

June 4, 2014

The Honorable John A. DeFrancisco
New York State Senate
175 State Street, Room 416
State Building
Albany, NY 12247

RE: SB 7114 of 2013 – OPPOSE

Dear Senator DeFrancisco:

On behalf of the members of the Information Technology Alliance for Public Sector (ITAPS)¹, we wish to advise you of our opposition to Senate Bill 7114 of 2013. The bill authorizes the insertion of cancellation provisions in all state, municipal, and public authority contracts for expenditures exceeding ten percent (10%) of the original bid price. While we appreciate your interest in strengthening the state's procurement process, we believe the bill will have negative repercussions for IT vendors doing business with the State of New York and its political subdivisions. We therefore respectfully request no further movement of the bill.

While some states have similar statutes that provide a right of termination for convenience at any time, in other states this requirement is accompanied by a right of the vendor to recover its reasonable costs. SB 7114 requires the state to pay monies owed, which may be zero if it is a fixed price contract with all payment due on completion. It is also concerning that the bill does not take into account the cause of the cost overage. An overage may arise from new or additional requests by the government agency that is outside the original scope of work. Approved change orders can often cause the price to exceed the original bid amount. Yet, the language of the bill does not consider the source of the overage. Rather it unfairly shifts the burden of these overage requests to a vendor without paying the vendor anything.

Procurement rules should help ensure fairness in competition as well as accountability and transparency in awarding contracts and take advantage of scale and efficiency by standardizing processes. Reforming procurement processes, however, should not include the imposition of even more onerous contract remedies. Resolving to require immediate contract termination for costs above a certain threshold is likely to rollback any streamlining the state may intend. In fact, this troublesome contract termination remedy will result in fewer IT vendors desiring to participate in New York's procurement bids, thereby reducing the level of competition the state receives. Furthermore, vendors that do submit bids will be

¹ **About the IT Alliance for Public Sector (ITAPS):** As a division of ITI, ITAPS is an alliance of leading technology companies offering the latest innovations and solutions to public sector markets. With a focus on the Federal, state and local levels of government, as well as on educational institutions, the ITAPS team advocates for improved procurement policies and practices, while identifying business development opportunities and sharing market intelligence with our industry participants.

forced to increase the price of their bids to accommodate this new and more restrictive contractual requirement. Neither market consequence will benefit the state's taxpayers.

Information technology goods and services solutions provide high quality capabilities that benefit the state's agencies, departments and citizens. Unfortunately, this proposal will only serve to complicate and delay an already protracted procurement process, reduce competition for the technology needs of the state and increase the risks and associated costs of procuring necessary and important IT goods, services and solutions.

We respectfully request that there be no further consideration of this bill. Thank you for your attention and should you have any questions, please contact me at chenton@itic.org or 650-544-7563 or Beth Winters at bwinters@itic.org or 717.574.6644

Respectfully submitted,



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