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Connecticut AG Says P3 for New London Pier Redevelopment is Legal.

Connecticut's attorney general has given the legal stamp of approval to a high profile public-private partnership that has come under fire for cost overruns.

After an investigation by a state watchdog commission into the contracts behind the Connecticut Port Authority's flagship redevelopment of the State Pier in New London, Attorney General William Tong issued an [opinion](#) Tuesday saying the public-private-partnership behind the \$255 million project is legal.

The Port Authority is redeveloping the State Pier as an base for offshore wind installations, a project that has received kudos from the Biden administration as part of its larger efforts to create an offshore wind infrastructure that would deploy 30 gigawatts of offshore wind by 2030, enough, the administration says, to power 10 million homes with clean energy.

The P3 arrangement the that port authority, investor-owned New England electric utility Eversource, and Danish renewable energy developer Orsted struck in late 2020 is supposed to turn the pier into a one-stop, state of the art hub for the production and shipping of windmill turbines.

But the Connecticut State Contracting Standards Board, which oversees state agency contracting and procurement policies, has raised questions about rising costs and delays.

The board and acting chair Robert Rinker say the port authority lacked the clear authority to enter into the P3 arrangement driving the pier's development.

The attorney general, in a response published Tuesday to a request by the contracting board, said otherwise.

"The Port Authority is a quasi-public agency and retains the authority to enter into all necessary, desirable, or incidental contracts and into partnerships with governmental or private entities," Tong wrote.

"Some of these partnerships might be characterized colloquially, in business documents and by the General Assembly as public-private partnerships since they are literally partnerships between government and private entities," he continued, further referring to the arrangement as a "special type of public private partnership."

It was not the result the 14-member contracting board had hoped for.

The board plans to draft an immediate response, Rinker said.

"Calling it a public-private-partnership has to fit in under a statutory construct," Rinker said, adding that the AG's ruling doesn't help tack down where it fits. "The legislature is going to have to take a look at this, because the bottom line is that this quasi-public agency spending hundreds of millions of

dollars of taxpayers' dollars without oversight.”

The contracting board says it is problematic that the State Pier deal was approved before the passage of a law in June 2021 banning the formation of new P3's for any agency but the state Department of Transportation without prior approval from the legislative.

“Now the General Assembly has some oversight by having legislative hearings on these partnerships,” Rinker said. However, contracts for the CPA's “biggest procurement now and probably for a very long period of time” were inked in the latter half of 2020, a little under a year before the new law passed and avoided such scrutiny.

A spokesperson for the port authority said the Attorney General's opinion was “welcomed confirmation that the CPA's statutory authority to enter into public-private partnerships is clear and consistent with the CPA's position when this was first raised one year ago.”

The traditional argument for P3s is that they benefit both governments and private partners by splitting the costs and risks of joint ventures. However, costs have skyrocketed at the New London Pier project and only the government has so far shouldered the burden, according to a report submitted to the state's General Assembly by the SCSB in February.

The original projected cost in 2020 was \$93 million, and under the agreement, the private partners fronted \$75 million to cover a majority of the price. Today costs stand at \$255 million and the state has covered the entirety of the difference, to the ire of the contracting board.

The port authority's latest request for \$20 million of state bond funds was approved by the State Bond Commission in May; more is expected to be needed to complete the project.

Port authority officials attributed the over two-fold increase to inflation, rising material costs, and other unforeseen difficulties. While that's true, Rinker said the board's audit revealed the organization wasn't the best manager for such a large project.

“They didn't fully understand the scope of the project and it's a relatively small organization that doesn't do construction, involved in one of the more high scale, high-priced infrastructure projects,” Rinker said.

Construction services within other agencies, like the state DOT, may have been more up to the task.

“Going from \$93 million to \$255 million, and maybe north of that, is a matter of public debate,” Rinker said.

In his ruling, Tong left the door open for other avenues of investigation by the SCSB.

“This opinion does not speak to the legality, propriety, or ethics of any particular public-private partnership,” he said. “We do not assume that any specific project or development characterized as a public-private partnership is or should be a partnership within the meaning of the General Statutes.”

The SCSB investigation also looks at instances of self-dealing in the contracting of construction services.

The SCSB found that Omaha-based construction contractor Kiewit, awarded an \$87 million contract to manage most of the pier's construction, had assigned at least five subcontracts to itself, which were then approved by the port authority.

“In terms of proper procurement everybody has to be on the same, level playing field,” Rinker said. “There was a sense that some people had information that other people did not when they were putting their proposals or their bids.”

While the state contracting board can't penalize or stop the project, it can make recommendations to legislators.

A bill introduced last week by Sen. Cathy Osten, D-Sprague, and Rep. Christine Conley, D-Groton, would prohibit construction managers on capital projects like Kiewit from subbing work to themselves or subsidiaries.

By Thomas Nocera

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