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## **OLR Bill Analysis**

### **SB 469**

#### ***AN ACT CONCERNING THE USE OF COMPETITIVE PROCUREMENT FOR STATE CONTRACTS.***

#### **SUMMARY**

This bill expands the types of procurement methods that state agencies may use when seeking to enter personal services agreements (PSAs) and contractual services contracts. It allows the agencies to use “competitive procurement” (i.e., an open and fair process, as defined in the bill) as an alternative to using requests for proposals (RFPs) to solicit these procurements.

For PSAs executed on or after July 1, 2023, and lasting for up to one year, the bill further increases state agencies’ procurement flexibility by increasing the cost threshold at which they must use competitive solicitation methods to enter into the PSA. Both of these changes also generally apply to POS (purchase-of-service) contracts, as by law these contracts are subject to the same requirements as PSAs (see BACKGROUND).

The bill also expands the contents of the Office of Policy and Management (OPM) secretary’s annual PSA report to the legislature, which he must submit by October 1 each year. For PSAs executed or otherwise in effect during the previous fiscal year, existing law requires him to report, among other things, the amount of all payments to each individual contractor and the amount of federal and private funds allocated for them. The bill requires him to additionally report the total amount of all PSA payments (§ 6).

Additionally, the bill requires the requesting state agency, rather than the OPM secretary, to notify the state auditors about certain PSAs for audit services. Lastly, it makes technical changes, including removing obsolete language.

EFFECTIVE DATE: October 1, 2022

## **§§ 1, 5 & 7 — COMPETITIVE PROCUREMENT**

### ***PSAs (§§ 1 & 5)***

The law generally requires state agencies to use competitive negotiation or competitive quotation when entering into a PSA that exceeds certain cost thresholds or lasts for more than one year. (The bill also increases the thresholds at which these requirements apply, see below.)

Current law defines “competitive negotiation” as a contracting procedure in which an agency (1) issues an RFP and (2) may negotiate with respondents for post-submission changes to proposals and prices. The bill broadens this definition to additionally allow agencies to solicit proposals using competitive procurement, rather than only by RFP. The bill defines “competitive procurement” as the purchase of services by a state agency through an open and fair process where all responsible sources have an equal opportunity to pursue, and possibly be selected for, a contract. As with existing law for RFPs, proposals received under a competitive procurement solicitation may be negotiated post-submission.

Existing law requires the OPM secretary to establish standards that state agencies must follow when entering into PSAs, including standards for developing RFPs. The bill requires that the standards additionally include provisions for developing forms of competitive procurement besides RFPs.

### ***Contractual Services (§ 7)***

The bill makes a parallel change to the definition of competitive negotiation that applies to contractual services purchases made by state agencies. It expands this definition to additionally allow agencies to solicit contractual services proposals using competitive procurement, rather than only by RFP as under current law. By law, contractual services generally must be awarded through competitive bidding or competitive negotiation (CGS § 4a-57).

“Contractual services” include laundry and cleaning; pest control; janitorial service; pest control; security; advertising; renting, repairing, and maintaining state-owned personal property; and other service arrangements where services are not provided by state employees.

Existing law’s requirements for competitive bidding or negotiation also apply to supplies, materials, and equipment purchased by state agencies. However, because the bill’s definition of “competitive procurement” refers only to services, it appears that the bill makes this procurement method available only to contractual services.

## **§§ 2-4 — PSA PROCUREMENTS**

### ***Cost Thresholds***

The law prohibits state agencies from executing a PSA costing more than \$50,000 or lasting longer than one year without the OPM secretary’s approval. For PSAs with a term of one year or less, current law requires agencies to use competitive negotiation or competitive quotations (1) when possible, for PSAs costing up to \$20,000, and (2) for each PSA that costs more than \$20,000 and up to \$50,000, unless the purchasing agency receives a waiver from the OPM secretary to allow a sole source purchase.

The bill increases both of these thresholds for PSAs executed on or after July 1, 2023. Specifically, it increases, from \$20,000 to \$50,000, the maximum cost of a PSA lasting one year or less for which agencies must use competitive negotiation or quotations when possible. It makes a conforming change by requiring these procurement methods for PSAs that cost more than \$50,000 and last for up to one year, unless the OPM secretary grants the sole source waiver described above.

For PSAs requiring the OPM secretary’s approval (i.e., those with a term of more than one year or costing more than \$50,000), existing law requires him to act on the application within 15 days after receiving it. The bill eliminates a provision in current law that deems the application approved if he does not act within this time period.

### ***Audit Services***

Existing law requires that the state auditors be given an opportunity to review certain PSA applications for audit services and advise whether they are necessary and, if so, could be provided by the auditors. This requirement applies to audit services PSAs (1) costing more than \$50,000 or lasting for more than one year or (2) for which the purchasing agency requests a sole source procurement waiver from the OPM secretary (see above).

Current law requires the secretary to immediately notify the auditors of these applications upon receipt. The bill instead requires the purchasing agency to notify the auditors of these applications before submitting them to the OPM secretary. It requires the auditors to advise both the purchasing agency and the secretary (rather than only the secretary as current law provides) of the need for the services and whether the auditors could provide them.

### **BACKGROUND**

#### ***POS Contracts***

By law, a POS contract is one between a state agency and a private provider organization or municipality to obtain direct health and human services for agency clients and generally not for administrative or clerical services, material goods, training, or consulting service. The definition does not include a contract with an individual. The law subjects POS contract requirements to the same procurement requirements as PSAs (CGS § 4-70b(a) & (e)).

### **COMMITTEE ACTION**

Government Administration and Elections Committee

Joint Favorable

Yea 12    Nay 6    (03/29/2022)