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## OLR Bill Analysis

### sHB 6444

## **AN ACT CONCERNING THE MODERNIZATION OF STATE SERVICES.**

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## **§§ 1-7 — CONTRACTING AFFIDAVITS**

*Generally eliminates requirements that contractors submit documentation (e.g., affidavits and certifications) about their compliance with certain contracting laws and instead requires that they incorporate the applicable requirements into the contracts*

The 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) about their compliance with certain contracting laws and instead requires that they incorporate the applicable requirements 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. It 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 on ethics laws, gift restrictions, consultant use, and nondiscrimination and affirmative action requirements do not apply to qualifying UConn and Board of Regents for Higher Education contracts, as these contracts are subject to different requirements under existing law.

Lastly, the bill makes technical and conforming changes.

EFFECTIVE DATE: July 1, 2021

### ***State Ethics Laws (§ 1)***

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 read and understood the summary and agreed 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 requiring the above affirmations, the bill establishes a different requirement for these contracts. Specifically, it prohibits a state agency or quasi-public agency from entering into a large state construction or procurement contract unless the contract contains a representation that the chief executive officer or authorized signatory of the contract and all key employees have read and understood the summary and agreed 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 entered into on or after July 1, 2021, with subcontractors and consultants. Under the bill, failure to do so is cause for terminating the contract.

### ***Gifts (§ 2)***

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 (1) no gifts were given in connection with the contract; (2) there were no attempts to circumvent the gift prohibition; and (3) the bids or proposals are being submitted without fraud or collusion. The certifications must be sworn as true to the certifier's best knowledge and belief, 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 (RFP), 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.

***Investments in Iran (§ 3)***

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 an entity that (1) fails to certify that such entity has not directly invested \$20 million or more in Iran’s energy sector or (2) certifies that it 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 entity’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 the contract contains the entity’s certification that it has not made a prohibited investment in Iran. Agencies must include notice of these representation requirements in bid specifications or RFPs for these contracts, just as they must for current law’s 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.

***Consulting Agreements (§ 4)***

The bill replaces certain required affidavits about consulting

agreements with representations that must be included in 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 these 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.

***Political Contributions (§ 5)***

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 committees, and party committees and (2) obtain a written acknowledgment of the notice receipt.

The bill instead requires state and quasi-public agencies to include a copy of, or Internet link to, the notice in the bid specifications or RFPs for a state contract.

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 the notice. 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 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 the person to submit an updated certification if there is a change in the most recently filed certification, either within 30 days after the effective date of the change or upon submitting a 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 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 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 the certification requirements.

***Nondiscrimination and Affirmative Action (§§ 6 & 7)***

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 instead requires the contracts, regardless of their value, to contain a nondiscrimination affirmation provision to certify that the contractor (1) understands the law's nondiscrimination and affirmative action obligations and (2) 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 this obligation by either (1) providing an affirmative response in the required online bid or RFP or (2) initialing the affirmation provision in the contract.

### **§§ 8-11 — SET-ASIDE PROGRAM**

*Revamps program's eligibility requirements by requiring that for-profit entities be certified with the federal SBA to participate in the program*

The bill revamps the state set-aside program's eligibility requirements for small contractors and minority business enterprises (MBEs). With respect to for-profit entities, it defines a "small contractor" as one that is certified as a small business with the federal Small Business Administration (SBA) (see BACKGROUND). This requirement replaces provisions in current law requiring, among other things, that these entities have annual gross revenues of \$20 million or less and be independent. (By law, unchanged by the bill, MBEs are small contractors owned by women, minorities, or people with disabilities.)

The bill makes conforming changes, including allowing awarding authorities to require documentation of a contractor's or subcontractor's (1) SBA certification if they are awarded a contract or contract portion under the set-aside program and (2) principal place of

business in the state. It also specifies that program certifications awarded before October 1, 2021, remain valid for their original term unless revoked for cause.

The bill retains existing law's eligibility requirements for nonprofit entities (e.g., that they have annual gross revenues of \$20 million or less and be independent). It additionally specifies that these entities must have a federal tax exemption in order to participate.

Under existing law, the Department of Administrative Services (DAS) commissioner must establish a process to certify small contractors and MBEs as eligible for set-aside contracts. Presumably, the commissioner must revise this process to conform to the bill's requirements that for-profit entities be certified with SBA. The bill retains existing law's validity period for set-aside program certifications (i.e., they are valid for up to two years, except that the commissioner may extend them for up to six months).

EFFECTIVE DATE: October 1, 2021, with the changes to the eligibility criteria applicable to certifications issued or renewed on or after that date.

## **§ 12 — COMPETITIVE BIDDING WAIVERS**

*Clarifies DAS commissioner's authority to waive competitive bidding requirements*

Current law allows the DAS commissioner to waive competitive bidding or competitive negotiation at his discretion for minor nonrecurring and emergency purchases of \$10,000 or less. The bill clarifies that the authority applies to minor nonrecurring or emergency purchases of \$10,000 or less.

EFFECTIVE DATE: July 1, 2021

## **§ 13 — REVERSE AUCTIONS FOR SERVICES**

*Allows use of reverse auctions to purchase services other than construction or construction-related services*

Existing law allows state contracting agencies to use reverse auctions to purchase goods and supplies. The bill expands reverse auction authority to include services other than construction or

construction-related services. As under existing law for goods and supplies, contracting agencies may (1) use reverse auctions for services when they determine it is advantageous and will ensure a competitive contract award and (2) contract with a third party to prepare and manage the auction.

By law, a reverse auction is an online bidding process in which qualified bidders or proposers, unknown to each other, submit bids or proposals pursuant to an online bid invitation or request for proposals.

EFFECTIVE DATE: July 1, 2021

#### **§ 14 — PRE-MARKET PRODUCT TESTING BY STATE AGENCIES**

*Expands the types of eligible businesses and products eligible for pre-market testing by state agencies*

The bill expands the types of technologies, products, and processes eligible for pre-market testing by state agencies. It allows the DAS commissioner to procure them for use by all state agencies if the Office of Policy and Management (OPM) secretary, in consultation with the commissioner, Connecticut Innovations, Inc. (CI) chief executive officer, and testing agency head, determines that the test demonstrates specified objectives.

Additionally, the bill makes minor changes concerning the process for participating in testing, the testing's costs, and a related recognition program for participating agencies. Lastly, the bill makes technical and conforming changes.

EFFECTIVE DATE: July 1, 2021

#### ***Eligibility***

Current law allows CI-funded businesses located in Connecticut to test their technology, product, or process in state agencies in order to study its commercial viability if it meets certain criteria. Specifically, it must (1) promote public health and safety, environmental protection, or economic development; (2) be manufactured in Connecticut and be safe; and (3) have the potential for commercialization within two years after completing the test.

The bill extends testing eligibility to small and minority business enterprises certified under the state's set-aside program. It also expands the types of eligible products to include those that CI finds would reduce administrative burdens or promote efficiency in state services, or otherwise improve them. It eliminates a requirement that the technology, product, or process be manufactured or produced in Connecticut and instead requires that it have a positive economic impact on the state, including prospective job growth and economic activity upon commercialization.

### ***Participation and Costs***

Upon an eligible business's application, current law allows CI to recommend that the OPM secretary direct a state agency to test the technology, product, or process in the agency's operations on a trial basis. The bill instead allows CI to recommend that OPM allow (rather than direct) agencies to participate in testing. (However, it retains OPM's authority to direct agencies to participate.) It also specifically includes public higher education institutions as state agencies for purposes of this program.

Under current law, CI, the business, or an investor in the business must pay for the cost of providing the technology, product, or process to the testing agency. The bill requires the OPM secretary, in consultation with the DAS commissioner, CI executive director, and testing agency head, to determine on a case-by-case basis which of the above entities must bear these costs.

### ***Procurement***

The bill allows the DAS commissioner to procure the product, process, or technology for use by all state agencies if the OPM secretary, in consultation with the commissioner, CI chief executive officer, and testing agency head, determines that the test demonstrates specified objectives. (Presumably, this would occur after the test concludes.) These objectives are (1) promoting public health and safety, environmental protection, economic development, or efficiency; (2) reducing administrative burdens; or (3) otherwise improving state services.

In procuring the product, process, or technology, the bill allows the DAS commissioner to waive competitive bidding requirements. If the procurement is estimated to cost \$50,000 or more, the waiver must be approved by the Standardization Committee, which consists of the commissioner, the state comptroller and treasurer or their designees, and other department heads (or their agents) designated by the governor.

### ***Recognition Program***

Current law allows OPM and CI to develop a program to recognize state agencies that promote public health and safety, environmental protection, or economic development by participating in testing. The bill (1) also makes DAS responsible for developing the recognition program (which remains permissive under the bill) and (2) adds promoting efficiencies, reducing service burdens, and improving state services as activities eligible for recognition. As under existing law, the recognition program may include a fund for any savings achieved by testing agencies using the technologies, products, or processes. The fund must be used only for the recognition program.

## **§ 15 — PURCHASES FROM EXISTING CONTRACTS**

*Expands the state's "piggyback" purchasing authority to include purchases from contracts with another state agency or branch; allows agencies to make these purchases directly if approved by DAS*

Existing law allows the state to purchase, through the DAS commissioner, goods and services from a person that has a contract to sell the goods and services to a political subdivision of the state (e.g., a municipality), nonprofit organization, public purchasing consortium, or other state government (i.e., "piggyback").

The bill expands this authority to include purchases from a person who contracts with another branch, division, or department in state government. It also eliminates the requirement that these purchases be made through the DAS commissioner and instead allows any state agency to make them if approved by the DAS commissioner or his designee.

EFFECTIVE DATE: July 1, 2021

**§ 16 — STATE INSURANCE AND RISK MANAGEMENT BOARD**

*Reduces the board's size from 13 members to 10 and makes conforming changes*

The bill eliminates three gubernatorial appointments from the State Insurance and Risk Management Board, reducing its size from 13 members to 10. (By law, the board consists of gubernatorial appointees and the state comptroller (or his designee) as an ex-officio member.)

The bill makes conforming changes by reducing the number of (1) public members from four to three, (2) members qualified by training from eight to six, and (3) members who may be from the same political party from eight to five. It specifies that five members, rather than a majority of members as current law provides, constitute a quorum.

EFFECTIVE DATE: July 1, 2021

**§ 17 — BUSINESS ACTIVITIES CONDUCTED ONLINE**

*Allows state and quasi-public agencies to conduct certain business activities electronically*

The bill allows state and quasi-public agencies to conduct various business activities electronically. Specifically, they may do the following:

1. accept fee payments by any means of electronic funds transfer they adopt;
2. receive, by electronic means with proof of delivery receipt, any communication or correspondence that must be delivered under current law by registered or certified mail, return receipt requested;
3. receive, by electronic means, any communication or correspondence that must be delivered under current law by U.S. mail or fax (as long as the agency determines that electronic delivery is appropriate); and
4. post, on their website or another electronic portal available to the general public, any legal notice that must be advertised in a newspaper under current law.

Under the bill, each of these activities must comply with the Connecticut Uniform Electronic Transactions Act (CUETA) if conducted electronically (e.g., the parties must agree to conduct the transaction electronically) (see BACKGROUND).

EFFECTIVE DATE: July 1, 2021

## **§ 18 — INFORMATION AND TELECOMMUNICATION SYSTEMS STRATEGIC PLAN**

*Requires that DAS's annual information and telecommunication systems strategic plan include standards for digital identity verification*

Existing law requires the DAS commissioner to develop, publish, and annually update an information and telecommunication systems strategic plan. Among other things, the plan must include architecture guidelines and standards for these systems that support state agencies.

The bill requires that the plan specifically include standards for digital identity verification under CUETA that are consistent with industry standards and best practices. Among other things, CUETA provides that if a signature or record must be notarized, acknowledged, verified, or made under oath, the requirement is satisfied by an electronic signature from the person authorized to perform these acts (along with any other information required by the applicable law).

EFFECTIVE DATE: July 1, 2021

## **§§ 19-25 — ELIMINATED REPORTING REQUIREMENTS**

*Eliminates various reporting requirements*

The bill eliminates several reporting requirements by DAS to the legislature, or from state agencies to DAS, as shown in Table 1.

**Table 1: Eliminated Reporting Requirements**

<b>§</b>	<b>Reporting Requirement</b>
19	Annual report by DAS to the Environment, Government Administration and Elections, and Transportation committees on the state vehicle fleet
20	Annual reports by state agencies to DAS on purchase orders made by the agency under purchasing authority delegated by DAS

21	Annual report by DAS to the Appropriations Committee listing personal property items leased by state agencies
22	Annual report by DAS to the State Properties Review Board (SPRB) on realty transactions
22	Annual report by SPRB to the governor and the Appropriations and Finance, Revenue and Bonding committees with recommendations and other information on realty transactions
23	Annual report by DAS and the Codes and Standards Committee to the Public Safety and Security Committee with recommendations for amending state agency regulations that conflict with the State Building Code or fire safety regulations (e.g., the State Fire Code)
24	Triennial report by the state fire marshal to the Public Safety and Security Committee on the effectiveness of state law's provisions on fire-safe cigarette testing
25	Annual filing by state agencies of ethics statements with DAS (the bill retains the requirement that they be filed with the Office of State Ethics)

EFFECTIVE DATE: July 1, 2021

## **BACKGROUND**

### ***Related Bill***

HB 6601 (File 178), reported favorably by the Commerce Committee, contains identical provisions concerning pre-market product testing (§ 14 of this bill).

### ***Executive Order 49***

In May 2015, Governor Malloy issued Executive Order 49, which (1) 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 and (2) requires state contractors subject to the gift certification requirements to also disclose in an affidavit all campaign contributions made to statewide office or legislative candidates.

### ***Penalty of False Statement***

By law, giving a 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 government 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)).

***Set-Aside Program***

The state set-aside program requires state agencies and political subdivisions (other than municipalities; see below) to set aside 25% of the total value of all contracts they let for construction, goods, and services each year for exclusive bidding by certified small contractors. The agencies must further reserve 25% of the set-aside value (6.25% of the total) for exclusive bidding by certified minority business enterprises. Contractors awarded municipal public works contracts must comply with these requirements if the (1) contract includes state financial assistance and (2) total contract value exceeds \$50,000.

***SBA Certification***

SBA maintains several certification programs for small businesses (e.g., 8(a) Business Development, Women-Owned Small Business, Historically Underutilized Business Zones (HUBZones), etc.). Each program is targeted toward a specific population (e.g., businesses owned by a person who is socially and economically disadvantaged). SBA does not have a broad-based small business certification. Rather, these businesses self-certify that they meet SBA's standards for being a small business when registering in the federal System for Award Management (SAM) database. (Contractors must register in SAM in order to access federal contracting opportunities.)

Generally, SBA's size standards vary by industry and are typically based on either a business's annual receipts or average number of

employees. According to a 2019 SBA report, receipts-based standards range from \$750,000 to \$38.5 million, while employee-based standards range from 100 to 1,500.

**CUETA**

CUETA establishes a legal foundation for using electronic communications in transactions where the parties, including state and local government agencies, have agreed to conduct business electronically. It validates the use of electronic records and signatures and places electronic commerce and paper-based commerce on the same legal footing. CUETA does not specifically authorize agencies to send notices, or any type of certified or registered mail, by e-mail, but rather sets requirements with which electronic transmissions must comply (CGS §§ 1-266 to 1-286).

**COMMITTEE ACTION**

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 13 Nay 6 (03/31/2021)