a Special Committee of Inquiry (Committee) to examine the procurement processes for the investment, development, and operation of the State Pier.

At the February 2, 2021 SCSB meeting, the Committee presented their initial review of the CPA materials available and recommended the Board to further investigate procurement matters of the CPA at the State Pier. Following the February 2, 2021 SCSB meeting, Executive Director David Guay requested a formal opinion from the Attorney General's Office regarding the State Contracting Standards Board's authority over the Connecticut Port Authority (Exhibit 2). Attorney General Tong issued an opinion to the SCSB on February 25, 2021 stating, "the Board's jurisdiction with respect to the Port Authority would primarily be limited to regulating a bidder's contest...that did not involve real property" and that the "General Assembly would have to change the statutes to expand the Board's oversight" (Exhibit 3).

Public Act 21-2 amended Connecticut General Statutes to define the Connecticut Port Authority as "a state contracting agency for the purposes of chapter 62 except for the provisions of section 4e-16, and shall be subject to the authority of the State Contracting Standards Board established under section 4e-2", effective June 23, 2021 (Exhibit 4). This statutory change is in effect until 2026. The Act also requires the CPA to report on its operations, contracts, finances, and projects to the Office of Policy and Management (OPM) as well as the Department of Administrative Services (DAS) for review.

This report provides the findings and recommendations of the Special Committee's review and investigation of the Connecticut Port Authority's procurement practices and the State Pier development project. While the recommendations are based on the investigation of the CPA,

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these recommendations may also be applicable to state agencies and other quasi-public agencies. The General Assembly may want to seek legislative changes to Connecticut State Statutes based upon these recommendations. The SCSB in adopting these recommendations will work with any interested party in furthering the goal of transparent and competitive procurement processes throughout State government and its political subdivisions. *Any limitation of this report may be attributed to the lack of staffing of the SCSB.*

Procurement Review

The State Contracting Standards Board has been charged by the legislature with the responsibility to review, certify and periodically recertify state contracting agencies' procurement processes. With the designation of the Connecticut Port Authority as a state contracting agency, the Special Committee reviewed the procurement practices of the CPA from its inception. The procurement practices are currently contained within the CPA's operating procedures. It is acknowledged that prior to the designation of the CPA as a state contracting agency, the procedures adopted by the CPA Board and later procedures created in consultation with OPM were created for a quasi-public agency. The areas of deficiency are through a lens of what needs to be rectified now that the CPA is a state contracting agency, as well as general comments on best practices.

The original operating procedures contain the following procurement related sections: "Acquisition and Conveyance of Interest in Real Property"; "Contracting for Personal Services and Personal Property"; "State Contracting Requirements" (Exhibit 5). The review of the original procedures was necessary because these were the procedures that were in effect at the inception of the State Pier development project.

The procurement procedures for "Acquisition and Conveyance of Interest in Real Property" simply reads,

The Board of the Port Authority shall determine the procurement procedures necessary and desirable on a case-by-case basis for transactions involving investments in, or the acquisition or conveyance of any interest in real property as the Board determines to be in the best interest of the Port Authority and in furtherance of the purposes of the Port Authority pursuant to the Act.

This policy, which is not actually a procedure or a set process, gives wide discretion to the Board and provides no means by which to evaluate transactions. There are no accountability or transparency measures in place, which raises concerns considering the substantial amount of public dollars that are spent on such transactions, as well as the legal vulnerabilities that the CPA would be susceptible to were a transaction to be disputed.

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The section on “Contracting for Personal Services and Personal Property” procurement procedure establishes the following:

1. The Executive Director has responsibility and discretion over all procurements of personal services and personal property under \$50,000 in a fiscal year, as well as sole-source procurements.
2. All solicitations greater than \$50,000 in a fiscal year require a “competitive negotiation where proposals are solicited from at least three (3) qualified parties.”
3. The Port Authority may continue to use contracted professionals while working in conjunction with other state agencies or quasi-public authorities.
4. The Port Authority must solicit proposals every three (3) years for “financial, legal, bond, underwriting and other professional services required by the Port Authority on a regular and ongoing basis”. The CPA may not use the same financial audit person or firm for more than six (6) consecutive years.

Again, there is a great deal of latitude regarding procurement. In this case, the discretion for contracting is with the Executive Director. Of particular concern is the ability to use sole-source procurements whenever it is deemed necessary for a procurement valued under \$50,000. If the Executive Director determines it is not possible to competitively bid work for over \$50,000, then the competitive negotiation requirement can be waived as well. This section does not give a procedure or details on what mechanisms of solicitation can or should be used, nor does it require the CPA to pursue any type of results-based contracting. This policy does not lend itself to consistency nor transparency, as is expected and required of all other government contracting agencies.

The “State Contracting Requirements” states the broad requirement that the Connecticut Port Authority shall be subject to all state procurement and contracting that are applicable to quasi-public agencies and provides a list specifically calling out sections relating to campaign contributions, contractor affidavits, prohibitions on finder’s fees, whistleblower protections and non-discrimination requirements. Procurement requirements are provided for in numerous state statutes and various regulations. The considerable effort to define and identify all these requirements for each procurement activity is certainly necessary by law and for best practices, however, the CPA clearly does not have the resources to achieve this on their own. Further, a simple acknowledgement that the CPA is to follow all applicable laws and regulations is not a procedure which can be evaluated and certified by the SCSB.

Following a whistleblower complaint and reports of improper conduct at the Connecticut Port Authority, the Governor directed OPM to provide support to the CPA (Exhibit 6). In December 2019, a consulting firm, Whittlesey Advising, engaged by OPM issued a report of observations and considerations evaluating the organizational structure, policies, procedures, practices and internal controls related to the Connecticut Port Authority’s financial management and administrative systems (Exhibit 7). This included procurement practices. The following considerations were issued by the firm following their review of the CPA:

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1. Develop a policy for the two different types of procurement methods; purchase order only and contracting process.
2. Develop a workflow process explaining how each employee will be involved in the process and the key responsibilities of each employee.
3. Develop an approval process that requires different levels of approval depending on the size of the procurement. This approval process should be clearly defined and evaluated on a periodic basis.
4. Develop a policy and procedures for the Executive Director to obtain board approval for exceptions to the procurement policies.
5. In addition to the \$50,000 RFP threshold, CPA should consider implementing lower thresholds that mandate obtaining written quotes. This would be more in line with other state quasi-public agencies.
6. CPA should consider including, in its procurement policy, provisions regarding written justifications for sole source purchases and provisions regarding notification to the board of such purchases.
7. CPA should consider implementing an additional board approval requirement to ensure unbudgeted expenditures are appropriately authorized and the board remains informed on unbudgeted expenditures.
8. CPA should consider including a restrictive clause in its own procurement policies to not enter into any contract to purchase or acquire goods/services with an entity that is owned or controlled by any member of the board or any employee of the quasi-governmental agency or any immediate family. This is to ensure there are no related party transactions that would otherwise not occur had the related party been an outside entity.

Following the issuance of the Whittlesey Advising report, the CPA amended and adopted their Operating Procedures in April 2020 (Exhibit 7). These amended procedures are the most current Operating Procedures for the CPA. The revision includes a preamble stating a purchasing philosophy that promotes competitive bidding whenever possible. This preamble also requires that “all parties involved in the negotiation, performance, or administration of purchases to act in good faith to advance the competitive principles that underlie it” and prohibits acts to deliberately evade competitive bid, such as splitting up contracts or purchase orders. The Operating Procedures also references state ethics laws and conflict of interest policies.

The second section, titled “Acquisition and Conveyance of Interest in Real Property” states that the procurement procedure for such transactions is to have the CPA Board determine on a case-by-case basis prior to the commencement of the transaction what the procedure will be. Board approval is necessary for any real estate procurement or transaction in excess of \$50,000. The change in this policy from the previous version is that the Board will approve transactions in excess of \$50,000 which was not previously stipulated. However, the absence of a defined procedure still remains.

The procurement procedures in the third section, titled “Purchase of Personal Services, Personal Property and Other Goods and Services” includes definitions for “public solicitation” and “thresholds”; requirements for purchases between \$5,000 and \$50,000; requirements for purchases greater than \$50,000; exceptions to the requirements for verbal or written quotes or

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public solicitation; other allowable procurement methods; the CPA Board's actions regarding contracts over \$50,000 and amendments; policy for non-budgeted expenditures over \$5,000; and a policy for contracting with individuals.

The threshold definition states that the thresholds listed in the procurement procedures are based on the expected "net" costs to the CPA, meaning, the cost less actual or anticipated "rebates, reimbursements or credits owed or received under any contract or agreement related to such personal property, personal services or goods and services." This is not a typical understanding of contract cost. This interpretation of contract cost could be perceived as a means to avoid threshold requirements or other measures required by state statutes or regulations.

The exemptions to threshold requirements and competitive procurement can be waived by the Executive Director if one of three criteria are met. The criteria include "unusual condition or contingency," emergency situations, or the type of contract or agreement does not lend itself to competitive procurement as determined by the Executive Director. There is no description of how these determinations are made nor how the contract is negotiated, administered and controlled for results-based accountability and transparency.

Other procurement vehicles made available include using Department of Administrative Services master contracts, purchases from federal, state or municipal surplus property programs, and "purchases by, from, in conjunction with, or on behalf of other Connecticut quasi-public agencies, state agencies or political subdivisions of the State of Connecticut, any other state, the federal government, or inter-governmental purchasing groups or cooperatives." While it is useful to understand sources that the CPA can utilize for procurement, there is no established procedures to determine when these other mechanisms may be used, what thresholds may or may not apply, and how the CPA would track and report the negotiation, execution and performance of these contracts or purchases.

The section on contracting with individuals directs the Port Authority to consult the website of the Internal Revenue Service and State of Connecticut Comptroller's Office to determine if the duties and activities are those of an employee or an independent contractor. This inclusion may be the result of a repeated finding by the state Auditors of Public Accounts related to the hiring and payment of interns as consultants (Exhibit 8).

The last section of the procurement policy in the Operating Procedures requires record retention for all solicitations, selections, negotiations, contract execution and management, and closeout. It does not state who at the CPA is responsible for maintaining this comprehensive file, however, this is a best practice and would be helpful for the CPA to have in place.

Of the eight considerations for procurement given in the Whittlesey Advising consulting report, the 2020 revision of the Connecticut Port Authority's Operating Procedures adopted or incorporated three of the considerations in whole or in part. There was incorporation of additional thresholds, incorporation of requirements to obtain verbal or written quotes, and incorporation of reporting unbudgeted expenditures to the Board. Overall, the procurement policy provides wide discretion to the Executive Director, who is also acting as the Procurement Officer. There is still a lack of procedural steps for procurements. Given the size of the contracts

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that the Connecticut Port Authority is tasked with administering, it is imperative for both the CPA and potential bidders to understand how a solicitation will be handled each time.

The section on State Contracting Requirements remains identical to the previous version of the CPA Operating Procedures. This does not constitute a procurement procedure.

The CPA refers to their Operating Procedures as their procurement process, but it is inadequate. The Connecticut Port Authority doesn't have a formalized process, certainly not one which can be audited and certified. During discussions, the Committee encouraged the CPA to engage in discussions with OPM toward establishing a viable formalized process (Exhibit 9). This could be in the form of adopting the OPM Procurement Standards as their procurement procedure and would lend considerable formality to their process. Specifically, the sections dealing with Personal Service Agreements which discuss creating RFPs, determining contractor qualifications, proposal format and other critical information.

The Connecticut Port Authority entered into a Memorandum of Understanding with OPM beginning in September 2019 to allow the CPA to utilize certain OPM staff and consultants hired by OPM to review and make recommendations to a variety of subjects, including procurement (Exhibit 10).

State Pier Development

Quasi-public agencies operate in a unique space. The actions being reviewed occurred prior to the Connecticut Port Authority being defined as a state contracting agency. From the inception of the State Pier development project, there were some violations of CPA's Operating Procedures, questionable practices, and potential violations of state statutes and regulations. The purpose of this portion of the Committee investigation and inclusion in the report on procurement practices is in response to the numerous complaints made to the State Contracting Standards Board. The CPA is now defined as a state contracting agency for the purposes of Chapter 62, with some exceptions, per Public Act 21-2. Recommendations from this portion of the investigation are for the CPA moving forward as a state contracting agency.

The Connecticut Port Authority took ownership of State Pier in New London from the CT Department of Transportation in July 2016 (Exhibit 11). In November 2017, the Board of the Connecticut Port Authority authorized the hiring of Mott McDonald to develop and evaluate respondents to a Request for Qualifications related to the State Pier. The RFQ was released in February 2018 (Exhibit 12). In April 2018, the CPA Board authorized the hiring of Seabury Maritime Capital to issue an RFP for the operation of State Pier. In August 2018, Gateway New London was selected from this RFP process. The resulting public-private partnership, the Harbor Development Agreement, was executed February 11, 2020.

The CPA Board approved hiring Mott McDonald to develop, administer and evaluate responses from a Request for Qualifications (RFQ) at its November 1, 2017 Board meeting. Board member Henry Juan, a managing partner at competing firm Seabury Maritime Capital,

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abstained from the vote. The RFQ was released February 9, 2018. The RFQ was looking for respondents with a proven background in managing maritime ports to develop, operate, and/or maintain the New London State Pier facilities (Exhibit 13). There were five respondents: Metro Port, PortsAmerica, Logistec, Gateway Terminal, and DRVN Enterprises. Logistec at the time had been the managing operator at State Pier. Each of the respondents scored well by the evaluators, aside from DRVN Enterprises. Those that scored well were invited to respond to the subsequent Request for Proposals.

Following the completion of the RFQ process, and with a short list of qualified respondents, the CPA released a Request for Proposals (RFP) for “Strategic Advisory Services” to develop and assess the RFP for the development, operation and/or maintenance of State Pier (Exhibit 14). This solicitation garnered responses from Mott McDonald and Seabury Maritime Capital (Exhibit 15). While the solicitation received fewer than three bids, the CPA Board moved to hire Seabury Maritime Capital for the work, despite the requirement by the CPA Operating Procedures to have at least three bids and the potential conflict of interest. The last meeting that Mr. Henry Juan attended as a Board member is recorded as January 3, 2018.

Mr. Juan, according to his LinkedIn profile, worked as a managing director for Young America Capital from 2014 to 2017. Mr. Juan was appointed to the CPA Board in 2016. In February 2017, Mr. Juan was hired by Seabury Maritime Capital. Mr. Juan did not recuse himself for all discussions and votes regarding the State Pier and its development upon his employment with Seabury Maritime Capital. Abstaining from voting is not sufficient to avoid an appearance or an actual conflict of interest.

The RFP for Strategic Advisory Services initially required responses by March 23, 2018. Subsequent amendments to the RFP moved the deadline to April 11, 2018. Amendment 1 to the Strategic Advisory Services RFP was released after timely responses from Mott McDonald and Seabury Maritime Capital were received (Exhibit 16). Amendment 1 adds to the scope of work a second RFP, “to be run in parallel with the above terminal operator RFP process – for interested deep-water wind energy development at the State Pier Facility”, and to review, evaluate and provide guidance on the selection of the best respondent to that RFP. Amendment 1 also includes the prohibition, “success fees or similar fee arrangements will not be acceptable” to the RFP. Mott McDonald’s first and amended responses did not propose a success fee. Seabury Maritime Capital’s first response proposed success fees, but the amended response did not (Exhibit #).

The CPA Board approved the hiring of Seabury Maritime Capital to review responses to the RFQ, develop an RFP for a procurement process to identify a qualified terminal operator for the State Pier Facility, review and evaluate the RFP responses, and to provide legal, investment, debt, or financial advice to the Authority on the final management agreement at the May 23, 2018 Board meeting (Exhibit 17).

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The initial contract with Seabury Maritime Capital was executed May 15, 2018 and contains provisions and fee schedule for success fees. The success fee, as described in the contract, is for “Financial Advisory Services”, to be paid “in connection with assisting the Authority in arranging or closing a Transaction.” Transactions defined in the contract include operating transactions, equity transactions, and debt transactions. There are two success fee schedules: one for the value of a transaction for a facility development and one that reduces fees if the successful respondent was on the shortlist of respondents determined by the RFQ (Exhibit 18).

There are two subsequent amendments to the contract, the first dated November 10, 2018 and the second dated February 1, 2019, both to extend the term of the contract and make changes to the payment and fee structure. The two amendments establish hourly rates for work in addition to the monthly rate, and requires any success fee to be reduced by the aggregate of such hourly fees (not to exceed \$10,000) (Exhibit 19 and Exhibit 20). A dispute over the amount of success fee to be paid to Seabury Maritime Capital resulted in a settlement agreement payment of \$523,000 to Seabury Maritime Capital on July 21, 2020 (Exhibit 21).

The second amendment to the Strategic Advisory Services Agreement is dated effective February 1, 2019 but signed February 26, 2019. Again, the CPA executed an agreement effective on a date prior to the actual execution by a CPA official. This is not an acceptable practice.

The Connecticut Port Authority, in consultation with Seabury Maritime Capital, released a Request for Proposals in June 2018 to “improve, develop, finance and/or operate via long-term Operating Agreement the State Pier at the Port of New London in Connecticut” (Exhibit 22). This would be the first RFP required by the Strategic Advisory Services contract. Submissions for the State Pier Development RFP were initially due August 10, 2018. On August 7, 2018 the submission deadline was extended to August 31, 2018 via an amendment to the RFP (Exhibit 23).

The RFP received submissions from Gateway Terminals, Logistec, and World Wide Terminals. Each of the evaluators scored Gateway Terminals substantially higher than the other respondents and was selected to operate the State Pier on behalf of the CPA (Exhibit 24). On January 7, 2019 a concession agreement between Gateway New London LLC and the Connecticut Port Authority was executed for a period of 20 years, with two 10-year extension options (Exhibit 25). The agreement gave the operator the ability to close port facilities for the exclusive use of wind-energy activities.

While each of the submissions referenced experience and capabilities to handle wind-energy cargoes and commerce, Gateway Terminals was the only respondent to bring a wind-energy partnership with them to the agreement. Gateway Terminals entered a response with support from Orsted-Eversource to bring wind-energy operations and cargoes to the State Pier via their venture Bay State Wind (Exhibit 26).

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On February 11, 2020, the Harbor Development Agreement was executed by the Connecticut Port Authority, Gateway New London LLC, and Northeast Offshore LLC. This is a public-private partnership committing state bonded funds, resources and assets to the development of the State Pier in New London for use by Orsted-Eversource and their affiliates to assemble and deploy wind turbine generators (Exhibit 27). Per Connecticut General Statutes Chapter 55d Section 4-256, there is a requirement that public-private partnerships be approved by the Governor and “the joint standing committees of the General Assembly having cognizance of matters relating to finance, revenue and bonding and appropriations and the budgets of state agencies. Said committees shall hold public hearings on any such submission.” There was no such public hearing for this project prior to execution of the agreement. The agreement requires the State of Connecticut to pay for any costs exceeding the initial investment of \$30 million made by Bay State Wind.

Chapter 55d Public-Private Partnerships was enacted by Public Act 11-1 of the October 2011 Special Session of the Connecticut General Assembly. The Public Act originally had a sunset provision for approving public-private partnerships of January 1, 2016. Public Act 17-149 extended that sunset provision to January 1, 2020. Public Act 21-99 reinstated public-private partnerships, but limits their use to the Department of Transportation. Quasi-public agencies are covered by the governing statutes of public-private partnerships. There is no record that the CPA followed the approval and notification process of the statute.

The Connecticut Port Authority has a Memorandum of Agreement with the Department of Administrative Services and Office of Policy and Management for “the oversight of design, construction, construction management, and business, legal and procurement services related to the New London State Pier Project”. One of the reasons listed was a lack of staffing in the CPA for the necessary paperwork and due diligence for the project. CPA will be paying the state agencies for their employees work on behalf of the CPA.

Conclusions

The Committee reviewed an extensive number of documents related to the operating of the Connecticut Port Authority and the State Pier development project. These documents were obtained from the CPA, FOI requests made by the public, and information published online. The Committee also reviewed audits performed by the State Auditors of Public Accounts, relevant state statutes, guidance documents from OPM, and materials and recordings of CPA meetings. The Committee conducted interviews with members of the public who submitted complaints to the SCSB, as well as the Chairman of the Connecticut Port Authority Board, David Kooris, and Executive Director, John Henshaw. To confirm authority and compliance with state statutes, the SCSB had sought an opinion from the Attorney General’s office and subsequently received limited legislative authority over CPA. Under its existing authority, the SCSB has referred a suspected collusion issue to the Attorney General’s office related to contracts executed by the Connecticut Port Authority.

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There were several issues and/or violations found in the review of the Connecticut Port Authority and the State Pier development project. First, the CPA violated their own Operating Procedures by continuing to move forward on a solicitation that resulted in fewer than three bids. When discussing this with Chairman Kooris and Executive Director Henshaw, the response was that the Authority often finds it difficult to receive three bids, for a number of reasons.

Second, there is the circumspect award of a contract to a firm who had a managing partner that was also a member of the Connecticut Port Authority Board. This Board member, Henry Juan, was aware of the work that the CPA sought to have performed prior to the issuance of the RFP, was likely aware that the CPA was dissatisfied with Mott McDonald's work on the State Pier RFQ (as stated by Chairman Kooris in an interview), and could have had a special knowledge of the likelihood that the CPA would enter into a contract that contained success fees (Exhibit 28). This type of fee structure was not proposed by Mott McDonald, and was specifically prohibited in an amendment to the Strategic Advisory Services RFP. Even after the prohibition of success fees in the RFP Amendment, and the removal of such in the amended response from Seabury Maritime Capital, the resulting contract contained a success fee structure.

Third, the State of Connecticut has prohibitions on finder's fees and restrictions on consultant fees. ~~While it is not in the expertise of the SCSB to determine whether or not the success fee was legal, it is an issue that ought to be clarified by the Attorney General or State Treasurer's Office.~~ Despite the CPA claiming that success fees are common in their industry, the SCSB does not believe that they are appropriate for government contract work (Exhibit 29). If a court or other reviewing entity ~~the Attorney General's office~~ finds that Connecticut statutes do not bar success fees in this situation then the General Assembly may wish to examine this issue as a matter of public policy.

Fourth, the Harbor Development Agreement is a public-private partnership, as stated in the contract itself. The enabling statutes for the CPA do not give specific authority to execute public-private partnerships. There is no record that the CPA had the statutory authority to execute a public-private partnership after January 1, 2020.

There needs to be significant improvements and clarifications made to the Connecticut Port Authority's procurement practices and procedures. While the CPA itself does not have a large staff, it is responsible for hundreds of millions of dollars in contracts, state assets, and bond funds. As such, internal transparency and accountability controls must be at the forefront of the CPA's actions, and should be reflected as such in its Operating Procedures and policies.

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Recommendations

1. The CPA should develop a comprehensive procurement procedure.

A procedure must include the specific type of procurement (e.g. legal services, services costing \$20,000 or more); the individual(s) responsible for administering the procurement and executing the contract; circumstances of exception, if any; limitations to the process (e.g. RFP must be open for a minimum of 30 days for small procurements, must be open for 60 days for larger/more involved projects, must have at least three bids, weighting must be published in RFP) and how to proceed when its criteria cannot be met. Procedure must also include applicable state statutes and broadly how the CPA would handle common areas of concern (e.g. Board member employed by an interested RFP respondent, communications between CPA and bidders). Further, this procedure should include the procedures and policies that the CPA is actually using in their operations.

The SCSB will collaborate with CPA in drafting their procedure manual. Once adopted by the CPA Board, the SCSB will be able to audit and certify the CPA's procurement practices.

2. Contracts should not be executed prior to Board approval.

The Strategic Advisory Services contract was executed May 15, 2018 with Board approval given May 23, 2018. Additionally, the second amendment to the Strategic Advisory Services contract was dated effective February 1, 2019 but signed February 26, 2019 by the CPA Executive Director. This is an impermissible action. The process of approving contracts prior to execution should be detailed in the procurement procedure. The procurement procedure should also explicitly state that work cannot begin or be billed for prior to the date of execution of a contract.

3. The procurement procedure should include specific limitations on communications with prospective bidders and respondents to requests for proposals.

It is understood that members of the CPA Board have personal and business connections to the maritime industry, and that there have been and likely will continue to be instances where members of the Board would have personal or business connections to prospective bidders to work conducted by the CPA. The CPA should adopt ethics and communications standards that include limitations on communications and participation of such implicated members to eliminate a real or the appearance of a conflict of interest. Such members should recuse themselves from discussions related to the work. Abstaining from votes is not sufficient.

4. The CPA should obtain proper authority to enter into a public-private partnership.

The statutes enabling state agencies and quasi-public agencies to enter in public-private partnerships lapsed on January 1, 2020. The Harbor Development Agreement was executed on February 11, 2020. The Connecticut Port Authority did not have statutory authority to enter into this type of contract. In order to utilize public-private partnership contracts, the CPA should seek a statute change by the legislature to allow for the CPA to enter into such agreements.

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The SCSB did not have the authority in February 2020 to review the public-private partnership entered into by CPA, Gateway New London LLC and Northeast Offshore, LLC as provided for in C.G.S. Chapter 55d, section 4-256. ~~The legitimacy of this agreement rests with the Attorney General.~~

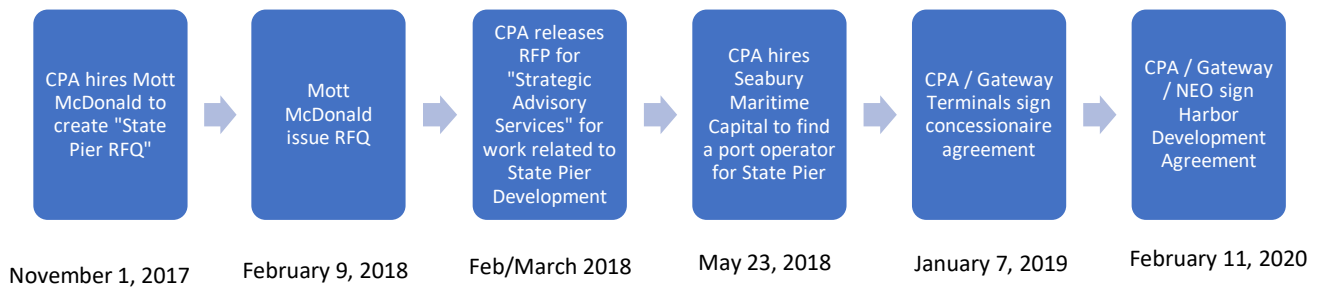
5. Success fee payment structures should not be utilized in government contracts.

Success fee payments are not defined or regulated in state statute. Payment for services rendered should be paid on a transparent fee structure for services rendered, in whole. Fees for completing the work that the contractor was already paid a fee to complete is not a best practice.

6. Systemic changes to State government procurement.

The underlying issues discussed in this report are endemic to state agencies and quasi-publics throughout the state. The state needs to pursue consolidation and centralization of procurement processes and streamline agencies' ability to procure and contract for services in a manner that is cost-effective, transparent and delivers results to the residents of Connecticut.

State Pier Contract Timeline



- ATTORNEY GENERAL COMMENTS -

Lauren Gauthier <gauthier.lcs@gmail.com>

Just received last evening from AAG Deichert**Guay, David L** <David.Guay@ct.gov>

Fri, Feb 4, 2022 at 8:51 AM

To: albertilg <albertilg@mac.com>, "Ilg, Albert" <Albert.Ilg@ct.gov>, "Bertoline, Alfred" <Alfred.Bertoline@ct.gov>, abertoline <abertoline@hotmail.com>, bsisco3 <bsisco3@comcast.net>, "Sisco, Brenda" <Brenda.Sisco@ct.gov>, Bruce Buff <brucebuff@hotmail.com>, "Buff, Bruce" <Bruce.Buff@ct.gov>, "Rovero, Daniel" <Daniel.Rovero@ct.gov>, dkarnes759 <dkarnes759@aol.com>, "Karnes, Donna" <Donna.Karnes@ct.gov>, "dsrovero@sbcglobal.net" <dsrovero@sbcglobal.net>, "Guay, David L" <David.Guay@ct.gov>, jmnova57 <jmnova57@gmail.com>, "Morningstar, Jean" <Jean.Morningstar@ct.gov>, Lawrence Fox <larrysfox@aol.com>, "Fox, Lawrence" <Lawrence.Fox@ct.gov>, "Gauthier, Lauren" <Lauren.Gauthier@ct.gov>, Lauren Gauthier <gauthier.lcs@gmail.com>, rdrinker <rdrinker@csea760.com>, Robert Rinker <rdrinker@gmail.com>, "Rinker, Robert" <Robert.Rinker@ct.gov>, "Chester, Ryan" <Ryan.Chester@ct.gov>, Salvatore Luciano <lucianosal476@gmail.com>, Irene and Stuart Mahler <slmahler@msn.com>, "Mahler, Stuart" <Stuart.Mahler@ct.gov>, Thomas Ahneman <tga@ahnemankirby.com>, "Ahneman, Thomas" <Thomas.Ahneman@ct.gov>, "xholina.nano" <xholina.nano@uconn.edu>

Good morning everyone:

We received this email last evening from AAG Deichert. We will be suggesting that it be added to the AG's appendix as part of our report.

David L. Guay

Executive Director | State Contracting Standards Board | 165 Capitol Avenue, Suite 1060 | Hartford Connecticut 06106 | (office: 860.947.0706 | ✉ e-mail: david.guay@ct.gov

From: Deichert, Robert <Robert.Deichert@ct.gov>**Sent:** Thursday, February 3, 2022 6:24 PM**To:** Guay, David L <David.Guay@ct.gov>**Subject:** FW: Comments--Follow-up to our Teams Call ***PRIVILEGED AND CONFIDENTIAL***

Good evening David,

I hope all is well. I e-mailed and messaged you earlier asking if you could talk, but I did not get a response so I thought it might be good to follow up with an e-mail since this issue is on the SCSB's agenda for tomorrow's meeting. On page 10 of the attached draft, the SCSB states that "Despite the CPA claiming that success fees are common in their industry, the SCSB does not believe that they are appropriate for government contract work (Exhibit 29)." Exhibit 29 supports

- ATTORNEY GENERAL COMMENTS -

- ATTORNEY GENERAL COMMENTS -

the first part of that sentence—the CPA’s claim that success fees are common—but it does not appear to support the second part, the SCSB’s belief that success fees are not “appropriate for government contract work.”

The question is the basis for the SCSB’s statement that it does not believe that success fees are appropriate for government contract work. If there is a legal or regulatory basis for that statement, it would appear to be advisable for the SCSB to cite that legal or regulatory basis. If the basis for the statement is not legal or regulatory, it may be worthwhile for the SCSB to provide more detail on the reasons why it believes that success fees are not appropriate for government contract work or, in the alternative, remove the statement.

Please note that this question is in addition to the changes requested in the below e-mail and referenced on the attached draft.

Best,

Rob

From: Deichert, Robert
Sent: Friday, January 28, 2022 12:57 PM
To: Guay, David L <David.Guay@ct.gov>
Subject: Comments--Follow-up to our Teams Call

David,

Thanks for taking the time to talk with me on Teams. As we discussed, the Attorney General’s Office has concerns with some of the references to the Attorney General’s Office in the draft report and requests the changes reflected in redline on the attached document at the pages with the numbers 10 and 12 on the bottom. Please let me know if you or the SCSB has any questions or needs anything else on this issue.

Please note that other Sections in the Attorney General’s Office may independently comment on the draft report.

Best,

- ATTORNEY GENERAL COMMENTS -

- ATTORNEY GENERAL COMMENTS -


Rob



ROBERT DEICHERT
Assistant Attorney General

Office of the Attorney General
165 Capitol Ave, Hartford, CT 06106
Office: +1 860-808-5020 | Fax: +1 860-808-5347 | URL: <https://ct.gov/ag/>

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 **CPA Procurement and State Pier DRAFT report (CPA copy with AGO Special Litigation Comments 1-28-2022).pdf**
275K

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Appendix B:
CPA and OPM Joint Comments on Draft Report,
submitted January 31, 2022



PROCUREMENT REVIEW OF THE CONNECTICUT PORT AUTHORITY

Connecticut State Contracting Standards Board

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Introduction

It is the mission of the Connecticut State Contracting Standards Board (SCSB) to require that state contracting and procurement are understood and carried out in a manner that is transparent, cost effective, efficient, and consistent with state and federal statutes, rules, and regulations. The SCSB is required by statute to audit and certify procurement practices of state contracting agencies and assist state agencies in improving contracting practices.

The Connecticut Port Authority was established by Public Act 15-5, June Special Session, effective July 1, 2015. Pursuant to Chapter 12, Section 1-120, CPA is classified as a quasi-public agency. The authority manages three deep water ports (and several coastal and river harbors that make important contributions to the state's economy.

Authority description isn't an accurate representation of the Authority. See CGA Chapter 264 Sec. 15-31b(a) for "Purposes. Duties and powers":

"The purposes of the Connecticut Port Authority shall be to coordinate the development of Connecticut's ports and harbors, with a focus on private and public investments, pursue federal and state funds for dredging and other infrastructure improvements to increase cargo movement through the ports and maintain navigability of all ports and harbors, market the economic development of such ports and harbors, work with the Department of Economic and Community Development and other state, local and private entities to maximize the economic potential of the ports and harbors, support and enhance the overall development of the state's maritime commerce and industries, coordinate the planning and funding of capital projects promoting the development of the ports and harbors, develop strategic entrepreneurial initiatives that may be available to the state, coordinate the state's maritime policy activities, serve as the Governor's principal maritime policy advisor and undertake such other responsibilities as may be assigned to it."

The CPA states their mission is to, "grow Connecticut's economy and create jobs by strategically investing in the state's three deep water ports and small harbors to enable each to maximize its own economic potential."

At its December 11, 2020 meeting, SCSB Executive Director David Guay presented a complaint from a member of the public requesting the SCSB to review the Connecticut Port Authority's (CPA) development at the State Pier in New London (Exhibit 1). The complaint was supported by material received by the complainant by a Freedom of Information Request to the CPA. On January 8, 2021, the SCSB voted to form a Special Committee of Inquiry (Committee) to examine the procurement processes for the investment, development, and operation of the State Pier.

At the February 2, 2021 SCSB meeting, the Committee presented their initial review of the CPA materials available and recommended the Board to further investigate procurement matters of the CPA at the State Pier. Following the February 2, 2021 SCSB meeting, Executive Director David Guay requested a formal opinion from the Attorney General's Office regarding

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the State Contracting Standards Board's authority over the Connecticut Port Authority (Exhibit 2). Attorney General Tong issued an opinion to the SCSB on February 25, 2021 stating, "the Board's jurisdiction with respect to the Port Authority would primarily be limited to regulating a bidder's contest...that did not involve real property" and that the "General Assembly would have to change the statutes to expand the Board's oversight" (Exhibit 3).

Public Act 21-2 amended Connecticut General Statutes to define the Connecticut Port Authority as "a state contracting agency for the purposes of chapter 62 except for the provisions of section 4e-16, and shall be subject to the authority of the State Contracting Standards Board established under section 4e-2", effective June 23, 2021 (Exhibit 4). This statutory change is in effect until 2026. The Act also requires the CPA to report quarterly on its operations, contracts, finances, and projects to the Office of Policy and Management (OPM) as well as the Department of Administrative Services (DAS) for review.

This report provides the findings and recommendations of the Special Committee's review and investigation of the Connecticut Port Authority's procurement practices and the State Pier development project. While the recommendations are based on the investigation of the CPA, these recommendations may also be applicable to state agencies and other quasi-public agencies. The General Assembly may want to seek legislative changes to Connecticut State Statutes based upon these recommendations. The SCSB in adopting these recommendations will work with any interested party in furthering the goal of transparent and competitive procurement processes throughout State government and its political subdivisions. **Any limitation of this report may be attributed to the lack of staffing of the SCSB.**

Procurement Review

The State Contracting Standards Board has been charged by the legislature with the responsibility to review, certify and periodically recertify state contracting agencies' procurement processes. With the designation of the Connecticut Port Authority as a state contracting agency in July of 2021, the Special Committee reviewed the procurement practices of the CPA from its inception. The procurement practices are currently contained within the CPA's operating procedures. It is acknowledged that prior to the designation of the CPA as a state contracting agency, the procedures adopted by the CPA Board and later procedures created in consultation with OPM were created for a quasi-public agency. The areas of deficiency are through a lens of what needs to be rectified now that the CPA is a state contracting agency, as well as general comments on best practices.

The original operating procedures, that were replaced by new procedures adopted in 2020, contain the following procurement related sections: "Acquisition and Conveyance of Interest in Real Property"; "Contracting for Personal Services and Personal Property"; "State Contracting Requirements" (Exhibit 5). The review of the original procedures was necessary because these were the procedures that were in effect at the inception of the State Pier development project.

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The procurement procedures for “Acquisition and Conveyance of Interest in Real Property” simply ~~reads,~~

Commented [A1]: Reference to old procedures should be referred to in the past tense as suggested in the edits below.

The Board of the Port Authority shall determine the procurement procedures necessary and desirable on a case-by-case basis for transactions involving investments in, or the acquisition or conveyance of any interest in real property as the Board determines to be in the best interest of the Port Authority and in furtherance of the purposes of the Port Authority pursuant to the Act.

This policy, ~~which has since been updated with new procedures~~~~which, is-was~~ not actually a procedure or a set process, ~~gives-gave~~ wide discretion to the Board and ~~provideds~~ no means by which to evaluate transactions. There ~~are-were~~ no accountability or transparency measures in place, which raises concerns considering the substantial amount of public dollars that are spent on such transactions, as well as the legal vulnerabilities that the CPA would be susceptible to were a transaction to be disputed.

The section on “Contracting for Personal Services and Personal Property” procurement procedure ~~establisheds~~ the following:

1. The Executive Director has responsibility and discretion over all procurements of personal services and personal property under \$50,000 in a fiscal year, as well as sole-source procurements.
2. All solicitations greater than \$50,000 in a fiscal year require a “competitive negotiation where proposals are solicited from at least three (3) qualified parties.”
3. The Port Authority may continue to use contracted professionals while working in conjunction with other state agencies or quasi-public authorities.
4. The Port Authority must solicit proposals every three (3) years for “financial, legal, bond, underwriting and other professional services required by the Port Authority on a regular and ongoing basis”. The CPA may not use the same financial audit person or firm for more than six (6) consecutive years.

Again, there ~~is-was~~ a great deal of latitude regarding procurement ~~prior to the new procedures adopted in 2020~~. In this case, the discretion for contracting ~~is-was~~ with the Executive Director. Of particular concern ~~is-was~~ the ability to use sole-source procurements whenever it is deemed necessary for a procurement valued under \$50,000. If the Executive Director ~~determineds~~ it is not possible to competitively bid work for over \$50,000, then the competitive negotiation requirement ~~couldan~~ be waived as well. This section ~~didoes~~ not give a procedure or details on what mechanisms of solicitation can or should be used, nor ~~didoes~~ it require the CPA to pursue any type of results-based contracting. This policy ~~didoes~~ not lend itself to consistency nor transparency, as is expected and required of all other government contracting agencies.

The “State Contracting Requirements” ~~stateds~~ the broad requirement that the Connecticut Port Authority shall be subject to all state procurement and contracting that are applicable to

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quasi-public agencies and provides a list specifically calling out sections relating to campaign contributions, contractor affidavits, prohibitions on finder's fees, whistleblower protections and non-discrimination requirements. Procurement requirements are provided for in numerous state statutes and various regulations. The considerable effort to define and identify all these requirements for each procurement activity is certainly necessary by law and for best practices, however, the CPA clearly does not have the resources to achieve this on their own. Further, a simple acknowledgement that the CPA is to follow all applicable laws and regulations is not a procedure which can be evaluated and certified by the SCSB.

Following a whistleblower complaint and reports of improper conduct at the Connecticut Port Authority, the Governor directed OPM to provide support to the CPA (Exhibit 6).

Commented [A2]: By who?

In 2019 Governor Lamont took decisive action to address issues at the Connecticut Port Authority (CPA) identified by State Auditors of Public Accounts and the Authority's independent auditors and directed the Office of Policy and Management (OPM) to take a direct and active role in the financial decisions and management of the CPA.

In response to the Governor's directive, the Authority executed a Memorandum of Understanding (MOU) with the Office of Policy and Management (OPM) in September of 2019, that provided for OPM to oversee financial and procurement decisions made by the CPA, engage such consultants and resources as needed to oversee and evaluate the CPA's fiscal, organizational and administrative practices and activities and to recommend and assist in the implementation of needed improvements in the CPA's organizational and business practices. The MOU has since been amended in scope several times, as open issues have been rectified.

The Authority has a Memorandum of Agreement (MOA) with OPM and DAS, effective October 2, 2019 in connection with procurement and technical services in support of the State Pier Infrastructure Improvements Project (the Project) in New London, including, but not limited to: OPM and DAS furnishing staffing assistance to support contract administration and construction management activities.

Following the Governor's directive to intervene in the day-to-day activities and to make the structural improvements to ensure transparency, accountability and best fiscal and administrative practices at the CPA, OPM, in conjunction with the authority's Board of Directors, have worked tirelessly over the last two years to bring oversight and stability in the short-term and to begin the implementation of longer-term structural improvements.

This work has laid the groundwork for the Authority's new executive director John Henshaw (hired in September 2020) to take the reins in an improved environment, equipped with the updated policy and governance infrastructure necessary for the success of the authority's projects and mission and for assurance of the public trust. A critical component of continued success is the recruitment of a capable, seasoned finance director to ensure compliance with the new policies, procedures and governance and to maintain the integrity of the finances and associated operations. To date, a permanent finance director has not been secured due to recruitment challenges.

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OPM remains actively engaged in the Authority's day-to-day business, with an OPM consultant working on-site at the Authority's offices. During the recent months, OPM, CPA staff and consultants have reviewed, revised and improved accounting processes in the areas of recordation, purchasing, cash management and month end closing. Numerous work instruction level process flows, documents and forms have been developed to supplement the Accounting Policy and Procedure Manual to robustly illustrate procedures and highlight controls.

OPM is working to conclude action on all open items to ensure compliance with all identified reform measures and will continue to monitor the work of the CPA. OPM is also committed to assisting the Authority in on-boarding a finance director, once the vacancy has been filled. Following the conclusion of the MOU term, OPM will be issuing a final report summarizing its actions, recommendations and policy revisions to-date, as well as concluding comments.

In December 2019, a consulting firm, Whittlesey Advising, engaged by OPM issued a report of observations and considerations evaluating the organizational structure, policies, procedures, practices and internal controls related to the Connecticut Port Authority's financial management and administrative systems (Exhibit 7). This included procurement practices. The following considerations were issued by the firm following their review of the CPA:

1. Develop a policy for the two different types of procurement methods; purchase order only and contracting process.
2. Develop a workflow process explaining how each employee will be involved in the process and the key responsibilities of each employee.
3. Develop an approval process that requires different levels of approval depending on the size of the procurement. This approval process should be clearly defined and evaluated on a periodic basis.
4. Develop a policy and procedures for the Executive Director to obtain board approval for exceptions to the procurement policies.
5. In addition to the \$50,000 RFP threshold, CPA should consider implementing lower thresholds that mandate obtaining written quotes. This would be more in line with other state quasi-public agencies.
6. CPA should consider including, in its procurement policy, provisions regarding written justifications for sole source purchases and provisions regarding notification to the board of such purchases.
7. CPA should consider implementing an additional board approval requirement to ensure unbudgeted expenditures are appropriately authorized and the board remains informed on unbudgeted expenditures.
8. CPA should consider including a restrictive clause in its own procurement policies to not enter into any contract to purchase or acquire goods/services with an entity that is owned or controlled by any member of the board or any employee of the quasi-governmental agency or any immediate family. This is to ensure there are no related party transactions that would otherwise not occur had the related party been an outside entity.

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Following the issuance of the Whittlesey Advising report, OPM recommended and the CPA adopted their Operating Procedures in April 2020 (Exhibit 7). OPM produced a report on all of the work done in response to the audits of the CPA conducted by Blum Shapiro, the Auditors of Public Accounts, and Whittlesey in March of 2021 (Exhibit X). These amended procedures are the most current Operating Procedures for the CPA. The revision includes a preamble stating a purchasing philosophy that promotes competitive bidding ~~whenever possible~~ consistent with established procedures. This preamble also requires that “all parties involved in the negotiation, performance, or administration of purchases to act in good faith to advance the competitive principles that underlie it” and prohibits acts to deliberately evade competitive bid, such as splitting up contracts or purchase orders. The Operating Procedures also references state ethics laws and conflict of interest policies.

The second section, titled “Acquisition and Conveyance of Interest in Real Property” states that the procurement procedure for such transactions is to have the CPA Board determine on a case-by-case basis prior to the commencement of the transaction what the procedure will be. Board approval is necessary for any real estate procurement or transaction in excess of \$50,000. The change in this policy from the previous version is that the Board will approve transactions in excess of \$50,000 which was not previously stipulated. However, the absence of a defined procedure still remains.

The procurement procedures in the third section, titled “Purchase of Personal Services, Personal Property and Other Goods and Services” includes definitions for “public solicitation” and “thresholds”; requirements for purchases between \$5,000 and \$50,000; requirements for purchases greater than \$50,000; exceptions to the requirements for verbal or written quotes or public solicitation; other allowable procurement methods; the CPA Board’s actions regarding contracts over \$50,000 and amendments; policy for non-budgeted expenditures over \$5,000; and a policy for contracting with individuals.

The threshold definition states that the thresholds listed in the procurement procedures are based on the expected “net” costs to the CPA, meaning, the cost less actual or anticipated “rebates, reimbursements or credits owed or received under any contract or agreement related to such personal property, personal services or goods and services.” This is not a typical understanding of contract cost. This interpretation of contract cost could be perceived as a means to avoid threshold requirements or other measures required by state statutes or regulations.

The exemptions to threshold requirements and competitive procurement can be waived by the Executive Director if one of three criteria are met. The criteria include “unusual condition or contingency,” emergency situations, or the type of contract or agreement does not lend itself to competitive procurement as determined by the Executive Director. There is no description of how these determinations are made nor how the contract is negotiated, administered and controlled for results-based accountability and transparency.

Other procurement vehicles made available include using Department of Administrative Services master contracts, purchases from federal, state or municipal surplus property programs, and “purchases by, from, in conjunction with, or on behalf of other Connecticut quasi-public agencies, state agencies or political subdivisions of the State of Connecticut, any other state, the

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federal government, or inter-governmental purchasing groups or cooperatives.” While it is useful to understand sources that the CPA can utilize for procurement, there is no established procedures to determine when these other mechanisms may be used, what thresholds may or may not apply, and how the CPA would track and report the negotiation, execution and performance of these contracts or purchases.

The section on contracting with individuals directs the Port Authority to consult the website of the Internal Revenue Service and State of Connecticut Comptroller’s Office to determine if the duties and activities are those of an employee or an independent contractor. This inclusion may be the result of a repeated finding by the state Auditors of Public Accounts related to the hiring and payment of interns as consultants (Exhibit 8).

The last section of the procurement policy in the Operating Procedures requires record retention for all solicitations, selections, negotiations, contract execution and management, and closeout. It does not state who at the CPA is responsible for maintaining this comprehensive file, however, this is a best practice and would be helpful for the CPA to have in place.

Of the eight considerations for procurement given in the Whittlesey Advising consulting report, the 2020 revision of the Connecticut Port Authority’s Operating Procedures, adopted or incorporated three of the considerations in whole or in part. There was incorporation of additional thresholds, incorporation of requirements to obtain verbal or written quotes, and incorporation of reporting unbudgeted expenditures to the Board. Overall, the procurement policy provides wide discretion to the Executive Director, who is also acting as the Procurement Officer. There is still a lack of procedural steps for procurements. Given the size of the contracts that the Connecticut Port Authority is tasked with administering, it is imperative for both the CPA and potential bidders to understand how a solicitation will be handled each time.

The section on State Contracting Requirements remains identical to the previous version of the CPA Operating Procedures. This does not constitute a procurement procedure.

The CPA refers to their Operating Procedures as their procurement process, but it is inadequate. The Connecticut Port Authority doesn’t have a formalized process, certainly not one which can be audited and certified. During discussions, the Committee encouraged the CPA to engage in discussions with OPM toward establishing a viable formalized process (Exhibit 9). This could be in the form of adopting the OPM Procurement Standards as their procurement procedure and would lend considerable formality to their process. Specifically, the sections dealing with Personal Service Agreements which discuss creating RFPs, determining contractor qualifications, proposal format and other critical information.

The Connecticut Port Authority entered into a Memorandum of Understanding with OPM beginning in September 2019 to allow the CPA to utilize certain OPM staff and consultants hired by OPM to review and make recommendations to a variety of subjects, including procurement (Exhibit 10). [A report on OPM’s progress in this regard is included as Exhibit X.](#)

State Pier Development

Commented [A3]: Those not addressed in the revised Operating Procedures have been addressed either through efforts led by OPM or ongoing efforts in collaboration with OPM. If the SCSB is not able to work with the CPA directly to develop an effective procurement manual, OPM has authorized that a consultant can be hired for the CPA to complete this task.

Commented [A4]: CPA has been awaiting the on-boarding of a permanent finance director to draft a more detailed procurement manual. Though this has not yet occurred, in response to this report, the CPA will do so now.

Commented [A5]: As noted above, OPM remains actively engaged in the Authority’s day-to-day business, with an OPM consultant working on-site at the Authority’s offices. During the recent months, OPM, CPA staff and consultants have reviewed, revised and improved accounting processes in the areas of recordation, purchasing, cash management and month end closing. Numerous work instruction level process flows, documents and forms have been developed to supplement the Accounting Policy and Procedure Manual to robustly illustrate procedures and highlight controls.

OPM is working to conclude action on all open items to assure compliance with all identified reform measures and will continue to monitor the work of the CPA. OPM is also committed to assisting the Authority in on-boarding a finance director, once the vacancy has been filled. Following the conclusion of the MOU term, OPM will be issuing a final report summarizing its actions, recommendations and policy revisions to-date, as well as concluding comments.

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Quasi-public agencies operate in a unique space. The actions being reviewed occurred prior to the Connecticut Port Authority being defined as a state contracting agency. From the inception of the State Pier development project, there were some violations of CPA’s Operating Procedures, questionable practices, and potential ~~violations~~violations of state statutes and regulations. The purpose of this portion of the Committee investigation and inclusion in the report on procurement practices is in response to the numerous complaints made to the State Contracting Standards Board. The CPA is now defined as a state contracting agency for the purposes of Chapter 62, with some exceptions, per Public Act 21-2. Recommendations from this portion of the investigation are for the CPA moving forward as a state contracting agency.

The Connecticut Port Authority took ownership of State Pier in New London from the CT Department of Transportation in July 2016 (Exhibit 11). In November 2017, the Board of the Connecticut Port Authority authorized the hiring of Mott McDonald to develop and evaluate respondents to a Request for Qualifications related to the State Pier. The RFQ was released in February 2018 (Exhibit 12). In April 2018, the CPA Board authorized the hiring of Seabury Maritime Capital to issue an RFP for the operation of State Pier. In August 2018, Gateway New London was selected from this RFP process. The resulting public-private partnership, the Harbor Development Agreement, was executed February 11, 2020.

The CPA Board approved hiring Mott McDonald to develop, administer and evaluate responses from a Request for Qualifications (RFQ) at its November 1, 2017 Board meeting. Board member Henry Juan, a managing partner at competing firm Seabury Maritime Capital, abstained from the vote. The RFQ was released February 9, 2018. The RFQ was looking for respondents with a proven background in managing maritime ports to develop, operate, and/or maintain the New London State Pier facilities (Exhibit 13). There were five respondents: Metro Port, PortsAmerica, Logistec, Gateway Terminal, and DRVN Enterprises. Logistec at the time had been the managing operator at State Pier. Each of the respondents scored well by the evaluators, aside from DRVN Enterprises. Those that scored well were invited to respond to the subsequent Request for Proposals.

Following the completion of the RFQ process, and with a short list of qualified respondents, the CPA released a Request for Proposals (RFP) for “Strategic Advisory Services” to develop and assess the RFP for the development, operation and/or maintenance of State Pier (Exhibit 14). This solicitation garnered responses from Mott McDonald and Seabury Maritime Capital (Exhibit 15). While the solicitation received fewer than three bids, the CPA Board moved to hire Seabury Maritime Capital for the work, despite the requirement by the CPA Operating Procedures to have at least three bids and the potential conflict of interest. The last meeting that Mr. Henry Juan attended as a Board member is recorded as January 3, 2018.

Mr. Juan, according to his LinkedIn profile, worked as a managing director for Young America Capital from 2014 to 2017. Mr. Juan was appointed to the CPA Board in 2016. In February 2017, Mr. Juan was hired by Seabury Maritime Capital. Mr. Juan did not recuse

Commented [A6]: Is there evidence of these alleged violations? If so, it should be included.

Commented [A7]: There was a reference to a single complaint (Exhibit 1). If there are others they should be included as exhibits as well.

Commented [A8]: This is not accurate. There was a Transfer of Care, Custody and Control agreement between CPA and DOT in 2016, but ownership was not conveyed to CPA until the HDA was adopted in 2020.

Furthermore, there was a 2016 MOU between CPA, DOT and the Treasurer to Facilitate the Governance of the Ports and Harbors of the State and the Orderly Transition and Transfer of Related Resources to the Connecticut Port Authority.

Commented [A9]: See note below regarding the incorrect interpretation of this phrase.

Commented [A10]: The Authority’s old Operating Procedures at the time of this procurement stated: “...wherever possible, such contract shall be awarded on the basis of a process of competitive negotiation where proposals are solicited from at least three (3) qualified parties.” The process enabled by those procedures can be critiqued, but the taken in 2018 was not in violation of the policies and procedures at that time.

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himself for all discussions and votes regarding the State Pier and its development upon his employment with Seabury Maritime Capital. Abstaining from voting is not sufficient to avoid an appearance or an actual conflict of interest.

The RFP for Strategic Advisory Services initially required responses by March 23, 2018. Subsequent amendments to the RFP moved the deadline to April 11, 2018. Amendment 1 to the Strategic Advisory Services RFP was released after timely responses from Mott McDonald and Seabury Maritime Capital were received (Exhibit 16). Amendment 1 adds to the scope of work a second RFP, “to be run in parallel with the above terminal operator RFP process – for interested deep-water wind energy development at the State Pier Facility”, and to review, evaluate and provide guidance on the selection of the best respondent to that RFP. Amendment 1 also includes the prohibition, “success fees or similar fee arrangements will not be acceptable” to the RFP. Mott McDonald’s first and amended responses did not propose a success fee. Seabury Maritime Capital’s first response proposed success fees, but the amended response did not (Exhibit #).

The CPA Board approved the hiring of Seabury Maritime Capital to review responses to the RFQ, develop an RFP for a procurement process to identify a qualified terminal operator for the State Pier Facility, review and evaluate the RFP responses, and to provide legal, investment, debt, or financial advice to the Authority on the final management agreement at the May 23, 2018 Board meeting (Exhibit 17).

Commented [A11]: The action at the May 23rd meeting was to formally accept the final contract that was previously authorized to be negotiated and entered into at the April 2018 Board meeting.

The initial contract with Seabury Maritime Capital was executed May 15, 2018 and contains provisions and fee schedule for success fees. The success fee, as described in the contract, is for “Financial Advisory Services”, to be paid “in connection with assisting the Authority in arranging or closing a Transaction.” Transactions defined in the contract include operating transactions, equity transactions, and debt transactions. There are two success fee schedules: one for the value of a transaction for a facility development and one that reduces fees if the successful respondent was on the shortlist of respondents determined by the RFQ (Exhibit 18).

There are two subsequent amendments to the contract, the first dated November 10, 2018 and the second dated February 1, 2019, both to extend the term of the contract and make changes to the payment and fee structure. The two amendments establish hourly rates for work in addition to the monthly rate, and requires any success fee to be reduced by the aggregate of such hourly fees (not to exceed \$10,000) (Exhibit 19 and Exhibit 20). A dispute over the amount of success fee to be paid to Seabury Maritime Capital resulted in a settlement agreement payment of \$523,000 to Seabury Maritime Capital on July 21, 2020 (Exhibit 21).

The second amendment to the Strategic Advisory Services Agreement is dated effective February 1, 2019 but signed February 26, 2019. Again, the CPA executed an agreement effective on a date prior to the actual execution by a CPA official. This is not an acceptable practice.

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The Connecticut Port Authority, in consultation with Seabury Maritime Capital, released a Request for Proposals in June 2018 to “improve, develop, finance and/or operate via long-term Operating Agreement the State Pier at the Port of New London in Connecticut” (Exhibit 22). This would be the first RFP required by the Strategic Advisory Services contract. Submissions for the State Pier Development RFP were initially due August 10, 2018. On August 7, 2018 the submission deadline was extended to August 31, 2018 via an amendment to the RFP (Exhibit 23).

The RFP received submissions from Gateway Terminals, Logistec, and World Wide Terminals. Each of the evaluators scored Gateway Terminals substantially higher than the other respondents and was selected to operate the State Pier on behalf of the CPA (Exhibit 24). On January 7, 2019 a concession agreement between Gateway New London LLC and the Connecticut Port Authority was executed for a period of 20 years, with two 10-year extension options (Exhibit 25). The agreement gave the operator the ability to close port facilities for the exclusive use of wind-energy activities.

While each of the submissions referenced experience and capabilities to handle wind-energy cargoes and commerce, Gateway Terminals was the only respondent to bring a wind-energy partnership with them to the agreement. Gateway Terminals entered a response with support from Orsted-Eversource to bring wind-energy operations and cargoes to the State Pier via their venture Bay State Wind (Exhibit 26).

On February 11, 2020, the Harbor Development Agreement was executed by the Connecticut Port Authority, Gateway New London LLC, and Northeast Offshore LLC. This is a public-private partnership committing state bonded funds, resources and assets to the development of the State Pier in New London for use by Orsted-Eversource and their affiliates to assemble and deploy wind turbine generators (Exhibit 27). Per Connecticut General Statutes Chapter 55d Section 4-256, there is a requirement that public-private partnerships be approved by the Governor and “the joint standing committees of the General Assembly having cognizance of matters relating to finance, revenue and bonding and appropriations and the budgets of state agencies. Said committees shall hold public hearings on any such submission.” There was no such public hearing for this project prior to execution of the agreement. The agreement requires the State of Connecticut to pay for any costs exceeding the initial investment of \$30 million made by Bay State Wind.

Chapter 55d Public-Private Partnerships was enacted by Public Act 11-1 of the October 2011 Special Session of the Connecticut General Assembly. The Public Act originally had a sunset provision for approving public-private partnerships of January 1, 2016. Public Act 17-149 extended that sunset provision to January 1, 2020. Public Act 21-99 reinstated public-private partnerships, but limits their use to the Department of Transportation. Quasi-public agencies are covered by the governing statutes of public-private partnerships. There is no record that the CPA followed the approval and notification process of the statute.

Commented [A12]: There were six responses to the RFP, but only three responses that met all requirements to be considered for evaluation.

This section should also note that there was a process of evaluation beyond just scoring the responses. Gateway scored higher based on their response AND again following interviews.

Commented [A13]: This is factually incorrect. While the later HDA would alter certain terms of the concession agreement to allow for construction activities and for Gateway to sublease the facility, the highlighted sentence does not accurately convey the content of the Concession Agreement.

Commented [A14]: The Authority's efforts included direct engagement and participation of OPM and DAS leadership per MOU and MOA described in the first section of this document.

Commented [A15]: The phrase “public-private partnership” is widely used term and should not be taken to reference a particular process (P3) enabled by Chapter 55d.

Commented [A16]: Terminal concession with a sublease. Characterization of the agreement as a turning over of the asset to a private entity is incorrect. The Authority retains ownership.

Commented [A17]: This characterization of the funding sequence is inaccurate.

Commented [A18]: The Harbor Development Agreement (HAD) is “a public-private partnership pursuant to the Authority's power under Chapter 264a”. Use of the words “public-private partnership” in the Recitals does not cause the HAD to fall under Chapter 55d. See further comments in the conclusions section below.

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The Connecticut Port Authority has a Memorandum of Agreement with the Department of Administrative Services and Office of Policy and Management for “the oversight of design, construction, construction management, and business, legal and procurement services related to the New London State Pier Project”. One of the reasons listed was a lack of staffing in the CPA for the necessary paperwork and due diligence for the project. CPA will be paying the state agencies for their employees work on behalf of the CPA.

Conclusions

The Committee reviewed an extensive number of documents related to the operating of the Connecticut Port Authority and the State Pier development project. These documents were obtained from the CPA, FOI requests made by the public, and information published online. The Committee also reviewed audits performed by the State Auditors of Public Accounts, relevant state statutes, guidance documents from OPM, and materials and recordings of CPA meetings. The Committee conducted interviews with members of the public who submitted complaints to the SCSB, as well as the Chairman of the Connecticut Port Authority Board, David Kooris, and Executive Director, John Henshaw. To confirm authority and compliance with state statutes, the SCSB had sought an opinion from the Attorney General’s office and subsequently received limited legislative authority over CPA. Under its existing authority, the SCSB has referred a suspected collusion issue to the Attorney General’s office related to contracts executed by the Connecticut Port Authority.

Commented [A19]: Please note current Chairman Kooris’ tenure began in July 2019. Current Executive Director John Henshaw’s tenure began in September 2020.

There were several issues and/or violations found in the review of the Connecticut Port Authority and the State Pier development project. First, the CPA violated their own Operating Procedures by continuing to move forward on a solicitation that resulted in fewer than three bids. When discussing this with Chairman Kooris and Executive Director Henshaw, the response was that the Authority often finds it difficult to receive three bids, for a number of reasons.

The Authority's old Operating Procedures stated: "...wherever possible, such contract shall be awarded on the basis of a process of competitive negotiation where proposals are solicited from at least three (3) qualified parties."

Receiving only two bids and making a selection was not a violation, based on the prior wording at the time of the solicitation.

Further, the Authority distributed the RFP to the prior RFQ respondent list, so more than three were solicited, but only two responses were received.

Second, there is the circumspect award of a contract to a firm who had a managing partner that was also a member of the Connecticut Port Authority Board. This Board member, Henry Juan, was aware of the work that the CPA sought to have performed prior to the issuance of the RFP, was likely aware that the CPA was dissatisfied with Mott McDonald’s work on the State Pier RFQ (as stated by Chairman Kooris in an interview), and could have had a special knowledge of the likelihood that the CPA would enter into a contract that contained success fees

Commented [A20]: While Mr. Kooris may have casually surmised this to be the case in discussions with you, the fact is that Mr. Kooris joined the board over a year after Mr. Juan’s resignation (never having met one another) and the Board’s assessment of Mott McDonald’s work would have occurred in the early months of 2018 after Mr. Juan’s resignation as well. Either remove this aside as it cannot be used to factually support the statement of Mr. Juan’s awareness or make the clear caveat that it was a guess and Mr. Kooris was not directly privy to whether or not this was the case.

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(Exhibit 28). This type of fee structure was not proposed by Mott McDonald, and was specifically prohibited in an amendment to the Strategic Advisory Services RFP. Even after the prohibition of success fees in the RFP Amendment, and the removal of such in the amended response from Seabury Maritime Capital, the resulting contract contained a success fee structure.

Each of the two firms' responses included different types of upfront and additional fees. Lack of clarity in this analysis on apples to apples comparison of both the initial costs and terms of the compensation over the course of the original submission and amended submissions provides an inaccurate picture of the options the Authority had to weigh to make its business decision at the time of review.

Third, the State of Connecticut has prohibitions on finder's fees and restrictions on consultant fees. While it is not in the expertise of the SCSB to determine whether or not the success fee was legal, it is an issue that ought to be clarified by the Attorney General or State Treasurer's Office. Despite the CPA claiming that success fees are common in their industry, the SCSB does not believe that they are appropriate for government contract work (Exhibit 29). If the Attorney General's office finds that Connecticut statutes do not bar success fees in this situation then the General Assembly may wish to examine this issue as a matter of public policy.

Fourth, the Harbor Development Agreement is a public-private partnership, as stated in the contract itself. The enabling statutes for the CPA do not give specific authority to execute public-private partnerships. There is no record that the CPA had the statutory authority to execute a public-private partnership after January 1, 2020.

The Harbor Development Agreement (HDA) is "a public-private partnership pursuant to the Authority's power under Chapter 264a". Use of the words "public-private partnership" in the Recitals does not cause the HDA to fall under Chapter 55d. More importantly, the recitals in the HDA made proper reference to Chapter 264a, the enabling Act for the CPA, pursuant to which the CPA has authority to enter into contracts for the development of the State Pier.

The use of a general industry phrase does not in and of itself convert the HDA into an agreement governed by Chapter 55d (the P3 Act). Neither the HDA nor any of its related documents indicated or implied any intention of any of the parties to utilize the provisions of, or to be governed by, the P3 Act. While the phrase "public-private partnership" is widely used, the type of P3 enabled by Chapter 55d is very specific in that it allows for the privatization of public facilities so that the private partner can take on the typically public responsibilities of design, finance, build, operate, and maintain of that asset with agreed upon objectives to be met set by the public sector. That is demonstrably NOT what is happening through the HDA. Not only does the CPA (public) retain ownership of the facility, but it is directly completing the design, the financing, the construction (through contracts directly executed between the CPA and the contractor), and is responsible for ongoing maintenance. The facility will be, in the future, operated by Gateway through a concession agreement executed clearly within the CPA's authority. The fact that the CPA has entered into a concession agreement with Gateway and a Harbor Development Agreement that includes a sublease with Gateway and Orsted/Eversource in exchange for a capital contribution to a construction project (conducted by the CPA) in addition to typical lease payments does not make this anything close to a P3 as described in

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Chapter 55d. Further, the P3 statute supposes the revenue streams will be directed to the private partner as compensation for their taking on public responsibilities; at state pier all revenue streams continue to flow to the public site owner, the CPA.

As a contrasting example of a project that did make use of that statute, the highway rest areas were demolished, remediated, designed, financed, built, operated, and maintained by the state's private partner with no actions directly taken by the state to implement the public asset enhancement other than articulation of objectives that the private partner must meet. Again, the conclusion of applicability seems to be drawn exclusively from the use of a term once within the HDA rather than an analysis of the statute to determine relevance.

There needs to be significant improvements and clarifications made to the Connecticut Port Authority's procurement practices and procedures. While the CPA itself does not have a large staff, it is responsible for hundreds of millions of dollars in contracts, state assets, and bond funds. As such, internal transparency and accountability controls must be at the forefront of the CPA's actions, and should be reflected as such in its Operating Procedures and policies.

Recommendations

1. The CPA should develop a comprehensive procurement procedure.

A procedure must include the specific type of procurement (e.g. legal services, services costing \$20,000 or more); the individual(s) responsible for administering the procurement and executing the contract; circumstances of exception, if any; limitations to the process (e.g. RFP must be open for a minimum of 30 days for small procurements, must be open for 60 days for larger/more involved projects, must have at least three bids, weighting must be published in RFP) and how to proceed when its criteria cannot be met. Procedure must also include applicable state statutes and broadly how the CPA would handle common areas of concern (e.g. Board member employed by an interested RFP respondent, communications between CPA and bidders). Further, this procedure should include the procedures and policies that the CPA is actually using in their operations.

The SCSB will collaborate with CPA in drafting their procedure manual. Once adopted by the CPA Board, the SCSB will be able to audit and certify the CPA's procurement practices.

It has been CPA and OPM's plan for some time to update the procurement procedures again once a new finance director is onboard. Until then, the 5 pages on procurement in the operating procedures manual, which incorporates by reference all state law on procurement, controls. As CPA has stated to members of the SCSB repeatedly since oversight began in July 2021, we welcome any concrete suggestions that you may have and commit to bring them before the Board for adoption if they are workable within our staff structure.

2. Contracts should not be executed prior to Board approval.

The Strategic Advisory Services contract was executed May 15, 2018 with Board approval given May 23, 2018. Additionally, the second amendment to the Strategic Advisory Services contract

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was dated effective February 1, 2019 but signed February 26, 2019 by the CPA Executive Director. This is an impermissible action. The process of approving contracts prior to execution should be detailed in the procurement procedure. The procurement procedure should also explicitly state that work cannot begin or be billed for prior to the date of execution of a contract.

The first stated instance (execution May 15, 2018 and Board approval May 23, 2018) is not an example of staff contract execution prior to Board approval. The report neglects to acknowledge that the Board unanimously approved a resolution at its April 4, 2018 meeting authorizing the ED "...to enter into a consulting agreement with one of the responders for professional consulting services on such terms and provisions that the Executive Director deems to be in the best interests of the Authority, and to negotiate, execute and deliver such consulting agreement and any and all other reasonable and necessary documents in furtherance thereof." The action at the May 23rd meeting was to formally accept the final contract that was previously authorized to be negotiated and entered into.

3. The procurement procedure should include specific limitations on communications with prospective bidders and respondents to requests for proposals.

It is understood that members of the CPA Board have personal and business connections to the maritime industry, and that there have been and likely will continue to be instances where members of the Board would have personal or business connections to prospective bidders to work conducted by the CPA. The CPA should adopt ethics and communications standards that include limitations on communications and participation of such implicated members to eliminate a real or the appearance of a conflict of interest. Such members should recuse themselves from discussions related to the work. Abstaining from votes is not sufficient.

4. The CPA should obtain proper authority to enter into a public-private partnership.

The statutes enabling state agencies and quasi-public agencies to enter in public-private partnerships lapsed on January 1, 2020. The Harbor Development Agreement was executed on February 11, 2020. The Connecticut Port Authority did not have statutory authority to enter into this type of contract. In order to utilize public-private partnership contracts, the CPA should seek a statute change by the legislature to allow for the CPA to enter into such agreements.

The SCSB did not have the authority in February 2020 to review the public-private partnership entered into by CPA, Gateway New London LLC and Northeast Offshore, LLC as provided for in C.G.S. Chapter 55d, section 4-256. The legitimacy of this agreement rests with the Attorney General.

See other comments on this. This agreement is NOT the type of "Public-private partnership" (capital "P" defined term in statute) that Chapter 55d contemplates and enables. We are happy to discuss further as outlined above the clear reasons why this agreement is NOT the type that triggers the steps alluded to here from 55d. We are very surprised to see this recommendation here since it did not come up in any of our prior conversations so that we could have had this discussion before the 11th hour.

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5. Success fee payment structures should not be utilized in government contracts.

Success fee payments are not defined or regulated in state statute. Payment for services rendered should be paid on a transparent fee structure for services rendered, in whole. Fees for completing the work that the contractor was already paid a fee to complete is not a best practice.

This is not a recommendation for action to be taken by the CPA.

6. Systemic changes to State government procurement.

The underlying issues discussed in this report are endemic to state agencies and quasi-publics throughout the state. The state needs to pursue consolidation and centralization of procurement processes and streamline agencies' ability to procure and contract for services in a manner that is cost-effective, transparent and delivers results to the residents of Connecticut.

This is not a recommendation for action to be taken by the CPA.

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State Pier Contract Timeline

