

# ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Com. on Jobs, Econ. Dev. & Economy Analyst: Marion Mann DeJong Bill Number: AB 1813

Related Bills: See Legislative History Telephone: 845-6979 Amended Date: 06/18/2002

Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** State Agency Director of General Services Director Notify Legislature of Intention to Enter into Information Technology Contracts

## SUMMARY

This bill would require that notification be provided to the Legislature of intent to enter into new sole-source contracts for information technology (IT) goods and services.

## SUMMARY OF AMENDMENTS

The June 18, 2002, amendments reduced the threshold amount from \$1 million to \$500,000 and made other technical changes.

This is the department's first analysis of this bill.

## PURPOSE OF THE BILL

According to the author's office, this bill is intended to provide the Legislature with oversight authority of state agency sole-source IT contracts.

## EFFECTIVE/OPERATIVE DATE

This bill would become effective January 1, 2003, and would apply to IT contracts signed on or after that date.

## POSITION

Pending.

## ANALYSIS

### STATE LAW

Current state law requires that state contracts for acquisition of IT goods and services be conducted through competitive means. Exceptions to competitive contracting are allowed when the Director of the Department of General Services (DGS) determines that:

- the goods and services proposed for acquisition are the only goods and services that can meet the state's need, or
- the goods and services are needed in cases of emergency where immediate acquisition is necessary for the protection of the public health, welfare, or safety.

Board Position:	Department Director	Date
_____ S		
_____ SA	Gerald H. Goldberg	8/7/02
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Existing law requires DGS to approve an agency's mode of acquisition and the procedures followed for procurement. DGS must maintain appropriate criteria and procedures to ensure compliance with the law.

Section 11.00 of the 2001-02 Budget Act requires a state agency to obtain written approval from the Department of Finance before entering into any IT contract that increases the budgeted cost of the project by the lesser of \$500,000 or 10% of the budgeted cost of the IT project. The agency must also notify the Legislature at least 30 days prior to entering into such contracts. This notification must:

- explain the necessity for the proposed contract or amendment;
- identify the cost savings, revenue increase, or fiscal benefit resulting from the contract or amendment; and
- identify the funding source of the proposed contract or amendment.

In May 2002, Governor Davis issued Executive Order D-55-02. This Executive Order instructs a three-member team to review the state's contracting and procurement procedures and recommend changes necessary to ensure that open and competitive bidding is utilized to the greatest extent possible in awarding state contracts. The three-member team is required to submit its findings and recommendations to the Governor in August 2002.

The Executive Order also states that during the 90-day review period, no state contract or procurement greater than \$100,000, including those bid under master service agreements, will be executed unless awarded pursuant to a competitively bid process. In addition, during the review period, any state contract or procurement in the amount of \$100,000 or less must comply with interim guidelines adopted by DGS. The order permits exceptions for:

- essential services,
- public health or safety,
- cases of emergency, or
- avoidance of financial loss to the state.

### THIS BILL

This bill would require DGS or the director of a contracting state agency, as applicable, to notify the chairs of specified legislative committees of his or her intention to enter into sole-source contracts for IT goods and services in excess of \$500,000. The notice must be given at least 30 days prior to entering into the contract. Each notice must:

- explain the necessity and rationale for the proposed contract;
- identify cost savings or other fiscal benefits; and
- identify the funding source.

Notice would be given to the chair and all the members of the Joint Legislative Budget Committee, the chairs of the budget committee of each house of the Legislature, and the chair of any policy committee that considers and reviews legislation regarding IT goods and services.

Exceptions to the notice requirement would be allowed if:

- the contract is in response to an emergency and is necessary to protect the public health, welfare, or safety, or
- the sole-source contract is awarded under circumstances where a competitive bid process was conducted and only one person submitted a bid.

**CURRENT DEPARTMENT PRACTICE**

The department currently follows the guidelines set forth under Management Memo 02-12, which allows for sole-source contract agreements and acquisitions under \$5,000. Contract agreements and acquisitions for more than \$5,000 must comply with Public Contract Codes 10301, 10302, 10340, and 12102. In addition, specific approvals must be acquired. The following table shows the compliance and approval requirements for department contracts.

Contract Amount	Comply with specified Public Contract Codes	Comply with Executive Order D-55-02	Approval of FTB Legal Branch and Executive Officer, and Agency Secretary	Approval of DGS	Approval of Department of Finance
More than \$5,000, to \$25,000	<b>X</b>		<b>X</b>		
More than \$25,000, to \$100,000	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	
More than \$100,000	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>

**IMPLEMENTATION CONSIDERATIONS**

Department staff will need to create a new process to notify the legislative committee members of potential sole-source contracts and to answer any questions resulting from the notice requirement in this bill. As with the addition of any approvals to the procurement process, the time may be extended to implement projects or execute purchases critical to revenue collections.

**LEGISLATIVE HISTORY**

AB 425 (Oropeza, 2001-2002), AB 1777 (Oropeza, 2001-2002), and SB 1840 (Committee on Budget and Fiscal Review, 2001-2002) are proposed Budget Acts for 2002-03. Section 11.00 of all three bills would require a state agency to obtain written approval from the Department of Finance before entering into any IT contract that increases the budgeted cost of an IT project by the lesser of \$500,000 or 10% of the budgeted IT project. The agency must also notify the Legislature at least 30 days prior to entering into such contracts. Section 11.10 of all three of these bills would add new requirements for approval of statewide software license agreements and notification to the Legislature of such agreements.

AB 425 passed the Senate on June 29, 2002. Concurrence was not reached in the Assembly with the Senate amendments on June 30, 2002, but granted it reconsideration.

AB 1777 passed the Senate on May 30, 2002. Concurrence was not reached in the Assembly with the Senate amendments on May 30, 2002. The bill is in Conference Committee.

SB 1840 is in the Assembly Third Reading File.

### **FISCAL IMPACT**

This bill would not significantly impact the department's costs.

### **ECONOMIC IMPACT**

This bill would not impact the state's income tax revenue.

### **LEGISLATIVE STAFF CONTACT**

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