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SB-1505 State contracts: procurement processes. (2017-2018)

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Senate Bill No. 1505

CHAPTER 335

An act to amend Section 14827.3 of the Government Code, and to amend Sections 6611 and 10306 of the Public Contract Code, relating to public contracts.

[Approved by Governor September 10, 2018. Filed with Secretary of State September 10, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1505, Committee on Governmental Organization. State contracts: procurement processes.

(1) Existing law requires the Department of General Services to publish, or cause to be published, the California State Contracts Register, describing contracts proposed by the state. Existing law authorizes the Department of General Services to exempt a state agency from the requirement of advertising in the California State Contracts Register under specified circumstances and provides that the department will identify the exemptions and publish them prominently in each issue of the California State Contracts Register.

This bill instead would require the department to publish the exemptions utilizing the Financial Information System for California.

(2) Existing law authorizes the Department of General Services, relative to contracts for goods, services, information technology, and telecommunications, to use a negotiation process if the department finds that one or more specified conditions exist. Existing law, when it is in the best interests of the state, also authorizes the department to negotiate amendments to the terms and conditions of existing contracts, as specified. Existing law authorizes the Department of Technology to utilize the negotiation process to procure information technology and telecommunications goods and services on behalf of state departments and information technology projects, as provided. Existing law requires that the Department of Technology and the Department of General Services report annually to the relevant budget subcommittees of each house of the Legislature during budget hearings on the Department of Technology's use of the negotiation process.

This bill would eliminate the requirement that the Department of General Services make that report.

(3) Existing law, whenever a contract or purchase order for goods and services is not to be awarded to the lowest bidder, requires that the lowest bidder be notified 24 hours before the contract or purchase order is awarded to another bidder. Existing law, upon written request by any bidder, requires notice of the proposed award to be posted in a public place in the offices of the department at least 24 hours before the contract or purchase order is awarded. Existing law, if a bidder files a specified protest with the department before the award is made, requires that the contract or purchase order not be awarded until either the protest has been withdrawn or the department has made a final decision relative to the protest.

This bill would eliminate application of this provision to a purchase order and would require a public notice posted upon written request to instead be posted in a public place specified in the solicitation document by the department.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

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

SECTION 1. Section 14827.3 of the Government Code is amended to read:

14827.3. The Department of General Services may exempt a state agency from the requirement of advertising in the California State Contracts Register where the contract is necessary for the immediate preservation of life or state property, where the contract is with another state or local agency and where the Director of General Services determines that the state's best interest would be better served by an exemption. The Department of General Services may, likewise, exempt a class or classes of contracts, where it appears to be in the state's best interest to do so. The department shall identify the exemptions and publish them utilizing the Financial Information System for California.

SEC. 2. Section 6611 of the Public Contract Code is amended to read:

6611. (a) Notwithstanding any other law, the Department of General Services may, relative to contracts for goods, services, information technology, and telecommunications, use a negotiation process if the department finds that one or more of the following conditions exist:

- (1) The business need or purpose of a procurement or contract can be further defined as a result of a negotiation process.
- (2) The business need or purpose of a procurement or contract is known by the department, but a negotiation process may identify different types of solutions to fulfill this business need or purpose.
- (3) The complexity of the purpose or need suggests a bidder's costs to prepare and develop a solicitation response are extremely high.
- (4) The business need or purpose of a procurement or contract is known by the department, but negotiation is necessary to ensure that the department is receiving the best value or the most cost-efficient goods, services, information technology, and telecommunications.

(b) When it is in the best interests of the state, the department may negotiate amendments to the terms and conditions, including scope of work, of existing contracts for goods, services, information technology, and telecommunications, whether or not the original contract was the result of competition, on behalf of itself or another state agency.

(c) (1) The department shall establish the procedures and guidelines for the negotiation process described in subdivision (a). Those procedures and guidelines shall include, but not be limited to, a clear description of the methodology that will be used by the department to evaluate a bid for the procurement of goods, services, information technology, and telecommunications.

(2) The procedures and guidelines described in paragraph (1) may include provisions that authorize the department to receive supplemental bids after the initial bids are opened. If the procedures and guidelines include these provisions, the procedures and guidelines shall specify the conditions under which supplemental bids may be received by the department.

(d) An unsuccessful bidder shall have no right to protest the results of the negotiating process undertaken pursuant to this section. As a remedy, an unsuccessful bidder may file a petition for a writ of mandate in accordance with Section 1085 of the Code of Civil Procedure. The venue for the petition for a writ of mandate shall be Sacramento, California. An action filed pursuant to this subdivision shall be given preference by the court.

(e) (1) The Department of Technology may utilize the negotiation process described in subdivisions (a) and (b) for the purpose of procuring information technology and telecommunications goods and services on behalf of state departments and information technology projects.

(2) Nothing in this section shall be interpreted to supersede the department's existing statutory control over procurement processes as dictated in Section 12100.

(f) On or before January 1, 2013, and annually thereafter, the Department of Technology shall report to the relevant budget subcommittees of each house of the Legislature on the use of subdivision (e) during budget hearings.

SEC. 3. Section 10306 of the Public Contract Code is amended to read:

10306. (a) Whenever a contract under this article is not to be awarded to the lowest bidder, the bidder shall be notified 24 hours prior to awarding the contract to another bidder. Upon written request by any bidder who has submitted a bid, notice of the proposed award shall be posted in a public place specified in the solicitation document by the department, that may include an electronic location or Internet Web site, at least 24 hours prior to awarding the contract. If prior to making the award, any bidder who has submitted a bid files a protest with the department against the awarding of the contract on the ground that he or she is

the lowest responsible bidder meeting specifications, the contract shall not be awarded until either the protest has been withdrawn or the department has made a final decision as to the action to be taken relative to the protest. In computing the 24-hour periods provided for in this section, Saturdays, Sundays, and legal holidays shall be excluded.

(b) Within 10 days after filing a protest, the protesting bidder shall file with the department a full and complete written statement specifying in detail the ground of the protest and the facts in support thereof.