OLR Bill Analysis  
sHB 7385

AN ACT CONCERNING THE DEPARTMENT OF ADMINISTRATIVE SERVICES AND CHANGES TO AFFIRMATION, AFFIDAVIT AND CERTIFICATION REQUIREMENTS FOR LARGE STATE CONTRACTS.

SUMMARY

This bill modifies contract compliance requirements for certain state, municipal, and quasi-public agency contracts.

It generally eliminates requirements that contractors submit documentation (e.g., affidavits and certifications) concerning their compliance with certain contracting laws and instead requires that the applicable requirements be incorporated into the contracts. The bill’s provisions concern contractors’ compliance with (1) state ethics laws; (2) restrictions on gifts, investments, political contributions and solicitations, and use of consultants; and (3) nondiscrimination and affirmative action requirements.

The bill also codifies and expands upon provisions in an existing executive order that require certain state contractors to disclose any campaign contributions.

The bill’s provisions concerning ethics laws, gift restrictions, use of consultants, and nondiscrimination and affirmative action requirements do not apply to qualifying UConn and Board of Regents for Higher Education contracts, as such contracts are subject to alternative requirements under existing law.

Lastly, it makes technical and conforming changes.

EFFECTIVE DATE: July 1, 2019

§ 1 — STATE ETHICS LAWS
Under current law, contractors and bidders for large state construction or procurement contracts (i.e., valued at more than $500,000) must affirm, in writing or electronically, that (1) they received a state ethics law summary from the contracting state or quasi-public agency and (2) their key personnel have read and understand the summary and agree to comply with the ethics laws. Similarly, large state construction or procurement contractors must obtain these affirmations from their subcontractors and consultants and provide them to the state contracting agency. Failure to submit the affirmation disqualifies the contractors, bidders, subcontractors, and consultants from the contract.

Rather than obtaining the above affirmations, the bill establishes an alternative requirement for such contracts. Specifically, it prohibits a state agency or quasi-public agency from entering into a large state construction or procurement contract unless such contract contains a representation that the chief executive officer or authorized signatory of the contract and all their key employees have read and understood the summary and agree to comply with the ethics laws’ provisions. It similarly requires large state construction or procurement contractors to include this representation in each of their contracts with subcontractors and consultants. Under the bill, failure to do so is cause for terminating the state contract.

To the extent this provision of the bill applies to existing contracts, it may implicate the Contracts Clause of the U.S. Constitution (see BACKGROUND).

§ 2 — GIFTS

Under current law, any principal or key personnel of a person, firm, or corporation that submits bids or proposals for a large state contract (i.e., valued more than $500,000 in a calendar or fiscal year) must certify that no (1) gifts were given in connection with the contract; (2) attempts were made to circumvent the gift prohibition; and (3) fraud or collusion exists in the submitted bids or proposals. The certifications must be sworn as true to the best knowledge and belief of the certifier, under penalty of false statement.
In addition, current law requires the agency official or employee responsible for executing the contract to certify that the selection process was devoid of collusion, gift giving (received or promised), compensation, fraud, or inappropriate influence.

The bill replaces these required certifications with requirements that the contracts contain representations to the same effect. An existing executive order subjects state contracts with a value of $50,000 or more in a calendar or fiscal year to the gift certification requirements that apply to contracts with a value of $500,000 or more (Executive Order 49, see BACKGROUND). Thus, the bill’s requirements also appear to apply to contracts with an annual value of $50,000 or more.

Under the bill, state and quasi-public agencies must include notice of the representation requirements in the bid specifications or request for proposals (RFPs) and failure to agree to them disqualifies the bidder or proposer from the contract. The same requirements apply with respect to the certifications under current law.

§ 3 — INVESTMENTS IN IRAN

Under current law, state and quasi-public agencies are prohibited from entering into, renewing, or amending a large state contract (i.e., valued at more than $500,000 in a calendar or fiscal year) with any entity who (1) fails to certify that such entity has not directly invested $20 million or more in Iran's energy sector or (2) certifies that he or she has made, renewed, or increased such an investment. Iran's energy sector, as defined by federal law, includes activities to develop petroleum or natural gas resources or nuclear power in Iran. The certification must be sworn as true to the person’s best knowledge and belief, subject to the penalties for false statement, with a penalty exception for affiants who make a good faith effort to verify whether they have made a prohibited investment. Bidders and proposers must submit the certification before submitting a bid or proposal for a large state contract.

The bill instead prohibits state and quasi-public agencies from entering into, renewing, or amending a large state contract unless such
a contract contains the entity’s representation that it has not made a prohibited investment in Iran. Agencies must include notice of these representation requirements in bid specifications or RFPs for such contracts, just as they must currently do for the certification requirements.

As under current law for the certifications, the representation requirements do not apply to any contract of the state treasurer in his role as trustee of the Connecticut retirement plans and trust funds.

§ 4 — CONSULTING AGREEMENTS

The bill replaces certain required affidavits concerning consulting agreements with representations that must be included within the contracts. Under the current requirements, any principal or key personnel of a person, firm, or corporation that submits bids or proposals for a goods and services contract with a total value of $50,000 or more in a calendar or fiscal year must attest to whether a consulting agreement has been entered into in connection with the contract. Under the bill, the contract must include a representation to this same effect.

As is currently required for the affidavits, the representation must include specified information about any such agreement, including its basic terms, as well as the consultant's name and status as a former state employee or public official. It must be sworn as true to the best knowledge and belief of the person signing the contract and is subject to the penalties of false statement. Each state and quasi-public agency must include a notice of the representation requirements in the bid specifications or RFPs for such contracts, as is required under current law for the affidavits. Failure to submit the affidavit under current law, or agree to the representation under the bill, disqualifies the bidder or proposer from the contract.

§ 5 — POLITICAL CONTRIBUTIONS

Current law requires state and quasi-public agencies to (1) distribute a written notice advising contractors and prospective contractors of the restrictions on contributing to, or soliciting for,
statewide or legislative candidates, certain political action committees, and party committees and (2) obtain a written acknowledgment of the receipt of such notice.

The bill alternatively requires state and quasi-public agencies to include a copy of, or internet link to, such notice in the bid specifications or RFPs for a large state contract. The bill does not define large contracts for such purposes.

The bill also prohibits such agencies from executing any “state contract,” as described below, unless it contains a representation that the chief executive officer or authorized signatory of the contract has received such notice (however, as stated above, only large state contracts must receive the notice in the bid specification or RFP). The campaign finance law generally defines “state contract” as an agreement or contract with a state agency in the executive or legislative branch of government or any quasi-public agency valued at $50,000 or more, or a combination or series of such agreements or contracts having a value of $100,000 or more in a calendar year.

Under the bill, any principal of the state contractor or prospective state contractor submitting a bid or proposal for a state contract must certify, under penalty of false statement, that in the previous four years neither the contractor or prospective state contractor, nor any of its principals, have made or solicited any prohibited political contributions unless there were mitigating circumstances found to exist concerning the violation. Similar requirements apply to contractors submitting bids or proposals for state contracts valued at more than $50,000 under an existing executive order (Executive Order 49, see BACKGROUND).

Each certification must be sworn as true to the best knowledge and belief of the person signing the certification. The bill requires such person to submit an updated certification if there is any change in the most recently filed certification, either within 30 days after the effective date of any such change or upon the submittal of any new bid or proposal for a state contract, whichever is earlier.
Under the bill, any principal of the state contractor or prospective state contractor submitting a bid or proposal for a state contract must disclose on the certification all contributions made by any of its principals to any party committee, exploratory committee, statewide or legislative candidate, or candidate committee for a period of four years prior to the signing of the contract or date of the response to the bid, whichever is longer, and certify that all such contributions have been disclosed.

The bill prohibits state and quasi-public agencies from executing a state contract, unless first obtaining the written certification. Each state agency and quasi-public agency must include in its bid specifications or RFPs for a state contract a notice of such certification requirements.

§§ 6 & 7 — NONDISCRIMINATION AND AFFIRMATIVE ACTION

Under current law, contractors that enter into contracts with the state or one of its political subdivisions, other than a municipality, or who are a party to a municipal public works contract or quasi-public agency project contract must indicate that they comply with state nondiscrimination and affirmative action laws by filing (1) a written or electronic representation for contracts valued less than $50,000 for each year or (2) certain documentation for contracts valued at $50,000 or more for each year.

The bill alternatively requires such contracts, regardless of their value, to contain a nondiscrimination affirmation provision to certify that the contractor understands the nondiscrimination and affirmative action obligations under the law and will maintain a nondiscrimination policy for the duration of the contract. Under the bill, the authorized signatory of the contract must demonstrate his or her understanding of such obligation by either providing an affirmative response in the required online bid or RFP or initialing the affirmation provision in the contract.

BACKGROUND

Contracts Clause of the U.S. Constitution

The Contracts Clause (Article I, Section 10) bars states from passing
laws that impair the obligation of contracts. When analyzing an alleged contracts clause violation, the threshold inquiry for a court is whether a state law has substantially impaired a contractual relationship. If so, in deciding whether to uphold the law at issue, the court must determine whether the (1) law has a legitimate and important public purpose and (2) adjustment of the rights of the parties to the contractual relationship was reasonable and appropriate in light of that purpose (Energy Reserves Group, Inc. v. Kansas Power & Light Co., 459 U.S. 400, 411-413 (1983)).

Executive Order 49

In May 2015, Governor Malloy issued Executive Order 49. The order (1) subjects state contracts with a value of $50,000 or more in a calendar or fiscal year to the gift certification requirements that currently apply to contracts with a value of $500,000 or more and (2) requires those state contractors subject to the gift certification requirements to also disclose in such affidavits all campaign contributions made to statewide office or legislative candidates.

Penalty of False Statement

By law, false statement is a class A misdemeanor, punishable by up to one year in prison, up to a $2,000 fine, or both (CGS § 53a-157b).

Ban on Campaign Contributions by State Contractors

By law, for current and prospective state contractors, the existing ban is branch specific. This means that for principals of contractors with executive branch or quasi-public agency contracts or contract solicitations, the ban applies to statewide office candidates. For those with legislative branch contracts or contract solicitations, the ban applies to legislative candidates. For pre-qualified contractors, the ban applies to candidates running for office in either branch. Additionally, the ban prohibits principals from making qualifying contributions to any candidates participating in the Citizens’ Election Program, regardless of the branch (CGS § 9-704(e)).

COMMITTEE ACTION

Government Administration and Elections Committee
Joint Favorable Substitute
Yea  12  Nay  4  (04/01/2019)