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## OLR Bill Analysis

### sSB 1184

***AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE DEPARTMENT OF ADMINISTRATIVE SERVICES CONCERNING STATE CONTRACTING REQUIREMENTS AND CERTAIN PROCUREMENT THRESHOLDS AND CONCERNING CONTRACTS, BIDS AND CAPITAL IMPROVEMENT PROJECTS FOR THE UNIVERSITY OF CONNECTICUT.***

#### **SUMMARY**

This bill makes several changes affecting (1) goods and services procurements administered by the Department of Administrative Services (DAS), UConn, and the Connecticut State Colleges and Universities (CSCU) and (2) capital projects administered by UConn.

Among other things, the bill expands the circumstances under which UConn and CSCU may make cooperative purchases and allows state agencies, with DAS approval, to make purchases directly from other states. It also increases, for UConn, CSCU, and state agencies, the thresholds at which (1) goods and services procurements must be advertised online (from \$50,000 to \$100,000) and (2) competitive bidding may be waived for minor purchases (from \$10,000 to \$25,000).

With respect to UConn capital projects, the bill eliminates a requirement that the university separately prequalify contractors for each project and instead allows UConn to prequalify contractors for one year and renew the prequalification for two years. It also allows, for construction manager at risk (CMR) projects to renovate existing buildings or facilities, (1) certain work to begin before the project's guaranteed maximum price (GMP) is determined and (2) a separate GMP to be determined for each phase of a multi-phase project.

Separately, the bill requires DAS to give awarding agencies a preliminary set-aside goal report for the upcoming fiscal year and delays the deadline by which agencies must submit their goals to DAS.

It also allows state contractors to affirm their understanding of the law's nondiscrimination requirements with respect to sexual orientation by signing the contract.

Current law requires DAS to post on its website any goods or services contract entered into without competitive bidding or competitive negotiation. The bill exempts from this requirement minor nonrecurring or emergency purchases of \$10,000 or less (§ 2).

Lastly, the bill eliminates a requirement that information technology (IT) contractors file a copy of executed subcontracts or subcontract amendments with the DAS commissioner. Existing law, unchanged by the bill, prohibits IT contractors from awarding a subcontract unless the DAS commissioner (or a designee) approves the subcontractor selection (§ 3).

EFFECTIVE DATE: Upon passage, except that the provisions on (1) UConn prequalification and increasing the goods and services procurement thresholds are effective October 1, 2023, and (2) set-aside goals are effective July 1, 2024.

## **§§ 1 & 8 — COOPERATIVE PURCHASING AND PURCHASES FROM OTHER STATES**

### ***State Agencies (§ 1)***

The bill allows state agencies, with the approval of the DAS commissioner or her designee, to purchase equipment, supplies, materials, and services directly from another state or its instrumentalities or political subdivisions. Under existing law, state agencies, if approved by the DAS commissioner or her designee, may purchase these goods and services from, among others, a person with a contract to sell them to other state governments.

### ***UConn and CSCU (§ 8)***

The bill expands the authority for UConn and CSCU to make cooperative purchases or purchases under an existing contract held by another entity (i.e., “piggyback”). (CSCU includes the state universities, regional community-technical colleges, and Charter Oak State College.)

Specifically, the bill allows UConn and CSCU to (1) join with one another in a cooperative purchasing plan if it would serve the state's best interests and (2) purchase goods and services from a person with a contract to sell them to a federal agency or another constituent unit of higher education.

Existing law allows UConn and CSCU to (1) join with specified entities in a cooperative purchasing plan (e.g., a federal agency or another state government) and (2) purchase goods and services from a person that has a contract to sell them to specified entities (e.g., another state government or a nonprofit organization).

## **§§ 5, 6 & 9 — COMPETITIVE PROCESSES FOR GOODS AND SERVICES PURCHASES**

### ***State Agencies (§ 5 & 6)***

Existing law generally requires executive branch state agencies to make goods and services purchases using competitive bidding or competitive negotiation when possible. The bill increases, from \$50,000 to \$100,000, the threshold cost of a procurement that must be advertised on the State Contracting Portal at least five days before the submission deadline for responses (i.e., costs above this amount must be advertised). It also increases, from \$10,000 to \$25,000, the maximum cost of a minor nonrecurring and emergency purchase for which the DAS commissioner may waive competitive bidding or negotiation.

Existing law allows the DAS commissioner or the state's chief information officer, as applicable, to waive competitive bidding requirements in specified emergency situations. The bill increases, from \$50,000 to \$100,000, the minimum cost of a procurement for which the Standardization Committee must approve waiver. By law, the committee consists of the DAS commissioner, the state comptroller and state treasurer or their designees, and other department heads (or their authorized agents) designated by the governor.

### ***UConn and CSCU (§ 9)***

The bill increases, from \$50,000 to \$100,000, the maximum cost of a goods and services procurement for which UConn and CSCU do not

need to solicit competitive bids or proposals. Under the bill, UConn and CSCU generally must make purchases of \$100,000 or less in the open market but must base them, when possible, on three competitive quotations. If the purchase exceeds \$100,000, then UConn and CSCU generally must submit competitive bids or proposals by posting notice online at least five calendar days before the closing date for submitting bids or proposals.

Existing law sets a number of exceptions to the above purchasing requirements, including one for minor purchases. The bill increases, from \$10,000 to \$25,000, the maximum cost of a minor purchase that is exempt from these requirements.

## **§§ 4 & 7 — SET-ASIDE PROGRAM AND NONDISCRIMINATION AFFIRMATION**

### ***Set-Aside Program (§ 4)***

The bill delays, from August 30 to September 30, the annual deadline by which state agencies and political subdivisions, other than municipalities, must notify DAS and other parties of their small contractor and minority business enterprise contracting set-aside goals for the current fiscal year. (By law, municipalities are not subject to this reporting requirement.)

The bill requires DAS to annually give awarding agencies a preliminary set-aside goal report for the upcoming fiscal year by June 30.

### ***Nondiscrimination Affirmation (§ 7)***

Existing law requires that each state contract have specified language that the contractor agrees to, among other things, not discriminate on the basis of sexual orientation (i.e., a nondiscrimination affirmation provision). Under current law, the contract's authorized signatory must show his or her understanding of this obligation by either (1) providing an affirmative response to a question about the provision in the required online bid or request for proposals or (2) initialing the affirmation provision in the contract.

The bill adds the signing of the contract to the list of ways the signatory may show his or her understanding of these requirements. A parallel nondiscrimination statute (e.g., on the basis of race or religion) already allows signatories to show their understanding by signing the contract (CGS § 4a-60).

### **§ 10 — UCONN CAPITAL PROJECTS**

The bill allows, for UConn CMR projects that involve renovating existing buildings or facilities, (1) certain work to begin before the project's guaranteed maximum price (GMP) is set and (2) a separate GMP to be set for each phase of a multi-phase project. Generally, the bill aligns UConn's CMR requirements with those for DAS CMR projects (CGS § 4b-103).

By law, a CMR project may not proceed until the GMP is set, except for site preparation and demolition work for which contracts have previously been bid and awarded (see BACKGROUND). For UConn CMR projects that involve renovating existing buildings or facilities, the bill allows public utility installation and connections, and building envelope components (e.g., roof, doors, windows, and exterior walls), to also begin before the GMP is determined, as long as (1) they have previously been bid and awarded and (2) the early work's (including site preparation and demolition) total cost is not more than 25% of the entire project's estimated construction cost.

The bill also allows a separate GMP to be set for each phase of a multi-phase project that involves renovating an existing building while it remains occupied. Under current law, one GMP is set for the entire project.

### **§§ 11 & 12 — UCONN CONTRACTOR PREQUALIFICATION**

The law generally requires that contractors for state public works projects be prequalified by DAS if the cost of the work exceeds \$500,000. Current law requires UConn to separately prequalify contractors for each capital project whose cost exceeds \$500,000. The bill (1) increases the threshold requiring separate prequalification to \$1 million and (2) allows the university to prequalify contractors for one year (rather than

for each separate project) and renew the prequalification for up to two more years. It also makes conforming changes.

As under current law, contractors seeking prequalification from UConn must be prequalified by DAS and show that they (1) have the financial, managerial, and technical ability and integrity necessary to faithfully and efficiently do work for the university; (2) are responsible and qualified based on experience with similar projects; and (3) do not have a conflict of interest. The bill allows UConn to include more qualification requirements in its discretion.

The bill allows UConn to issue a prequalification confirmation to contractors that meet the bill's requirements, valid for one year. UConn may renew the prequalification confirmation for up to two years after receiving a completed renewal application and any other materials it prescribes.

The bill subjects UConn projects whose cost exceeds \$500,000, up to \$1 million, to the prequalification requirements for state public works projects generally. As noted above, the law generally requires DAS to prequalify contractors if the cost of the work exceeds \$500,000 (CGS § 4b-91(a)(2)). As under current law, contractors for these UConn projects must not have a conflict of interest.

## **BACKGROUND**

### ***CMR Projects***

In a CMR project, the owner (e.g., UConn) hires a firm with construction experience (the construction manager or "CM"), usually during a project's design phase, to manage the entire construction process. The CM provides pre-construction services such as estimating costs, budgeting, reviewing constructability and suggesting construction alternatives, and scheduling. Once the design is finalized, the CM seeks competitive bids from subcontractors for each project element (e. g., electrical, mechanical, carpentry, roofing). Once the subcontractors' bids are received and verified for compliance with project requirements, scope, and specifications, the CM and the project owner negotiate and set a GMP for construction. The CM assumes the

risk to complete the project within the GMP.

The GMP includes the CM's fee, the cost of the work, and contingency funds for the project. The CM is responsible for costs that exceed the GMP, excluding any work not included in the final GMP that the owner authorizes through a change order process.

**COMMITTEE ACTION**

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 12 Nay 7 (03/27/2023)