

AMENDED IN SENATE FEBRUARY 10, 2016

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 558

Introduced by Assembly Member Low

February 23, 2015

~~An act to amend Sections 12102.2, 12104, and 12104.5 of the Public Contract Code, relating to public contracts. An act to amend Section 19533.5 of the Business and Professions Code, relating to horse racing, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 558, as amended, Low. ~~Public contracts: state contracts: information technology goods and services. Horse racing: nonthoroughbred races.~~

(1) The Horse Racing Law generally requires that any license granted to an association other than a fair is only for one type of racing, thoroughbred, harness, or quarter horse racing, as the case may be, except that the California Horse Racing Board may authorize the entering of thoroughbred and Appaloosa horses in quarter horse races at a distance not exceeding 5 furlongs at quarter horse meetings, mixed breed meetings, and fair meetings under specified conditions. That law, notwithstanding these provisions, empowers the board to authorize mixed breed racing that sanctions, among other things, either an association to conduct a quarter horse meeting to include Appaloosa races and Arabian races with the consent of the quarter horse horsemen's organization or a race between a quarter horse and a thoroughbred horse at a thoroughbred meeting with the consent of the

thoroughbred horsemen's organization, if each contracts with the association with respect to the conduct of the racing meeting.

This bill would empower the board to authorize an association licensed to conduct a thoroughbred race meeting to include up to 6 nonthoroughbred races per calendar year with the consent of the organization representing thoroughbred horsemen and horsewomen, provided, however, that a nonthoroughbred race shall not be held when a fair in the northern zone is conducting a race meeting without that fair's consent. Amounts deducted and distributed pursuant to the Horse Racing Law from wagering on nonthoroughbred races authorized pursuant to these provisions would be required to be deducted and distributed as if the wagers were placed on a thoroughbred race. By expanding the provisions of the Horse Racing Law, a violation of which is a crime, the bill would create new crimes and would thereby impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(3) This bill would declare that it is to take effect immediately as an urgency statute.

~~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 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~~^{2/3}. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~no~~^{yes}.

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

- 1 SECTION 1. Section 19533.5 of the Business and Professions
- 2 Code is amended to read:
- 3 19533.5. (a) Notwithstanding Section 19533, the board may
- 4 authorize the following mixed breed racing:
- 5 (1) An association licensed to conduct a quarter horse meeting
- 6 to include Appaloosa races and Arabian races with the consent of
- 7 the quarter horse horsemen’s organization contracting with the
- 8 association with respect to the conduct of the racing meeting.
- 9 (2) A race between a quarter horse and a thoroughbred horse at
- 10 a thoroughbred meeting with the consent of the thoroughbred

1 horsemen’s organization contracting with the association with
2 respect to the conduct of the racing meeting.

3 (b) Notwithstanding Section 19533, an association licensed to
4 conduct quarter horse racing or a fair may conduct races that
5 include paint horses racing with quarter horses or Appaloosa horses
6 in the same race. When paint horses race with quarter horses, the
7 consent of the organization that represents quarter horse horsemen
8 and horsewomen shall first be obtained. A quarter horse association
9 may write a race for paint horses only to replace an Appaloosa or
10 Arabian race without increasing the average number of races run
11 per race day with the consent of the organization representing the
12 ~~quarter horse men horsemen and women horsewomen.~~

13 (c) A quarter horse race with seven or more entries shall not be
14 replaced by a race that includes paint horses, without the consent
15 of the organization that represents quarter horse horsemen and
16 horsewomen.

17 (d) Notwithstanding any other ~~provision of law, any~~ a quarter
18 horse racing association or fair conducting barrel racing, paint
19 horse racing, show jump racing, or steeplechase racing shall pay
20 to the quarter horse men’s organization the amount specified in
21 Section 19613 for purposes of representing the horsemen and
22 horsewomen conducting these races.

23 (e) *Notwithstanding Section 19533, the board may authorize*
24 *an association licensed to conduct a thoroughbred race meeting*
25 *to include up to six nonthoroughbred races per calendar year with*
26 *the consent of the organization representing thoroughbred*
27 *horsemen and horsewomen, provided, however, that a*
28 *nonthoroughbred race shall not be held when a fair in the northern*
29 *zone is conducting a race meeting without that fair’s consent.*
30 *Amounts deducted and distributed pursuant to this chapter from*
31 *wagering on nonthoroughbred races authorized pursuant to this*
32 *section shall be deducted and distributed as if the wagers were*
33 *placed on a thoroughbred race.*

34 *SEC. 2. No reimbursement is required by this act pursuant to*
35 *Section 6 of Article XIII B of the California Constitution because*
36 *the only costs that may be incurred by a local agency or school*
37 *district will be incurred because this act creates a new crime or*
38 *infraction, eliminates a crime or infraction, or changes the penalty*
39 *for a crime or infraction, within the meaning of Section 17556 of*
40 *the Government Code, or changes the definition of a crime within*

1 *the meaning of Section 6 of Article XIII B of the California*
2 *Constitution.*

3 *SEC. 3. This act is an urgency statute necessary for the*
4 *immediate preservation of the public peace, health, or safety within*
5 *the meaning of Article IV of the Constitution and shall go into*
6 *immediate effect. The facts constituting the necessity are:*

7 *In order to ensure that the horse racing industry may continue*
8 *to offer the highest level of racing possible and promote horse*
9 *racing in California, it is necessary that this act take effect*
10 *immediately.*

11 ~~SECTION 1. Section 12102.2 of the Public Contract Code is~~
12 ~~amended to read:~~

13 ~~12102.2. (a) Contract awards for all large-scale systems~~
14 ~~integration projects shall be based on the proposal that provides~~
15 ~~the most value-effective solution to the state's requirements, as~~
16 ~~determined by the evaluation criteria contained in the solicitation~~
17 ~~document. Evaluation criteria for the acquisition of information~~
18 ~~technology goods and services, including systems integration, shall~~
19 ~~provide for the selection of a contractor on an objective basis not~~
20 ~~limited to cost alone.~~

21 ~~(1) The Department of Technology shall invite active~~
22 ~~participation, review, advice, comment, and assistance from the~~
23 ~~private sector and state agencies in developing procedures to~~
24 ~~streamline and to make the acquisition process more efficient,~~
25 ~~including, but not limited to, consideration of comprehensive~~
26 ~~statements in the request for proposals of the business needs and~~
27 ~~governmental functions, access to studies, planning documents,~~
28 ~~feasibility study reports and draft requests for proposals applicable~~
29 ~~to solicitations, minimizing the time and cost of the proposal~~
30 ~~submittal and selection process, and development of a procedure~~
31 ~~for submission and evaluation of a single proposal rather than~~
32 ~~multiple proposals. The acquisition methodology shall use~~
33 ~~electronic means, whenever possible, to reduce paper submissions~~
34 ~~and allow for electronic submission of bids and proposals.~~

35 ~~(2) Solicitations for acquisitions based on evaluation criteria~~
36 ~~other than cost alone shall provide that sealed cost proposals or,~~
37 ~~whenever possible, electronic cost proposals, shall be submitted~~
38 ~~and that they shall be opened at a time and place designated in the~~
39 ~~solicitation for bids and proposals. Evaluation of all criteria, other~~
40 ~~than cost, shall be completed prior to the time designated for public~~

1 opening of cost proposals, and the results of the completed
2 evaluation shall be published immediately before the opening of
3 cost proposals. The state's contact person for administration of the
4 solicitation shall be identified in the solicitation for bids and
5 proposals, and that person shall execute a certificate under penalty
6 of perjury, which shall be made a permanent part of the official
7 contract file, that all cost proposals received by the state have been
8 maintained sealed and under lock and key or sufficiently secured
9 electronically until the time cost proposals are opened.

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

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

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

26 (e) Acquisition authority may be delegated by the Director of
27 General Services to any state agency that has been determined by
28 the Department of General Services to be capable of effective use
29 of that authority. This authority may be limited by the Department
30 of General Services. Acquisitions conducted under delegated
31 authority shall be reviewed by the Department of General Services
32 on a selective basis.

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

38 (g) Protest procedures shall be developed to provide bidders an
39 opportunity to protest any formal, competitive acquisition
40 conducted in accordance with this chapter. The procedures shall

1 provide that protests must be filed no later than five working days
2 after the issuance of an intent to award. Authority to protest may
3 be limited to participating bidders. The Director of Technology,
4 or a person designated by the director, may consider and decide
5 on initial protests of bids for information technology projects
6 conducted by the Department of Technology and
7 telecommunications procurement made pursuant to Section 12120.
8 The Director of the Department of General Services, or a person
9 designated by the director, may consider and decide on initial
10 protests of all other information technology acquisitions. A decision
11 regarding an initial protest shall be final. If prior to the last day to
12 protest, any bidder who has submitted an offer files a protest with
13 the department against the awarding of the contract on the ground
14 that his or her bid or proposal should have been selected in
15 accordance with the selection criteria in the solicitation document,
16 the contract shall not be awarded until either the protest has been
17 withdrawn or the California Victim Compensation and Government
18 Claims Board has made a final decision as to the action to be taken
19 relating to the protest. Within 10 calendar days after filing a protest,
20 the protesting bidder shall file with the Victim Compensation and
21 Government Claims Board a full and complete written statement
22 specifying in detail the grounds of the protest and the facts in
23 support thereof.

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

30 (i) A supplier may be excluded from bid processes if the
31 supplier's performance with respect to a previously awarded
32 contract has been unsatisfactory, as determined by the state in
33 accordance with established procedures that shall be maintained
34 in the State Administrative Manual. This exclusion may not exceed
35 36 months for any one determination of unsatisfactory
36 performance. Any supplier excluded in accordance with this section
37 shall be reinstated as a qualified supplier at any time during this
38 36-month period, upon demonstrating to the Department of General
39 Services' satisfaction that the problems that resulted in the
40 supplier's exclusion have been corrected.

1 ~~SEC. 2.—Section 12104 of the Public Contract Code is amended~~
2 ~~to read:~~

3 ~~12104. (a) (1) The State Contracting Manual shall set forth~~
4 ~~all procedures and methods that shall be used by the state when~~
5 ~~seeking to obtain bids for the acquisition of information technology.~~

6 ~~(2) Revisions to the manual must be publicly announced,~~
7 ~~including, but not limited to, postings on the Internet Web site~~
8 ~~homepage of the Department of General Services. The Department~~
9 ~~of Technology shall provide a link to the State Contracting Manual~~
10 ~~on its Internet Web site homepage.~~

11 ~~(b) The Department of General Services and the Department of~~
12 ~~Technology in accordance with this chapter shall develop,~~
13 ~~implement, and maintain standardized methods for the development~~
14 ~~of all information technology requests for proposals, including,~~
15 ~~whenever possible, electronic formats for electronic bid solicitation~~
16 ~~and electronic receipt of bid proposals.~~

17 ~~(c) All information technology requests for proposals shall be~~
18 ~~reviewed by the Department of Technology prior to release to the~~
19 ~~public.~~

20 ~~SEC. 3.—Section 12104.5 of the Public Contract Code is~~
21 ~~amended to read:~~

22 ~~12104.5. (a) All rules and requirements governing an~~
23 ~~information technology acquisition, for which the Department of~~
24 ~~General Services or the Department of Technology determines~~
25 ~~that a request for proposal (RFP) is appropriate, shall be~~
26 ~~communicated in writing or, whenever possible, electronically, to~~
27 ~~all vendors that have expressed an intent to bid and shall be posted~~
28 ~~in a public location or, whenever possible, on the Internet Web~~
29 ~~site of the Department of General Services and the Department of~~
30 ~~Technology. Any changes to the rules and requirements governing~~
31 ~~that RFP shall be communicated in writing or, whenever possible,~~
32 ~~electronically, to all vendors that have expressed an intent to bid~~
33 ~~and shall be posted in a public location or, whenever possible, on~~
34 ~~the Internet Web site of the Department of General Services and~~
35 ~~the Department of Technology. Requirements other than those~~
36 ~~provided by law or outside of the published RFP and posted~~
37 ~~addendums shall not be used to score bids.~~

38 ~~(b) (1) All requests for proposals shall contain the following~~
39 ~~statement:~~

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

4 ~~(2) The Department of General Services shall post in the State~~
5 ~~Contracting Manual instructions for including the statement~~
6 ~~required by paragraph (1) in all affected contracts.~~

7 ~~(3) The statement required by paragraph (1) shall be deemed to~~
8 ~~be part of a request for proposal even if the statement is~~
9 ~~inadvertently omitted from the request for proposal.~~

10 ~~(e) The requirements of this section shall be in addition to any~~
11 ~~other requirement provided by law.~~

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