

ASSEMBLY BILL

No. 1517

Introduced by Assembly Member Buchanan

January 13, 2012

An act to amend and repeal Section 12112 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1517, as introduced, Buchanan. Public contracts: information technology goods and services.

Existing law generally requires the Department of General Services, for any contract for information technology goods or services meeting specified requirements, to provide that not less than 10% of the contract price is required to be withheld until final delivery and acceptance of the goods and services, and requires the department to conduct a risk evaluation, as specified. However, existing law, until July 1, 2013, requires the department, if it determines that lesser withholding levels are appropriate based on the evaluation of risk, to withhold no less than 5% of the contract price, if the contract price is \$10,000,000 or more, or no less than 3% of the contract price, if the contract price is less than \$10,000,000, until final delivery and acceptance of the goods or services.

Existing law, operative until July 1, 2013, also requires the Department of General Services, in consultation with the Department of Finance, to develop and maintain criteria for the evaluation of risk to the state that results from the acquisition of information technology goods or services and requires the department to submit the criteria developed and maintained for the evaluation of risk to the state that results from the acquisition of information technology goods and services to the Joint Legislative Budget Committee and to the State

Chief Information Officer, as specified. Existing law, until July 1, 2013, requires the State Chief Information Officer to review all contracts approved pursuant to this provision, as specified, and to submit a report to the Legislature, as provided. Existing law, commencing July 1, 2013, requires a contractor to submit a faithful performance based in a specified sum.

This bill would delete the dates on which the above provisions become inoperative and are repealed, and would make them operative indefinitely. The bill would also remove the requirement that, on and after July 1, 2013, a contractor submit a faithful performance bond.

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 12112 of the Public Contract Code, as
2 amended by Section 5 of Chapter 19 of the Fourth Extraordinary
3 Session of the Statutes of 2009, is amended to read:
4 12112. (a) Any contract for information technology goods or
5 services, to be manufactured or performed by the contractor
6 especially for the state and not suitable for sale to others in the
7 ordinary course of the contractor’s business may provide, on the
8 terms and conditions that the department deems necessary to
9 protect the state’s interests, for progress payments for work
10 performed and costs incurred at the contractor’s shop or plant,
11 provided that not less than 10 percent of the contract price is
12 required to be withheld until final delivery and acceptance of the
13 goods or services. Notwithstanding this subdivision, if the
14 department determines that lesser withholding levels are
15 appropriate based upon an evaluation of risk determined under
16 subdivision (b) and the contract price is ten million dollars
17 (\$10,000,000) or more, the department shall withhold no less than
18 5 percent of the contract price until final delivery and acceptance
19 of the goods or services. If the department determines that lesser
20 withholding levels are appropriate based on an evaluation of risk
21 determined under subdivision (b) and the contract price is less than
22 ten million dollars (\$10,000,000), the department shall withhold
23 no less than 3 percent of the contract price until final delivery and
24 acceptance of the goods or services.

1 (b) The department, in consultation with the Department of
2 Finance, shall develop and maintain criteria for the evaluation of
3 risk to the state that results from the acquisition of information
4 technology. This risk analysis shall determine the need for financial
5 protection that is in the best interest of the state, including, but not
6 limited to, any of the following:

7 (1) An acceptable performance bond as described in Chapter 2
8 (commencing with Section 995.010) of Title 14 of Part 2 of the
9 Code of Civil Procedure.

10 (2) Any surety as defined in Section 2787 of the Civil Code.

11 (3) A letter of credit as described in Division 5 (commencing
12 with Section 5101) of the Commercial Code.

13 (4) Protection in the form of contract terms.

14 (5) Any other form of security or guaranty of performance in
15 an amount sufficient to protect the state in the case of default by
16 the contractor providing information technology, or any other
17 breach or malfunction of the goods or services, or both.

18 (c) The department shall, on or before June 1, 2008, submit the
19 criteria developed and maintained pursuant to subdivision (b) to
20 the Joint Legislative Budget Committee and to the State Chief
21 Information Officer.

22 (d) The State Chief Information Officer shall, on or before July
23 1, 2012, do both of the following:

24 (1) Review and report to the Legislature on all contracts
25 approved pursuant to this section on and after January 1, 2008.

26 (2) Report to the Legislature any recommendations for changes
27 to this section or changes to the criteria developed and maintained
28 by the department pursuant to subdivision (b).

29 (e) For purposes of this section, “information technology” means
30 information technology goods or services, or both, as appropriate.

31 ~~(f) This section shall become inoperative on July 1, 2013, and
32 shall be repealed on January 1, 2014.~~

33 SEC. 2. Section 12112 of the Public Contract Code, as added
34 by Section 2 of Chapter 736 of the Statutes of 2007, is repealed.

35 ~~12112. (a) Any contract for information technology goods or
36 services, to be manufactured or performed by the contractor
37 especially for the state and not suitable for sale to others in the
38 ordinary course of the contractor’s business may provide, on the
39 terms and conditions that the department deems necessary to
40 protect the state’s interests, for progress payments for work~~

1 ~~performed and costs incurred at the contractor's shop or plant,~~
2 ~~provided that not less than 10 percent of the contract price is~~
3 ~~required to be withheld until final delivery and acceptance of the~~
4 ~~goods or services, and provided further, that the contractor is~~
5 ~~required to submit a faithful performance bond, acceptable to the~~
6 ~~department, in a sum not less than one-half of the total amount~~
7 ~~payable under the contract securing the faithful performance of~~
8 ~~the contract by the contractor.~~
9 (b) ~~This section shall become operative on July 1, 2013.~~