

AMENDED IN ASSEMBLY MAY 24, 2021  
AMENDED IN ASSEMBLY MARCH 25, 2021  
CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

**ASSEMBLY BILL**

**No. 13**

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**Introduced by Assembly Member Chau**

December 7, 2020

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An act to add Section 2004 to, and to add Chapter 3.3 (commencing with Section 12114) to Part 2 of Division 2 of, the Public Contract Code, relating to automatic decision systems.

LEGISLATIVE COUNSEL'S DIGEST

AB 13, as amended, Chau. Public contracts: automated decision systems.

Existing law governing the acquisition of information technology goods and services requires all contracts for the acquisition of information technology goods and services related to information technology projects, as defined, to be made by, or under the supervision of, the Department of Technology, as prescribed. Existing law requires all other contracts for the acquisition of information technology goods or services, whether by lease or purchase, to be made by or under the supervision of the Department of General Services. Existing law grants the Department of Technology or the Department of General Services final authority in the determination of information technology procurement procedures applicable to specified acquisitions. Existing law grants the Department of Technology the final authority in the determination of information technology procurement policy.

Existing law states the intent of the Legislature that those policies and procedures developed by the Department of Technology and the

Department of General Services provide for, among other things, the expeditious and value-effective acquisition of information technology goods and services to satisfy state requirements. Existing law provides that, for these purposes, “value-effective acquisition” may be defined to include, among other things, the operational cost that the state would incur if the bid or proposal is accepted, the quality of the product or service, or its technical competency, and innovative use of current technologies and quality results.

Existing law requires contract awards for all large-scale systems integration projects to be based on the proposal that provides the most value-effective solution to the state’s requirements, as determined by the evaluation criteria contained in the solicitation document. Existing law requires evaluation criteria for the acquisition of information technology goods and services, including systems integration, to provide for the selection of a contractor on an objective basis not limited to cost alone. Existing law requires specified processes and procedures for the solicitation for acquisitions, the evaluation of proposals, the selection of contractors, and the consideration of protests by participating bidders.

This bill would enact the Automated Decision Systems Accountability Act of 2021 and state the intent of the Legislature that state agencies use an acquisition method that minimizes the risk of adverse and discriminatory impacts resulting from the design and application of automated decision systems. The bill would define “automated decision system” ~~for purposes of the bill’s provisions~~ to mean a computational process, including one derived from machine learning, statistical modeling, data analytics, or artificial intelligence, that issues *simplified output, including a score, classification, or recommendation, or other simplified output* that is used to support or replace human decisionmaking and materially impacts natural persons.

The bill would require contract awards for goods or services that include the use, licensing, or development of an automated decision system for a high-risk application, as defined, to be based on the proposal that provides the most value-effective solution to the state’s requirements, as determined by the evaluation criteria contained in the solicitation document, and to be determined based on comprehensive assessment of objective criteria not limited to cost alone. The bill would require awarding of contracts subject to the bill’s provisions to be conducted pursuant to the requirements referenced above for awarding contracts for large-scale integration projects based on the proposal that provides the most value-effective solution to the state’s requirements.

Under the bill, to be considered responsive to a solicitation for these ~~contract~~, *contracts*, a bid response would be required to include an automated decision system impact assessment that makes certain disclosures, including, among others, certain tests of the system to help assess risks posed to the privacy or security of personal information and risks that may result in inaccurate, unfair, biased, or discriminatory decisions impacting natural persons.

The bill would require the Department of Technology, on or before January 1, 2023, to establish and make public guidelines for identifying automated decision systems that are subject to the bill's ~~requirements~~. *requirements, as specified*. The bill would require a state agency to submit to the department, within ~~10~~ 30 days of awarding ~~such a contract~~, *a contract subject to its provisions*, a high-risk automated decision system accountability report that includes, among other things, a description of any potential disparate impacts, as specified, from the proposed use of the automated decision ~~system~~, *system* and a detailed mitigation plan for identifying and minimizing the potential for any disparate impacts throughout the contracted use of the system. The bill would require, within 30 days of ~~such a~~ *that* contract award and for the duration of the contract, the department to publish on its internet website the automated decision system impact assessment submitted by the contractor and the high-risk automated decision system accountability report prepared by the state agency. The bill would authorize the department to adopt regulations and publish guidelines as necessary to effectuate the purposes of the bill.

The bill would authorize a local agency, for a contract for a good or service that includes the use, licensing, or development of an automated decision system for a high-risk application, to require a bid response submitted by a prospective contractor to include an automated decisions system impact assessment in order to be considered responsive to the solicitation. The bill would also authorize the local agency to base the contract award on the proposal that provides the most value-effective solution to the agency's requirements pursuant to the above-described provisions of the bill.

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 2004 is added to the Public Contract  
2 Code, to read:

3 2004. (a) For purposes of this section, “value-effective” has  
4 the same meaning as that term is defined in Chapter 3.3  
5 (commencing with Section 12114) of Part 2.

6 (b) Notwithstanding any other provision of law requiring a local  
7 agency to award contracts to the lowest responsible bidder, a local  
8 agency may, for a contract for a good or service that includes the  
9 use, licensing, or development of an automated decision system  
10 for a high-risk application, do both of the following:

11 (1) Require a bid response submitted by a prospective contractor  
12 to include an automated decision system impact assessment in  
13 order to be considered responsive to the solicitation.

14 (2) Base the contract award on the proposal that provides the  
15 most value-effective solution to the agency’s requirements,  
16 pursuant to Chapter 3.3 (commencing with Section 12114) of Part  
17 2.

18 SEC. 2. Chapter 3.3 (commencing with Section 12114) is added  
19 to Part 2 of Division 2 of the Public Contract Code, to read:

20

21 CHAPTER 3.3. ACQUISITION OF AUTOMATED DECISION SYSTEMS  
22 FOR HIGH-RISK APPLICATIONS  
23

24 12114. This chapter shall be known and may be cited as the  
25 Automated Decision Systems Accountability ~~Act of 2021~~ Act.

26 12114.5. It is the intent of the Legislature that agencies of the  
27 state use an acquisition method that minimizes the risk of adverse  
28 and discriminatory impacts resulting from the design and  
29 application of automated decision systems.

30 12115. For purposes of this chapter, the following shall apply:

31 (a) (1) “Automated decision system” means a computational  
32 process, including one derived from machine learning, statistical  
33 modeling, data analytics, or artificial intelligence, that issues  
34 *simplified output, including* a score, classification, *or*  
35 recommendation, ~~or other simplified output~~ that is used to support  
36 or replace human decisionmaking and materially impacts natural  
37 persons.

1 (2) “Automated decision system” does not include a tool that  
2 does not automate, support, or replace human decisionmaking  
3 processes, including, but not limited to, a junk email filter, firewall,  
4 antivirus software, calculator, spreadsheet, database, data set, or  
5 other compilation of data.

6 (b) “High-risk application” means a use of an automated  
7 decision system for which any of the following apply:

8 (1) Poses a significant risk to the privacy or security of personal  
9 information or ~~has the potential~~ *is likely* to result in inaccurate,  
10 unfair, biased, or discriminatory decisions impacting natural  
11 persons, taking into account the novelty of the technology used  
12 and the nature, scope, context, and purpose of the automated  
13 decision system.

14 (2) Affects the legal rights, health and well-being, or economic,  
15 property, or employment interests of a natural person, or otherwise  
16 significantly impacts a natural person. ~~person.~~

17 (3) Involves the personal information of a significant number  
18 of individuals with regard to race, color, national origin, political  
19 opinions, religion, trade union membership, genetic data, biometric  
20 data, health, gender, gender identity, sexuality, sexual orientation,  
21 criminal record, or any other characteristic identified in the Unruh  
22 Civil Rights Act (Section 51 of the Civil Code).

23 (4) Meets any other criteria established by the Department of  
24 Technology in regulations issued pursuant to Section 12117.

25 (c) “Simplified output” means output composed of fewer  
26 dimensions than the respective inputs used to generate it.

27 (d) “Value-effective” includes, but is not limited to, the  
28 following:

29 (1) The quality and effectiveness of steps taken by the  
30 prospective contractor to prevent disparate impacts on the basis  
31 of characteristics identified in the Unruh Civil Rights Act (Section  
32 51 of the Civil Code).

33 (2) The extent and quality of the internal policy adopted by the  
34 prospective contractor for how bias in the automated decision  
35 system, is identified and mitigated to prevent disparate impacts on  
36 the basis of characteristics identified in the Unruh Civil Rights Act  
37 (Section 51 of the Civil Code), and how it will respond to claims  
38 or evidence of bias that may arise within the terms of the contract.

39 12115.3. On or before January 1, 2023, the department shall  
40 establish and make public guidelines for identifying automated

1 decision systems that are subject to the requirements set forth in  
2 ~~Section 12115.5~~. *12115.5 in a manner generally consistent, if*  
3 *appropriate, with international high-risk frameworks and*  
4 *standards.*

5 12115.5. (a) Contract awards for goods or services that include  
6 the use, licensing, or development of an automated decision system  
7 for a high-risk application shall be based on the proposal that  
8 provides the most value-effective solution to the state's  
9 requirements, as determined by the evaluation criteria contained  
10 in the solicitation document, and shall be determined based on  
11 comprehensive assessment of objective criteria not limited to cost  
12 alone.

13 (b) Awarding of contracts subject to this chapter, including, but  
14 not limited to, solicitation for acquisitions, evaluation of proposals,  
15 and selection of contractors, shall be conducted pursuant to the  
16 requirements specified in Section 12102.2 for awarding contracts  
17 based on the proposal that provides the most value-effective  
18 solution to the state's requirements.

19 (c) A bid response submitted by a prospective contractor for a  
20 good or service that includes the use, licensing, or development  
21 of an automated decision system for a high-risk application shall  
22 not be considered responsive to the solicitation document unless  
23 the bid response includes an automated decision system impact  
24 assessment that makes the following disclosures to the contracting  
25 agency:

26 (1) Specify the name, vendor, and version of the automated  
27 decision system and describe its general capabilities, including,  
28 but not limited to, reasonably foreseeable capabilities outside the  
29 scope of its proposed use.

30 (2) Describe the purpose of the automated decision system,  
31 including, but not limited to, the decision or decisions it can make  
32 or support, and its intended benefits compared to alternatives,  
33 including, but not limited to, the results of any research assessing  
34 its efficacy and relative benefits.

35 (3) Provide a thorough explanation of how the automated  
36 decision system functions, the logical relationship between data  
37 inputs and outputs, and how those outputs relate to the decision  
38 or decisions made or supported by the system, including, but not  
39 limited to, limitations on inferences that can be drawn from those  
40 results.

1 (4) Describe the affirmative steps the prospective contractor  
2 has taken, or any third-party engagement, to conduct legitimate,  
3 independent, and reasonable tests of the automated decision system  
4 to help assess any risks posed to the privacy or security of personal  
5 information and any risks that may result in inaccurate, unfair,  
6 biased, or discriminatory decisions impacting natural persons.

7 (5) Describe any potential disparate impacts on the basis of  
8 characteristics identified in the Unruh Civil Rights Act (Section  
9 51 of the Civil Code) from the proposed use of the automated  
10 decision system, including, but not limited to, reasonably  
11 foreseeable capabilities outside the scope of its proposed use.

12 (6) Describe any internal policies the prospective contractor has  
13 adopted for identifying potential disparate impacts on the basis of  
14 characteristics identified in the Unruh Civil Rights Act (Section  
15 51 of the Civil Code) resulting from the proposed use of the  
16 automated decision system.

17 (7) Provide best practices for the proposed high-risk application  
18 of the automated decision system to avoid or minimize any  
19 disparate impacts on the basis of characteristics identified in the  
20 Unruh Civil Rights Act (Section 51 of the Civil Code), including  
21 all of the following:

22 (A) How and when the automated decision system should be  
23 deployed or used, and the relevant technical expertise necessary  
24 to minimize the potential for inaccurate, unfair, biased, or  
25 discriminatory decisions impacting natural persons.

26 (B) How to limit the collection and retention of information to  
27 that which is directly relevant and necessary for the specified  
28 purpose.

29 (C) How automated decision system data should be stored and  
30 accessed to mitigate security risks and threats.

31 (8) Any additional information specified in the solicitation, or  
32 otherwise required by the contracting agency for the purpose of  
33 effectively evaluating and avoiding or minimizing disparate  
34 impacts on the basis of characteristics identified in the Unruh Civil  
35 Rights Act (Section 51 of the Civil Code) from the use of the  
36 automated decision system.

37 (9) Any additional information required in accordance with  
38 regulations adopted by the Department of Technology pursuant to  
39 Section 12117.

1 12116. A state agency that awards a contract for goods or  
2 services that include the use, licensing, or development of an  
3 automated decision system for a high-risk application shall, within  
4 ~~40~~ 30 days of awarding that contract, submit to the Department of  
5 Technology a high-risk automated decision system accountability  
6 ~~report, including, but not limited to,~~ *report that includes* a clear  
7 and understandable statement of the following:

8 (a) The name, vendor, and version of the automated decision  
9 system.

10 (b) The type or types of data that will be used as inputs for the  
11 automated decision system, how that data will be generated,  
12 collected, and processed, and the type or types of data the system  
13 is likely to generate in the course of its proposed use.

14 (c) A description of the purpose of the automated decision  
15 system, including what decision or decisions it will be used to  
16 make or support, and a detailed determination of whether, and  
17 how, the system serves reasonable objectives and furthers a  
18 legitimate interest.

19 (d) A clear use and data management policy that includes  
20 protocols for the following:

21 (1) How and when the automated decision system will be  
22 deployed or used and by whom, including, but not limited to, the  
23 relevant technical expertise of the user or users, the factors that  
24 will be used to determine where, when, and how the technology  
25 will be deployed, whether the technology will be operated  
26 continuously or used only under specific circumstances, if the  
27 system will be operated or used by another entity on behalf of the  
28 agency, and, if so, an explicit description of the conditions of that  
29 entity's access and applicable protocols.

30 (2) Any additional rules and processes that will govern the use  
31 of the automated decision system.

32 (3) How automated decision system data will be securely stored  
33 and accessed, whether the agency intends to share access to the  
34 automated decision system or the data from that automated decision  
35 system with any other entity, and, if so, the purpose for sharing  
36 that access or data, the specific entities with whom that access or  
37 data will be shared, and the manner in which that access or data  
38 will be shared, including, but not limited to, specific protocols to  
39 ensure compliance with any applicable privacy and security laws.

1 (4) How the agency will ensure that all personnel who operate  
2 the automated decision system or access its data are knowledgeable  
3 about, and able to ensure compliance with, the use and data  
4 management policy prior to the use of the automated decision  
5 system and throughout its contracted use.

6 (e) A description of how the agency will ensure that all  
7 personnel responsible for the adoption and operation of the  
8 automated decision system understand the system’s decisional  
9 criteria, the respective weights of those criteria, and the factors  
10 that may affect or underlie specific results the system produces.

11 (f) A description of any public or community engagement that  
12 has been carried out, and any intended future public or community  
13 engagement, pertaining to the use of the automated decision  
14 system.

15 (g) A description of any potential disparate impacts on the basis  
16 of characteristics identified in the Unruh Civil Rights Act (Section  
17 51 of the Civil Code) from the proposed use of the automated  
18 decision system, and a detailed mitigation plan for identifying and  
19 minimizing the potential for any disparate impacts throughout the  
20 contracted use of the system, including, but not limited to, any  
21 procedures to regularly audit its performance.

22 (h) A description of the fiscal impact of the use, licensing, and  
23 deployment of the automated decision system, including, but not  
24 limited to, initial acquisition costs, ongoing operating costs such  
25 as maintenance, personnel, legal compliance, auditing, data  
26 retention, and security costs, and any cost savings that would be  
27 achieved through the use of the automated decision system, as well  
28 as a comparison with the costs of alternative solutions for achieving  
29 the agency’s purposes.

30 (i) The extent to which members of the public have access to  
31 the results of the automated decision ~~system~~ *system, including an*  
32 *explanation for the basis of a resulting decision in terms*  
33 *understandable to a layperson*, and are able to correct or object to  
34 its results, and where and how that information will be made  
35 available and any applicable procedures for initiating corrections  
36 or objections, as appropriate.

37 (j) *Any other information the Department of Technology*  
38 *determines to be reasonably necessary to carry out the provisions*  
39 *of this chapter.*

1 12116.5. (a) Within 30 days of a contract award by a state  
2 agency for goods or services that include the use, licensing, or  
3 development of an automated decision system for a high-risk  
4 application, and for the duration of that contract, the Department  
5 of Technology shall publish on its internet website the automated  
6 decision system impact assessment submitted pursuant to  
7 subdivision (c) of Section 12115.5 and the report prepared pursuant  
8 to Section 12116.

9 (b) This section shall not be construed to require the publication  
10 of trade secrets, as defined in Section 3426.1 of the Civil Code.

11 12117. The Department of Technology may adopt regulations  
12 and publish guidelines as necessary to effectuate the purposes of  
13 this chapter.