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AB-971 Public contracts: information technology services: contractor evaluations. (2019-2020)

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Date Published: 10/04/2019 02:00 PM

Assembly Bill No. 971

CHAPTER 496

An act to add Section 12102.3 to the Public Contract Code, relating to public contracts.

[Approved by Governor October 03, 2019. Filed with Secretary of State October 03, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 971, Salas. Public contracts: information technology services: contractor evaluations.

Existing law requires all contracts for the acquisition of information technology goods and services related to information technology projects, as defined, to be made by or under the supervision of the Department of Technology. Existing law requires all other contracts for the acquisition of information technology goods or services to be made by or under the supervision of the Department of General Services. Under existing law, both the Department of Technology and the Department of General Services are authorized to delegate their authority to another agency, as specified.

Existing law establishes various procedures for the procurement of state goods and services, including consulting services and personal services. Existing law requires each state agency to conduct a postevaluation, by completing a postevaluation form, of each consulting services contract totaling \$5,000 or more that it executes. Existing law requires the state agency to evaluate the performance of the contractor in doing the work or delivering the services for which the contract was awarded, including evaluating any cost overruns or delayed completions.

This bill would require an awarding department, as specified, to conduct a postevaluation similar to the one described above for each contract for the acquisition of information technology services, as defined, totaling \$500,000 or more. The bill would require a department to base a postevaluation on objective facts and support them with program and contract performance data. The bill would require the Department of Technology and the Department of General Services to jointly develop, and each awarding department to use, a standard form or forms that contain objective postevaluation factors or metrics, as specified. The bill would require a public official who signs a postevaluation to confirm its accuracy. The bill would require an awarding department and the Department of Technology to keep postevaluations on file, as specified, and would authorize a contractor to comment on a negative postevaluation. The bill would provide that the postevaluations and contractor responses are not public records.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

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

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

SECTION 1. Section 12102.3 is added to the Public Contract Code, to read:

12102.3. (a) The department shall conduct a postevaluation of each contract for the acquisition of information technology services totaling five hundred thousand dollars (\$500,000) or more that it executes.

(b) The department shall evaluate the performance of the contractor in doing the work for which the contract was awarded. The department shall base a postevaluation on objective facts and support them with program and contract performance data. The Department of Technology and the Department of General Services shall jointly develop a standard form or forms and the procedures to implement this section. Each department shall use the standard form or forms that contain objective postevaluation factors or metrics appropriate to the nature of the information technology service and project type. In developing a standard postevaluation form or forms under this subdivision, the Department of Technology and the Department of General Services shall jointly gather feedback from stakeholders in the information technology industry to ensure that the use of any factors or metrics on the standard form or forms are appropriate to the nature of the information technology service or project type. A public official who signs a postevaluation shall confirm its accuracy. The department shall use a standard form developed pursuant to this subdivision to report on all of the following:

- (1) Whether the contracted work was completed within the time specified in the contract.
- (2) Whether the contracted work was completed within the budget specified in the contract.
- (3) Factors outside the control of the contractor that caused difficulties in contractor performance.
- (4) Other information the department, the Department of Technology, or the Department of General Services may require.

(c) If the contractor's performance was judged unsatisfactory on any of the factors or metrics specified in a standard postevaluation form developed pursuant to subdivision (b) and was not mitigated by any factors or metrics outside the control of the contractor that may have caused difficulties in the contractor's performance, the postevaluation shall be considered unsatisfactory for the purposes of subdivisions (e) and (f).

(d) The postevaluation shall be prepared within 60 days of the completion of the contract.

(e) Postevaluations shall remain on file at the offices of the department for a period of 36 months following contract completion. The department conducting the postevaluation shall place one copy of the postevaluation form in the department's contract file and, if the department is not the Department of Technology, send one copy of the form to the Department of Technology within five working days of the completion of the postevaluation. The postevaluations and contractor responses on file shall not be public records. The Department of Technology shall act as a central depository for all departments making postevaluations or desiring information on a contractor's record with the state and shall send a copy of any postevaluation report and response to the contracting manager or contracting officer of any department, upon request. Failure by a department to send a postevaluation to the Department of Technology may be grounds for the rejection of future delegation of information technology projects pursuant to Section 11546 of the Government Code.

(f) (1) Upon submitting an unsatisfactory postevaluation to the Department of Technology, the department shall notify and send a copy of the postevaluation to the contractor within 15 days.

(2) A contractor may comment on a negative postevaluation. Comments made pursuant to this paragraph shall be submitted to the department and the Department of Technology, to be attached to and filed with the copies of the postevaluation required to be filed pursuant to subdivision (e).

(g) For purposes of this section, the following definitions shall apply:

- (1) "Department" means the state agency that receives the information technology services.
- (2) "Information technology services" means services, including, but not limited to, information technology personal services and information technology consulting services, acquired in connection with an information technology project, as defined in Section 4819.2 of the State Administrative Manual.

SEC. 2. The Legislature finds and declares that Section 1 of this act, which adds Section 12102.3 of the Public Contract Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

To protect the interest of contractor privacy, it is necessary that a postevaluation or contractor response pursuant to Section 12102.3 of the Public Contract Code not be made public. Public access to postevaluations may dissuade qualified bidders from

bidding and thereby create public safety concerns.