

AMENDED IN ASSEMBLY MARCH 4, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 1813

Introduced by ~~Assembly Member Reyes~~ *Committee on Jobs, Economic Development, and the Economy (Assembly Members Reyes (Chair), Zettel (Vice Chair), Chan, Cohn, Correa, Diaz, Florez, Liu, and Wyman)*

January 16, 2002

An act to amend Sections 12101.5 and 12102 of the Public Contract Code, relating to information technology contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1813, as amended, ~~Reyes~~ *Committee on Jobs, Economic Development, and the Economy*. Public contracts: state government: information technology contracts.

Existing law authorizes the Department of General Services to contract with suppliers to obtain information technology goods and services.

This bill would prohibit the Department of General Services, or any state agency to which the contracting authority for the procurement of information technology goods and services has been delegated, from, in any fiscal year, entering into contracts for the procurement thereof or agreeing to contract amendments, that results, with specified exceptions, in the aggregate, in an increase in the budgeted cost of information ~~technology~~ *technology* goods and services that exceeds the lesser of \$500,000 or 10% of the budgeted cost for the acquisition of the information ~~technology~~ *technology* goods and services, unless the approval of the Department of Finance is first obtained and written

notification of that approval is provided by the department to the Chairperson of the Joint Legislative Budget Committee and the chair of the budget committee of each house, as prescribed.

Existing law requires the state’s acquisition of information technology goods and services to be conducted through competitive means, except as specified, under appropriate criteria and procedures maintained by the Department of Finance and the Department of General Services.

This bill would require the Director of the Department of General Services *or the director of a state agency, as applicable*, to notify the ~~Legislature~~ *chairs of specified legislative committees* of his or her intention to enter into a sole-source contract for the acquisition of information technology goods and services at least 30 days prior to entering into the contract.

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

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

1 SECTION 1. Section 12101.5 of the Public Contract Code is
2 amended to read:

3 12101.5. (a) It is the intent of the Legislature that agencies of
4 the State of California use an acquisition method that is compatible
5 with their short- and long-term fiscal needs in contracts relating to
6 commodities and information technology goods and services.
7 State agencies should be able to specify their anticipated life cycle
8 requirements that would become one of the criteria for contractor
9 selection. These agencies should be given the choice of suppliers
10 to meet statewide standardization needs, unique service
11 requirements, application requirements, and long-term
12 satisfaction criteria. There is a need for the State of California to
13 enter into long-term contracts with annual cancellation and
14 fund-out clauses, as required, to protect the state’s interests as well
15 as provide the option for multiyear renewals to encourage
16 suppliers to develop higher levels of service and support
17 throughout the contracts.

18 (b) The state may utilize multiple awards, including federal
19 General Service Administration Multiple Awards Schedules and
20 master agreements or contracts for goods, information technology,
21 services, or consulting services. For purposes of this subdivision,



1 a multiple award is an award of an indefinite quantity contract for
2 one or more similar goods, information technology, or services to
3 more than one supplier. Except for possible multiple awards as
4 permitted by this subdivision, all the requirements of this chapter
5 pertaining to other types of information technology acquisitions
6 shall be followed. The department shall ensure that multiple award
7 schedules are in compliance with all other applicable statutes.

8 (c) Notwithstanding any other provision of law, state agencies,
9 in exercising their contracting authority delegated by the
10 department, may contract with suppliers who have multiple award
11 schedules with the General Services Administration of the United
12 States on the same terms, conditions, and prices if the supplier is
13 willing to do so. The department may also develop multiple award
14 schedules or agreements for use by state agencies in the same
15 manner. The department shall determine the delegation
16 contracting authority for agencies wishing to use multiple award
17 schedules.

18 (d) (1) The Department of General Services, or any state
19 agency exercising its contracting authority as delegated by the
20 Department of General Services, pursuant to subdivision (c), to
21 which state funds are appropriated by one or more statutes,
22 including the Budget Act, for the acquisition of information
23 technology goods and services may not enter into one or more
24 contracts for the procurement thereof, or agree to one or more
25 contract amendments, in any fiscal year that results, in the
26 aggregate, in an increase in the budgeted cost of the acquisition of
27 information technology goods and services exceeding five
28 hundred thousand dollars (\$500,000), or 10 percent of the
29 budgeted cost for the acquisition of information technology goods
30 and services, whichever is less, unless the approval of the
31 Department of Finance is first obtained and written notification of
32 that approval is provided by the department to the Chairperson of
33 the Joint Legislative Budget Committee, and the chairperson of the
34 budget committee of each house of the Legislature, not less than
35 30 days prior to the effective date of the approval, or not sooner
36 than whatever lesser time the chairperson of the joint committee,
37 or his or her designee, may in each instance determine. Each
38 notification required by this section shall:

39 (A) Explain the necessity and rationale for the proposed
40 ~~contractor~~ *contract or amendment*.



1 (B) Identify the cost savings, revenue increase, or other fiscal
2 benefit of the proposed contract or amendment.

3 (C) Identify the funding source for the proposed contract or
4 amendment.

5 (2) Paragraph (1) shall not apply to a resulting increase in the
6 budgeted cost of the acquisition of information technology goods
7 and services that is less than one hundred thousand dollars
8 (\$100,000), or that is funded by an augmentation authorized
9 pursuant to the Budget Act.

10 SEC. 2. Section 12102 of the Public Contract Code is
11 amended to read:

12 12102. The Department of Information Technology and the
13 Department of General Services shall maintain, in the State
14 Administrative Manual, policies and procedures governing the
15 acquisition and disposal of information technology goods and
16 services.

17 (a) (1) Acquisition of information technology goods and
18 services shall be conducted through competitive means, except
19 when the Director of General Services determines either the goods
20 and services proposed for acquisition are the only goods and
21 services that can meet the state’s need, or the goods and services
22 are needed in cases of emergency where immediate acquisition is
23 necessary for the protection of the public health, welfare, or safety.
24 The acquisition mode to be used and the procedure to be followed
25 shall be approved by the Director of General Services. The
26 Department of General Services shall maintain, in the State
27 Administrative Manual, appropriate criteria and procedures to
28 ensure compliance with the intent of this chapter. These criteria
29 and procedures shall include acquisition and contracting
30 guidelines to be followed by state agencies with respect to the
31 acquisition of information technology goods and services. These
32 guidelines may be in the form of standard formats or model
33 formats.

34 ~~(2) The Director of the Department of General Services shall~~
35 ~~notify the Legislature of his or her intention to enter into a~~

36 *(2) The Director of the Department of General Services, or the*
37 *director of a contracting state agency, as applicable, shall notify*
38 *the chairperson of the Joint Legislative Budget Committee, the*
39 *chairperson of the budget committee of each house of the*
40 *Legislature, and the chairperson of any policy committee that*



1 *considers and reviews legislation regarding information*
2 *technology goods and services of his or her intention to enter into*
3 *a sole-source contract for the acquisition of information*
4 *technology goods and services at least 30 days prior to entering*
5 *into the contract.*

6 (b) (1) Contract awards for all large-scale systems integration
7 projects shall be based on the proposal that provides the most
8 value-effective solution to the state's requirements, as determined
9 by the evaluation criteria contained in the solicitation document.
10 Evaluation criteria for the acquisition of information technology
11 goods and services, including systems integration, shall provide
12 for the selection of a contractor on an objective basis not limited
13 to cost alone.

14 (2) The Department of General Services shall invite active
15 participation, review, advice, comment, and assistance from the
16 private sector and state agencies in developing procedures to
17 streamline and to make the acquisition process more efficient,
18 including, but not limited to, consideration of comprehensive
19 statements in the request for proposals of the business needs and
20 governmental functions, access to studies, planning documents,
21 feasibility study reports and draft requests for proposals applicable
22 to solicitations, minimizing the time and cost of the proposal
23 submittal and selection process, and development of a procedure
24 for submission and evaluation of a single proposal rather than
25 multiple proposals.

26 (3) Solicitations for acquisitions based on evaluation criteria
27 other than cost alone shall provide that sealed cost proposals shall
28 be submitted and that they shall be opened at a time and place
29 designated in the solicitation for bids and proposals. Evaluation of
30 all criteria, other than cost, shall be completed prior to the time
31 designated for public opening of cost proposals, and the results of
32 the completed evaluation shall be published immediately before
33 the opening of cost proposals. The state's contact person for
34 administration of the solicitation shall be identified in the
35 solicitation for bids and proposals, and that person shall execute
36 a certificate under penalty of perjury, ~~which~~ *that* shall be made a
37 permanent part of the official contract file, that all cost proposals
38 received by the state have been maintained sealed and under lock
39 and key until the time cost proposals are opened.



1 (c) The acquisition of hardware acquired independently of a
2 system integration project may be made on the basis of lowest cost
3 meeting all other specifications.

4 (d) The 5 percent small business preference provided for in
5 Chapter 6.5 (commencing with Section 14835) of Part 5.5 of
6 Division 3 of Title 2 of the Government Code and the regulations
7 implementing that chapter shall be accorded to all qualifying small
8 businesses.

9 (e) For all transactions formally advertised, evaluation of
10 bidders' proposals for the purpose of determining contract award
11 for information technology goods shall provide for consideration
12 of a bidder's best financing alternatives, including lease or
13 purchase alternatives, if any bidder so requests, not less than 30
14 days prior to the date of final bid submission, unless the acquiring
15 agency can prove to the satisfaction of the Department of General
16 Services that a particular financing alternative should not be so
17 considered.

18 (f) Acquisition authority may be delegated by the Director of
19 General Services to any state agency ~~which~~ *that* has been
20 determined by the Department of General Services to be capable
21 of effective use of that authority. This authority may be limited by
22 the Department of General Services. Acquisitions conducted
23 under delegated authority shall be reviewed by the Department of
24 General Services on a selective basis.

25 (g) To the extent practical, the solicitation documents shall
26 provide for a contract to be written to enable acquisition of
27 additional items to avoid essentially redundant acquisition
28 processes when it can be determined that it is economical to do so.

29 Further, it is the intent of the Legislature that, if a state
30 information technology advisory committee or a state
31 telecommunications advisory committee is established by the
32 Governor, the Director of Information Technology, or the Director
33 of General Services, the policies and procedures developed by the
34 Director of Information Technology and the Director of General
35 Services in accordance with this chapter shall be submitted to that
36 committee, including supplier representatives, for review and
37 comment, and that the comment be considered by both
38 departments prior to the adoption of any policy or procedure. It is
39 also the intent of the Legislature that this section shall apply to the



1 Department of General Services Information Technology
2 Customer Council.

3 (h) Protest procedures shall be developed to provide bidders an
4 opportunity to protest any formal, competitive acquisition
5 conducted in accordance with this chapter. The procedures shall
6 provide that protests must be filed no later than five working days
7 after the issuance of an intent to award. Authority to protest may
8 be limited to participating bidders. The Director of General
9 Services, or a person designated by the director, may consider and
10 decide on initial protests. A decision regarding an initial protest
11 shall be final. If prior to the last day to protest, any bidder who has
12 submitted an offer files a protest with the department against the
13 awarding of the contract on the ground that his or her bid or
14 proposal should have been selected in accordance with the
15 selection criteria in the solicitation document, the contract shall
16 not be awarded until either the protest has been withdrawn or the
17 State Board of Control has made a final decision as to the action
18 to be taken relating to the protest. Within 10 calendar days after
19 filing a protest, the protesting bidder shall file with the State Board
20 of Control a full and complete written statement specifying in
21 detail the grounds of the protest and the facts in support thereof.

22 (i) Information technology goods which have been determined
23 to be surplus to state needs shall be disposed of in a manner that
24 will best serve the interests of the state. Procedures governing the
25 disposal of surplus goods may include auction or transfer to local
26 governmental entities.

27 (j) A supplier may be excluded from bid processes if the
28 supplier's performance with respect to a previously awarded
29 contract has been unsatisfactory, as determined by the state in
30 accordance with established procedures ~~which~~ *that* shall be
31 maintained in the State Administrative Manual. This exclusion
32 may not exceed 360 calendar days for any one determination of
33 unsatisfactory performance. Any supplier excluded in accordance
34 with this section shall be reinstated as a qualified supplier at any
35 time during this 360-day period, upon demonstrating to the
36 department's satisfaction that the problems ~~which~~ *that* resulted in
37 the supplier's exclusion have been corrected.

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