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An act to amend Sections 12100 and 12102.2 of the Public Contract Code, relating to public contracts.



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THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 12100 of the Public Contract Code is amended to read: 12100. (a) ~~The Legislature finds that the unique aspects of information technology projects, as defined in Chapter 4800 of the State Administrative Manual and not delegated under subdivision (e) of Section 12102.2, goods and services and their importance to state programs warrant a separate acquisition authority.~~ body of governing statutes. The Legislature further finds that this separate ~~authority~~ body of governing statutes should enable the timely acquisition of information technology goods and services to meet the state's needs in the most value-effective manner.

(b) (1) ~~All contracts for the acquisition of information technology projects, reportable under goods and services related to information technology projects defined in Chapter 4800 of the State Administrative Manual and not delegated under subdivision (e) of Section 12102.2, shall be made by or under the supervision of the Department of Technology consistent with the requirements of this chapter.~~

(2) The Department of Technology shall have the authority necessary for the acquisition of information technology goods and services related to information technology projects as prescribed in this chapter.

(c) The Department of Technology shall have the final authority in the determination of information technology procurement policy.

(d) The Department of Technology shall have the final authority in the determination of information technology procurement procedures applicable to ~~acquisitions of information technology projects reportable under Chapter 4800 of the State Administrative Manual and not delegated under subdivision (e) of Section 12102.2~~ subject to subdivision (b) and telecommunications procurements made pursuant to Section 12120.

(e) The Department of Technology shall have the final authority in the determination of procurement policy in telecommunications procurements made pursuant to Section 12120.

(f) ~~Unless otherwise expressly provided, Except as expressly provided in subdivision (b),~~ all contracts for the acquisition of information technology goods or services, whether by lease or purchase, shall be made by or under the supervision of the Department of General Services.

(g) ~~Unless otherwise expressly provided, Except as expressly provided in subdivision (d),~~ the Department of General Services shall have the final authority in the determination of information technology procurement procedures. This includes, but is not limited to, the following:

(1) Acquisitions delegated by the Department of General Services pursuant to paragraph (1) of subdivision (e) of Section 12102.2, if the Department of Technology has also delegated project authority pursuant to subdivision (b) of Section 11546 of the Government Code.

(2) Acquisitions of information technology goods or services relating to information technology projects delegated by the Department of Technology under subdivision (b) of Section 11546 of the Government Code, but not delegated by the Department of General Services under paragraph (1) of subdivision (e) of Section 12102.2.



(3) If the Department of Technology has not delegated project authority pursuant to subdivision (b) of Section 11546 of the Government Code, but the Department of General Services has delegated acquisition authority pursuant to paragraph (1) of subdivision (e) of Section 12102.2 and the Department of Technology has authorized the state agency to conduct the acquisition.

SEC. 2. Section 12102.2 of the Public Contract Code is amended to read:

12102.2. (a) Contract awards for all large-scale systems integration projects shall be based on the proposal that provides the most value-effective solution to the state's requirements, as determined by the evaluation criteria contained in the solicitation document. Evaluation criteria for the acquisition of information technology goods and services, including systems integration, shall provide for the selection of a contractor on an objective basis not limited to cost alone.

(1) The Department of Technology shall invite active participation, review, advice, comment, and assistance from the private sector and state agencies in developing procedures to streamline and to make the acquisition process more efficient, including, but not limited to, consideration of comprehensive statements in the request for proposals of the business needs and governmental functions, access to studies, planning documents, feasibility study reports and draft requests for proposals applicable to solicitations, minimizing the time and cost of the proposal submittal and selection process, and development of a procedure for submission and evaluation of a single proposal rather than multiple proposals.

(2) Solicitations for acquisitions based on evaluation criteria other than cost alone shall provide that sealed cost proposals shall be submitted and that they shall be opened at a time and place designated in the solicitation for bids and proposals. Evaluation of all criteria, other than cost, shall be completed prior to the time designated for public opening of cost proposals, and the results of the completed evaluation shall be published immediately before the opening of cost proposals. The state's contact person for administration of the solicitation shall be identified in the solicitation for bids and proposals, and that person shall execute a certificate under penalty of perjury, which shall be made a permanent part of the official contract file, that all cost proposals received by the state have been maintained sealed and under lock and key until the time cost proposals are opened.

(b) The acquisition of hardware acquired independently of a system integration project may be made on the basis of lowest cost meeting all other specifications.

(c) The 5 percent small business preference provided for in Chapter 6.5 (commencing with Section 14835) of Part 5.5 of Division 3 of Title 2 of the Government Code and the regulations implementing that chapter shall be accorded to all qualifying small businesses.

(d) For all transactions formally advertised, evaluation of bidders' proposals for the purpose of determining contract award for information technology goods shall provide for consideration of a bidder's best financing alternatives, including lease or purchase alternatives, if any bidder so requests, not less than 30 days prior to the date of final bid submission, unless the acquiring agency can prove to the satisfaction of the Department of General Services that a particular financing alternative should not be so considered.

(e) Acquisition-Notwithstanding Section 12100:



(1) Acquisition authority may be delegated by the Director of General Services, in consultation with the Department of Technology, to any state agency that has been determined by the Department of General Services to be capable of effective use of that authority. This authority may be limited by the Department of General Services. Acquisitions A state agency shall not conduct an acquisition for information technology goods and services related to an information technology project under delegated acquisition authority pursuant to this section unless the Department of Technology has done one of the following:

(A) Delegated project authority to that state agency pursuant to Section 11546 of the Government Code.

(B) Authorized the state agency to conduct the acquisition.

(2) Acquisitions conducted under delegated acquisition authority shall be reviewed by the Department of General Services on a selective basis.

(f) To the extent practical, the solicitation documents shall provide for a contract to be written to enable acquisition of additional items to avoid essentially redundant acquisition processes when it can be determined that it is economical to do so.

(g) Protest procedures shall be developed to provide bidders an opportunity to protest any formal, competitive acquisition conducted in accordance with this chapter. The procedures shall provide that protests must be filed no later than five working days after the issuance of an intent to award. Authority to protest may be limited to participating bidders. The Director of Technology, or a person designated by the director, may consider and decide on initial protests of bids for information technology projects conducted by the Department of Technology and telecommunications procurement made pursuant to Section 12120. The Director of the Department of General Services, or a person designated by the director, may consider and decide on initial protests of all other information technology acquisitions. A decision regarding an initial protest shall be final. If prior to the last day to protest, any bidder who has submitted an offer files a protest with the department against the awarding of the contract on the ground that his or her bid or proposal should have been selected in accordance with the selection criteria in the solicitation document, the contract shall not be awarded until either the protest has been withdrawn or the Department of General Services has made a final decision as to the action to be taken relating to the protest. Within 10 calendar days after filing a protest, the protesting bidder shall file with the Department of General Services a full and complete written statement specifying in detail the grounds of the protest and the facts in support thereof.

(h) Consistent with the procedures established and administered by the Department of General Services, information technology goods that have been determined to be surplus to state needs shall be disposed of in a manner that will best serve the interests of the state. Procedures governing the disposal of surplus goods may include auction or transfer to local governmental entities.

(i) A supplier may be excluded from bid processes if the supplier's performance with respect to a previously awarded contract has been unsatisfactory, as determined by the state in accordance with established procedures that shall be maintained in the State Administrative Manual. This exclusion may shall not exceed 36 months for any one determination of unsatisfactory performance. Any supplier excluded in accordance with this section shall be reinstated as a qualified supplier at any time during this 36-month period, upon demonstrating to the Department of General Services'



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satisfaction that the problems that resulted in the supplier's exclusion have been corrected.

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LEGISLATIVE COUNSEL'S DIGEST

Bill No.
as introduced, _____.
General Subject: Public contracts: information technology.

Existing law governing the acquisition of information technology goods and services requires all contracts for the acquisition of information technology goods and services, whether by lease or purchase, to be made under the supervision of the Department of General Services. Existing law requires procedures developed by the Department of General Services to provide for, among other things, the expeditious and value-effective acquisition of information technology goods and services to satisfy state requirements, and the acquisition of information technology goods and services within a competitive framework. Existing law requires the Department of General Services to maintain, in the State Administrative Manual, policies and procedures governing the acquisition and disposal of information technology goods and services. Existing law requires the acquisition of information technology goods and services to be conducted through competitive means, except when the Director of General Services makes specified determinations.

Existing law authorizes the Director of General Services to delegate acquisition authority relating to information technology goods and services to any state agency that has been determined by the Department of General Services to be capable of effective use of that authority.

Existing law requires contracts for the acquisition of information technology projects to be made by and under the supervision of the Department of Technology, as prescribed. Existing law gives the Department of Technology the final authority in the determination of information technology procurement policy and information technology procurement procedures applicable to acquisitions of information technology projects under the State Administrative Manual. Existing law gives the Department of General Services final authority in the determination of information technology procurement procedures over which the Department of Technology does not have authority. Under existing law, the Department of Technology has the authority to delegate its authority to another agency based on a specified assessment.

This bill, instead, would require all contracts for the acquisition of information technology goods and services related to information technology projects to be made by, and under the supervision of, the Department of Technology, as prescribed. The bill would give the Department of Technology the final authority in the determination



of information technology procurement procedures applicable to acquisitions of goods and services related to information technology projects. The bill would specify 3 types of delegated acquisitions over which the Department of General Services would have final authority in the determination of information technology procurement procedures.

The bill would require the Director of General Services to consult with the Department of Technology to delegate that acquisition authority. The bill would require the Department of Technology to have either delegated project authority to a state agency or authorized the state agency to conduct the acquisition in order for a state agency to conduct an acquisition of information technology goods and services related to an information technology project under delegated acquisition authority.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

