

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 558**

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**Introduced by Assembly Member Low**

February 23, 2015

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An act to amend ~~Section 12016~~ Sections 12102.2, 12104, and 12104.5 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 558, as amended, Low. Public contracts: state contracts: information technology goods and services.

Existing law authorizes the Department of General Services and the Department of Technology to adopt rules and regulations as are necessary to govern the acquisition and disposal of information technology goods and services. *Existing law requires contract awards for all large-scale systems integration projects to be based on the proposal that provides the most value-effective solutions to the state's requirements, as specified, and requires evaluation criteria for the acquisition of information technology goods and services, including systems integration, to provide for the selection of a contractor on an objective basis not limited to cost alone. Existing law requires the Department of Technology to invite active participation, review, advice, comment, and assistance from the private sector and state agencies in developing procedures to streamline and make the acquisition process more efficient, and requires solicitations for acquisitions based on evaluation criteria other than cost alone to provide that sealed cost proposals be submitted.*

~~This bill would make a technical, nonsubstantive change to this provision.~~

*This bill would require the Department of Technology, in developing procedures to streamline and make the acquisition process more efficient, to require the acquisition methodology to use electronic means, whenever possible, to reduce paper submissions and allow for electronic submission of bids and proposals. This bill would also require solicitations for acquisitions based on evaluation criteria other than cost alone to provide that electronic cost proposals be submitted whenever possible.*

*Existing law requires the Department of General Services and the Department of Technology to develop, implement, and maintain standardized methods for the development of all information technology requests for proposals.*

*This bill would require the standardized methods to include, whenever possible, electronic formats for electronic bid solicitation and electronic receipt of bid proposals.*

*Existing law requires all rules and requirements and any changes to the rules and requirements governing an information technology acquisition, for which the Department of General Services or the Department of Technology determines that a request for proposal is appropriate, to be communicated in writing to all vendors that have expressed an intent to bid and to be posted in a public location.\*

*This bill would require all rules and requirements and any changes to the rules and requirements to be communicated electronically and to be posted on the Internet Web site of the Department of General Services and the Department of Technology whenever possible.*

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

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

- 1     SECTION 1. Section 12102.2 of the Public Contract Code is
- 2     amended to read:
- 3     12102.2. (a) Contract awards for all large-scale systems
- 4     integration projects shall be based on the proposal that provides
- 5     the most value-effective solution to the state’s requirements, as
- 6     determined by the evaluation criteria contained in the solicitation
- 7     document. Evaluation criteria for the acquisition of information
- 8     technology goods and services, including systems integration, shall
- 9     provide for the selection of a contractor on an objective basis not
- 10    limited to cost alone.

1 (1) The Department of Technology shall invite active  
2 participation, review, advice, comment, and assistance from the  
3 private sector and state agencies in developing procedures to  
4 streamline and to make the acquisition process more efficient,  
5 including, but not limited to, consideration of comprehensive  
6 statements in the request for proposals of the business needs and  
7 governmental functions, access to studies, planning documents,  
8 feasibility study reports and draft requests for proposals applicable  
9 to solicitations, minimizing the time and cost of the proposal  
10 submittal and selection process, and development of a procedure  
11 for submission and evaluation of a single proposal rather than  
12 multiple proposals. *The acquisition methodology shall use*  
13 *electronic means, whenever possible, to reduce paper submissions*  
14 *and allow for electronic submission of bids and proposals.*

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

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

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

38 (d) For all transactions formally advertised, evaluation of  
39 bidders' proposals for the purpose of determining contract award  
40 for information technology goods shall provide for consideration

1 of a bidder's best financing alternatives, including lease or purchase  
2 alternatives, if any bidder so requests, not less than 30 days prior  
3 to the date of final bid submission, unless the acquiring agency  
4 can prove to the satisfaction of the Department of General Services  
5 that a particular financing alternative should not be so considered.

6 (e) Acquisition authority may be delegated by the Director of  
7 General Services to any state agency that has been determined by  
8 the Department of General Services to be capable of effective use  
9 of that authority. This authority may be limited by the Department  
10 of General Services. Acquisitions conducted under delegated  
11 authority shall be reviewed by the Department of General Services  
12 on a selective basis.

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

18 (g) Protest procedures shall be developed to provide bidders an  
19 opportunity to protest any formal, competitive acquisition  
20 conducted in accordance with this chapter. The procedures shall  
21 provide that protests must be filed no later than five working days  
22 after the issuance of an intent to award. Authority to protest may  
23 be limited to participating bidders. The Director of Technology,  
24 or a person designated by the director, may consider and decide  
25 on initial protests of bids for information technology projects  
26 conducted by the Department of Technology and  
27 telecommunications procurement made pursuant to Section 12120.  
28 The Director of the Department of General Services, or a person  
29 designated by the director, may consider and decide on initial  
30 protests of all other information technology acquisitions. A decision  
31 regarding an initial protest shall be final. If prior to the last day to  
32 protest, any bidder who has submitted an offer files a protest with  
33 the department against the awarding of the contract on the ground  
34 that his or her bid or proposal should have been selected in  
35 accordance with the selection criteria in the solicitation document,  
36 the contract shall not be awarded until either the protest has been  
37 withdrawn or the California Victim Compensation and Government  
38 Claims Board has made a final decision as to the action to be taken  
39 relating to the protest. Within 10 calendar days after filing a protest,  
40 the protesting bidder shall file with the Victim Compensation and

1 Government Claims Board a full and complete written statement  
2 specifying in detail the grounds of the protest and the facts in  
3 support thereof.

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

10 (i) A supplier may be excluded from bid processes if the  
11 supplier's performance with respect to a previously awarded  
12 contract has been unsatisfactory, as determined by the state in  
13 accordance with established procedures that shall be maintained  
14 in the State Administrative Manual. This exclusion may not exceed  
15 36 months for any one determination of unsatisfactory  
16 performance. Any supplier excluded in accordance with this section  
17 shall be reinstated as a qualified supplier at any time during this  
18 36-month period, upon demonstrating to the Department of General  
19 Services' satisfaction that the problems that resulted in the  
20 supplier's exclusion have been corrected.

21 *SEC. 2. Section 12104 of the Public Contract Code is amended*  
22 *to read:*

23 12104. (a) (1) The State Contracting Manual shall set forth  
24 all procedures and methods that shall be used by the state when  
25 seeking to obtain bids for the acquisition of information technology.

26 (2) Revisions to the manual must be publicly announced,  
27 including, but not limited to, postings on the Internet Web site  
28 homepage of the Department of General Services. The Department  
29 of Technology shall provide a link to the State Contracting Manual  
30 on its Internet Web site homepage.

31 (b) The Department of General Services and the Department of  
32 Technology in accordance with this chapter shall develop,  
33 implement, and maintain standardized methods for the development  
34 of all information technology requests for ~~proposals~~. *proposals,*  
35 *including, whenever possible, electronic formats for electronic bid*  
36 *solicitation and electronic receipt of bid proposals.*

37 (c) All information technology requests for proposals shall be  
38 reviewed by the Department of Technology prior to release to the  
39 public.

1 SEC. 3. Section 12104.5 of the Public Contract Code is  
2 amended to read:

3 12104.5. (a) All rules and requirements governing an  
4 information technology acquisition, for which the Department of  
5 General Services or the Department of Technology determines  
6 that a request for proposal (RFP) is appropriate, shall be  
7 communicated in writing *or, whenever possible, electronically*, to  
8 all vendors that have expressed an intent to bid and shall be posted  
9 in a public ~~location~~. *location or, whenever possible, on the Internet*  
10 *Web site of the Department of General Services and the*  
11 *Department of Technology*. Any changes to the rules and  
12 requirements governing that RFP shall be communicated in writing  
13 *or, whenever possible, electronically*, to all vendors that have  
14 expressed an intent to bid and shall be posted in a public ~~location~~.  
15 *location or, whenever possible, on the Internet Web site of the*  
16 *Department of General Services and the Department of*  
17 *Technology*. Requirements other than those provided by law or  
18 outside of the published RFP and posted addendums shall not be  
19 used to score bids.

20 (b) (1) All requests for proposals shall contain the following  
21 statement:

22 “It is unlawful for any person engaged in business within this  
23 state to sell or use any article or product as a “loss leader” as  
24 defined in Section 17030 of the Business and Professions Code.”

25 (2) The Department of General Services shall post in the State  
26 Contracting Manual instructions for including the statement  
27 required by paragraph (1) in all affected contracts.

28 (3) The statement required by paragraph (1) shall be deemed to  
29 be part of a request for proposal even if the statement is  
30 inadvertently omitted from the request for proposal.

31 (c) The requirements of this section shall be in addition to any  
32 other requirement provided by law.

33 ~~SECTION 1. Section 12106 of the Public Contract Code is~~  
34 ~~amended to read:~~

35 ~~12106. The Department of General Services and the Department~~  
36 ~~of Technology may, in addition to fulfilling the mandatory~~  
37 ~~requirements enumerated in Sections 12102, 12102.1, and 12102.2,~~  
38 ~~adopt rules and regulations as are necessary for the purposes of~~  
39 ~~this chapter.~~

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