

AMENDED IN SENATE MAY 22, 2012

AMENDED IN SENATE APRIL 9, 2012

**SENATE BILL**

**No. 1516**

---

---

**Introduced by Senator Leno**

February 24, 2012

---

---

An act to amend Section 3400 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1516, as amended, Leno. Public contracts: bids: "or equal" materials or service.

Existing law prohibits, except in specified circumstances, a state agency, political subdivision, municipal corporation, district, or public officer responsible for letting a public works contract from drafting bid specifications for that contract in a manner that limits the bidding to any one concern or product, unless the specification is followed by the words "or equal." Existing law requires that these bid specifications provide a period of time prior to or after, or prior to and after, the award of the contract to allow the contractor to submit data that demonstrates that a concern or product to be provided under the contract is equal to the concern or product identified in the bid specification.

This bill would *additionally* prohibit, *except in specified circumstances*, these bid specifications from requiring a bidder to provide submission of data substantiating a request for a substitution of "an equal" item prior to the bid or proposal submission deadline. *The bill would exclude from this prohibition contracts with an agency of the state, a public officer of the state, or a person charged with the letting of contracts for an agency of the state.*

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 3400 of the Public Contract Code is  
2 amended to read:

3 3400. (a) The Legislature finds and declares that it is the intent  
4 of this section to encourage contractors and manufacturers to  
5 develop and implement new and ingenious materials, products,  
6 and services that function as well, in all essential respects, as  
7 materials, products, and services that are required by a contract,  
8 but at a lower cost to taxpayers.

9 (b) (1) No agency of the state, nor any political subdivision,  
10 municipal corporation, or district, nor any public officer or person  
11 charged with the letting of contracts for the construction, alteration,  
12 or repair of public works, shall draft or cause to be drafted  
13 specifications for bids, in connection with the construction,  
14 alteration, or repair of public works, (1) in a manner that limits the  
15 bidding, directly or indirectly, to any one specific concern, or (2)  
16 calling for a designated material, product, thing, or service by  
17 specific brand or trade name unless the specification is followed  
18 by the words “or equal” so that bidders may furnish any equal  
19 material, product, thing, or service. In applying this section, the  
20 specifying agency shall, if aware of an equal product manufactured  
21 in this state, name that product in the specification. Specifications  
22 shall provide a period of time prior to or after, or prior to and after,  
23 the award of the contract for submission of data substantiating a  
24 request for a substitution of “an equal” item. If no time period is  
25 specified, data may be submitted any time within 35 days after the  
26 award of the contract.

27 (2) (A) Notwithstanding paragraph (1), specifications shall not  
28 require a bidder to provide submission of data substantiating a  
29 request for a substitution of “an equal” item prior to the bid or  
30 proposal submission deadline.

31 (B) *This paragraph shall not apply to contracts with an agency*  
32 *of the state, a public officer of the state, or a person charged with*  
33 *the letting of contracts for an agency of the state.*

34 (c) Subdivision (b) is not applicable if the awarding authority,  
35 or its designee, makes a finding that is described in the invitation

1 for bids or request for proposals that a particular material, product,  
2 thing, or service is designated by specific brand or trade name for  
3 any of the following purposes:

4 (1) In order that a field test or experiment may be made to  
5 determine the product's suitability for future use.

6 (2) In order to match other products in use on a particular public  
7 improvement either completed or in the course of completion.

8 (3) In order to obtain a necessary item that is only available  
9 from one source.

10 (4) (A) In order to respond to an emergency declared by a local  
11 agency, but only if the declaration is approved by a four-fifths vote  
12 of the governing board of the local agency issuing the invitation  
13 for bid or request for proposals.

14 (B) In order to respond to an emergency declared by the state,  
15 a state agency, or political subdivision of the state, but only if the  
16 facts setting forth the reasons for the finding of the emergency are  
17 contained in the public records of the authority issuing the  
18 invitation for bid or request for proposals.

O