



STATE OF CONNECTICUT
OFFICE OF GOVERNMENTAL ACCOUNTABILITY
STATE CONTRACTING STANDARDS BOARD

Final & Approved
Minutes
Friday, October 14, 2022 - 10:00 A.M.
Meeting of the State Contracting Standards Board
Virtual Meeting
Via Microsoft Teams

Members Present:

Lawrence Fox, Chair
Alfred Bertoline
Bruce Buff
Lauren Gauthier
Albert Ilg
Robert Rinker
Donna Karnes
Stuart Mahler
Jean Morningstar
Danial Rovero
Brenda Sisco
Salvatore Luciano

David L. Guay, Temporary Worker Retiree
Jing Liang, Intern

1. Call to order

Chair Fox called the meeting to order at 10:03 AM.

2. Approve the Minutes of the September 9, 2022 meeting

Alfred Bertoline motioned to approve the Minutes of the September 9, 2022, meeting, and Donna Karnes seconded the motion. All voted in favor, with Salvatore Luciano abstaining due to his absence from the last meeting. The Minutes were approved.

3. Update on the FY23 Hiring of Board Staff

Mr. Guay provided an update on the hiring of the board staff. He referred the Board members to the Department of Administrative Services written response he posed in preparation of the Board meeting.

Chair Fox asked Mr. Guay about whether the Board has done everything to be ready once DAS has provided a list of candidates. Mr. Guay responded no. Chair Fox raised questions regarding interview question for each preferred qualification. Chair Fox directed Mr. Guay to prepare proposed questions and prepare the list of panelists, so the Board has done everything possible to be prepared.

Chair Fox reported that he had no information to report on a new Executive Director.

4. Sec.4e-36 Contested Solicitations and Awards Subcommittee Report

Subcommittee Chair Robert Rinker reported that there are no matters pending before the Subcommittee.

5. Privatization Contract Committee Report

Committee Chair Fox reported on two pending petitions.

The union representing workers at the UConn Health Center, University Health Professionals, Local 3837 AFT/AFT-CT/AFL-CIO filed the petition upon the UConn Health Center forming an entity to do radiologic services, which the union believes is privatization.

In both cases the UCONN – UHP Petition & the UCONN - CEUI Petition Management does not believe that privatization covered by our law.

In the case of the UConn Health, the University claims to be doing a joint venture by the UConn Health Center Finance Corporation with a for profit company and the UConn Health Center Finance Corporation is not covered by the State Contracting Standards Board law on privatization of government services. Therefore, not required to perform a cost-benefit-analysis.

The Union's counter argument is that the UConn Health Center Finance Corporation enabling statute provides for different kinds of activities that will lower costs for the hospital. It is a creature of UConn, and all the employees of the Corporation are employees of the State. The Corporation's intent is not harming the integrity of the bargaining units. A further argument is that when the State Contracting Standards Board Statutes were passed, it is clearly stated which entities are not covered, the UConn Health Center Finance Corporation is not one of those and the statute states who is covered and the University of Connecticut is and its constituent units. Another argument is that the decision about the

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privatization was made by the University and not the Health Corporation. Implementation of the decision is by the Corporation.

Chair Fox summarized the questions into one question, did the University follow the law on privatization.

The union representing workers at the athletic facilities at the University of Connecticut Storrs Campus, CEUI, SEIU Local 511 filed the petition upon the University of Connecticut outsourcing custodial work currently being performed by members of the union. The current focus is on the athletic facilities. UConn has a history of privatization of custodial services at the Storrs Campus. The Union contends that the contractor in question does not have that long history. The University argues that they are not covered by our privatization statutes, C.G.S. Sec. 4e-16(a). The Union contends that the University is covered by C.G.S. Sec. 4e-16(p) which requires the filing of a Cost-Effectiveness-Evaluation with the Office of Policy and Management to determine whether it is appropriate and cost-effective. Current understanding is that the University has not completed the cost-effectiveness-evaluation as required by C.G.S. Sec. 4e-16(p).

Chair Fox posed the question of what the remedy is if the University has not completed the cost-effectiveness-evaluation required under C.G.S. Sec. 4e-16(p).

Chair Fox identified a need for a deeper understanding of the issues by having a conversation with both representatives of the Unions and the University.

Chair Fox further noted the need for a meeting with the Office of Policy and Management to discuss the appropriate number for fringe costs.

6. Consider Decision concerning the Petition by SEIU District 1199 New England concerning the Department of Mental Health and Addiction Services plans to close the Hilltop Residential Program

Acting Chair Robert Rinker reported on the matter because of the recusal of Chair Lawrence Fox.

The matter concerns a petition by SEIU 1199 New England concerning the Department of Health and Addiction Services (DMHAS) program is known as the Hilltop program, which is a residential program for young adults with substance abuse issues. The Privatization Contract Committee met on October 7, 2022 and voted to adopt a decision to forward to the Board for adoption.

DECISION

SEIU District 1199 New England

-and-

Department of Mental Health and Addiction Services

Hilltop Residential Program at 556 Blue Hills Avenue, Hartford

Background

1. On October 29, 2021, Rob Baril, President of SEIU District 1199 New England (Union) sent a letter to David Guay, Executive Director, of the State Contracting Standards Board (SCSB) regarding the closure of the Department of Mental Health and Addiction Services' (DMHAS) Hilltop Residential Program at 556 Blue Hills Avenue in Hartford and replacing it with private services. (Exhibit 1) The Union believes that such privatization is a violation of C.G.S. 4e-16(a) *et seq.* It is the Union's position that DMHAS did not follow any of the required procedures under C.G.S. 4e-16 regarding such privatization.
2. The Union claims that this program is unique. The Hilltop Transitional Living Program is a supervised apartment program which is staffed twenty-four hours a day, seven days a week. The services promote recovery by providing a structured, safer, nurturing and therapeutic environment to young adults.
3. The planned closure was scheduled on or about November 19, 2021.
4. In a letter to Mr. Baril dated November 5, 2021, Nancy Navarretta, Acting Commissioner of DMHAS, responded to Mr. Baril's letter of October 29, 2021 with a copy to Mr. Guay. (Exhibit 2) Ms. Navarretta states, "As discussed with 1199 members, the property owner of Hilltop chose not to renew the lease for earlier this year, which necessitated the closure of the Hilltop program." Ms. Navarretta further states, "Moreover, because the clinical care of such individual clients is continuing to be met by state employees through the Capitol Region Mental Health Center (CRMHC), and other supports and needs are continuing to be met by current non-profit providers that already have been providing services, and no new contracts are required in connection with servicing these clients, there has been no violation of 4e-16(a) as alleged in the October 29, 2021 letter."
5. At its November 12, 2021 meeting, the SCSB acknowledged receipt of Mr. Baril's letter of October 29, 2021 and referred the matter to its privatization contract committee. Lawrence Fox, Chair of the SCSB and also chair of the privatization contract committee recused himself from

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- the matter and appointed Robert Rinker as the acting chair of the privatization contract committee for this matter. (Exhibit 3)
6. The privatization contract committee met on November 12, 2021 and a motion was made, seconded and passed to request a cost benefit analysis under C.G.S. 4e-16 of the Hilltop Transitional Living Program by DMHAS. (Exhibit 4)
 7. On December 1, 2021, Mr. Guay on behalf of the privatization contract committee sent a letter to Ms. Navarretta asking what other program similar to the Hilltop program has been privatized. It should be noted that date on the letter was November 1, 2021, this was a clerical error and has no impact on the response received by DMHAS. (Exhibit 5)
 8. On December 9, 2021, Ms. Navarretta responded to Mr. Guay's letter of December 1, 2021. (Exhibit 6) Ms. Narrarretta clarified her letter of November 5, 2021, by saying, "Clients previously residing at Hilltop who require residential support have moved to living arrangements supported by private not for profits providers. These living arrangements utilize existing capacity at existing providers, and did not require any new contracts. Each client moved to the appropriate level of residential support that met their current need."
 9. On December 10, 2021, the privatization contract committee met and decided to ask for a response from Mr. Baril to Ms. Navarretta letter dated December 9, 2021. Mr. Rinker stated he was interested in finding out more about the contracts for services provided after the close of the Hilltop program. Mr. Rinker stated the privatization contract committee is committed to receiving all the information from both sides to fully understand the situation to make a better decision. Mr. Rinker stated there are three questions for the privatization contract committee to understand. First, is this a new service that did not exist in residential non-profit programs? Second, are the clients receiving the same services as before the move to the non-profit program? Third, if DMHAS had not lost their lease, would they have continued the program? Mr. Rinker would like a response from DMHAS by January 7, 2022, so that the subcommittee could review it before their next meeting. (Exhibit 7)
 10. On December 14, 2021, Mr. Guay sent a follow up letter to Ms. Navarretta. (Exhibit 8) In Mr. Guay's letter, he informs Ms. Navarretta that the privatization contract committee has asked for a response from Mr. Baril to Ms. Navarretta's letter of December 9, 2021. Mr. Guay's letter continues by asking for on a de-identified basis the placement of the individuals in the Hilltop program to the residential non-profit program(s) along with the State contract(s) for those residential non-profit programs. The privatization contract committee requested a response by January 7, 2022.
 11. On January 4, 2022, Deborah Moore, Legal Director for DMHAS, responded to Mr. Guay's letter of December 14, 2021. (Exhibit 9) Ms. Moore described the placement of the clients in the Hilltop program along with the State contracts for those residential non-profit programs. First,

Independent living is not DMHAS contracted program. No DMHAS funded staff is employed at the private site. Independent living is a natural progression for DMHAS clients. Second, Hartford Hospital is a contracted provider for DMHAS. Hartford Hospital has residential services. Ms. Moore's letter refers to the Todd House which has individual bedrooms, dorm-style bathrooms and common living areas. It is a mental health intensive care setting with 24/7 staffing. It should be noted that the Todd House is located at the Institute of Living on the Hartford Hospital campus. Third is Mercy Housing Shelter, Inc. which is a contracted provider for DMHAS. The housing arrangement is similar to those described at the Hartford Hospital's Todd House. DMHAS did not answer the question of how many residents under the above-described arrangement went to each setting.

12. A copy of Ms. Moore's letter was sent to Mr. Baril seeking the Union's response. Follow up emails, telephone calls and texts have been sent to Mr. Baril. As of June 1, 2022, no response has been received from the Union.
13. On June 9, 2022, Mr. Guay sent an email to Commissioner Navaretta with three questions. (Exhibit 10) The questions were:
 - a. In the response letter written on your behalf, you describe three residential settings for the placement of clients from the Hilltop program. They were Independent Living, Hartford Hospital/Todd House, and Mercy Housing & Shelter, Inc. Would you provide us with the number of clients from the Hilltop program that were placed in each of these settings?
 - b. With regards to Hartford Hospital and Mercy Housing & Shelter, Inc., did DMHAS have contracts with these non-profits before January 1, 2009? Were these contracts for residential services as described in your letter of January 4, 2022?
 - c. It is clear from the correspondence that DMHAS did not conduct an evaluation under C.G.S 4e-16(a). Did DMHAS conduct an evaluation under C.G.S. 4e-16(p)? If so, would you provide to the privatization contract committee a copy of that evaluation?
14. On August 3, 2022, Commissioner Navarretta responded to Mr. Guay.(Exhibit 11) The response to the Privatization Contract Committee was as follows:
 - a. At the time of closure, there were five residents served at the Hilltop Program. Residents were transitioned as follows: one individual transitioned to independent living, one individual transitioned to Hartford Hospital/Todd House, and three individuals were transferred to Mercy Housing & Shelter Corporation. All of the individuals who initially transitioned to Mercy Housing, successfully discharged from this residence over time. Additionally, all of the state-employed staff who previously worked at Hilltop Program were transferred to other DMHAS positions. Nine employees remained employed at Capitol Region Mental Health Center.
 - b. DMHAS has contracts with Hartford Hospital/Todd House, as well as Mercy Housing & Shelter Corporation, all of which were executed prior to 2009.
 - c. The agency did not conduct evaluations under CGS 4e-16(a) or CGS 4e-16(p) as the required criteria were not met to necessitate such evaluations. As stated previously, the

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contracts were already in place for these services with the aforementioned providers; contracts were existing. In short, Hilltop's lease expiration necessitated that the Department quickly, safely and appropriately, transition five individuals (as well as 12 state staff) in a truncated timeframe. The existing providers, who have been tremendous partners in providing services for decades, were able to accommodate the individuals and achieve the desired outcomes.

15. Commissioner Navarretta's response was sent to members of the privatization contract committee. The response was also texted to Mr. Baril on August 4, 2022. Mr. Baril was given an opportunity to respond by August 11, 2022. Mr. Baril acknowledged receipt of the text on August 4, 2022.
16. The privatization contract committee met on August 12, 2022 to discuss the response of Commissioner Navarretta's letter of August 3, 2022. The privatization contract committee decided that Mr. Rinker would draft a decision for its next meeting.
17. The relevant statutory provisions for consideration by privatization contract committee are:
 - a. C.G.S. 4e-1 (8) (8) "Contract" or "state contract" means an agreement or a combination or series of agreements between a state contracting agency or quasi-public agency and a business for: (D) The provision of goods and services, including, but not limited to, the use of purchase of services contracts and personal service agreements;
 - b. C.G.S. 4e-1 (21) - "Privatization contract" means an agreement or series of agreements between a state contracting agency and a person or entity in which such person or entity agrees to provide services that are substantially similar to and in lieu of services provided, in whole or in part, by state employees, other than contracts with a nonprofit agency, which are in effect as of January 1, 2009, and which through a renewal, modification, extension or rebidding of contracts continue to be provided by a nonprofit agency;
 - c. C.G.S. 4-16 (a) Prior to entering into any privatization contract for the privatization of a state service that is not currently privatized, the state contracting agency shall develop a cost-benefit analysis in accordance with the provisions of subsection (b) of this section. Such requirement shall not apply to a privatization contract for a service currently provided, in whole or in part, by a non-state entity. Any affected party may petition the State Contracting Standards Board for review of such privatization contract, in accordance with the provisions of subsections (f) to (h), inclusive, of this section.

(b) The cost-benefit analysis conducted by a state contracting agency prior to entering into a privatization contract shall document the direct and indirect costs, savings, and qualitative and quantitative benefits, that will result from the implementation of such privatization contract. Such cost-benefit analysis shall specify the schedule that, at a minimum, shall be adhered to in order to achieve any estimated savings. Any cost factor shall be clearly identified in such cost-benefit analysis and supported by all applicable records and reports. The department head of such state contracting agency shall certify that, based on the data and information, all projected costs, savings and benefits are valid and achievable. As used in this subsection, (1) "costs" means all reasonable, relevant and verifiable expenses, including salary, materials, supplies, services, equipment, capital depreciation, rent, maintenance, repairs, utilities, insurance, travel, overhead, interim and final payments and the normal cost of fringe benefits, as calculated by the Comptroller; (2) "normal cost of fringe benefits" means the amount of contributions required to fund the fringe benefits allocated to the current year of service; and (3) "savings" means the difference between the current annual direct and indirect costs of providing such service and the projected, annual direct and indirect costs of contracting to provide such services in any succeeding state fiscal year during the term of such proposed privatization contract.

(c) (1) If such cost-benefit analysis identifies a cost savings to the state of ten per cent or more, and such privatization contract will not diminish the quality of such service, the state contracting agency shall develop a business case, in accordance with the provisions of subsection (d) of this section, in order to evaluate the feasibility of entering into any such contract and to identify the potential results, effectiveness and efficiency of such contract.

(2) If such cost-benefit analysis identifies a cost savings of less than ten per cent to the state and such privatization contract will not diminish the quality of such service, the state contracting agency may develop a business case, in accordance with the provisions of subsection (d) of this section, in order to evaluate the feasibility of entering into any such contract and to identify the potential results, effectiveness and efficiency of such contract, provided there is a significant public policy reason to enter into such privatization contract. Any such business case shall be approved in accordance with the provisions of subdivision (4) of subsection (h) of this section.

(3) If any such proposed privatization contract would result in the layoff, transfer or reassignment of one hundred or more state agency employees, after consulting with the potentially affected bargaining units, if any, the state contracting agency shall notify the state employees of such bargaining unit, after such cost-benefit analysis is completed. Such state contracting agency shall provide an opportunity for said employees to reduce the costs of conducting the operations to be privatized and provide reasonable resources for the purpose of encouraging and assisting such state employees to organize and submit

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a bid to provide the services that are the subject of the potential privatization contract. The state contracting agency shall retain sole discretion in determining whether to proceed with the privatization contract, provided the business case for such contract is approved by the board.

(d) Any business case developed by a state contracting agency for the purpose of complying with subsection (c) of this section shall include: (1) The cost-benefit analysis as described in subsection (b) of this section, (2) a detailed description of the service or activity that is the subject of such business case, (3) a description and analysis of the state contracting agency's current performance of such service or activity, (4) the goals to be achieved through the proposed privatization contract and the rationale for such goals, (5) a description of available options for achieving such goals, (6) an analysis of the advantages and disadvantages of each option, including, at a minimum, potential performance improvements and risks attendant to termination of the contract or rescission of such contract, (7) a description of the current market for the services or activities that are the subject of such business case, (8) an analysis of the quality of services as gauged by standardized measures and key performance requirements including compensation, turnover, and staffing ratios, (9) a description of the specific results-based performance standards that shall, at a minimum be met, to ensure adequate performance by any party performing such service or activity, (10) the projected time frame for key events from the beginning of the procurement process through the expiration of a contract, if applicable, (11) a specific and feasible contingency plan that addresses contractor nonperformance and a description of the tasks involved in and costs required for implementation of such plan, and (12) a transition plan, if appropriate, for addressing changes in the number of agency personnel, affected business processes, employee transition issues, and communications with affected stakeholders, such as agency clients and members of the public, if applicable. Such transition plan shall contain a reemployment and retraining assistance plan for employees who are not retained by the state or employed by the contractor. If the primary purpose of the proposed privatization contract is to provide a core governmental function, such business case shall also include information sufficient to rebut the presumption that such core governmental function should not be privatized. Such presumption shall not be construed to prohibit a state contracting agency from contracting for specialized technical expertise not available within such agency, provided such agency shall retain responsibility for such core governmental function. For the purposes of this section, "core governmental function" means a function for which the primary purpose is (A) the inspection for adherence to health and safety standards because public health or safety may be jeopardized if such inspection is not done or is not done in a timely or proper manner, (B) the establishment of statutory, regulatory or contractual standards to which a regulated person, entity or state contractor shall be held, (C) the enforcement of statutory, regulatory or contractual requirements governing public health or safety, or (D) criminal or civil law enforcement. If any part of such business case is based upon evidence that the state contracting agency

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is not sufficiently staffed to provide the core governmental function required by the privatization contract, the state contracting agency shall also include within such business case a plan for remediation of the understaffing to allow such services to be provided directly by the state contracting agency in the future.

(e) Upon the completion of such business case, the state contracting agency shall submit the business case to the State Contracting Standards Board. For any privatization contract with a projected cost that exceeds one hundred fifty million dollars annually or six hundred million dollars over the life of such contract, the state contracting agency shall also submit such business case to the Governor, the president pro tempore of the Senate, the speaker of the House of Representatives, and any collective bargaining unit affected by the proposed privatization contract.

(f) (1) There shall be a privatization contract committee of the State Contracting Standards Board that shall review, evaluate, issue advisory reports and make recommendations on business cases submitted to the board by any state contracting agency. Such privatization contract committee shall consist of five members of the State Contracting Standards Board. Such members shall be appointed by the chairperson of the board and consist of both gubernatorial and legislative appointments, have not more than three members from any one political party, and at least one member of such committee shall have expertise in the area that is the subject of such proposed contract. The chairperson of the board, or the chairperson's designee shall serve as the chair of the privatization contract committee. (2) Upon receipt of any such business case from a state contracting agency, the State Contracting Standards Board shall immediately refer such business case to such privatization contract committee. The privatization contract committee shall employ a standard process for reviewing, evaluating and approving any such business cases. Such process shall include due consideration of: (A) The cost-benefit analysis developed by the state contracting agency, (B) the business case developed by the state contracting agency, including any facts, documents or other materials that are relevant to such business case, (C) any adverse effect that such privatization contract may have on minority, small and women-owned businesses that do, or are attempting to do business with the state, and (D) the value of having services performed in the state and within the United States. (3) The privatization committee shall evaluate the business case and submit the committee's evaluation to the State Contracting Standards Board for review and approval. During the review or consideration of any such business case, no member of the board shall engage in any ex-parte communication with any lobbyist, contractor or union representative. Unless otherwise provided in this section, a majority vote of the board shall be required to approve any such business case. (4) The business case for a privatization contract to provide a core governmental function may be approved by a two-thirds vote of the board, provided the state contracting agency has provided sufficient evidence to rebut the presumption contained in subsection (d) of this section and there is a significant policy reason to approve such business case. In no such case shall the insufficient staffing of a

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state contracting agency constitute a significant policy reason to approve a business case for a privatization contract to provide a core governmental function.

(g) Each state contracting agency that submits a business case to the board for review shall submit to the board all information, documents or other material required by the privatization contract committee to complete its review and evaluation of such business case.

(h) (1) Not later than sixty days after receipt of any business case, the State Contracting Standards Board shall transmit a report detailing its review, evaluation and disposition regarding such business case to the state contracting agency that submitted such business case and, in the case of a privatization contract with a projected cost of one hundred fifty million dollars or more annually, or six hundred million dollars or more over the life of the contract, concomitantly transmit such report to the Governor, the president pro tempore of the Senate, the speaker of the House of Representatives and any collective bargaining unit affected by the proposed privatization contract. Such sixty-day period may be extended for an additional thirty days upon a majority vote of the board or the privatization contract committee and for good cause shown. (2) The board's report shall include the business case prepared by the state contracting agency, the evaluation of the business case prepared by the privatization contract committee, the reasons for approval or disapproval, any recommendations of the board and sufficient information to assist the state contracting agency in determining if additional steps are necessary to move forward with a privatization contract. (3) If the State Contracting Standards Board does not act on a business case submitted by a state contracting agency within sixty days of receipt of such business case, such business case shall be deemed approved, except that no business case may be approved for failure of the board to meet. (4) In the case of a business case developed pursuant to subdivision (2) of subsection (c) of this section, a two-thirds vote of the board shall be required for approval of such privatization contract. (5) Any state contracting agency may request an expedited review of a business case submitted to the board if there is a compelling public interest for such expedited review. If the board approves the agency's request for such an expedited review, such review shall be completed not later than thirty days after receipt of such request. If the board fails to complete an expedited review within thirty days of receipt of a request that was approved by the board, such business case shall be deemed to be approved.

(i) A state contracting agency may publish notice soliciting bids for a privatization contract only after the board approves such business case, provided any privatization contract that is estimated to cost in excess of one hundred fifty million dollars annually or six hundred million dollars or more over the life of the contract shall also be approved by the General Assembly prior to the state contracting agency soliciting bids for such contract. The General Assembly may approve any such contract as a whole by a majority vote of each house or may reject such agreement as a whole by a majority vote of either house. If the

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General Assembly is in session, it shall vote to approve or reject such contract not later than thirty days after such state contracting agency files such contract with the General Assembly. If the General Assembly is not in session when such contract is filed, it shall be submitted to the General Assembly not later than ten days after the first day of the next regular session or special session called for such purpose. The contract shall be deemed approved if the General Assembly fails to vote to approve or reject such contract within thirty days after such filing. Such thirty-day period shall not begin or expire unless the General Assembly is in regular session. For the purpose of this subsection, any contract filed with the clerks within thirty days before the commencement of a regular session of the General Assembly shall be deemed to be filed on the first day of such session.

(j) Each state contracting agency shall submit, in writing, to the State Contracting Standards Board, any proposed amendment to a board-approved business case in order that the board may review and approve of such proposed amendment. The board may approve or disapprove of any such proposed amendment not later than thirty days after receipt of such proposed amendment by the same vote that was required for approval of the original business case. If the board fails to complete its review within thirty days of receipt of such proposed amendment, such amendment shall be deemed approved.

(k) Not later than thirty days after a decision of the board to approve a business case, any collective bargaining agent of any employee adversely affected by such proposed privatization contract may file a motion for an order to show cause in the superior court for the judicial district of Hartford on the grounds that such contract fails to comply with the substantive or procedural requirements of this section. A ruling on any such motion may: (1) Deny the motion; (2) grant the motion if the court finds that the proposed contract would substantively violate the provisions of this section; or (3) stay the effective date of the contract until any substantive or procedural defect found by the court has been corrected.

(l) (1) The board may review additional existing privatization contracts and shall review not less than one contracting area each year that is currently privatized. During the review of any such privatization contract, no member of the board shall engage in any ex-parte communication with any lobbyist, contractor or union representative. For each such privatization contract selected for review by the board, the appropriate state contracting agency shall develop a cost-benefit analysis in accordance with subsection (b) of this section. In addition, any affected party may petition the board for review of any existing privatization contract, in accordance with the provisions of subsections (f) to (h), inclusive, of this section. (2) If such cost-benefit analysis identifies a ten per cent or more cost savings to the state from the use of such privatization contract and such contract does not diminish the quality of the service provided, such state contracting agency shall develop a business case for the renewal of such privatization contract in accordance with the provisions of subsections (d) and (e) of this section. The board shall review such

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contract in accordance with the provisions of subsections (f) to (h), inclusive, of this section and may approve such renewal by the applicable vote of the board, provided any such renewal that is estimated to cost in excess of one hundred fifty million dollars annually or six hundred million dollars or more over the life of the contract shall also be approved by the General Assembly prior to the state contracting agency renewing such contract. If such renewal is approved by the board and the General Assembly, if applicable, the provisions of subsection (j) of this section shall apply to any proposed amendment to such contract. (3) If such cost-benefit analysis identifies a cost savings to the state of less than ten per cent, such state contracting agency shall prepare a plan to have such service provided by state employees and shall begin to implement such plan, provided: (A) While such plan is prepared, but prior to implementation of such plan, such state contracting agency may develop a business case for such privatization contract, in accordance with the provisions of subsection (d) of this section, that achieves a cost savings to the state of ten per cent or more. Any such business case shall be reviewed by the board in accordance with the provisions of subsections (f) to (h), inclusive, of this section, and may be approved by the applicable vote of the board; (B) such privatization contract shall not be renewed with the vendor currently providing such service unless: (i) There exists a significant public interest in renewing such contract, and (ii) such renewal is approved by a two-thirds vote of the board; (C) the state contracting agency may enter into a contract with a term of one year or less for the provision of such service until such state contracting agency implements such plan; and (D) the procedure for the transfer of funds from the General Fund, as described in section 4-94, may be utilized to allocate necessary resources for the implementation of the provisions of this subdivision. (4) Notwithstanding the provisions of subdivision (3) of this subsection, the renewal of a privatization contract with a nonprofit organization shall not be denied if the cost of increasing compensation to employees performing the privatized service is the sole cause for such contract not achieving a cost savings to the state of ten per cent or more.

(m) The Office of Policy and Management, in consultation with the State Contracting Standards Board, shall: (1) Develop policies and procedures, including templates for use by state contracting agencies for the development of a cost-benefit analysis, as described in subsection (b) of this section, and (2) review with each state contracting agency the budgetary impact of any such privatization contract and the need to request budget adjustments in connection with any such privatization contract.

(n) The State Contracting Standards Board, in consultation with the Department of Administrative Services, shall: (1) Recommend and implement standards and procedures for state contracting agencies to develop business cases in connection with privatization contracts, including templates for use by state contracting agencies when submitting business cases to the board, and policies and procedures to guide state contracting agencies to complete such business cases, and (2) develop guidelines and procedures for assisting state employees whose jobs are affected by a privatization contract.

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(o) Notwithstanding the provisions of subsections (a) and (i) of this section, a state contracting agency may enter into a privatization contract without development of a cost-benefit analysis or approval of a business case by the State Contracting Standards Board if (1) the state contracting agency finds that a privatization contract is required (A) due to an imminent peril to the public health, safety or welfare, and (B) the agency states, in writing, its reasons for such finding; and (2) the Governor approves such finding, in writing.

(p) Prior to entering into or renewing any privatization contract that is not subject to the provisions of subsection (a) of this section, the state contracting agency shall evaluate such contract to determine if entering into or renewing such contract is the most cost-effective method of delivering the service, by determining the costs, as defined in subsection (b) of this section, of such service. The state contracting agency shall perform such evaluation in accordance with a template prescribed by the Secretary of the Office of Policy and Management and such evaluation shall be subject to verification by the secretary. The secretary may waive the requirement for an evaluation of cost-effectiveness under this subsection upon a finding by the secretary that exigent or emergent circumstances necessitate such waiver.

(q) Nothing in this section shall be construed to apply to procurements that involve the expenditure of federal assistance or federal contract funds, provided federal law provides applicable procurement procedures that are inconsistent with the requirements of this section.

DISCUSSION

While the letter from Mr. Baril of October 29, 2022 has been categorized as a “petition,” it is a claim that the privatization of the Hilltop Residential Program is a violation of C.G.S. 4e-16. Specifically in bold in the first paragraph of his letter it states, “**We also do not believe any of the required procedures under 4e-16(a) et. seq. have been followed, making this privatization a direct violation of Connecticut law.**” Consequently, it may not be within the purview of the privatization contract committee to make such a determination that a law has been violated, but such decision rests with the full SCSB under C.G.S. 4e-39 or C.G.S. 4e-40. In the case before us, the applicable statute at this time is C.G.S. 4e-40.

In this particular circumstance, DMHAS did not solicit or award a contract after an award as called for in C.G.S. 4e-40. DMHAS used existing contracts that the Agency claims were in existence prior to January 1, 2009 with nonprofit agencies. Hartford Hospital/Todd House and Mercy Housing are nonprofit agencies. In its communication with the privatization contract committee, DMHAS claims that part of the program would continue to be provided by DMHAS employees and other parts by the above-mentioned nonprofits. C.G.S. 4e-16(a) states in part with regards to a cost-benefit analysis as called for in C.G.S. 4e-16(b) that, “Such requirement shall not apply to a privatization contract for a service currently provided, in whole or in part, by a non-state entity.” C.G.S. 4e-1 (21) provides the following definition of a

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privatization contract: “Privatization contract” means an agreement or series of agreements between a state contracting agency and a person or entity in which such person or entity agrees to provide services that are substantially similar to and in lieu of services provided, in whole or in part, by state employees, other than contracts with a nonprofit agency, which are in effect as of January 1, 2009, and which through a renewal, modification, extension or rebidding of contracts continue to be provided by a nonprofit agency.

The question before the privatization contract committee is whether or not the unique nature of the Hilltop Residential Program is so different in nature and scope than any other programs offered by nonprofit entities that such privatization required an evaluation under C.G.S. 4e-16(a)? If so, did DMHAS as asserted by the Union violate C.G.S. 4e-16(a)? If DMHAS violated C.G.S. 4e-16(a), it is the full board of the SCSB that makes that decision, not the privatization contract committee.

Conversely, SEIU District 1199 New England could have petitioned the board under 4e-16(a) which states, “Any affected party may petition the State Contracting Board for review of such privatization contract, in accordance with the provisions of subsections (f) to (h), inclusive of this section.” The Union did not petition the SCSB; consequently, we do not have to reach a decision on that point.

DECISION

The claim filed by the Union that DMHAS violated C.G.S. 4e-16 regarding the Hilltop Residential Program is not supported by the record before the privatization contract committee.

The Union’s claim that the program offered by the Hilltop Residential Program is unique and is not refuted by DMHAS. The program as described in the Union letter of October 29, 2021 describes the program as a supervised apartment program which is staffed twenty-four hours a day, seven days a week. The services promote recovery by providing a structured, safer, nurturing and therapeutic environment to young adults.

DMHAS, when they lost their lease, decided to “contract” the residential part of the program. DMHAS did so by using existing contracts with nonprofits, Hartford Hospital and Mercy Housing and Shelter Corporation. C.G.S. 4e-16(b) states that before entering into a contract for services ... In this instance, DMHAS did not enter into a contract, but utilized an existing contract with a nonprofit entity. It is unrefuted that Hartford Hospital and Mercy Housing and Shelter Corporation were providing services to DMHAS prior to January 1, 2009. Consequently, even if the privatization contract committee were to find this to be privatization contract, such contracts are exempted as privatization contracts under the grandparenting provisions of C.G.S 4e-1(21).

Conversely, if DMHAS were to have established a program like the Hilltop Residential Program as described in the Union’s letter i.e. a structured 24/7 apartment program with a nonprofit entity, the Union’s claim would merit further consideration by the privatization contract committee. Further, if

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DMHAS were to reestablish the aforementioned program in the future with a non-state entity, the provisions of C.G.S. 4e-16 would need to be considered by DMHAS as being applicable.

DMHAS did not violate C.G.S. 4e-16(a) *et. seq.* when it did not conduct a cost benefit analysis regarding the Hilltop Residential Program.

Robert Rinker moved to accept the decision by the Privatization Contract Committee in the matter of SEIU District 1199 New England and the Department of Mental Health and Addiction Services Hilltop Residential Program at 556 Blue Hills Avenue, Hartford, Stuart Mahler seconded the motion. With no further discussion all voted in favor and the motion passed, with Chair Fox recused.

7. Jeffrey Respler – CGS Sec. 4e-34 Action

David Guay reported that the board decided on Mr. Jeffrey Respler almost a year ago to pursue disqualifying Mr. Respler as a state contractor, that particular activity on pause due to his upcoming retirement. Now under the direction of Chair Fox, we are beginning to bring that process forward again. Mr. Guay reached out to Mr. Respler's attorney to begin discussions on how to move forward. The issue remains as to whether Mr. Respler should be disqualified from bidding on future state contracts for a while. Chair Fox suggested moving forward and making some recommendations to the board on this issue.

8. Report on AAG conversation on Opinion requests

We requested two opinions for the Attorney general based on motions from Lauren, and they were agreed upon by the board. The first one was an opinion concerning the Connecticut Port Authority's ability to enter a public-private partnership, via their own enabling statutes. The second question was regarding the legitimacy of the Connecticut Port Authorities harbor development public-private partnership. At this point we are having a conversation on these two questions with the Solicitor General within the Office of the Attorney General.

9. Other Business

Alfred Bertoline made note of the diversity study currently being conducted on purchasing. Mr. Bertoline also initiated a conversation on an anticipated strategic planning meeting.

10. Public Comment

No public comment.

11. Adjournment

Danial Rovero motioned to adjourn; Alfred Bertoline seconded. All voted in favor. Meeting adjourned at 11:01 A.M.

Respectfully submitted: Jing Liang, Intern and David Guay, Temporary Worker Retiree.