

ASSEMBLY BILL

No. 2397

Introduced by Assembly Member Shirley Horton

February 19, 2004

An act to amend Sections 4535.1, 7084, 7118, 14842, and 14842.5 of the Government Code, and to amend Sections 10303 and 12102 of, and to add Article 11 (commencing with Section 10287) to Chapter 1 of Part 2 of Division 2 of, the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2397, as introduced, Shirley Horton. Public contracts: debarment and suspension.

Under existing law, a supplier or contractor with a state agency may be suspended or debarred from future bidding and contracting for periods between 3 months and 2 years, depending on the basis of the suspension or debarment. A contractor that performs unsatisfactorily under a contract for acquisition of information technology may be excluded from bidding for up to 360 days, and a contractor that has demonstrated lack of reliability in completing contracts may be removed from the list of qualified bidders for up to 360 days.

This bill would permit a contractor to be suspended for up to 180 days or debarred for up to 3 years by the Department of General Services for specified grounds, including unsatisfactory contract performance, unwillingness to honor a binding bid or contract, and multiple strikes. The bill would establish procedures and factors to be considering in making suspension and debarment decisions, and would provide for appeal of those decisions to an administrative law judge.

This bill would also make conforming, technical, and clarifying changes.

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

The people of the State of California do enact as follows:

1 SECTION 1. Section 4535.1 of the Government Code is
2 amended to read:

3 4535.1. A business ~~which~~ *that* requests and is given the
4 preference provided for in Section 4533, 4533.1, 4534, or 4534.1
5 by reason of having furnished a false certification, and which by
6 reason of that certification has been awarded a contract to which
7 it would not otherwise have been entitled, shall be subject to all of
8 the following:

9 (a) Pay to the state any difference between the contract amount
10 and what the state’s cost would have been if the contract had been
11 properly awarded.

12 (b) In addition to the amount specified in subdivision (a), be
13 assessed a penalty in an amount of not more than 10 percent of the
14 amount of the contract involved.

15 (c) Be ~~ineligible to directly or indirectly transact any business~~
16 ~~suspended or debarred from contracting~~ with the state for a period
17 of not less than ~~three months~~ *180 calendar days* and not more than
18 ~~24~~ 36 months *pursuant to Section 10287.3 of the Public Contract*
19 *Code.*

20 Prior to the imposition of any sanction under this chapter, the
21 contractor or vendor shall be ~~entitled to a public hearing and to five~~
22 ~~days’ notice of the time and place thereof. The notice shall state the~~
23 ~~reasons for the hearing~~ *notified at least five calendar days in*
24 *advance of any suspension, and 30 calendar days in advance of*
25 *any debarment, and the reasons for the action. The contractor or*
26 *vendor shall have the right to appeal the department’s proposed*
27 *suspension or debarment.*

28 SEC. 2. Section 7084 of the Government Code is amended to
29 read:

30 7084. (a) Whenever the state prepares a solicitation for a
31 contract for goods in excess of one hundred thousand dollars
32 (\$100,000), except a contract in which the worksite is fixed by the
33 provisions of the contract, the state shall award a 5-percent



1 preference to California-based companies that demonstrate and
2 certify under penalty of perjury that of the total labor hours
3 required to manufacture the goods and perform the contract, at
4 least 50 percent of the hours shall be accomplished at an identified
5 worksite or worksites located in an enterprise zone.

6 (b) In evaluating proposals for contracts for services in excess
7 of one hundred thousand dollars (\$100,000), except a contract in
8 which the worksite is fixed by the provisions of the contract, the
9 state shall award a 5-percent preference on the price submitted by
10 California-based companies that demonstrate and certify under
11 penalty of perjury that not less than 90 percent of the labor hours
12 required to perform the contract shall be accomplished at an
13 identified worksite or worksites located in an enterprise zone.

14 (c) Where a bidder complies with subdivision (a) or (b), the
15 state shall award a 1-percent preference for bidders who certify
16 under penalty of perjury to hire persons living within a targeted
17 employment area or are enterprise zone eligible employees equal
18 to 5 to 9 percent of its ~~work force~~ *workforce* during the period of
19 contract performance; a 2-percent preference for bidders who shall
20 agree to hire persons living within a targeted employment area or
21 are enterprise zone eligible employees equal to 10 to 14 percent of
22 its ~~work force~~ *workforce* during the period of contract
23 performance; a 3-percent preference for bidders who shall agree
24 to hire persons living within a targeted employment area or are
25 enterprise zone eligible employees equal to 15 to 19 percent of its
26 ~~work force~~ *workforce* during the period of contract performance;
27 and a 4-percent preference for bidders who shall agree to hire
28 persons living within a targeted employment area or are enterprise
29 zone eligible employees equal to 20 or more percent of its ~~work~~
30 ~~force~~ *workforce* during the period of contract performance.

31 (d) The maximum preference a bidder may be awarded
32 pursuant to this chapter and any other provision of law shall be 15
33 percent. However, in no case shall the maximum preference cost
34 under this section exceed fifty thousand dollars (\$50,000) for any
35 bid, nor shall the combined cost of preferences granted pursuant
36 to this section and any other provision of law exceed one hundred
37 thousand dollars (\$100,000). In those cases where the 15-percent
38 cumulated preference cost would exceed the one hundred
39 thousand dollar (\$100,000) maximum preference cost limit, the



1 one hundred thousand dollar (\$100,000) maximum preference
2 cost limit shall apply.

3 (e) Notwithstanding any other provision of this section, small
4 business bidders qualified in accordance with Section 14838 shall
5 have precedence over nonsmall business bidders in that the
6 application of any bidder preference for which nonsmall business
7 bidders may be eligible, including the preference contained in this
8 section, shall not result in the denial of the award to a small
9 business bidder. This subdivision shall apply to those cases where
10 the small business bidder is the lowest responsible bidder, as well
11 as to those cases where the small business bidder is eligible for
12 award as the result of application of the 5-percent small business
13 bidder incentive.

14 (f) All state contracts issued to bidders who are awarded
15 preferences under this section shall contain conditions to ensure
16 that the contractor performs the contract at the location specified
17 and meets any commitment to employ persons with high risk of
18 unemployment.

19 (g) (1) A business that requests and is given the preference
20 provided for in subdivision (a) or (b) by reason of having furnished
21 a false certification, and that by reason of this certification has been
22 awarded a contract to which it would not otherwise have been
23 entitled, shall be subject to all of the following:

24 (A) Pay to the state any difference between the contract amount
25 and what the state's cost would have been if the contract had been
26 properly awarded.

27 (B) In addition to the amount specified in subparagraph (A), be
28 assessed a penalty in an amount of not more than 10 percent of the
29 amount of the contract involved.

30 (C) Be ~~ineligible to directly or indirectly transact any business~~
31 *suspended or debarred from contracting* with the state for a period
32 of not less than ~~three months~~ *180 days* and not more than ~~24~~ *36*
33 *months pursuant to Section 10287.3 of the Public Contract Code.*

34 (2) Prior to the imposition of any sanction under this
35 subdivision, the business shall be ~~entitled to a public hearing and~~
36 ~~to five days' notice of the time and place thereof. The notice shall~~
37 ~~state the reasons for the hearing~~ *notified at least five calendar days*
38 *in advance of any suspension, and 30 calendar days in advance of*
39 *any debarment, and the reason for the action. The contractor or*



1 *vendor shall have the right to appeal the department's proposed*
2 *suspension or debarment.*

3 (h) In each instance in this section an enterprise zone shall also
4 mean any enterprise zone or program area previously authorized
5 under any other provision of state law.

6 (i) As used in this section, "enterprise zone eligible
7 employees" means employees who meet any of the requirements
8 of clause (iv) of subparagraph (A) of paragraph (4) of subdivision
9 (b) of Section 17053.74, or clause (iv) of subparagraph (A) of
10 paragraph (4) of subdivision (b) of Section 23622.5, of the
11 Revenue and Taxation Code.

12 SEC. 3. Section 7118 of the Government Code is amended to
13 read:

14 7118. (a) Whenever the state prepares a solicitation for a
15 contract for goods in excess of one hundred thousand dollars
16 (\$100,000), except a contract in which the worksite is fixed by the
17 provisions of the contract, the state shall award a 5-percent
18 preference to California-based companies who demonstrate and
19 certify under penalty of perjury that of the total labor hours
20 required to manufacture the goods and perform the contract, at
21 least 50 percent of the hours shall be accomplished at an identified
22 worksite or worksites located in a local agency military base
23 recovery area.

24 (b) In evaluating proposals for contracts for services in excess
25 of one hundred thousand dollars (\$100,000), except a contract in
26 which the worksite is fixed by the provisions of the contract, the
27 state shall award a 5-percent preference on the price submitted by
28 California-based companies who demonstrate and certify under
29 penalty of perjury that not less than 90 percent of the labor hours
30 required to perform the contract shall be accomplished at an
31 identified worksite or worksites located in a local agency military
32 base recovery area.

33 (c) Where a bidder complies with subdivision (a) or (b), the
34 state shall award a 1-percent preference for bidders who certify
35 under penalty of perjury to hire persons living within a local
36 agency military base recovery area equal to 5 to 9 percent of its
37 workforce during the period of contract performance; a 2-percent
38 preference for bidders who shall agree to hire persons living within
39 a local agency military base recovery area equal to 10 to 14 percent
40 of its workforce during the period of contract performance; a



1 3-percent preference for bidders who shall agree to hire persons
2 living within a local agency military base recovery area equal to
3 15 to 19 percent of its workforce during the period of contract
4 performance; and a 4-percent preference for bidders who shall
5 agree to hire persons living within a local agency military base
6 recovery area equal to 20 or more percent of its workforce during
7 the period of contract performance.

8 (d) The maximum preference a bidder may be awarded
9 pursuant to this chapter and any other provision of law shall be 15
10 percent. However, in no case shall the maximum preference cost
11 under this section exceed fifty thousand dollars (\$50,000) for any
12 bid, nor shall the combined cost of preferences granted pursuant
13 to this section and any other provision of law exceed one hundred
14 thousand dollars (\$100,000). In those cases where the 15-percent
15 cumulated preference cost would exceed the one hundred
16 thousand dollar (\$100,000) maximum preference cost limit, the
17 one hundred thousand dollar (\$100,000) maximum preference
18 cost limit shall apply.

19 (e) Notwithstanding any other provision of this section, small
20 business bidders qualified in accordance with Section 14838 shall
21 have precedence over non-small business bidders in that the
22 application of any bidder preference for which non-small business
23 bidders may be eligible, including the preference contained in this
24 section, shall not result in the denial of the award to a small
25 business bidder. This subdivision shall apply to those cases where
26 the small business bidder is the lowest responsible bidder, as well
27 as to those cases where the small business bidder is eligible for
28 award as the result of application of the 5-percent small business
29 bidder preference.

30 (f) All state contracts issued to bidders who are awarded
31 preferences under this section shall contain conditions to ensure
32 that the contractor performs the contract at the location specified
33 and meets any commitment to employ persons with high risk of
34 unemployment.

35 (g) (1) A business that requests and is given the preference
36 provided for in subdivision (a) or (b) by reason of having furnished
37 a false certification, and that by reason of this certification has been
38 awarded a contract to which it would not otherwise have been
39 entitled, shall be subject to all of the following:



1 (A) Pay to the state any difference between the contract amount
2 and what the state’s cost would have been if the contract had been
3 properly awarded.

4 (B) In addition to the amount specified in subparagraph (A), be
5 assessed a penalty in an amount of not more than 10 percent of the
6 amount of the contract involved.

7 ~~(C) Be ineligible to directly or indirectly transact any business~~
8 *suspended or debarred from contracting* with the state for a period
9 of not less than ~~three months~~ *180 days* and not more than ~~24~~ *36*
10 *months pursuant to Section 10287.3 of the Public Contract Code.*

11 (2) Prior to the imposition of any sanction under this
12 subdivision, the business shall be ~~entitled to a public hearing and~~
13 ~~to five days’ notice of the time and place thereof. The notice shall~~
14 ~~state the reasons for the hearing~~ *notified at least five calendar days*
15 *in advance of any suspension, and 30 calendar days in advance of*
16 *any debarment, and the reasons for the action. The contractor or*
17 *vendor shall have the right to appeal the department’s proposed*
18 *suspension or debarment.*

19 (h) In each instance in this section, a local agency military base
20 recovery area shall also mean any local agency military base
21 recovery area previously authorized under any other provision of
22 state law.

23 SEC. 4. Section 14842 of the Government Code is amended
24 to read:

25 14842. (a) A business that has obtained classification as a
26 small business or microbusiness by reason of having furnished
27 incorrect supporting information or by reason of having withheld
28 information, and that knew, or should have known, the
29 information furnished was incorrect or the information withheld
30 was relevant to its request for classification, and that by reason of
31 that classification has been awarded a contract to which it would
32 not otherwise have been entitled, shall do all of the following:

33 (1) Pay to the state any difference between the contract amount
34 and what the state’s costs would have been if the contract had been
35 properly awarded.

36 (2) In addition to the amount described in subdivision (a), be
37 assessed a penalty in an amount of not more than 10 percent of the
38 amount of the contract involved.

39 ~~(3) Be ineligible to transact~~



1 (b) *Suspend any person who violates subdivision (a) from*
 2 *transacting any business with the state either directly as a prime*
 3 *contractor or indirectly as a subcontractor, for a period of not less*
 4 *than ~~three months~~ 180 days and not more than ~~24~~ 36 months. State*
 5 *agencies may reject the bid of a supplier offering goods,*
 6 *information technology, or services manufactured or provided by*
 7 *a subcontractor if that subcontractor has been declared ineligible*
 8 *to transact any business with the state under this chapter, even*
 9 *though the bidder is a business in good standing.*

10 ~~(b)~~

11 (c) All payments to the state pursuant to paragraph (1) of
 12 subdivision (a) shall be deposited in the fund out of which the
 13 contract involved was awarded.

14 ~~(c)~~

15 (d) All payments to the state pursuant to paragraph (2) of
 16 subdivision (a) shall be deposited in the state General Fund.

17 ~~(d)~~

18 (e) The small business certification of a business found to have
 19 violated ~~the provisions of~~ subdivision (a) shall be revoked *by the*
 20 *department* for a period of not less than one year. For an additional
 21 or subsequent violation, the period of certification revocation or
 22 suspension shall be extended for a period of up to three years. The
 23 revocation shall apply to the principals of the business and any
 24 subsequent businesses formed by those principals.

25 ~~(e)~~

26 (f) Prior to the imposition of any sanctions under this article, a
 27 business shall be entitled to a public hearing and to at least five
 28 working days' notice of the time and place thereof. The notice
 29 shall state the reasons for the hearing.

30 SEC. 5. Section 14842.5 of the Government Code is amended
 31 to read:

32 14842.5. (a) It shall be unlawful for a person to do any of the
 33 following:

34 (1) Knowingly and with intent to defraud, fraudulently obtain,
 35 retain, attempt to obtain or retain, or aid another in fraudulently
 36 obtaining or retaining or attempting to obtain or retain,
 37 certification as a small business or microbusiness enterprise for the
 38 purposes of this chapter.

39 (2) Willfully and knowingly make a false statement with the
 40 intent to defraud, whether by affidavit, report, or other



1 representation, to a state official or employee for the purpose of
2 influencing the certification or denial of certification of any entity
3 as a small business or microbusiness enterprise.

4 (3) Willfully and knowingly obstruct, impede, or attempt to
5 obstruct or impede, any state official or employee who is
6 investigating the qualifications of a business entity that has
7 requested certification as a small business or microbusiness
8 enterprise.

9 (4) Knowingly and with intent to defraud, fraudulently obtain,
10 attempt to obtain, or aid another person in fraudulently obtaining
11 or attempting to obtain, public moneys to which the person is not
12 entitled under this chapter.

13 (5) Knowingly and with intent to defraud, fraudulently
14 represent certified small business or microbusiness participation
15 in order to obtain or retain a bid preference or a state contract.

16 (6) Knowingly and with intent to defraud, fraudulently
17 represent that a commercially useful function is being performed
18 by a certified small business or microbusiness in order to obtain or
19 retain a bid preference or a state contract.

20 (b) Any person who is found by the department to have violated
21 any of the provisions of subdivision (a) is subject to a civil penalty
22 of not more than five thousand dollars (\$5,000).

23 (c) ~~Any person who~~ *The department shall revoke the small*
24 *business or microbusiness certification of any person that violates*
25 *subdivision (a) shall, if certified as a small business or a*
26 *microbusiness, have the business' certification revoked* for a
27 period of not more than one year, and shall, in addition to the
28 penalties provided for in subdivision (b), be suspended from
29 bidding on, or participating as a contractor, a subcontractor, or a
30 supplier in, any state contract or project for a period of not less than
31 ~~three months~~ *180 days* nor more than ~~24~~ *36* months. However, for
32 an additional or subsequent violation, the period of certification
33 revocation or suspension shall be extended for a period of up to
34 three years. The certification revocation shall apply to the
35 principals of the business and any subsequent businesses formed
36 by those principals. Any business or person who fails to satisfy the
37 penalties imposed pursuant to subdivisions (b) and (c) shall be
38 prohibited from further contracting with the state until the
39 penalties are satisfied.



1 (d) If a contractor, subcontractor, supplier, subsidiary, or
 2 affiliate thereof, has been found by the department to have violated
 3 subdivision (a) and that violation occurred within three years of
 4 another violation of subdivision (a) found by the department, the
 5 department shall prohibit that contractor, subcontractor, supplier,
 6 subsidiary, or affiliate thereof, from entering into a state project or
 7 state contract and from further bidding to a state entity, and from
 8 being a subcontractor to a contractor for a state entity and from
 9 being a supplier to a state entity.

10 SEC. 6. Article 11 (commencing with Section 10287) is
 11 added to Chapter 1 of Part 2 of Division 2 of the Public Contract
 12 Code, to read:

13

14 Article 11. Suspension and Debarment

15

16 10287. State agencies shall solicit offers for goods, services,
 17 and information technology from, award contracts to, and consent
 18 to subcontracts only with, responsible businesses.

19 10287.1. As used in this article, the following definitions
 20 apply:

21 (a) "ALJ" means an administrative law judge as defined in
 22 Section 11502 of the Government Code, for the purpose of
 23 rendering a fair and impartial decision on an appeal filed pursuant
 24 to this article.

25 (b) "Business" means an entity organized for profit, including,
 26 but not limited to, an individual, partnership, joint venture,
 27 corporation, "S" corporation, limited liability company, limited
 28 liability partnership, sole proprietorship, joint stock company,
 29 consortium, association or cooperative, or other private legal
 30 entity recognized by statute, and shall include any partner,
 31 member, officer, director, responsible managing officer, or
 32 responsible managing employee thereof.

33 (c) "Debarment" means an exclusion from directly or
 34 indirectly contracting with state agencies for goods, services, or
 35 information technology, pursuant to Chapter 2 (commencing with
 36 Section 10290), Chapter 3 (commencing with Section 12100), or
 37 Chapter 3.6 (commencing with Section 12125), on the basis of any
 38 cause set forth in this article, commensurate with the seriousness
 39 of the offense, failure, or inadequacy of performance. The
 40 debarment period shall include any time the business was



1 suspended. Debarment does not relieve the business of
2 responsibility for existing obligations.

3 (d) “Department” means the Department of General Services.

4 (e) “State agency” means any state agency, department,
5 officer, office, commission, board, bureau, institution, hospital,
6 training facility, data center, or other state entity empowered by
7 law to enter into contracts on behalf of the State of California.

8 (f) “Successor-in-interest” means any business that is
9 substantially similar to a business that was previously debarred or
10 suspended. For purposes of this article, it shall be presumed that
11 a business that employs, or is associated with, any partner,
12 member, officer, director, responsible managing officer, or
13 responsible managing employee, of a business that was previously
14 debarred or suspended is a successor-in-interest.

15 (g) “Suspension” means a temporary exclusion from directly
16 or indirectly contracting with state agencies for goods, services, or
17 information technology pursuant to Chapter 2 (commencing with
18 Section 10290), Chapter 3 (commencing with Section 12100), or
19 Chapter 3.6 (commencing with Section 12125), on the basis of any
20 cause set forth in this article, pending the outcome of a debarment
21 process.

22 10287.3. (a) The department may debar or suspend a
23 business or successor-in-interest from contracting with the state
24 for any of the following:

- 25 (1) A history of unsatisfactory contract performance.
- 26 (2) Stating an unwillingness to honor a binding bid or contract.
- 27 (3) Falsifying or misrepresenting specifications, solicitation
28 requirements, or status in order to appear responsive to a
29 solicitation or to obtain a contract.
- 30 (4) Knowingly and intentionally conferring or offering to
31 confer any gift, gratuity, favor, or advantage, present or future,
32 upon any employee of a state agency who exercises any official
33 responsibility for an acquisition.
- 34 (5) Failing to disclose a known conflict of interest by any
35 owner, partner, officer, director, or responsible managing member,
36 successor-in-interest, or subcontractor of the business.
- 37 (6) The filing of a civil action by the Attorney General for a
38 violation of the False Claims Act (Article 9 (commencing with
39 Section 12650) of Chapter 6 of Division 3 of Title 2 of the
40 Government Code).



- 1 (7) Filing voluntary or involuntary bankruptcy where there is
2 a finding based on substantial evidence, that the bankruptcy
3 interfered with a state contract or subcontract.
- 4 (8) Breach of the terms and conditions of a state contract,
5 resulting in termination of the contract for cause.
- 6 (9) The owner, partner, officer, director, or responsible
7 managing member of a business, has been debarred from
8 contracting with any other federal or California state agency.
- 9 (10) The business, or owner, partner, officer, director, or
10 responsible managing member has violated any of the following
11 provisions of law:
 - 12 (A) Article 1 (commencing with Section 14836) of Chapter 6.5
13 of Part 5.5 of Division 3 of Title 2 of the Government Code relating
14 to the Small Business Procurement and Contract Act.
 - 15 (B) Article 6 (commencing with Section 999) of Chapter 6 of
16 Division 4 of the Military and Veterans Code.
 - 17 (C) The Target Area Contract Preference Act (Chapter 10.5
18 (commencing with Section 4530) of Division 5 of Title 1 of the
19 Government Code).
 - 20 (D) The Enterprise Zone Act (Chapter 12.8 (commencing with
21 Section 7070) of Division 7 of Title 1 of the Government Code).
 - 22 (E) Section 7118 of the Government Code relating to the Local
23 Agency Military Base Recovery Area Act.
- 24 (11) Conviction of any felony charge of fraud, bribery,
25 collusion, conspiracy, federal or state antitrust laws, or other
26 criminal offense in connection with the bidding upon, award of, or
27 performance of any contract for goods, services, or information
28 technology, with any state agency. Indictment for any of the causes
29 in this subdivision constitutes adequate cause for suspension. The
30 business shall advise the department within 10 working days of
31 any conviction.
 - 32 (b) Debarment shall be for no more than 36 months from any
33 of the following:
 - 34 (1) The date of suspension pursuant to paragraph (1) of
35 subdivision (a), or if the business is not suspended, from the
36 effective date of the debarment.
 - 37 (2) The date of the event pursuant to paragraphs (2) to (10),
38 inclusive, of subdivision (a).
 - 39 (3) The date of conviction pursuant to paragraph (11) of
40 subdivision (a).



1 (c) Suspension shall be for up to 180 calendar days unless a
2 decision on an indictment has not been made, in which case the
3 suspension may be extended for a period not to exceed 12 months
4 from the initial date of suspension.

5 10287.4. A suspension or debarment may include all known
6 successors-in-interest of a business. Each decision to suspend or
7 debar a successor-in-interest shall be made on a case-by-case basis
8 after consideration of relevant facts and circumstances.

9 10287.5. If the department determines the reason for
10 debarment pertains to the business's traits or tendencies with
11 regard to certain goods, services, or information technology, the
12 debarment may apply only to those specific goods, services, or
13 information technology.

14 10287.6. Any exclusion from state contracting due to
15 debarment or suspension shall extend to any state agency expressly
16 or impliedly authorized to enter into transactions pursuant to this
17 part, however, it does not apply, to those transactions excluded
18 from the department's review pursuant to Section 10295.

19 10287.7. State agencies may reject the bid of a business
20 offering goods, services, or information technology,
21 manufactured or offered by a business that has been debarred even
22 though the bidder is a contractor in good standing.

23 10287.8. (a) The department shall promulgate regulations
24 for suspension and debarment, including appeals. The regulations
25 shall provide for decisionmaking processes that are as informal as
26 practicable, consistent with principles of fundamental fairness,
27 and shall afford interested parties an opportunity to submit
28 information and argument in opposition to the intended
29 suspension or debarment. The regulations shall be established in
30 accordance with the rulemaking provisions of the Administrative
31 Procedure Act (Chapter 3.5 (commencing with Section 11340) of
32 Part 1 of Division 3 of Title 2 of the Government Code).

33 (b) At a minimum, the regulations relating to suspension shall
34 address the following:

35 (1) The department shall provide a minimum of five working
36 days advance written notice of the department's intent to suspend
37 a business, with the opportunity to appeal the proposed
38 suspension. The department's notice shall include full disclosure
39 of the evidence supporting the intention to suspend.



1 (2) Any appeal of the proposed suspension shall be filed with
2 the department in writing, and the department shall have an
3 opportunity to review and respond to the detailed statement of
4 appeal filed by the business.

5 (3) The grounds for appeal of a suspension shall be that the state
6 should not suspend the business because it does not have a history
7 of failure to comply with contract provisions, it has not taken any
8 of the other actions set forth in Section 10287.3, and it has not been
9 indicted for any of the causes set forth in Section 10287.3. The
10 burden of proof is a preponderance of the evidence, and the burden
11 of proof shall rest with the business.

12 (4) The department shall appoint an independent hearing
13 officer to decide on the appeal. The hearing officer shall be
14 authorized to do all of the following:

15 (A) Determine whether oral testimony will be permitted, the
16 number of witnesses, if any, and the amount of time allocated to
17 witnesses.

18 (B) Review documents alone for all or part of the hearing.

19 (5) The appeal hearing shall be a public hearing, unless the
20 hearing officer, in his or her sole discretion, determines that the
21 attendance of individuals or groups of individuals would disrupt
22 or delay the orderly conduct or timely completion of the hearing.

23 (6) The hearing officer's decision shall be in writing, and shall
24 include a statement of the factual and legal basis for the decision,
25 addressing both the issues raised in the department's letter of intent
26 to suspend and the business's detailed written statement of appeal.
27 The decision shall include an order upholding or denying the
28 appeal. The decision may do any of the following:

29 (A) Establish the suspension period.

30 (B) Limit the suspension to specific goods, services, or
31 information technology.

32 (C) Uphold or deny the imposition of monetary sanctions
33 pursuant to Section 4535.1, 7084, or 7118 of the Government
34 Code.

35 (D) Establish the amount of a monetary sanction imposed, if
36 any.

37 (7) The decision shall be the final administrative
38 determination.

39 (c) At a minimum, the regulations relating to debarment shall
40 address the following:



1 (1) The department shall provide a minimum of 30 calendar
2 days advance written notice of its intent to debar a business, with
3 the opportunity to appeal the proposed debarment. The
4 department's notice shall include full disclosure of the evidence
5 supporting the intention to debar.

6 (2) Any appeal of the proposed suspension shall be filed with
7 the department in writing, and the department shall have an
8 opportunity to review and respond to the detailed statement of
9 appeal filed by the business.

10 (3) The grounds for appeal of a debarment shall be that the state
11 should not debar the business because it does not have a history of
12 failure to comply with contract provisions, it has not taken any of
13 the other actions set forth in Section 10287.3, and it has not been
14 indicted or convicted for any of the causes set forth in Section
15 10287.3. The burden of proof is a preponderance of the evidence,
16 and the burden of proof shall rest with the business.

17 (4) Rules for selection by the appealing business and the
18 department of the presiding ALJ.

19 (5) The ALJ shall be authorized to do all of the following:

20 (A) Schedule the date, time, and place of hearing and notify all
21 parties.

22 (B) Issue subpoenas as necessary.

23 (C) Administer oaths and affirmations.

24 (D) Make rulings and orders as are necessary to the fair,
25 impartial, and efficient conduct of the hearing.

26 (E) Determine whether oral testimony will be permitted, the
27 number of witnesses, if any, and the amount of time allocated to
28 witnesses.

29 (6) The ALJ shall have discretion to determine whether or not
30 to do any of the following:

31 (A) Conduct a prehearing conference.

32 (B) Permit cross-examination, and, if permitted, determine the
33 extent of the cross-examination.

34 (C) Review documents alone for all or part of the hearing.

35 (7) The appeal hearing shall be a public hearing, unless the
36 ALJ, in his or her exclusive discretion, determines that the
37 attendance of individuals or groups of individuals would disrupt
38 or delay the orderly conduct or timely completion of the hearing.

39 (8) The hearing officer's decision shall be in writing, and shall
40 include a statement of the factual and legal basis for the decision,



1 addressing both the issues raised in the department's letter of intent
2 to debar and the business's detailed written statement of appeal.
3 The decision shall include an order upholding or denying the
4 appeal. The decision may also do one or more of the following:

5 (A) Establish the debarment period.

6 (B) Limit the debarment to specific goods, services, or
7 information technology.

8 (C) Uphold or deny the imposition of monetary sanctions
9 pursuant to Sections 4535.1, 7084, and 7118 of the Government
10 Code.

11 (D) Establish the amount of a monetary sanction imposed, if
12 any.

13 (9) The decision shall be the final administrative
14 determination.

15 10287.9. The department shall maintain and publish a listing
16 of suspended or debarred businesses.

17 10288. A suspended or debarred business may apply in
18 writing to the department requesting that the debarment or
19 suspension be vacated. The request shall cite actions taken to
20 remedy the reason for suspension or debarment or prevent
21 recurrence of the condition that prompted the suspension or
22 debarment action. At the discretion of the department, a
23 suspension or debarment may be terminated at any time if
24 determined to be in the best interests of the state.

25 10288.1. No party to a suspension appeal or debarment
26 proceeding, including employees of the state agency that initiated
27 the action, and no person who has a direct interest in the outcome
28 of the appeal or proceeding, or who presided at a previous stage of
29 the appeal or proceeding, may communicate directly or indirectly
30 upon the merits of the suspension or debarment that is pending,
31 with the ALJ, without notice and opportunity for all parties to
32 participate in the communication.

33 SEC. 7. Section 10303 of the Public Contract Code is
34 amended to read:

35 10303. The department shall adopt, publish and apply
36 uniform standards of rating bidders, on the basis of questionnaires
37 and required statements, with respect to contracts upon which each
38 bidder is qualified to bid. The department may adopt and publish
39 lists of qualified bidders. No list so adopted and published shall
40 preclude a qualified bidder not on the list from submitting a bid or



1 bids and from being awarded a contract or contracts as the
2 successful bidder.

3 ~~The department may remove, for a period not less than 90~~
4 ~~calendar days, but not to exceed 360 calendar days, from any list~~
5 ~~of qualified bidders prepared by the department any bidder who,~~
6 ~~based upon his performance on contracts which he has previously~~
7 ~~been awarded by the state, has demonstrated a lack of reliability~~
8 ~~in complying with and completing such previously awarded~~
9 ~~contracts.~~

10 ~~Any bidder temporarily removed under this section shall be~~
11 ~~returned to the list of qualified bidders at any time after the initial~~
12 ~~90-day period, upon demonstrating to the department's~~
13 ~~satisfaction that the problems which resulted in the bidder's~~
14 ~~previously demonstrated unreliability in completing state~~
15 ~~contracts, have been corrected.~~

16 SEC. 8. Section 12102 of the Public Contract Code is
17 amended to read:

18 12102. ~~The Department of Information Technology and the~~
19 ~~Department of General Services shall maintain, in the State~~
20 ~~Administrative Manual, policies and procedures governing the~~
21 ~~acquisition and disposal of information technology goods and~~
22 ~~services.~~

23 (a) Acquisition of information technology goods and services
24 shall be conducted through competitive means, except when the
25 Director of General Services determines that (1) the goods and
26 services proposed for acquisition are the only goods and services
27 which can meet the state's need, or (2) the goods and services are
28 needed in cases of emergency where immediate acquisition is
29 necessary for the protection of the public health, welfare, or safety.
30 The acquisition mode to be used and the procedure to be followed
31 shall be approved by the Director of General Services. The
32 Department of General Services shall maintain, in the State
33 Administrative Manual, appropriate criteria and procedures to
34 ensure compliance with the intent of this chapter. These criteria
35 and procedures shall include acquisition and contracting
36 guidelines to be followed by state agencies with respect to the
37 acquisition of information technology goods and services. These
38 guidelines may be in the form of standard formats or model
39 formats.



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

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

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

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

38 (d) The 5 percent small business preference provided for in
39 Chapter 6.5 (commencing with Section 14835) of Part 5.5 of
40 Division 3 of Title 2 of the Government Code and the regulations



1 implementing that chapter shall be accorded to all qualifying small
2 businesses.

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

12 (f) Acquisition authority may be delegated by the Director of
13 General Services to any state agency ~~which~~ *that* has been
14 determined by the Department of General Services to be capable
15 of effective use of that authority. This authority may be limited by
16 the Department of General Services. Acquisitions conducted
17 under delegated authority shall be reviewed by the Department of
18 General Services on a selective basis.

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

23 Further, it is the intent of the Legislature that, if a state
24 information technology advisory committee or a state
25 telecommunications advisory committee is established by the
26 Governor, ~~the Director of Information Technology,~~ or the Director
27 of General Services, the policies and procedures developed by the
28 ~~Director of Information Technology and the Director of General~~
29 Services in accordance with this chapter shall be submitted to that
30 committee, including supplier representatives, for review and
31 comment, and that the comment be considered by both
32 departments prior to the adoption of any policy or procedure. It is
33 also the intent of the Legislature that this section shall apply to the
34 Department of General Services Information Technology
35 Customer Council.

36 (h) Protest procedures shall be developed to provide bidders an
37 opportunity to protest any formal, competitive acquisition
38 conducted in accordance with this chapter. The procedures shall
39 provide that protests must be filed no later than five working days
40 after the issuance of an intent to award. Authority to protest may



1 be limited to participating bidders. The Director of General
2 Services, or a person designated by the director, may consider and
3 decide on initial protests. A decision regarding an initial protest
4 shall be final. If prior to the last day to protest, any bidder who has
5 submitted an offer files a protest with the department against the
6 awarding of the contract on the ground that his or her bid or
7 proposal should have been selected in accordance with the
8 selection criteria in the solicitation document, the contract shall
9 not be awarded until either the protest has been withdrawn or the
10 State Board of Control has made a final decision as to the action
11 to be taken relating to the protest. Within 10 calendar days after
12 filing a protest, the protesting bidder shall file with the State Board
13 of Control a full and complete written statement specifying in
14 detail the grounds of the protest and the facts in support thereof.

15 (i) Information technology goods ~~which~~ *that* have been
16 determined to be surplus to state needs shall be disposed of in a
17 manner that will best serve the interests of the state. Procedures
18 governing the disposal of surplus goods may include auction or
19 transfer to local governmental entities.

20 ~~(j) A supplier may be excluded from bid processes if the~~
21 ~~supplier's performance with respect to a previously awarded~~
22 ~~contract has been unsatisfactory, as determined by the state in~~
23 ~~accordance with established procedures which shall be maintained~~
24 ~~in the State Administrative Manual. This exclusion may not~~
25 ~~exceed 360 calendar days for any one determination of~~
26 ~~unsatisfactory performance. Any supplier excluded in accordance~~
27 ~~with this section shall be reinstated as a qualified supplier at any~~
28 ~~time during this 360 day period, upon demonstrating to the~~
29 ~~department's satisfaction that the problems which resulted in the~~
30 ~~supplier's exclusion have been corrected.~~

