
OLR Bill Analysis

HB 6867

AN ACT CONCERNING COMPETITIVE NEGOTIATION FOR CERTAIN STATE CONTRACTS AND OTHER PROCUREMENT PRACTICES.

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 does so by expanding the definition of “competitive negotiation” to include any open and fair process, as described in the bill, as an alternative to using requests for proposals (RFPs) to solicit these procurements.

The bill also increases state agencies’ procurement flexibility by (1) increasing, from \$20,000 to \$50,000, the cost threshold at which they must use competitive solicitation methods to enter into the PSA and (2) generally eliminating a PSA’s length as a criterion for determining whether a competitive solicitation is required.

These changes also generally apply to purchase-of-service (POS) contracts as, by law, these contracts are subject to the same requirements as PSAs (see BACKGROUND).

Among other things, the bill also (1) requires the requesting state agency, rather than the Office of Policy and Management (OPM) secretary, to notify the state auditors about certain PSAs for audit services and (2) eliminates a provision in current law that deems PSA applications requiring approval by the OPM secretary approved if he does not act on them within a set time period. Lastly, it makes technical changes, including removing obsolete language.

EFFECTIVE DATE: July 1, 2023

§§ 1, 5 & 7 — PROCUREMENT METHODS

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 increases the thresholds at which these requirements apply, see below.)

Current law defines “competitive negotiation” as a contracting procedure in which an agency issues an RFP and 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 any open and fair process in which all qualified entities have an equal opportunity to be selected to provide the services. It also specifies that an RFP is a competitive procurement regardless of how many responses are received.

Existing law requires the OPM secretary to set 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 other forms of competitive negotiation.

Under existing law, PSAs are provided by a “personal services contractor,” which is a person, firm, or corporation hired by a state agency to provide services, but is not employed by the state. Current law excludes several types of contractors from this definition (e.g., construction services consultants). The bill additionally excludes transportation service contracts entered into by the transportation commissioner.

Contractual Services (§ 7)

The bill makes parallel changes 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 any open and fair process in which all qualified entities have an equal opportunity to be selected, rather than only by an RFP as under current law. It also specifies that an RFP for these services is a competitive procurement regardless of how

many responses are received. 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; security; advertising; renting, repairing, and maintaining state-owned personal property; and other service arrangements where services are not provided by state employees. The bill removes obsolete references to photostating and mimeographing.

§§ 2-4 & 6 — PSA PROCUREMENTS

Cost Thresholds

Current law (1) prohibits state agencies from executing a PSA costing more than \$50,000 or lasting longer than one year without the OPM secretary’s approval and (2) requires the purchasing agency to use competitive negotiation or competitive quotations for these procurements unless it receives a waiver from the OPM secretary to allow a sole source purchase.

The bill eliminates a PSA’s length as a factor for determining whether these requirements apply, thereby applying them to PSAs only when their cost exceeds \$50,000. It makes a conforming change by eliminating a provision in current law requiring agencies to get the OPM secretary’s approval before executing an amendment to a PSA whose original cost was \$50,000 or less if the amendment extends the agreement beyond a one-year period.

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 makes a conforming change by increasing, 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.

(The bill does not specify what requirements apply when a PSA costs \$50,000 or less but lasts for more than one year.)

For PSAs requiring the OPM secretary's approval for the PSA or a sole source purchase waiver, 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. The requirement applies to audit services PSAs (1) requiring the OPM secretary's approval (e.g., costing more than \$50,000) 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 at least seven days before submitting the application to the OPM secretary. It requires the auditors to advise the purchasing agency, rather than the secretary as under current law, of the need for the services and whether the auditors could provide them. Under the bill, the auditors must notify the agency within the seven-day period before the agency submits the application to the secretary.

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 13 Nay 6 (03/27/2023)