

AMENDED IN ASSEMBLY JUNE 11, 2012

AMENDED IN SENATE MAY 31, 2011

AMENDED IN SENATE MAY 3, 2011

AMENDED IN SENATE APRIL 12, 2011

SENATE BILL

No. 467

Introduced by Senator Pavley

February 17, 2011

An act to add Section 15814.37 to the Government Code, relating to state buildings.

LEGISLATIVE COUNSEL'S DIGEST

SB 467, as amended, Pavley. Department of General Services: contracts for energy efficiency *information technology* products or services.

The State Building Construction Act of 1955 requires that all new public buildings, *as specified*, be equipped with all energy efficiency measures, materials, and devices that are feasible and cost-effective, as defined, over the life of the building or the life of the energy efficiency measure, whichever is less, and sets forth the duties of the Department of General Services in this regard.

This bill would additionally require the department to deem a contract for *the purchase of* an energy efficiency *information technology* product or service to be a no-cost or net-neutral cost contract when specified conditions are met. It would require the department to issue a nonmandatory master services agreement permitting owners, operators, and tenants of state facilities to procure a wide range of energy efficiency *information technology* products ~~or~~ *and* services according to specified criteria. *It would require the department to post on its Internet Web*

site, as specified, a link to a document entitled “Record of Energy-Saving Projects” that contains specified information.

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. The Legislature finds and declares as follows:

2 (a) The state urgently needs to save state funds and in so doing
3 needs to take cost-effective steps to improve energy efficiency.

4 (b) These goals should not be impeded simply because there is
5 no particular contracting method specifically permitting the state
6 to purchase energy saving products or services where the state
7 does not have to pay out-of-pocket for those technologies or
8 services but nevertheless enjoys the monetary savings from those
9 purchases.

10 SEC. 2. Section 15814.37 is added to the Government Code,
11 to read:

12 15814.37. (a) The Department of General Services shall deem
13 a contract for *the purchase of an energy efficiency information*
14 *technology* product or service to be a no-cost or net-neutral cost
15 contract where funding for the contract is provided through either
16 of the following methods:

17 (1) The state is required, for the life of the contract, to pay the
18 vendor in monthly or other scheduled increments where those
19 payments are less than the difference between the amount the state
20 was paying for energy, including the cost of maintaining the
21 electrical and mechanical energy systems providing that facility’s
22 energy, for a facility or facilities prior to entering into the contract
23 and what the state is paying for the same energy after entering into
24 the contract.

25 (2) The contract requires the vendor to pay the state a single
26 sum at the execution of the contract to provide its *information*
27 *technology products* or services, at a calculated net present value
28 figure, in exchange for the state paying the vendor monthly or
29 other scheduled increments in amounts equal to the difference
30 between what the state was paying for energy for a facility or
31 facilities prior to execution of the contract and for the same energy
32 after execution of the contract, for the life of the contract.

1 (b) (1) No later than ~~January~~ April 1, 2013, the department
2 shall issue a nonmandatory master services agreement permitting
3 owners, operators, and tenants of state facilities to procure a wide
4 range of energy efficiency *information technology* products ~~or~~ and
5 services from a wide range of approved companies included in the
6 agreement. The companies included in the agreement shall have
7 a record of providing those products or services to governmental
8 entities or private sector companies for at least two years ~~prior to~~
9 *before* January 1, ~~2012~~ 2013. The department shall begin to work
10 with relevant university centers no later than January 1, ~~2012~~ 2013,
11 for guidance in the development of product and service
12 specifications for the agreement.

13 (2) *At a minimum, the master service agreement shall require*
14 *the owner, operator, or tenant to submit to the department, 10*
15 *days before the purchase of the energy efficiency information*
16 *technology product or service, all of the following:*

17 (A) *A document demonstrating that the owner, operator, or*
18 *tenant has obtained at least two bids from companies on the master*
19 *service agreement.*

20 (B) *A document forecasting the projected savings of purchasing*
21 *the solution.*

22 (C) *A document describing how the owner, operator, or tenant*
23 *will track, record, and retain a record of the savings achieved.*

24 (c) Notwithstanding subdivision (b), the agreement shall include,
25 among other things, a provision to permit pilot or demonstration
26 contracts for energy efficiency *information technology* products
27 or services. An energy efficiency *information technology* product
28 or service shall not be excluded from this portion of the agreement
29 because the companies included have been in business for less
30 than two years, or it is an emerging technology or service that has
31 been demonstrated to be effective in prototypical or limited
32 production, that could become commercially viable and successful
33 with appropriate market development efforts. The department shall
34 begin to work with relevant university centers no later than January
35 1, ~~2012~~ 2013, for guidance in the development of product and
36 service specifications for the pilot or demonstration portion of the
37 agreement.

38 (d) For purposes of this section, an “energy efficiency
39 *information technology* product or service” means a *software- or*
40 *hardware-based* technology product or ~~technology~~ service where

1 ~~the that analyzes the energy use of buildings and related facilities.~~
 2 *The energy efficiency information technology product or service*
 3 *must result in energy cost savings to the state that are projected*
 4 *to exceed the compensation the state pays for the energy efficiency*
 5 *information technology product or service within 36 48 months*
 6 *of the initial deployment of the product or service. The energy*
 7 *efficiency information technology product or service shall not be*
 8 *considered to be conservation measures or services pursuant to*
 9 *Section 4217.11.*

10 (e) For purposes of this section, the difference between the
 11 amount the state would have paid for energy and the cost of
 12 maintaining energy consuming devices ~~prior to entering into the~~
 13 ~~contract before purchasing the energy efficiency information~~
 14 ~~technology product or service~~ and what it is paying for the same
 15 energy and maintenance of energy consuming devices after ~~entering~~
 16 ~~into the contract purchasing the product or service~~ shall be based
 17 upon either of the following:

18 (1) The amount the state paid to ~~a utility and maintenance~~
 19 ~~service contractors for a kind of~~ for energy at a particular facility
 20 in the ~~36 48~~ months prior to entering the contract, divided by
 21 month or another increment of time.

22 (2) Another amount calculated by an outside third party selected
 23 by the state and agreed to by the vendor in the contract.

24 (f) ~~Nothing in this~~ This section shall *not* be construed to do any
 25 of the following:

26 (1) Limit the department's ability to determine *if* a vendor is in
 27 breach of contract.

28 (2) Prevent the state from requiring other terms and conditions,
 29 provided that those terms and conditions are not duplicative of, or
 30 in conflict with, and do not frustrate the intent of, this section.

31 (3) Prevent the department from reasonably apportioning
 32 administrative or consulting costs required to implement the
 33 contracting methods set forth in this section over as many contracts
 34 as required to ensure both that the state does not lose the
 35 opportunity to achieve energy savings and the department is able
 36 to be fully reimbursed for those reasonable costs exclusively from
 37 savings.

38 (4) Require the creation of a General Fund obligation in
 39 contravention of Section 1 of Article XVI of the California
 40 Constitution.

1 (5) *Limit the application of the state’s prevailing wage laws.*

2 (g) *No later than January 1, 2014, and annually thereafter, the*
3 *department shall post a link on its Internet Web site, located on*
4 *the Real Estate Services Division Web page, to a document entitled*
5 *“Record of Energy-Saving Projects” that lists the projects that*
6 *have achieved energy and fiscal savings to the state since the*
7 *issuance of Executive Order No. B-18-12, and the estimated*
8 *amount of energy and funds saved.*

9 (h) *This section shall not be construed to conflict with Section*
10 *1720.6 of the Labor Code.*

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