

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)(1), (C)(1), (D)(1)
3 and (2), (E)(introductory paragraph) and (4), (G)(introductory paragraph) and (1)(a),
4 (c), and (d), and (M), to enact R.S. 39:197(20), (21), and (22), 1556(63), 1593(6)(f),
5 and 1600(F), and to repeal R.S. 39:198(G)(4), relative to the procurement of
6 information technology; to provide for authority of certain committees; to provide
7 for methods of procurement; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

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

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

13 A. ~~At the request of the Joint Legislative Committee on the Budget, the~~
14 ~~committee shall review any budget request or expenditure request~~ The committee
15 may review, and shall review if provided by law or if requested by the Joint
16 Legislative Committee on the Budget, any budget request, expenditure request, or
17 procurement request related to technology or cybersecurity. The committee shall
18 perform its review and submit its comments and recommendations ~~regarding the~~
19 ~~request~~ to the Joint Legislative Committee on the Budget in a timely manner.

20 * * *

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 C. The committee may review ~~at~~ any technology fees and expenditures
2 related to information technology and cybersecurity from ~~dedicated funds~~ any means
3 of finance and shall report its findings and recommendations as it deems appropriate.

4 Section 2. R.S. 39:198(A), (B)(1), (C)(1), (D)(1) and (2), (E)(introductory paragraph)
5 and (4), (G)(introductory paragraph) and (1)(a), (c), and (d), and (M) are hereby amended
6 and reenacted and R.S. 39:197(20), (21), and (22), 1556(63), 1593(6)(f), and 1600(F) are
7 hereby enacted to read as follows:

8 §197. Definitions

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

11 * * *

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

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

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

18 §198. Types of contracts permitted

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

25 B. The office of technology services, through the state purchasing office,
26 may, on behalf of any state agency, enter into information technology systems
27 contracts, as well as professional services contracts and consulting services contracts
28 related to information technology, in accordance with the following provisions:

1 (1) Contracts of this type shall be entered into ~~through a request for~~
2 ~~proposals as provided in R.S. 39:199.~~ using one of the methods of source selection
3 provided in R.S. 39:1593. An invitation to bid format may be utilized with written
4 approval from the state chief information officer.

5 * * *

6 C. The office of technology services, through the office of state procurement,
7 may on behalf of any state agency, enter into information technology services
8 contracts in accordance with the following provisions:

9 (1) Contracts of this type shall be entered into ~~through a request for~~
10 ~~proposals as provided in R.S. 39:199.~~ using one of the methods of source selection
11 provided in R.S. 39:1593. An invitation to bid format may be utilized with written
12 approval from the state chief information officer.

13 * * *

14 D. The office of technology services, through the office of state
15 procurement, may on behalf of any state agency, enter into a information technology
16 systems lease contract for an operating lease, installment purchase, or financed lease
17 for information technology systems in accordance with the following provisions:

18 (1) All contracts of this type shall be entered into ~~through a request for~~
19 ~~proposals as provided in R.S. 39:199.~~ using one of the methods of source selection
20 provided in R.S. 39:1593.

21 (2) The justification of such contracts must be approved by the office of
22 technology services prior to issuance of a request for proposals or an invitation to
23 negotiate. Such justification shall identify and consider all cost factors relevant to
24 that contract.

25 * * *

26 E. ~~Notwithstanding the provisions of R.S. 39:1615 to the contrary, the~~ The
27 use of a multi-year contract for information technology systems, ~~and~~ information
28 technology services, professional services, and consulting services related to

1 information technology, shall be in accordance with rules and regulations and under
2 the following conditions:

3 * * *

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

8 * * *

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

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

18 (a) All contracts of this type shall be entered into ~~through competitive sealed~~
19 ~~bidding~~ using one of the methods of source selection provided in R.S. 39:1593.

20 * * *

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

23 (ii) Notwithstanding Item (i) of this Subparagraph, contracts for electronic
24 benefits issuance system services as required under R.S. 46:450.1 may be entered
25 into for periods of up to ten years. The contracts shall be for an initial contract
26 period of six years with the state having two options for two-year extensions up to
27 a maximum of ten years.

28 (d)(i) All such contracts ~~must~~ shall contain the following annual
29 appropriation dependency clause:

1 "The continuation of this contract is contingent upon the continuation of an
2 appropriation of funds by the legislature to fulfill the requirements of the contract.
3 If the legislature fails to appropriate sufficient monies to provide for the continuation
4 of a contract or if such appropriation is reduced by the veto of the governor or by any
5 means provided in the Appropriation Act or Title 39 of the Louisiana Revised
6 Statutes of 1950 to prevent the total appropriations for the year from exceeding
7 revenues for that year or for any other lawful purpose and the effect of such
8 reduction is to provide insufficient monies for the continuation of the contract, the
9 contract shall terminate on the date of the beginning of the first fiscal year for which
10 funds are not appropriated."

11 (ii) When funds are not appropriated or otherwise made available to support
12 continuation of performance in the following fiscal year of a multiyear contract for
13 professional or consulting services, the contract for the remaining term shall be
14 cancelled and the contractor shall be reimbursed in accordance with the terms of the
15 contract for the reasonable value of any nonrecurring costs incurred but not
16 amortized in the price of services delivered pursuant to the contract. The cost of
17 cancellation may be paid from appropriations made specifically for the payment of
18 such cancellation costs or from unobligated funds of the using agency.

19 (iii) With respect to all multiyear contracts under this Subsection, there shall
20 be no provisions for a penalty to the state for cancellation or early payment of the
21 contract.

22 * * *

23 ~~M.(1)(a) Any contract entered into for a period of more than three years as~~
24 ~~authorized by this Section shall be subject to prior approval of the Joint Legislative~~
25 ~~Committee on the Budget. No award of any contract procured for a period of more~~
26 than three years, inclusive of contract extensions, and with a cost of more than two
27 million dollars shall be made until reviewed by the Joint Legislative Committee on
28 Technology and Cybersecurity and approved by the Joint Legislative Committee on
29 the Budget.

1 (b) No award of any contract procured through an invitation to negotiate
2 shall be made until reviewed by the Joint Legislative Committee on Technology and
3 Cybersecurity.

4 (2) The issuing agency shall submit the award for review by the Joint
5 Legislative Committee on Technology and Cybersecurity and approval by the Joint
6 Legislative Committee on the Budget no later than sixty-five days prior to issuance.
7 The Joint Legislative Committee on Technology and Cybersecurity shall conduct a
8 public hearing to review the award and shall make recommendations to the Joint
9 Legislative Committee on the Budget. Upon receiving the recommendations of the
10 Joint Legislative Committee on Technology and Cybersecurity, the Joint Legislative
11 Committee on the Budget shall conduct a public hearing to consider approval of the
12 award.

13 §1556. Definitions

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

18 * * *

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

23 * * *

24 §1593. Methods of source selection

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

27 * * *

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

29 * * *

1 (f) Invitation to negotiate.

2 * * *

3 §1600. Other procurement methods

4 * * *

5 F. Invitation to negotiate. (1) Notwithstanding any other provision of this
6 Section to the contrary, with the written determination by the state chief procurement
7 officer that the best interest of the state would be served, an invitation to negotiate
8 may be utilized for the acquisition of materials, supplies, services of any type,
9 products, equipment, or consulting services of any monetary amount, including small
10 purchases.

11 (2) Before issuing an invitation to negotiate, the head of an agency shall
12 determine and specify in writing the reasons that procurement by an invitation to bid
13 or a request for proposal is not practicable.

14 (3) The invitation to negotiate shall describe the questions being explored,
15 the facts being sought, and the specific goals or problems that are the subject of the
16 solicitation.

17 (4) The criteria that will be used for determining the acceptability of the
18 reply and guiding the selection of the vendors with which the agency will negotiate
19 shall be specified. The evaluation criteria shall include consideration of prior
20 relevant experience of the vendor.

21 (5) The agency shall evaluate replies against all evaluation criteria set forth
22 in the invitation to negotiate in order to establish a competitive range of replies
23 reasonably susceptible of award. The agency may select one or more vendors within
24 the competitive range with which to commence negotiations. After negotiations are
25 conducted, the agency shall award the contract to the responsible and responsive
26 vendor that the agency determines will provide the best value to the state, based on
27 the selection criteria.

28 (6) The contract file for a vendor selected through an invitation to negotiate
29 shall contain a short plain statement that explains the basis for the selection of the

1 vendor and that sets forth the vendor's deliverables and price, pursuant to the
 2 contract, along with an explanation of how the deliverables and price provide the
 3 best value to the state.

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

8 Section 3. R.S. 39:198(G)(4) is hereby repealed in its entirety.

9 Section 4. The Louisiana State Law Institute is hereby authorized and directed to
 10 arrange in alphabetical order and renumber the definitions provided in R.S. 39:197 as
 11 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 Engrossed

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 the invitation to negotiate as one of the multiple 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 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.

(Amends R.S. 24:673(A) and (C) and R.S. 39:198(A), (B)(1), (C)(1), (D)(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(F); Repeals R.S. 39:198(G)(4))

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.