

AMENDED IN SENATE APRIL 25, 2006

AMENDED IN SENATE APRIL 18, 2006

AMENDED IN SENATE MARCH 27, 2006

SENATE BILL

No. 1629

Introduced by Senator Speier

(Principal coauthor: Assembly Member Lieber)

(Coauthor: Assembly Member Karnette)

February 24, 2006

An act to add Chapter 7 (commencing with Section 12500) to Part 2 of Division 2 of the Public Contract Code, relating to state contracts, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1629, as amended, Speier. Public contracts: the Federal Laboratory Contracting Act.

The State Contract Act governs contracting between state agencies and private contractors, and sets forth requirements for the procurement of materials, supplies, equipment, and services by state agencies. Existing law sets out the various responsibilities of the Department of General Services, and other state agencies in overseeing and implementing state contracting procedures and policies.

This bill would enact the Federal Laboratory Contracting Act to modify the existing contracting procedures and policies to authorize a state agency that contracts with a federally funded research and development center, as defined, or a field center, as defined, to make contract payments in advance, indemnify, to the extent permitted by state law, the center, as provided, and reimburse the center for the

actual costs incurred in performing the contracted services. This bill would prohibit a state agency that contracts with a federally funded Department of Energy or National Aeronautics and Space Administration (NASA) research and development center, or a NASA field center, from requiring either the center or the federal government to indemnify the agency and from imposing any standard state contracting terms or conditions that are inconsistent with the policies of the federal agency or agencies funding the contract. This bill would also require the Governor to designate the Secretary of State and Consumer Services as the state representative for purposes of communicating and negotiating with the representatives of the United States Department of Energy, NASA, federally funded Department of Energy and NASA research and development centers and NASA field centers, as provided.

This bill would set forth legislative findings and declarations regarding existing policies and procedures governing state contracts with federally funded Department of Energy and NASA research and development centers and NASA field centers located in California.

The bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. Chapter 7 (commencing with Section 12500) is
2 added to Part 2 of Division 2 of the Public Contract Code, to
3 read:

4
5 CHAPTER 7. THE FEDERAL LABORATORY CONTRACTING ACT
6

7 12500. This chapter shall be known and may be cited as the
8 Federal Laboratory Contracting Act.

9 12501. The Legislature finds and declares all of the
10 following:

11 (a) Technological advances are an important part of
12 California’s economy and, therefore, it would be wise for state
13 agencies to contract, in a facile and efficient manner, with
14 federally funded Department of Energy (DOE) and National
15 Aeronautics and Space Administration (NASA) research and

1 development centers and NASA field centers located in
2 California that are often at the forefront of science and
3 technology.

4 (b) As the major funding agency and owner of several research
5 and development centers located in California, DOE allows
6 outside parties to contract with the centers but requires the
7 centers, when initiating and finalizing any contracts with outside
8 parties, to adhere to rigorous policies and procedures specified by
9 federal laws and regulations. NASA adheres to similar federal
10 laws and regulations when initiating and finalizing contracts
11 between its research and development centers or field centers in
12 California and outside parties. The State of California has its own
13 laws, regulations, and procedures governing state contracts. The
14 research and development centers and field centers owned or
15 owned and operated by DOE and NASA have attempted to
16 contract with state agencies and departments in California but
17 have had minimal success. Conflicting provisions in federal and
18 state laws, regulations, and policies, and seemingly unachievable
19 compromises appear to be the major limiting factors in the
20 successful negotiation of contracts between the federally funded
21 centers and California state agencies and departments.

22 ~~(e) The State of California shall develop policies and~~
23 ~~procedures to encourage and enable the contracting process with~~
24 ~~federally funded DOE and NASA research and development~~
25 ~~centers and NASA field centers and shall create a master contract~~
26 ~~that shall be used by any state agency or department in~~
27 ~~negotiating a contract with one of those centers.~~

28 *12501.5. (a) The Governor shall designate the Secretary of*
29 *State and Consumer Services as the state's representative for*
30 *purposes of communicating and negotiating with representatives*
31 *of the United States Department of Energy, National Aeronautics*
32 *and Space Administration, federally funded DOE and NASA*
33 *research and development centers in California, and NASA field*
34 *centers in California regarding any issue that may affect a*
35 *contractual relationship between the state and these federal*
36 *entities. The Secretary of State and Consumer Services may*
37 *delegate this responsibility to the Director of the Department of*
38 *General Services, if the secretary views such delegation as*
39 *necessary to advance the successful negotiation of contracts*
40 *between the state and one or more of those federal entities.*

1 ***(b) The Secretary of State and Consumer Services or his or***
2 ***her designee shall develop policies and procedures to encourage***
3 ***and enable the contracting process with federally funded DOE***
4 ***and NASA research and development centers and NASA field***
5 ***centers and shall create a master contract that is available for***
6 ***use by any state agency or department in negotiating a contract***
7 ***with one of these centers.***

8 12502. (a) Notwithstanding any other law, a state agency that
9 enters into a contract with a federally funded DOE or NASA
10 research and development center or a NASA field center located
11 in California may, if requested by the contracting party, do any of
12 the following:

13 (1) Make contract payments to the center for contracted
14 services in advance.

15 (2) To the extent permitted by state law, indemnify the center
16 with respect to product liability, intellectual property, and general
17 liability claims arising out of the activities to be carried out by
18 the center pursuant to the contract.

19 (3) Reimburse the center for the actual costs incurred by the
20 center in rendering its services under the contract with the state
21 agency, up to the contract ceiling amount.

22 (b) Notwithstanding any other law, a state agency that enters
23 into a contract with a federally funded DOE or NASA research
24 and development center or a NASA field center located in
25 California shall not do either of the following:

26 (1) Require the center or the federal government to indemnify
27 the state agency with respect to activities performed under the
28 contract.

29 (2) Impose any standard state contracting terms or conditions
30 that are inconsistent with the policies of the federal agency or
31 agencies funding the center.

32 (c) For purposes of this chapter:

33 (1) “Federally funded research and development center”
34 means a federally funded research and development center as
35 defined in Subpart 2.1 of Part 2 of Subchapter A of Chapter 1 of
36 Title 48 of the Code of Federal Regulations.

37 (2) “NASA field center” means a field center identified as
38 such by NASA and authorized by Title III of the Space Act of
39 1958.

1 (d) A state agency shall not audit the records of any federally
2 funded DOE or NASA research and development center, or a
3 NASA field center, but it may rely on the services of a cognizant
4 federal audit agency, including the Defense Contract Audit
5 Agency, the United States Government Accounting Office or the
6 United States Departmental Inspector General to satisfy its
7 auditing requirements.

8 ~~(e) The Governor shall designate the Secretary of State and
9 Consumer Services as the state representative for purposes of
10 communicating and negotiating with the representatives of the
11 United States Department of Energy, National Aeronautics and
12 Space Administration, federally funded DOE and NASA
13 research and development centers in California, and NASA field
14 centers in California regarding any issue that may affect a
15 contractual relationship between the state and these federal
16 entities.~~

17 SEC. 2. This act is an urgency statute necessary for the
18 immediate preservation of the public peace, health, or safety
19 within the meaning of Article IV of the Constitution and shall go
20 into immediate effect. The facts constituting the necessity are:

21 In order for California state agencies and departments to be
22 able to contract, in a facile and efficient manner, with federally
23 funded Department of Energy and NASA research and
24 development centers and NASA field centers located in this state
25 for purposes of developing new technologies that may protect
26 public health and welfare, it is necessary that this act take effect
27 immediately.