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## **OLR Bill Analysis**

**HB 6194**

### ***AN ACT CONCERNING THE COMPETITIVE BIDDING AND OVERSIGHT OF QUASI-PUBLIC AGENCY CONTRACTS.***

#### **SUMMARY**

This bill generally requires quasi-public agencies to follow the same procedures as state agencies when entering into certain goods and services contracts. (By law, the state has 17 quasi-public agencies.) Generally, these procedures require (1) using competitive bidding or competitive negotiation when purchasing goods and services and (2) awarding contracts to the lowest responsible qualified bidder or highest-scoring bidder in a multiple-criteria bid. The bill's provisions generally mirror provisions in existing law that apply to executive branch state agencies (CGS §§ 4a-50, -57 & -59).

The bill also subjects quasi-public agencies to certain oversight by the State Contracting Standards Board (SCSB). Generally, it applies to quasi-public agencies provisions in existing law that allow SCSB to limit state contracting agencies' authority to enter into contracts or procurement agreements. It also requires quasi-public agencies to purchase goods and services using procurement methods specified in regulations that existing law requires SCSB to adopt. (To date, the board has not adopted these regulations.)

The bill makes numerous conforming changes to individual quasi-public agencies' authorizing statutes where they would otherwise conflict with the bill's requirements (§§ 4-17).

EFFECTIVE DATE: October 1, 2021

#### **§ 1 — COMPETITIVE BIDDING REQUIREMENTS**

##### ***Procedures***

The bill's requirements apply to quasi-public agencies' purchases of

supplies, materials, equipment, and specified contractual services (e.g., laundry and cleaning, equipment maintenance). With certain exceptions, it requires that purchases of these goods and services be made using competitive bidding or competitive negotiation (as defined in existing law) when possible. When using competitive negotiation, the quasi-public agency must include price as an explicit criterion in the request for proposals and contract award.

The bill requires quasi-public agencies to adopt procedures establishing standards and procedures for (1) using competitive negotiation, including criteria to be considered and each criterion's weight, and (2) making additional purchases from existing contracts. As under existing law, the bill establishes exceptions for (1) minor nonrecurring and emergency purchases of \$10,000 or less and (2) specified public utility services.

### ***Solicitations***

Under the bill, quasi-public agencies must solicit competitive bids or proposals by noticing the planned purchase in a form and manner they determine will promote competition and maximize public participation, including by small contractors certified under the state set-aside program (see BACKGROUND). The notice must include the types of goods and services sought by the agency and the contract award's estimated value.

When applicable, the notice must also contain (1) a notice of state law's nondiscrimination and affirmative action requirements and (2) provisions for awarding contracts to entities certified under the state set-aside program (e.g., small contractors and minority business enterprises).

The bill requires quasi-public agencies to keep bids and proposals sealed or secured until publicly opened at the time stated in the solicitation notice.

### ***Contract Awards***

The bill requires that all open-market orders or contracts for the

specified goods and services be awarded to the (1) lowest responsible qualified bidder, (2) highest-scoring bidder in a multiple-criteria bid, or (3) proposer that the quasi-public agency deems as having the most advantageous proposal.

“Lowest responsible qualified bidder” refers to the lowest bidder that has the skill, ability, and integrity needed to perform the work. “Highest-scoring bidder in a multiple-criteria bid” refers to the bidder with the highest score for a combination of attributes, including price, skill, ability, and integrity based on objective criteria established in the bid solicitation. In both cases, the quasi-public agency must base its evaluation on the bidder’s fulfillment of past contract obligations and experience or lack of experience in delivering the specific goods or services sought in the bid solicitation.

### **§§ 2 & 3 — SCSB OVERSIGHT**

Under current law, SCSB has limited authority over quasi-public agencies, as they are not included in the definition of “state contracting agency” in SCSB’s authorizing statutes (however, the State Education Resource Center (SERC) is a state contracting agency under a statute governing procurement methods) (see BACKGROUND).

The bill applies to quasi-public agencies provisions in existing law that allow SCSB to limit state contracting agencies’ authority to enter into contracts or procurement agreements. Specifically, it allows SCSB, under specified conditions, to (1) review, terminate, or recommend termination of a contract or procurement agreement for cause following specified procedures (e.g., provide the contractor with a hearing); (2) restrict or terminate a quasi-public agency’s authority to enter into a contract or procurement agreement; and (3) order a quasi-public agency to restrict or terminate an employee’s or agent’s authority to enter into contracts or procurement agreements.

The bill also applies to quasi-public agencies a requirement in existing law that all goods and services purchases by a state contracting agency be made by (1) competitive sealed bidding or proposals, (2) small purchase procedure, (3) sole source procurement,

(4) emergency procurements, or (5) a bid or proposal waiver for extraordinary conditions (CGS § 4e-19). Under current law, SERC is the only quasi-public agency subject to these requirements.

These provisions require SCSB to adopt implementing regulations before they become operative. However, SCSB has not adopted any such implementing regulations to date. Therefore, it is unclear how the statutes would apply to quasi-public agencies.

## **BACKGROUND**

### ***Related Bills***

sHB 6664, reported favorably by the Government Administration and Elections (GAE) Committee, makes numerous changes that, generally, increase the executive and legislative branches' oversight of quasi-public agencies.

sHB 6577, reported favorably by the GAE Committee, requires the State Properties Review Board to review and approve or disapprove certain real estate transactions proposed by quasi-public agencies.

### ***Attorney General Opinion***

In a 2021 opinion (Attorney General Opinion 2021-01), the attorney general concluded that most SCSB statutes give the board authority over state contracting agencies only, with only limited authority over quasi-public agencies. He noted that although the board has authority over certain bid contests involving quasi-public agencies, generally its authority over quasi-public agencies "is much more limited and circumscribed relative to its authority over state contracting agencies."

### ***Set-Aside Program***

The state set-aside program requires state agencies and certain political subdivisions (including quasi-public agencies) 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 (MBE).

By law, a “certified small contractor” is a business that (1) maintains its principal place of business in Connecticut, (2) had gross revenues of \$20 million or less during its most recent fiscal year, and (3) is independent. MBEs are small contractors owned by women, minorities, or people with disabilities. The owner must have managerial and technical competence and experience directly related to his or her principal business activities (CGS § 4a-60g(a)).

**COMMITTEE ACTION**

Government Administration and Elections Committee

Joint Favorable

Yea 19 Nay 0 (03/31/2021)