AMENDED IN SENATE JUNE 1, 2010

AMENDED IN SENATE APRIL 20, 2010

AMENDED IN SENATE APRIL 5, 2010

SENATE BILL No. 1249

Introduced by Senator Ducheny

February 19, 2010

An act to add Chapter 2.01 (commencing with Section 10490.10) to Part 2 of Division 2 of the Public Contract Code, relating to state contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1249, as amended, Ducheny. Contracting by state agencies: best value competitive bid contracts.

Existing law governs contracting between state agencies and private contractors, sets forth requirements for the bidding, awarding, and overseeing of contracts for construction projects, and regulates the awarding of contracts for the purchase of goods and services.

This bill would permit competitive bid contracts for construction projects, including, but not limited to, projects of the California State University, contracts for goods and services, and contracts for information technology acquisition, to be awarded as best value competitive bid contracts, as defined, taking into consideration, when awarding the contract, the total direct and indirect economic benefit to the state of the proposed contract, as prescribed. *The bill would prohibit the award of a contract to a bidder pursuant to these provisions if the Director of General Services determines that the award of the contract to that bidder would result in a net loss of revenues to the General Fund based on estimates of the total direct and indirect economic benefit to* *the state under the contract.* ~~This~~ *The* bill would authorize the Director of General Services to adopt regulations to assist state agencies in implementing these provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. It is the intent of the Legislature to do both of the following:

(a) Permit a contract entered into between the state and outside entities to reflect the true costs, both direct and indirect, of the contract to the state.

(b) Permit the method established for calculating the actual cost of any contract entered into to include both direct and indirect economic benefits to the state through the employment of individuals or companies or both or the purchase of goods or services or both that generate revenues to the state, including personal or corporate, or both personal and corporate, income taxes, property taxes, or sales and use taxes.

SEC. 2. Chapter 2.01 (commencing with Section 10490.10) is added to Part 2 of Division 2 of the Public Contract Code, immediately following Chapter 2 (commencing with Section 10290), to read:

Chapter 2.01. Best Value Competitive Bid Contracts

10490.10. (a) Notwithstanding any provision of law, commencing January 1, 2011, every contract that would otherwise be required to be awarded on a competitive basis pursuant to Chapter 1 (commencing with Section 10100), Chapter 2 (commencing with Section 10290), Chapter 2.5 (commencing with Section 10700), Chapter 3 (commencing with Section 12100), and any other applicable state statute governing state contracts, may be awarded, instead, as a best value competitive bid contract to the bid or proposal that presents the best overall value to the state.

(b) For purposes of this chapter, "best value competitive bid contract" means a contract that is awarded on a competitive process that is not based merely on the lowest direct cost to the state under the contract, but rather is awarded to the bidder that presents the overall best value to the state after consideration of the total direct and indirect economic benefit to the state under the contract, including, but not limited to, all of the following:

(1) The direct cost of the contract, including, but not limited to, materials, goods, and services.

(2) Indirect value to the state generated by the contract, including, but not limited to, an analysis of the proposed contract to determine all of the following:

(A) (i) The total projected indirect revenue to the state generated by the wages that the contractor and subcontractors, if any, propose to pay their workers in performing under the contract.

(ii) The total projected indirect revenue to California local governments generated by the wages that the contractor and subcontractors, if any, propose to pay their workers in performing under the contract and the indirect revenue to the state generated thereby.

(B) (i) The total projected indirect revenue to the state generated from the goods and materials that the contractor and subcontractors, if any, propose to purchase or provide in performing under the contract.

(ii) The total projected indirect revenue to California local governments generated by the goods and materials that the contractor and subcontractors, if any, propose to purchase or deliver in performing under the contract and the indirect revenue to the state generated thereby.

(iii) The indirect economic benefit to the state generated by the economic activity related to the production of the goods and materials to be purchased or delivered under the contract.

(c) The Director of General Services shall adopt regulations that shall take effect immediately and are exempt from the rulemaking provisions of the Administrative Procedure Act to provide guidance to state agencies on best methods and practices and a related matrix to assist those agencies in determining the overall best value.

(d) In determining the overall economic benefit to the state of a proposed contract pursuant to this section, state agencies shall consider, to the extent not prohibited under federal law, the location where the wages are to be paid and the location where the products or materials are to be manufactured or produced.

(e) No contract shall be awarded to a bidder pursuant to this chapter if the Director of General Services determines that the award of the contract to that bidder would result in a net loss of revenues to the General Fund based on estimates of the total direct and indirect economic benefit to the state under the contract.

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