

AMENDED IN SENATE JULY 20, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 185

Introduced by Assembly Member Wright

February 7, 2001

An act to amend Section 7118 of the Government Code, *and to amend Section 10351 of the Public Contract Code*, relating to ~~economic development~~ *public contracts*.

LEGISLATIVE COUNSEL'S DIGEST

AB 185, as amended, Wright. ~~Local State contracts: approval exemptions: local agency military base recovery areas: bids.~~

(1) The Local Agency Military Base Recovery Area Act provides, among other things, that whenever the state prepares an invitation for bid for a contract for goods in excess of \$100,000, with a specified exception, the state shall award a 5% preference to California-based companies who certify under penalty of perjury that no less than 50% of the labor required to perform the contract shall be accomplished at a worksite or worksites located in a local agency military base recovery area. In evaluating proposals for contracts for services in excess of \$100,000, with a specified exception, the state is required to award a 5% preference on the price submitted by California-based companies who certify under penalty of perjury that they shall perform the contract at a worksite or worksites located in a local agency military base recovery area.

This bill instead would provide that whenever the state prepares a solicitation for a contract for goods in excess of \$100,000, with that specified exception, the state shall award the 5% preference to



California-based companies who demonstrate and certify under penalty of perjury that of the total labor hours required to manufacture the goods and perform the contract, at least 50% of the hours shall be accomplished at an identified worksite or worksites located in a local agency military base recovery area. It would also provide that, in evaluating proposals for contracts for services in excess of \$100,000, with that specified exception, the state shall award a 5% preference on the price submitted by California-based companies who demonstrate and certify under penalty of perjury that not less than 90% of the labor hours required to perform the contract shall be accomplished at an identified worksite or worksites located in a local agency military base recovery area.

By expanding the scope of a crime, this bill would impose a state-mandated local program.

(2) The act also provides that where a bidder complies with the provisions set forth above, the state shall award a 1% preference for bidders who shall agree to hire persons living within a local agency military base recovery area equal to 5 to 9% of its workforce during the period of contract performance.

This bill instead would provide that the state shall award a 1% preference under these provisions for bidders who certify under penalty of perjury to hire persons meeting these criteria.

By expanding the definition of a crime, this bill would impose a state-mandated local program.

(3) The act further provides that a business that requests and is given the preference provided for under these provisions by reason of having furnished a false certification, and that by reason of this certification has been awarded a contract to which it would not otherwise have been entitled, shall, among other things, be ineligible to transact any business with the state for a period of not less than 3 months and not more than 24 months.

This bill instead would state that the business would be ineligible to directly or indirectly transact any business with the state for this period.

(4) *Existing law provides for Department of General Services approval of state agency contracts for services. However, contracts under \$75,000 are exempt if a state agency complies with certain requirements.*

This bill would increase the exemption amount to \$100,000, and would permit the Director of General Services to adjust that limit every



2 years by an inflation factor based on the California Consumer Price Index.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 7118 of the Government Code is
2 amended to read:

3 7118. (a) Whenever the state prepares a solicitation for a
4 contract for goods in excess of one hundred thousand dollars
5 (\$100,000), except a contract in which the worksite is fixed by the
6 provisions of the contract, the state shall award a 5-percent
7 preference to California-based companies who demonstrate and
8 certify under penalty of perjury that of the total labor hours
9 required to manufacture the goods and perform the contract, at
10 least 50 percent of the hours shall be accomplished at an identified
11 worksite or worksites located in a local agency military base
12 recovery area.

13 (b) In evaluating proposals for contracts for services in excess
14 of one hundred thousand dollars (\$100,000), except a contract in
15 which the worksite is fixed by the provisions of the contract, the
16 state shall award a 5-percent preference on the price submitted by
17 California-based companies who demonstrate and certify under
18 penalty of perjury that not less than 90 percent of the labor hours
19 required to perform the contract shall be accomplished at an
20 identified worksite or worksites located in a local agency military
21 base recovery area.

22 (c) Where a bidder complies with subdivision (a) or (b), the
23 state shall award a 1-percent preference for bidders who certify
24 under penalty of perjury to hire persons living within a local
25 agency military base recovery area equal to 5 to 9 percent of its
26 workforce during the period of contract performance; a 2-percent
27 preference for bidders who shall agree to hire persons living within



1 a local agency military base recovery area equal to 10 to 14 percent
2 of its workforce during the period of contract performance; a
3 3-percent preference for bidders who shall agree to hire persons
4 living within a local agency military base recovery area equal to
5 15 to 19 percent of its workforce during the period of contract
6 performance; and a 4-percent preference for bidders who shall
7 agree to hire persons living within a local agency military base
8 recovery area equal to 20 or more percent of its workforce during
9 the period of contract performance.

10 (d) The maximum preference a bidder may be awarded
11 pursuant to this chapter and any other provision of law shall be 15
12 percent. However, in no case shall the maximum preference cost
13 under this section exceed fifty thousand dollars (\$50,000) for any
14 bid, nor shall the combined cost of preferences granted pursuant
15 to this section and any other provision of law exceed one hundred
16 thousand dollars (\$100,000). In those cases where the 15-percent
17 cumulated preference cost would exceed the one hundred
18 thousand dollar (\$100,000) maximum preference cost limit, the
19 one hundred thousand dollar (\$100,000) maximum preference
20 cost limit shall apply.

21 (e) Notwithstanding any other provision of this section, small
22 business bidders qualified in accordance with Section 14838 shall
23 have precedence over nonsmall business bidders in that the
24 application of any bidder preference for which nonsmall business
25 bidders may be eligible, including the preference contained in this
26 section, shall not result in the denial of the award to a small
27 business bidder. This subdivision shall apply to those cases where
28 the small business bidder is the lowest responsible bidder, as well
29 as to those cases where the small business bidder is eligible for
30 award as the result of application of the 5-percent small business
31 bidder preference.

32 (f) All state contracts issued to bidders who are awarded
33 preferences under this section shall contain conditions to ensure
34 that the contractor performs the contract at the location specified
35 and meets any commitment to employ persons with high risk of
36 unemployment.

37 (g) (1) A business that requests and is given the preference
38 provided for in subdivision (a) or (b) by reason of having furnished
39 a false certification, and that by reason of this certification has been



1 awarded a contract to which it would not otherwise have been
2 entitled, shall be subject to all of the following:

3 (A) Pay to the state any difference between the contract amount
4 and what the state's cost would have been if the contract had been
5 properly awarded.

6 (B) In addition to the amount specified in subparagraph (A), be
7 assessed a penalty in an amount of not more than 10 percent of the
8 amount of the contract involved.

9 (C) Be ineligible to directly or indirectly transact any business
10 with the state for a period of not less than three months and not
11 more than 24 months.

12 (2) Prior to the imposition of any sanction under this
13 subdivision, the business shall be entitled to a public hearing and
14 to five days' notice of the time and place thereof. The notice shall
15 state the reasons for the hearing.

16 (h) In each instance in this section, a local agency military base
17 recovery area shall also mean any local agency military base
18 recovery area previously authorized under any other provision of
19 state law.

20 SEC. 2.

21 10351. (a) The department shall exempt from its approval
22 contracts under ~~seventy-five thousand dollars (\$75,000)~~ *one*
23 *hundred thousand dollars (\$100,000)* that any state agency awards
24 if the state agency does all of the following:

25 (1) Designates an agency officer as responsible and directly
26 accountable for the agency's contracting program.

27 (2) Establishes written policies and procedures and a
28 management system that will ensure the state agency's contracting
29 activities comply with applicable provisions of law and
30 regulations and that it has demonstrated the ability to carry out
31 these policies and procedures and to implement the management
32 system.

33 (3) Establishes a plan for ensuring that contracting personnel
34 are adequately trained in contract administration and contract
35 management.

36 (4) Conducts an audit every two years of the contracting
37 program and reports to the department as it may require.

38 (5) Establishes procedures for reporting to the department and
39 the Legislature on ~~such any contracts as~~ *that* the Legislature may
40 require in the Budget Act.



1 (b) Any state agency may request the department to exempt
 2 from its approval classes or types of contracts under this section.
 3 When the department receives a request but refuses to grant the
 4 exemption, it shall state in writing the reasons for the refusal. It is
 5 the intent of the Legislature that the department shall actively
 6 implement the provisions of this section and shall exempt from its
 7 approval as wide a range of classes or types of contracts as is
 8 consistent with proper administrative controls and the best
 9 interests of the state.

10 (c) *On January 1, 2005, and each January 1 of each odd*
 11 *numbered year thereafter, the director may increase the amount*
 12 *specified in subdivision (a) by a percentage equal to the*
 13 *percentage increase in the California Consumer Price Index for all*
 14 *items, as determined by the California Department of Industrial*
 15 *Relations, over the two-year period ending with the immediately*
 16 *preceding October.*

17 SEC. 3. No reimbursement is required by this act pursuant to
 18 Section 6 of Article XIII B of the California Constitution because
 19 the only costs that may be incurred by a local agency or school
 20 district will be incurred because this act creates a new crime or
 21 infraction, eliminates a crime or infraction, or changes the penalty
 22 for a crime or infraction, within the meaning of Section 17556 of
 23 the Government Code, or changes the definition of a crime within
 24 the meaning of Section 6 of Article XIII B of the California
 25 Constitution.

