

AMENDED IN ASSEMBLY MARCH 20, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 963

Introduced by Assembly Member Levine

February 22, 2013

An act to amend Sections 10344 and 12400 of the Public Contract Code, relating to state contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 963, as amended, Levine. State contracts: request for proposal: procedures.

Existing law governs contracting between state agencies and private contractors, and sets forth requirements for the procurement of materials, supplies, equipment, and services, and the acquisition of information technology goods and services by state agencies.

This bill would require a bidder's record of environmentally preferable purchasing, as defined, to be a factor in awarding a contract under a request for proposal, as specified.

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 10344 of the Public Contract Code is
2 amended to read:
3 10344. (a) Contracts subject to this article may be awarded
4 under a procedure that makes use of a request for proposal. State
5 agencies that use this procedure shall include in the request for
6 proposal a clear, precise description of the work to be performed

1 or services to be provided, a description of the format that proposals
2 shall follow and the elements they shall contain, the standards the
3 agency will use in evaluating proposals, the date on which
4 proposals are due and the timetable the agency will follow in
5 reviewing and evaluating them.

6 State agencies that use a procedure that makes use of a request
7 for proposal shall evaluate proposals and award contracts pursuant
8 to subdivision (b) or (c). A proposal shall not be considered if it
9 has not been received at the place, and before the closing time,
10 stated in the request for proposal.

11 (b) State agencies that use the evaluation and selection procedure
12 in this subdivision shall include in the request for proposal, in
13 addition to the information required by subdivision (a), a
14 requirement that bidders submit their proposals with the bid price
15 and all cost information in a separate, sealed envelope.

16 Proposals shall be evaluated and the contract awarded in the
17 following manner:

18 (1) All proposals received shall be reviewed to determine those
19 that meet the format requirements and the standards specified in
20 the request for proposal.

21 (2) The sealed envelopes containing the bid price and cost
22 information for those proposals that meet the format requirements
23 and standards shall then be publicly opened and read.

24 (3) The contract shall be awarded to the lowest responsible
25 bidder meeting the standards.

26 (4) (A) If there is a tie for the lowest responsible bidder, the
27 awarding agency shall select the bidder with a ~~superior~~ record of
28 environmentally preferable purchasing as defined in Section 12400.

29 (B) If the bid price of the lowest responsible bidder is not more
30 than 3% lower than the second lowest bid price, the awarding
31 agency shall select, among the bidders with the lowest and second
32 lowest bid price, the bidder with a ~~superior~~ record of
33 environmentally preferable purchasing as defined in Section 12400.
34 *In the event that the bidders with the lowest and second lowest bid*
35 *price have a record of environmentally preferable purchasing, the*
36 *awarding agency shall select the lowest responsible bidder.*

37 (c) State agencies that use the evaluation and selection procedure
38 in this subdivision shall include in the request for proposal, in
39 addition to the information required by subdivision (a), a
40 description of the methods that will be used in evaluating and

1 scoring the proposals. Any evaluation and scoring method shall
2 ensure that substantial weight in relationship to all other criteria
3 used shall be given to the contract price proposed by the bidder.

4 Proposals shall be evaluated and the contract awarded in the
5 following manner:

6 (1) All proposals shall be reviewed to determine which meet
7 the format requirements specified in the request for proposal.

8 (2) All proposals meeting the formal requirements shall then
9 be submitted to an agency evaluation committee which shall
10 evaluate and score the proposals using the methods specified in
11 the request for proposal. All proposals and all evaluation and
12 scoring sheets shall be available for public inspection at the
13 conclusion of the committee scoring process. The agency
14 evaluation committee shall consider a bidder's environmentally
15 preferable purchasing as defined in Section ~~12404~~ 12400.

16 (3) The contract shall be awarded to the bidder whose proposal
17 is given the highest score by the evaluation committee.

18 (d) This section shall not require the awarding of the contract
19 if no proposals are received containing bids offering a contract
20 price that in the opinion of the state agency is a reasonable price.

21 (e) (1) In addition to the information required by subdivision
22 (a), a request for proposal for a contract that involves the furnishing
23 of equipment, materials, or supplies shall contain the following
24 statement:

25
26 "It is unlawful for any person engaged in business within this
27 state to sell or use any article or product as a "loss leader" as
28 defined in Section 17030 of the Business and Professions Code."
29

30 (2) On and after March 31, 2010, and until December 31, 2011,
31 if a request for proposal does not contain the statement required
32 by paragraph (1), the awarding agency shall report this error to the
33 department within 30 days of the date the awarding agency
34 discovers this error.

35 (3) The department shall post in the State Contracting Manual
36 instructions for including the statement required by paragraph (1)
37 in all affected contracts.

38 (4) The statement required by paragraph (1) shall be deemed to
39 be part of a request for proposal even if the statement is
40 inadvertently omitted from the request for proposal.

1 (f) A bidder shall be subject to Section ~~12404~~ 12400 if the bidder
2 includes environmentally preferable purchasing as part of his or
3 her proposal.

4 SEC. 2. Section 12400 of the Public Contract Code is amended
5 to read:

6 12400. For purposes of this chapter, “environmentally
7 preferable purchasing” means the procurement or acquisition of
8 goods and services that have a lesser or reduced effect on human
9 health and the environment when compared with competing goods
10 or services that serve the same purpose. This comparison shall
11 take into consideration, to the extent feasible, among other things,
12 raw materials acquisition, production, manufacturing, packaging,
13 distribution, reuse, operation, maintenance, disposal, energy
14 efficiency, product performance, durability, safety, the needs of
15 the purchaser, and cost.