

ASSEMBLY BILL

No. 1212

Introduced by Assembly Member Levine

February 22, 2013

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1212, as introduced, Levine. 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 prohibit 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.

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) *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 (c) Subdivision (b) is not applicable if the awarding authority,
32 or its designee, makes a finding that is described in the invitation
33 for bids or request for proposals that a particular material, product,
34 thing, or service is designated by specific brand or trade name for
35 any of the following purposes:

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

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

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

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

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

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