

AMENDED IN SENATE APRIL 19, 2005

SENATE BILL

No. 837

Introduced by Senator Dutton

February 22, 2005

~~An act to amend Section 10296 of the Public Contract Code, relating to state contracts.~~ *An act to amend Sections 6611, 12125, 12126, and 12128 of, and to repeal Sections 12129 and 12130 of, the Public Contract Code, relating to public contracts.*

LEGISLATIVE COUNSEL'S DIGEST

SB 837, as amended, Dutton. ~~Department of General Services: state contracts: goods and services.~~ *Alternative Protest Pilot Project.*

Existing law provides for the Alternative Protest Pilot Project in connection with state agency acquisition of goods and services, including the acquisition of information technology goods and services, and requires the Department of General Services to administer the project until January 1, 2007, or until the pilot project has been applied to at least 25 contracts, including at least 5 information technology contracts, whichever occurs later.

This bill would delete the repeal date and the minimum contract attainment provisions. The bill would rename the project as the Alternative Protest Process.

This bill would also prohibit an unsuccessful bidder from using the alternate protest process, and would instead provide for the filing of a writ of mandate, as specified.

~~Existing law requires that all contracts entered into by a state agency for specified services, with limited exceptions, be approved by the Department of General Services, and contain a statement in which the contractor swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been~~

~~issued against the contractor for failure to comply with an order of the National Labor Relations Board, as specified.~~

~~This bill would make technical, nonsubstantive changes to these provisions.~~

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

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

1 SECTION 1. Section 6611 of the Public Contract Code is
2 amended to read:

3 6611. (a) Notwithstanding any other provision of law, the
4 Department of General Services may, relative to contracts for
5 goods, services, information technology, and
6 telecommunications, use a negotiation process if the department
7 finds that one or more of the following conditions exist:

8 (1) The business need or purpose of a procurement or contract
9 can be further defined as a result of a negotiation process.

10 (2) The business need or purpose of a procurement or contract
11 is known by the department, but a negotiation process may
12 identify different types of solutions to fulfill this business need or
13 purpose.

14 (3) The complexity of the purpose or need suggests a bidder's
15 costs to prepare and develop a solicitation response are extremely
16 high.

17 (4) The business need or purpose of a procurement or contract
18 is known by the department, but negotiation is necessary to
19 ensure that the department is receiving the best value or the most
20 cost-efficient goods, services, information technology, and
21 telecommunications.

22 (b) When it is in the best interests of the state, the department
23 may negotiate amendments to the terms and conditions, including
24 scope of work, of existing contracts for goods, services,
25 information technology, and telecommunications, whether or not
26 the original contract was the result of competition, on behalf of
27 itself or another state agency.

28 (c) (1) The department shall establish the procedures and
29 guidelines for the negotiation process described in subdivision
30 (a), which procedures and guidelines shall include, but not be
31 limited to, a clear description of the methodology that will be

1 used by the department to evaluate a bid for the procurement
2 goods, services, information technology, and
3 telecommunications.

4 (2) The procedures and guidelines described in paragraph (1)
5 may include provisions that authorize the department to receive
6 supplemental bids after the initial bids are opened. If the
7 procedures and guidelines include these provisions, the
8 procedures and guidelines shall specify the conditions under
9 which supplemental bids may be received by the department.

10 ~~(d) This section shall become inoperative on July 1, 2006, and,~~
11 ~~as of January 1, 2007, is repealed, unless a later enacted statute,~~
12 ~~that is enacted before January 1, 2007, deletes or extends the~~
13 ~~dates on which it becomes inoperative and is repealed.~~ *An*
14 *unsuccessful bidder shall have no right to protest the results of*
15 *the negotiating process undertaken pursuant to this section. As a*
16 *remedy, an unsuccessful bidder may file a petition for a writ of*
17 *mandate. The venue for the petition for a writ of mandate shall*
18 *be Sacramento, California and an action filed pursuant to this*
19 *subdivision shall be given preference by the court.*

20 *SEC. 2. Section 12125 of the Public Contract Code is*
21 *amended to read:*

22 12125. There is hereby established the Alternative Protest
23 ~~Pilot Project Process~~ to be administered by the Department of
24 General Services.

25 *SEC. 3. Section 12126 of the Public Contract Code is*
26 *amended to read:*

27 12126. (a) Notwithstanding any other provision of law, any
28 department or agency may use the solicitation and alternative
29 protest procedures outlined in this chapter for solicitations
30 authorized under Chapter 2 (commencing with Section 10290) or
31 Chapter 3 (commencing with Section 12100). The Department of
32 General Services shall develop procedures and guidelines for the
33 implementation of this ~~pilot project~~ *alternative protest process*.
34 ~~Establishment of procedures for major information technology~~
35 ~~acquisitions pursuant to this chapter shall be coordinated with the~~
36 ~~Department of Information Technology.~~

37 (b) To be eligible for this ~~pilot project~~ *alternative protest*
38 *process*, the contracting department shall agree to participate in
39 the ~~pilot project~~ *alternative protest process* and the Department
40 of General Services shall indicate that the proposed solicitation

1 shall be conducted as part of the ~~pilot project~~ *alternative protest*
2 *process* prior to release of the solicitation. Submission of a bid
3 constitutes consent for participation in the alternative protest
4 ~~pilot project process~~. Any protests filed in relation to the
5 proposed contract award shall be conducted under the procedures
6 set forth by the Department of General Services for the
7 alternative protest ~~pilot project process~~.

8 (c) Notwithstanding any other provision of law to the contrary,
9 any bid protest conducted under this chapter shall include one or
10 more of the following alternative procedures:

11 (1) The protest process shall not prevent the commencement
12 of work in accordance with the terms of any other contract
13 awarded pursuant to this chapter. A contract may be entered into
14 pending a final decision on the protest.

15 (2) The Department of General Services shall review the
16 protest within seven days of the filing date to determine if the
17 protest is frivolous. If determined to be frivolous, the protest
18 shall not proceed under this chapter until the bidder posts a
19 protest bond in an amount not less than 10 percent of the
20 estimated contract value, as determined by the Department of
21 General Services in the solicitation.

22 (3) The Director of General Services shall issue a decision
23 within a period not to exceed 45 days from the date the protest is
24 filed.

25 (4) Arbitration, as defined and established by the Department
26 of General Services, shall be the resolution tool.

27 (d) Authority to protest under this chapter shall be limited to
28 participating bidders.

29 (1) Grounds for major information technology acquisition
30 protests shall be limited to violations of the solicitation
31 procedures and that the protestant should have been selected.

32 (2) Any other acquisition protest filed pursuant to this chapter
33 shall be based on the ground that the bid or proposal should have
34 been selected in accordance with selection criteria in the
35 solicitation document.

36 *SEC. 4. Section 12128 of the Public Contract Code is*
37 *amended to read:*

38 12128. ~~The pilot project shall continue until it has been~~
39 ~~applied to at least 25 contracts, with varying dollar amounts, at~~
40 ~~least five of which are major information technology~~

1 acquisitions, or until December 31, 2005, whichever occurs later.
2 The Department of General Services shall apply this chapter to
3 the following categories:

- 4 (a) Information technology and ancillary services.
- 5 (b) Material, supplies, equipment, and ancillary services.

6 *SEC. 5. Section 12129 of the Public Contract Code is*
7 *repealed.*

8 ~~12129. The Department of General Services shall~~
9 ~~electronically submit a report to the Legislature regarding the~~
10 ~~pilot project within 90 days after the termination of the project.~~
11 ~~The report shall include the following:~~

12 ~~(a) The percentage of bids with values under five hundred~~
13 ~~thousand dollars (\$500,000), under one million dollars~~
14 ~~(\$1,000,000), and over one million dollars (\$1,000,000) or more~~
15 ~~not in the pilot project that were protested with corresponding~~
16 ~~data for solicitations issued pursuant to the pilot project.~~

17 ~~(b) The number of protests determined to be frivolous by the~~
18 ~~Department of General Services, subject to this chapter, with~~
19 ~~corresponding data for solicitations issued pursuant to existing~~
20 ~~procedures.~~

21 ~~(c) The percentage of contracts awarded under the pilot project~~
22 ~~that were subsequently challenged in a court of law with~~
23 ~~corresponding data for solicitations issued pursuant to existing~~
24 ~~procedures.~~

25 ~~(d) All costs of a protest incurred by state agencies subject to~~
26 ~~subdivision (b) of Section 12126 from the original date filed,~~
27 ~~until final resolution. This shall include all costs associated with~~
28 ~~a successful protest and commencement of work under~~
29 ~~subdivision (b) of Section 12126 from the original date filed,~~
30 ~~until final resolution, with corresponding data for solicitations~~
31 ~~issued pursuant to existing procedures.~~

32 ~~(e) The length of time to resolve protests pursuant to this~~
33 ~~chapter and the corresponding data for solicitations issued~~
34 ~~pursuant to existing procedures.~~

35 *SEC. 6 Section 12130 of the Public Contract Code is*
36 *repealed.*

37 ~~12130. The pilot project shall be considered a success if there~~
38 ~~is at least a 10-percent reduction in the number of frivolous~~
39 ~~protests filed with the Department of General Services and if the~~
40 ~~length of time for the state to resolve protests is reduced by at~~

1 least 20 percent, or if there is a substantial reduction in the
2 number of protests filed under the pilot project than under the
3 existing protest procedures.

4 SECTION 1. Section 10296 of the Public Contract Code is
5 amended to read:

6 10296. Every contract entered into by any state agency for
7 any purpose specified in subdivisions (a) to (d), inclusive, of
8 Section 10295 shall contain a statement by which the contractor
9 swears under penalty of perjury that no more than one final,
10 unappealable finding of contempt of court by a federal court has
11 been issued against the contractor within the immediately
12 preceding two-year period because of the contractor's failure to
13 comply with an order of a federal court which orders the
14 contractor to comply with an order of the National Labor
15 Relations Board. For purposes of this section, a finding of
16 contempt does not include any finding that has been vacated,
17 dismissed, or otherwise removed by the court because the
18 contractor has complied with the order which was the basis for
19 the finding. The state may rescind any contract in that the
20 contractor falsely swears to the truth of the statement required by
21 this section.