

2023 Regular Session

HOUSE BILL NO. 431

BY REPRESENTATIVE DESHOTEL

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

PROCUREMENT: Provides relative to procurement of information technology

1 AN ACT

2 To amend and reenact R.S. 24:673(A) and (C) and R.S. 39:198(A), (B)(introductory

3 paragraph) and (1), (C)(1), (D)(introductory paragraph), (1), and (2),

4 (E)(introductory paragraph) and (4), (G)(introductory paragraph) and (1)(a), (c), and

5 (d), and (M), to enact R.S. 39:197(20), (21), and (22), 1556(63), 1593(6)(f), and

6 1600.2, and to repeal R.S. 39:198(G)(4) and 200(I), relative to the procurement of

7 information technology; to provide for authority of certain committees; to provide

8 for methods of procurement; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 24:673(A) and (C) are hereby amended and reenacted to read as
11 follows:

12 §673. Budget requests and expenditure requests; technology funds, fees, and
13 donations; review

14 A. ~~At the request of the Joint Legislative Committee on the Budget, the~~
 15 ~~committee shall review any budget request or expenditure request~~ The committee
 16 may review, and shall review if provided by law or if requested by the Joint
 17 Legislative Committee on the Budget, any budget request, expenditure request, or
 18 procurement request related to technology or cybersecurity. The committee shall

1 perform its review and submit its comments and recommendations ~~regarding the~~
2 ~~request~~ to the Joint Legislative Committee on the Budget in a timely manner.

3 * * *

4 C. The committee may review ~~all~~ any technology fees and expenditures
5 related to information technology and cybersecurity from ~~dedicated funds~~ any means
6 of finance and shall report its findings and recommendations as it deems appropriate.

7 Section 2. R.S. 39:198(A), (B)(introductory paragraph) and (1), (C)(1),
8 (D)(introductory paragraph), (1), and (2), (E)(introductory paragraph) and (4),
9 (G)(introductory paragraph) and (1)(a), (c), and (d), and (M) are hereby amended and
10 reenacted and R.S. 39:197(20), (21), and (22), 1556(63), 1593(6)(f), and 1600.2 are hereby
11 enacted to read as follows:

12 §197. Definitions

13 For the purposes of this Part, the following words and phrases shall be
14 defined as follows:

15 * * *

16 (20) "Consulting service" shall have the same meaning as in R.S. 39:1556.

17 (21) "Invitation to negotiate" means a written or electronically posted
18 solicitation for competitive sealed replies to select one or more vendors with which
19 to commence negotiations for the procurement of commodities or contractual
20 services.

21 (22) "Professional service" shall have the same meaning as in R.S. 39:1556.

22 §198. Types of contracts permitted

23 A. The types of contracts permitted in the procurement of information
24 technology systems, information technology services, ~~and software,~~ and professional
25 services contracts and consulting services contracts related to information
26 technology, are defined in this Part, and the provisions of this Part supersede, with
27 respect to such procurements, any existing conflicting statutory provisions and
28 supplement the provisions of R.S. 39:1551 through 1736.

1 negotiate. Such justification shall identify and consider all cost factors relevant to
2 that contract.

3 * * *

4 E. ~~Notwithstanding the provisions of R.S. 39:1615 to the contrary, the~~ The
5 use of a multi-year contract for information technology systems, ~~and~~ information
6 technology services, and professional services and consulting services contracts
7 related to information technology shall be in accordance with rules and regulations
8 and under the following conditions:

9 * * *

10 (4) A report of all multi-year contracts shall be provided to the Joint
11 Legislative Committee on the Budget and the Joint Legislative Committee on
12 Technology and Cybersecurity no later than ninety days after the end of each fiscal
13 year.

14 * * *

15 G. Multiyear contracts other than direct order contracts and contracts for
16 fiscal intermediary services. The office of technology services, through the office of
17 state procurement, may on behalf of any state agency ~~State agencies may~~ enter into
18 contracts for the lease or purchase of information technology systems, information
19 technology services, ~~or~~ software, and professional services and consulting services
20 contracts related to information technology when the term of such lease or purchase
21 is greater than twelve months or involves more than one fiscal year in accordance
22 with the following provisions:

23 (1) General terms and conditions for multiyear contracts shall be as follows:

24 (a) All contracts of this type shall be entered into ~~through competitive sealed~~
25 ~~bidding~~ using one of the methods of source selection provided in R.S. 39:1594, 1595,
26 1600(D), 1600.2, and 1702.

27 * * *

28 (c)(i) The term of such contract shall ~~not exceed sixty months~~ be in
29 accordance with Subsections B, C, and D of this Section.

1 §1556. Definitions

2 As used in this Chapter, the words defined in this Section shall have the
3 meanings set forth below, unless the context in which they are used clearly requires
4 a different meaning or a different definition is prescribed for a particular Part or
5 provision:

6 * * *

7 (63) "Invitation to negotiate" means a written or electronically posted
8 solicitation for competitive sealed replies to select one or more vendors with which
9 to commence negotiations for the procurement of commodities or contractual
10 services.

11 * * *

12 §1593. Methods of source selection

13 Unless otherwise authorized by law, all state contracts shall be awarded by
14 one of the following methods:

15 * * *

16 (6) R.S. 39:1600, other procurement methods:

17 * * *

18 (f) Invitation to negotiate.

19 * * *

20 §1600.2. Invitation to negotiate

21 A. Notwithstanding any other provision of law to the contrary, with the
22 written determination by the state chief procurement officer that the best interest of
23 the state would be served, especially where the business need is complex or requires
24 innovation, an invitation to negotiate may be utilized for the acquisition of materials,
25 supplies, services of any type, products, equipment, or consulting services of any
26 monetary amount, including small purchases.

27 B. Before issuing an invitation to negotiate, the head of the agency shall
28 determine and specify in writing that procurement by the other methods outlined in
29 R.S. 39:1594, 1595, 1600(D), and 1702 are not practicable.

1 C. The invitation to negotiate shall describe the questions being explored, the
2 facts being sought, and the specific goals or problems that are the subject of the
3 solicitation, and shall be subject to all of the following conditions:

4 (1) The formal solicitation must specifically allow for the possibility of
5 negotiation and describe, with as much specificity as possible, how negotiations may
6 be conducted.

7 (2) Submissions shall be evaluated and ranked based on the evaluation
8 criteria in the formal solicitation.

9 (3) Only those vendors whose proposals or offers are determined to be
10 acceptable, in accordance with criteria for negotiations set forth in the formal
11 solicitation, shall be candidates for negotiations.

12 (4) Negotiations shall be conducted first with the vendor that is the apparent
13 highest ranked responsible vendor, unless concurrent negotiations are permissible,
14 in accordance with the terms of the solicitation.

15 (5) Auction techniques and disclosure of information derived from
16 competing proposals shall be prohibited.

17 (6) Any clarifications or changes resulting from negotiations shall be
18 documented in writing.

19 (7) If the parties to negotiations are unable to agree, the office of state
20 procurement shall formally terminate negotiations and may undertake negotiations
21 with the next ranked vendor.

22 (8) If negotiations as provided for in this Section fail to result in a contract,
23 as determined by the office of state procurement, the formal solicitation may be
24 canceled.

25 D. The office of state procurement may terminate negotiations at any time,
26 in the best interest of the state, and shall provide the reasons therefor in writing.

27 E. The contract file for the vendor selection through an invitation to negotiate
28 shall contain a short plain statement that explains the basis for the selection of the
29 vendor and that sets forth the vendor's deliverables and price, pursuant to the

1 contract, along with an explanation of how the deliverables and price provide the
2 best value to the state.

3 F. In accordance with the Administrative Procedure Act, the division of
4 administration, office of state procurement, is hereby authorized and directed to
5 adopt and promulgate rules necessary for the administration of the provisions of this
6 Section.

7 Section 3. R.S. 39:198(G)(4) and 200(I) are hereby repealed in their entirety.

8 Section 4. The Louisiana State Law Institute is hereby authorized and directed to
9 arrange in alphabetical order and renumber the definitions provided in R.S. 39:197 and 1556
10 as amended by this Act.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 431 Reengrossed

2023 Regular Session

Deshotel

Abstract: Provides for methods of procurement for the office of technology services.

Present law provides for the creation of the Joint Legislative Committee on Technology and Cybersecurity (JLCTC). Provides for the duties and functions of the committee, which include the power to review budget or expenditure requests related to technology or cybersecurity.

Proposed law retains present law and adds the power to review procurement requests related to technology or cybersecurity.

Present law provides for definitions related to the procurement of information technology.

Proposed law retains present law and adds the definitions of consulting service, invitation to negotiate, and professional services.

Present law provides for the types of contracts permitted in the procurement of information technology systems, information technology services, and software. Provides for contracts to be entered into through a request for proposals.

Proposed law retains present law and adds professional services and consulting services contracts related to information technology to the types of contracts permitted in present law provisions that govern procurement of information technology. Adds competitive sealed bids, competitive sealed proposals, reverse auction, cooperative purchasing, and an invitation to negotiate as the methods of procurement for information technology.

Present law provides for multi-year contracts in the procurement of information technology systems, information technology services, and software.

Proposed law retains present law and adds professional services and consulting services

contracts related to information technology to the types of contracts eligible for multi-year contracts. Provides that professional services and consulting services contracts related to information technology shall not exceed five years. Provides that contracts for electronic benefit issuance system services shall be for an initial contract period of six years with an option for two options for two-year extensions up to a maximum of ten years.

Present law requires all multi-year contracts to contain language concerning the appropriation of funds to fulfill the requirements of the contracts. Proposed law changes the word "must" to "shall". Proposed law provides for when funds are not appropriated to continue a multi-year contract and the cost of cancellation of a contract.

Present law provides for a report of all multi-year contracts to be provided to the Joint Legislative Committee on the Budget (JLCB) each fiscal year. Provides that any contract entered into for more than three years is subject to approval by JLCB.

Proposed law retains present law and adds that the report shall also be provided to JLCTC. Adds that any contract entered into for more than three years, inclusive of initial contract extension options and later executed contract extensions, and has a cost of more than \$2 million or procured through an invitation to negotiate is subject to review by JLCTC and approval of JLCB. Requires those contracts for review and approval to be submitted 30 days prior to the scheduled meetings of JLCTC and JLCB. Further requires the office of technology services to submit a monthly report of all multiyear contracts, including pending contracts, with a cost of more than \$1 million to JLCTC.

Proposed law provides for the invitation to negotiate and sets the parameters for the new procurement method.

Proposed law repeals the requirement that information technology contracts are subject to review by the procurement support team.

(Amends R.S. 24:673(A) and (C) and R.S. 39:198(A), (B)(intro. para.) and (1), (C)(1), (D)(intro. para.), (1), and (2), (E)(intro. para.) and (4), (G)(intro. para.) and (1)(a), (c), and (d), and (M); Adds R.S. 39:197(20), (21), and (22), 1556(63), 1593(6)(f), and 1600.2; Repeals R.S. 39:198(G)(4) and 200(I))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Appropriations to the original bill:

1. Provide for the authority of the Joint Legislative Committee on Technology and Cybersecurity (JLCTC) to review any procurement request.
2. Add the definitions of consulting service and professional service.
3. Add the authority to the office of technology services to enter into professional services and consulting services contracts related to information technology.
4. Add the invitation to negotiate as a method of procurement available to the office of technology services and add the requirements for the invitation to negotiate.
5. Add professional services and consulting services contracts related to information technology to the types of contracts that may be multi-year contracts.
6. Authorize contracts for electronic benefit issuance system services to be entered into for periods of up to ten years with an initial contract period of six years and two options for two-year extensions.

7. Require all contracts to contain language concerning the appropriation of funds to fulfill the requirements of the contract and provide for when funds are not appropriated and the cost of the cancellation of a contract.
8. Provide for the review of a contract procured for a period of more than three years and with a cost of more than \$2 M by JLCTC and approval by JLCB, require all contracts procured through an invitation to negotiate to be reviewed by JLCTC, and provide for a time line in which to submit contracts for review and approval to JLCTC and JLCB, respectively.
9. Repeal R.S. 39:198(G)(4).
10. Make technical changes.

The House Floor Amendments to the engrossed bill:

1. Change "state purchasing office" to "office of state procurement".
2. Change the methods of source selection from those found in R.S. 39:1593 to those found in R.S. 39:1594, 1595, 1600(D), 1600.2, and 1702.
3. Change "contract extensions" to "contract extension options" relative to those contracts which shall be reviewed by the Joint Legislative Committee on Technology and Cybersecurity (JLCTC) and approved by the Joint Legislative Committee on the Budget (JLCB).
4. Add the provision that any contract extension of a contract procured for a period of more than three years and \$2 million shall be reviewed by JLCTC and approved by JLCB.
5. Change the requirement that an agency shall submit a contract for review by JLCTC and approval by JLCB from 65 days prior to issuance to 30 days prior to the scheduled meetings of JLCTC and JLCB.
6. Require the office of technology services to submit a monthly report of all multiyear contracts, including pending contracts, with a cost of over \$1 million.
7. Require all contracts procured by an invitation to negotiate to be reviewed by JLCTC.
8. Move provisions of proposed law providing for the invitation to negotiate from R.S. 39:1600(F) to R.S. 39:1600.2.
9. Add provisions repealing R.S. 39:200(I).
10. Make technical changes.