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## **OLR Bill Analysis**

### **sHB 5418**

#### ***AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE STATE CONTRACTING STANDARDS BOARD.***

#### **SUMMARY**

This bill transfers, from the Office of Policy and Management (OPM) secretary to the State Contracting Standards Board (SCSB), authority for granting competitive bidding waivers for personal service agreements (PSAs) and limits the reasons for which these waivers may be granted. It subjects the offices of the attorney general, secretary of the state, state comptroller, and state treasurer and the constituent units of higher education to the board's full authority.

The bill also adds a certification component to the procurement and project management education and training program required by existing law and requires certain employees to achieve certification, rather than only participate in training. It requires SCSB to appoint a chief procurement auditor to, among other things, conduct the board's triennial audits of state contracting agencies.

The bill also makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2019

#### **§§ 1-3 — PSA WAIVERS**

##### ***Waiver Authority (§§ 1 & 2)***

Under current law, PSAs costing more than \$20,000 or lasting for more than one year must be based on competitive negotiation or competitive quotations unless the purchasing agency applies for and receives a waiver from the OPM secretary allowing a sole source purchase. The bill requires purchasing agencies to instead apply for and receive these waivers from SCSB. It requires the board to post on the state contracting portal any waiver requests it receives.

The bill shifts, from the OPM secretary to SCSB, the authority to adopt guidelines for determining the type of PSA services that may qualify for a waiver. It makes adopting these guidelines permissive for SCSB, rather than mandatory for the secretary as current law requires. It also restricts the board's waiver authority to the following services only:

1. those for which the cost of a competitive selection outweighs the benefits as documented by the agency,
2. proprietary services,
3. services to be provided by a contractor mandated by the general statutes or a public or special act, and
4. emergency services.

Under current law, the OPM secretary's waiver authority applies to other types of services beyond these four categories as she determines (see BACKGROUND).

Existing law prohibits state agencies from beginning a PSA solicitation process without the OPM secretary's prior approval if the PSA (1) costs more than \$50,000 or (2) lasts for more than one year. The bill requires the OPM secretary to immediately notify SCSB of any such application for approval if the agency does not intend to purchase the services by competitive negotiation. The bill does not require similar notification when an agency does not intend to use competitive quotation.

### ***Contesting an Award (§ 3)***

The bill specifically allows bidders and proposers to contest the solicitation or award of a PSA for which SCSB grants a waiver. Under existing law, bidders and proposers on a state contract may contest a contract solicitation or award with SCSB, with the contest (1) limited to (a) the procedural elements of the solicitation or award process or (b) claims of an unauthorized or unwarranted, noncompetitive selection process and (2) adjudicated by an SCSB subcommittee.

**§ 4 — STATE CONTRACTING AGENCIES**

Current law exempts from the definition of state contracting agency, and therefore SCSB authority, (1) the offices of the attorney general, secretary of state, state comptroller, and state treasurer with respect to their constitutional functions; (2) state agencies with respect to contracts specific to the state treasurer's constitutional and statutory functions; and (3) the constituent units of higher education for purposes other than the privatization law (see BACKGROUND). The bill subjects these agencies and the constituent units to SCSB's general authority by eliminating these exemptions. It retains existing law's exemptions for the legislative and judicial branches.

In addition to its broad authority over privatization, SCSB has authority under existing law over (1) acquisition and management of supplies, services, and construction; (2) state contracting and procurement processes and practices; and (3) contracts for the construction, reconstruction, alteration, remodeling, repair, or demolition of public buildings. SCSB is also authorized to (1) review and terminate, for cause, existing contracts undertaken by state contracting agencies and (2) disqualify a contractor, for cause, from bidding on or receiving state contracts for up to five years.

**§ 5 — CERTIFICATION PROGRAM**

The bill adds a certification requirement to the procurement and project management education and training program that SCSB must develop and administer under current law. It requires employees with procurement responsibilities in state contracting agencies to achieve certification from the program, rather than only participate in it as current law requires. Under the bill, SCSB must (1) grant certification to any employee who completes the program and (2) adopt implementing regulations.

**§§ 6 & 7 — CHIEF PROCUREMENT AUDITOR**

The bill requires SCSB to appoint a chief procurement auditor for a term of up to six years. The auditor must (1) report to, be annually evaluated by, and serve at the pleasure of the board and (2) may be reappointed. SCSB's executive director must supervise him or her for

administrative purposes only.

Under the bill, the chief procurement auditor must:

1. establish procedures, in consultation with the state auditors, for monitoring the financial and cost provisions of contracting regulations;
2. establish an anonymous hotline to receive procurement complaints and investigate them, as appropriate;
3. measure and report annually on procurement process improvement; and
4. conduct SCSB's triennial audits of state contracting agencies to ensure compliance with procurement-related statutes and regulations.

## **BACKGROUND**

### ***Waivers from Competitive Solicitation***

PSAs are typically used by state agencies to purchase infrequent and non-routine services or end products, such as certain consulting services, technical assistance, and training. Most PSAs have competitive solicitation requirements unless the purchasing agency applies to the OPM secretary for a waiver, and the secretary grants the waiver.

In addition to the conditions prescribed in statute, OPM has used its discretionary authority to extend waiver eligibility to services that require a contractor with special capabilities or unique experience.

### ***Constituent Units of Higher Education***

The state's constituent units of higher education are, generally, not subject to SCSB's authority, except for the privatization law. Existing law requires SCSB to adopt regulations to apply the requirements of specified SCSB-related statutes to the constituent units (CGS § 4e-47). (To date, the board has not adopted these regulations.)

However, under existing law, several SCSB-related statutes do not

become operative until the board adopts its implementing regulations. To date, SCSB has not adopted these implementing regulations; therefore, it is unclear how these statutes would apply to the constituent units.

***Related Bills***

sSB 917, reported favorably by the Government Administration and Elections Committee, subjects quasi-public agencies, including quasi-publics that provide financing to a constituent unit of higher education, to the state's privatization law by defining them as “state contracting agencies.”

sSB 1041, reported favorably by the Government Administration and Elections Committee, limits PSA waivers to those conditions that are specifically prescribed in statute and eliminates the discretionary authority of the OPM secretary to grant waivers under additional conditions.

**COMMITTEE ACTION**

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 15    Nay 0    (03/29/2019)