

AMENDED IN SENATE APRIL 29, 2013

AMENDED IN SENATE APRIL 10, 2013

**SENATE BILL**

**No. 124**

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**Introduced by Senator Corbett**  
*(Coauthor: Senator Correa)*

January 18, 2013

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An act to amend Sections 4217.11 and 4217.16 of the Government Code, and to add Section 10780.6 to, and to add Article 7 (commencing with Section 10390) to Chapter 2 of Part 2 of Division 2 of, the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 124, as amended, Corbett. Public contracts: bid preferences: clean energy.

Existing law imposes various requirements with respect to contracting by state agencies and the Trustees of the California State University. Existing law requires state agencies and the Trustees of the California State University to use a competitive bidding process when contracting for goods and services. However, existing law allows a public agency to award an energy service contract if the governing body determines it is in the best interest of the agency and costs will be reduced, as specified.

This bill would require state agencies and the Trustees of the California State University that accept bids or proposals for a contract for the purchase or installation of a clean energy device, technology, or system, as defined, to provide a 5% preference to a bidder that certifies that all of the parts of the clean energy device, technology, or system to be installed have been manufactured ~~or assembled~~ in the state, in accordance with specified criteria. This bill would authorize a public

agency, including, but not limited to, the Trustees of the California State University, to award a contract based on the fact that a clean energy device, technology, or system was manufactured ~~or assembled~~ in the state if the contract is an energy service contract determined to be in the best interest of the public agency.

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 all of the  
2 following:

3 (a) California faces the most severe economic downturn since  
4 the Great Depression. Over two million Californians are out of  
5 work, and California’s unemployment rate is one of the highest in  
6 the nation.

7 (b) At a time of scarce state resources, state purchases should  
8 be used to stimulate our state economy and put people back to  
9 work.

10 (c) The Green Building Executive Order (B-18-12) mandated  
11 that state agencies evaluate the merits of using clean and renewable  
12 onsite energy generation technologies in all new building or large  
13 renovation projects.

14 (d) California has several companies that manufacture clean  
15 energy devices, technology, and systems in the state, employing  
16 Californians and helping our economy.

17 (e) California is the nation’s largest clean economy. More than  
18 12,000 clean technology companies call California home and are  
19 creating jobs at nearly 10 times the rate of the state’s other  
20 industries. A number of these companies have developed novel  
21 technologies, and it is in the interest of the state to incentivize these  
22 companies to establish and grow manufacturing operations within  
23 the state. This will create both construction and permanent  
24 manufacturing jobs in California.

25 (f) It is the intent of the Legislature that a preference should be  
26 allowed for clean energy devices, technology, and systems  
27 manufactured in California.

28 SEC. 2. Section 4217.11 of the Government Code is amended  
29 to read:

1 4217.11. The following terms, whenever used in this chapter,  
2 have the meanings given in this section, except where the context  
3 clearly indicates otherwise:

4 (a) “Clean energy device, technology, or system” means devices  
5 or technologies used for a renewable electrical generation facility,  
6 as defined in paragraph (1) of subdivision (a) of Section 25741 of  
7 the Public Resources Code; a combined heat and power system,  
8 as defined in Section 2840.2 of the Public Utilities Code;  
9 distributed generation and energy storage technologies eligible  
10 under the self-generation incentive program pursuant to Section  
11 379.6 of the Public Utilities Code, as determined by the Public  
12 Utilities Commission; or a facility designed for the production of  
13 renewable fuels the efficient use of which reduces the use of fossil  
14 or nuclear fuels; and energy efficiency devices or technologies  
15 that reduce the need for new electric generation and reduce  
16 emissions of toxic and criteria pollutants and greenhouse gases.

17 (b) “Conservation services” means the electrical, thermal, or  
18 other energy savings resulting from conservation measures, which  
19 shall be treated as a supply of that energy.

20 (c) “Energy conservation facility” means clean energy devices,  
21 technologies, or systems, or conservation measures located in  
22 public buildings or on land owned by public agencies.

23 (d) “Energy service contract” means a contract entered into by  
24 a public agency with any person, pursuant to which the person will  
25 provide electrical or thermal energy or conservation services to a  
26 public agency from an energy conservation facility.

27 (e) “Facility financing contract” means a contract entered into  
28 by a public agency with any person whereby the person provides  
29 financing for an energy conservation facility in exchange for  
30 repayment of the financing and all costs and expenses related  
31 thereto by the public agency. A facility financing contract may  
32 provide for the person with whom the public agency contracts to  
33 provide any combination of feasibility studies for, and design and  
34 construction of, all or part of the energy conservation facility in  
35 addition to the financing and other related services, and may  
36 provide for an installment sale purchase, another form of purchase,  
37 or amortized lease of the energy conservation facility by the public  
38 agency.

39 (f) “Facility ground lease” means a lease of all, or any portion  
40 of, land or a public building owned by, or under lease to, a public

1 agency to a person in conjunction with an energy service contract  
2 or a facility financing contract. A facility ground lease may include,  
3 in addition to the land on which energy conservation facilities will  
4 be located, easements, rights-of-way, licenses, and rights of access,  
5 for the construction, use, or ownership by the person of the facility  
6 and all related utility lines not owned or controlled by the  
7 interconnecting utility, and offsite improvements related thereto.  
8 A facility ground lease may also include the addition or  
9 improvement of utility lines and equipment owned by the  
10 interconnecting utility that are necessary to permit interconnection  
11 between that utility and an energy conservation facility.

12 (g) “Person” means, but is not limited to, any individual,  
13 company, corporation, partnership, limited liability company,  
14 public agency, association, proprietorship, trust, joint venture, or  
15 other entity or group of entities.

16 (h) “Public agency” means the state, a county, city and county,  
17 city, district, community college district, school district, California  
18 State University, joint powers authority or other entity designated  
19 or created by a political subdivision relating to energy development  
20 projects, and any other political subdivision or public corporation  
21 in the state.

22 (i) “Public building” includes any structure, building, facility,  
23 or work which a public agency is authorized to construct or use,  
24 and automobile parking lots, landscaping, and other facilities,  
25 including furnishings and equipment, incidental to the use of any  
26 structure, building, facility, or work, and also includes the site  
27 thereof, and any easements, rights-of-way appurtenant thereto, or  
28 necessary for its full use.

29 SEC. 3. Section 4217.16 of the Government Code is amended  
30 to read:

31 4217.16. Prior to awarding or entering into an agreement or  
32 lease, the public agency may request proposals from qualified  
33 persons. After evaluating the proposals, the public agency may  
34 award the contract on the basis of the experience of the contractor,  
35 the type of technology employed by the contractor, the cost to the  
36 local agency, whether the clean energy device or technology is  
37 manufactured ~~or assembled~~ in California, and any other relevant  
38 considerations. The public agency may utilize the pool of qualified  
39 energy service companies established pursuant to Section 388 of

1 the Public Utilities Code and the procedures contained in that  
2 section in awarding the contract.

3 SEC. 4. Article 7 (commencing with Section 10390) is added  
4 to Chapter 2 of Part 2 of Division 2 of the Public Contract Code,  
5 to read:

6

7 Article 7. Preference for California-Manufactured Clean Energy  
8 Devices, Technology, and Systems

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10 10390. For the purposes of this article:

11 (a) “Clean energy device, technology, or system” means devices  
12 or technologies used for a renewable electrical generation facility,  
13 as defined in paragraph (1) of subdivision (a) of Section 25741 of  
14 the Public Resources Code; a combined heat and power system,  
15 as defined in Section 2840.2 of the Public Utilities Code;  
16 distributed generation and energy storage technologies eligible  
17 under the self-generation incentive program pursuant to Section  
18 379.6 of the Public Utilities Code, as determined by the Public  
19 Utilities Commission; or a facility designed for the production of  
20 renewable fuels, the efficient use of which reduces the use of fossil  
21 or nuclear fuels; and energy efficiency devices or technologies  
22 that reduce the need for new electric generation and reduce  
23 emissions of toxic and criteria pollutants and greenhouse gases.

24 (b) “Power purchase agreement” means a financial arrangement  
25 in which a third-party developer owns, operates, and maintains a  
26 clean energy device, technology, or system, and a state agency  
27 agrees to site the device, technology, or system on its roof or  
28 elsewhere on its property and purchases the device, technology,  
29 or system’s electric output, not the device, technology, or system  
30 itself, from the third-party developer for a predetermined period  
31 of time.

32 10391. (a) A state agency that accepts bids or proposals for a  
33 contract for the purchase or installation of a clean energy device,  
34 technology, or system through a power purchase agreement or a  
35 direct purchase shall provide a preference of 5 percent to a bidder  
36 that certifies that all of the parts of the clean energy device,  
37 technology, or system to be installed have been manufactured ~~or~~  
38 assembled in this state. The preference shall be provided as follows:

39 (1) For solicitations to be awarded to the lowest responsible  
40 bidder meeting specifications, the preference to a bidder that

1 certifies that all of the parts of the clean energy device, technology,  
2 or system to be installed have been manufactured ~~or assembled~~ in  
3 this state shall be 5 percent of the bid price of the lowest  
4 responsible bidder meeting specifications.

5 (2) For solicitations to be awarded to the highest scored bidder  
6 based on evaluation factors in addition to price, the preference to  
7 a bidder that certifies that all of the parts of the clean energy device,  
8 technology, or system to be installed have been manufactured ~~or~~  
9 ~~assembled~~ in this state shall be 5 percent of the total score of the  
10 highest scored bidder.

11 (3) A preference awarded pursuant to paragraph (1) or (2) shall  
12 not be awarded to a noncompliant bidder and shall not be used to  
13 satisfy any applicable minimum requirements.

14 (4) In order to be eligible for the 5-percent preference authorized  
15 pursuant to this section, a bidder shall submit all required  
16 substantiating documentation and information needed by the state  
17 agency to determine if the bidder is eligible for the preference,  
18 including, but not limited to, documentation regarding the identity  
19 of the manufacturer ~~or assembler~~ of the clean energy device,  
20 technology, or system and the location or locations where the parts  
21 of the clean energy device, technology, or system will be  
22 manufactured ~~or assembled~~.

23 (5) If, after application of the preferences set forth in this section,  
24 more than one bid qualified as the lowest responsible bid or the  
25 highest scored bid, the state agency shall award the contract to the  
26 bidder that has the highest number of full-time employees who  
27 ~~assemble or manufacture~~ the parts of the clean energy device,  
28 technology, or system in the state when the contract is let.

29 (b) The Department of General Services shall establish a process  
30 to verify that a bidder meets the criteria for the 5-percent  
31 preference.

32 SEC. 5. Section 10780.6 is added to the Public Contract Code,  
33 to read:

34 10780.6. (a) For purposes of this section, “clean energy device,  
35 technology, or system” means devices or technologies used for a  
36 renewable electrical generation facility, as defined in paragraph  
37 (1) of subdivision (a) of Section 25741 of the Public Resources  
38 Code; a combined heat and power system, as defined in Section  
39 2840.2 of the Public Utilities Code; distributed generation and  
40 energy storage technologies eligible under the self-generation

1 incentive program pursuant to Section 379.6 of the Public Utilities  
2 Code, as determined by the Public Utilities Commission; or a  
3 facility designed for the production of renewable fuels, the efficient  
4 use of which reduces the use of fossil or nuclear fuels; and energy  
5 efficiency devices or technologies that reduce the need for new  
6 electric generation and reduce emissions of toxic and criteria  
7 pollutants and greenhouse gases.

8 (b) The trustees that accept bids or proposals for a contract for  
9 the purchase or installation of a clean energy device, technology,  
10 or system through a power purchase agreement or a direct purchase  
11 shall provide a preference of 5 percent to a bidder that certifies  
12 that all of the parts of the clean energy device, technology, or  
13 system to be installed have been manufactured ~~or assembled~~ in  
14 this state. The preference shall be provided as follows:

15 (1) For solicitations to be awarded to the lowest responsible  
16 bidder meeting specifications, the preference to a bidder that  
17 certifies that all of the parts of the clean energy device, technology,  
18 or system to be installed have been manufactured ~~or assembled~~ in  
19 this state shall be 5 percent of the bid price of the lowest  
20 responsible bidder meeting specifications.

21 (2) For solicitations to be awarded to the highest scored bidder  
22 based on evaluation factors in addition to price, the preference to  
23 a bidder that certifies that all of the parts of the clean energy device,  
24 technology, or system to be installed have been manufactured ~~or~~  
25 assembled in this state shall be 5 percent of the total score of the  
26 highest scored bidder.

27 (3) A preference awarded pursuant to paragraph (1) or (2) shall  
28 not be awarded to a noncompliant bidder and shall not be used to  
29 satisfy any applicable minimum requirements.

30 (4) In order to be eligible for the 5-percent preference authorized  
31 pursuant to this section, a bidder shall submit all required  
32 substantiating documentation and information needed by the  
33 trustees to determine if the bidder is eligible for the preference,  
34 including, but not limited to, documentation regarding the identity  
35 of the manufacturer ~~or assembler~~ of the clean energy device,  
36 technology, or system and the location or locations where the parts  
37 of the clean energy device, technology, or system will be  
38 manufactured ~~or assembled~~.

39 (5) If, after application of the preferences set forth in this section,  
40 more than one bid qualifies as the lowest responsible bid or the

1 highest scored bid, the trustees shall award the contract to the  
2 bidder that has the highest number of full-time employees who  
3 ~~assemble or~~ manufacture the parts of the clean energy device,  
4 technology, or system in the state when the contract is let.  
5 (c) The Department of General Services shall establish a process  
6 to verify that a bidder meets the criteria for the 5-percent  
7 preference.