HLS 23RS-501 REENGROSSED

2023 Regular Session

HOUSE BILL NO. 431

1

BY REPRESENTATIVE DESHOTEL

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

AN ACT

PROCUREMENT: Provides relative to procurement of information technology

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

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| 1 | perform its review and submit its comments and recommendations regarding the |
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| 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 |
| 17 18 | (21) "Invitation to negotiate" means a written or electronically posted solicitation for competitive sealed replies to select one or more vendors with which |
| | |
| 18 | solicitation for competitive sealed replies to select one or more vendors with which |
| 18 19 | solicitation for competitive sealed replies to select one or more vendors with which to commence negotiations for the procurement of commodities or contractual |
| 18 19 20 | solicitation for competitive sealed replies to select one or more vendors with which to commence negotiations for the procurement of commodities or contractual services. |
| 18 19 20 21 | solicitation for competitive sealed replies to select one or more vendors with which to commence negotiations for the procurement of commodities or contractual services. (22) "Professional service" shall have the same meaning as in R.S. 39:1556. |
| 18 19 20 21 22 | solicitation for competitive sealed replies to select one or more vendors with which to commence negotiations for the procurement of commodities or contractual services. (22) "Professional service" shall have the same meaning as in R.S. 39:1556. §198. Types of contracts permitted |
| 18 19 20 21 22 23 | solicitation for competitive sealed replies to select one or more vendors with which to commence negotiations for the procurement of commodities or contractual services. (22) "Professional service" shall have the same meaning as in R.S. 39:1556. §198. Types of contracts permitted A. The types of contracts permitted in the procurement of information |
| 18 19 20 21 22 23 24 | solicitation for competitive sealed replies to select one or more vendors with which to commence negotiations for the procurement of commodities or contractual services. (22) "Professional service" shall have the same meaning as in R.S. 39:1556. §198. Types of contracts permitted A. The types of contracts permitted in the procurement of information technology systems, information technology services, and professional |
| 18 19 20 21 22 23 24 25 | solicitation for competitive sealed replies to select one or more vendors with which to commence negotiations for the procurement of commodities or contractual services. (22) "Professional service" shall have the same meaning as in R.S. 39:1556. §198. Types of contracts permitted A. The types of contracts permitted in the procurement of information technology systems, information technology services, and software, and professional services contracts and consulting services contracts related to information |

| 1 | B. The office of technology services, through the state purchasing office, |
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| 2 | office of state procurement, may, on behalf of any state agency, enter into |
| 3 | information technology systems contracts, as well as professional services contracts |
| 4 | and consulting services contracts related to information technology, in accordance |
| 5 | with the following provisions: |
| 6 | (1) Contracts of this type shall be entered into through a request for |
| 7 | proposals as provided in R.S. 39:199. using one of the methods of source selection |
| 8 | provided in R.S. 39:1594, 1595, 1600(D), 1600.2, and 1702. An invitation to bid |
| 9 | format may be utilized with written approval from the state chief information officer. |
| 10 | * * * |
| 11 | C. The office of technology services, through the office of state procurement, |
| 12 | may on behalf of any state agency, enter into information technology services |
| 13 | contracts in accordance with the following provisions: |
| 14 | (1) Contracts of this type shall be entered into through a request for |
| 15 | proposals as provided in R.S. 39:199. using one of the methods of source selection |
| 16 | provided in R.S. 39:1594, 1595, 1600(D), 1600.2, and 1702. An invitation to bid |
| 17 | format may be utilized with written approval from the state chief information officer. |
| 18 | * * * |
| 19 | D. The office of technology services, through the office of state |
| 20 | procurement, may on behalf of any state agency, enter into a an information |
| 21 | technology systems lease contract for an operating lease, installment purchase, or |
| 22 | financed lease for information technology systems in accordance with the following |
| 23 | provisions: |
| 24 | (1) All contracts of this type shall be entered into through a request for |
| 25 | proposals as provided in R.S. 39:199. using one of the methods of source selection |
| 26 | provided in R.S. 39:1594, 1595, 1600(D), 1600.2, and 1702. |
| 27 | (2) The justification of such contracts must be approved by the office of |
| 28 | technology services prior to issuance of a request for proposals or an invitation to |

| 1 | negotiate. Such justification shall identify and consider all cost factors relevant to |
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| 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 | (ii) Notwithstanding Item (i) of this Subparagraph, contracts for electronic |
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| 2 | benefits issuance system services as required under R.S. 46:450.1 may be entered |
| 3 | into for periods of up to ten years. The contracts shall be for an initial contract |
| 4 | period of six years with the state having two options for two-year extensions up to |
| 5 | a maximum of ten years. |
| 6 | (d)(i) All such contracts must shall contain the following annual |
| 7 | appropriation dependency clause: |
| 8 | "The continuation of this contract is contingent upon the continuation of an |
| 9 | appropriation of funds by the legislature to fulfill the requirements of the contract. |
| 10 | If the legislature fails to appropriate sufficient monies to provide for the continuation |
| 11 | of a contract or if such appropriation is reduced by the veto of the governor or by any |
| 12 | means provided in the Appropriation Act or Title 39 of the Louisiana Revised |
| 13 | Statutes of 1950 to prevent the total appropriations for the year from exceeding |
| 14 | revenues for that year or for any other lawful purpose and the effect of such |
| 15 | reduction is to provide insufficient monies for the continuation of the contract, the |
| 16 | contract shall terminate on the date of the beginning of the first fiscal year for which |
| 17 | funds are not appropriated." |
| 18 | (ii) When funds are not appropriated or otherwise made available to support |
| 19 | continuation of performance in the following fiscal year of a multiyear contract for |
| 20 | professional or consulting services, the contract for the remaining term shall be |
| 21 | cancelled and the contractor shall be reimbursed in accordance with the terms of the |
| 22 | contract for the reasonable value of any nonrecurring costs incurred but not |
| 23 | amortized in the price of services delivered pursuant to the contract. The cost of |
| 24 | cancellation may be paid from appropriations made specifically for the payment of |
| 25 | such cancellation costs or from unobligated funds of the using agency. |
| 26 | (iii) With respect to all multiyear contracts for professional services and |
| 27 | consulting services under this Subsection, there shall be no provisions for a penalty |
| 28 | to the state for cancellation or early payment of the contract. |
| 29 | * * * |

| 1 | M.(1)(a) Any contract entered into for a period of more than three years as |
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| 2 | authorized by this Section shall be subject to prior approval of the Joint Legislative |
| 3 | Committee on the Budget. No award of any contract procured for a period of more |
| 4 | than three years, inclusive of contract extension options, and with a cost of more than |
| 5 | two million dollars shall be made until reviewed by the Joint Legislative Committee |
| 6 | on Technology and Cybersecurity and approved by the Joint Legislative Committee |
| 7 | on the Budget. The provisions of this Subparagraph shall also apply to the extension |
| 8 | of any such contract. |
| 9 | (b) The issuing agency shall submit the contract for review by the Joint |
| 10 | Legislative Committee on Technology and Cybersecurity and approval by the Joint |
| 11 | Legislative Committee on the Budget no later than thirty days prior to the scheduled |
| 12 | meetings of the Joint Legislative Committee on Technology and Cybersecurity and |
| 13 | the Joint Legislative Committee on the Budget. The Joint Legislative Committee on |
| 14 | Technology and Cybersecurity shall conduct a public hearing to review the award |
| 15 | and shall make recommendations to the Joint Legislative Committee on the Budget. |
| 16 | Upon receiving the recommendations of the Joint Legislative Committee on |
| 17 | Technology and Cybersecurity, the Joint Legislative Committee on the Budget shall |
| 18 | conduct a public hearing to consider approval of the award. |
| 19 | (2) The office of technology services shall submit a monthly report of all |
| 20 | multiyear contracts with a cost of more than one million dollars to the Joint |
| 21 | Legislative Committee on Technology and Cybersecurity. The report shall include |
| 22 | all pending multiyear contracts with a cost of more than one million dollars that may |
| 23 | be executed within thirty days of the reporting period. |
| 24 | (3) No award of any contract procured through an invitation to negotiate shall |
| 25 | be made until after it has been reviewed by the Joint Legislative Committee on |
| 26 | Technology and Cybersecurity. |
| 27 | * * * |

| 1 | §1556. Definitions |
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| 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. |

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| 2 | facts being sought, and the specific goals or problems that are the subject of the |
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| 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 |

C. The invitation to negotiate shall describe the questions being explored, the

1 contract, along with an explanation of how the deliverables and price provide the 2 best value to the state. F. In accordance with the Administrative Procedure Act, the division of 3 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.

<u>Present law provides</u> 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.

<u>Proposed law</u> retains <u>present law</u> 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.

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

<u>Present law</u> 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.

<u>Proposed law</u> retains <u>present law</u> and adds professional services and consulting services contracts related to information technology to the types of contracts permitted in <u>present law</u> 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.

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

<u>Proposed law</u> retains <u>present law</u> and adds professional services and consulting services

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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.

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

<u>Present law</u> 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.

<u>Proposed law</u> retains <u>present law</u> 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.

<u>Proposed law</u> provides for the invitation to negotiate and sets the parameters for the new procurement method.

<u>Proposed law</u> 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 <u>House Committee on Appropriations</u> 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.

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- 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 <u>proposed law</u> 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.