

AMENDED IN SENATE JUNE 24, 2021

AMENDED IN ASSEMBLY MAY 24, 2021

AMENDED IN ASSEMBLY MARCH 25, 2021

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 13

Introduced by Assembly Member Chau

December 7, 2020

An act to add ~~Section 2004 to, and to add~~ Chapter 3.3 (commencing with Section 12114) to Part 2 of Division 2 of, *and to add and repeal Section 12115.4 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 generally requires all contracts entered into by a state agency for the acquisition of goods or services to be approved by the Department of General Services, except as specified. Existing law requires all contracts entered into by a state agency 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 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” 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, 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 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, *in consultation with the Department of General Services and with stakeholder input*, to establish and make public guidelines for identifying automated decision systems that are subject to the bill's requirements, as specified. *The bill would require the Department of Technology, by June 30, 2023, to conduct a comprehensive inventory of all high-risk automated decision systems that have been proposed for, or are being used, developed, or procured by state agencies, and to submit a report to the Legislature by July 31, 2023. The bill, on and after January 1, 2023, would require a state agency seeking to award a contract for goods or services that includes the use, licensing, or development of an automated decision system for a high-risk application to encourage a bid response submitted by a prospective contractor to include an automated decision system impact assessment report that makes specified disclosures.* ~~The bill, on and after January 1, 2023, would require a state agency to submit to the department, agency, within 30 days of awarding a contract subject to its provisions, that includes an automated decision system for a high-risk application, to submit to the department 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 and a detailed mitigation plan for identifying and minimizing the potential for any disparate impacts throughout the contracted use of the system. impact assessment report, if included in the bid response. The bill would require, authorize the department, within 30 days of that contract award and for the duration of the contract, the department a state agency's submission of an automated decision system impact assessment report, to publish the report 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 website, but exclude any proprietary information or intellectual property. The bill would require the department, on or before January 1, 2023, to develop a sample automated decision system impact assessment report for prospective contractors, and 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.~~

1 ~~SEC. 2.~~

2 *SECTION 1.* Chapter 3.3 (commencing with Section 12114)
3 is added to Part 2 of Division 2 of the Public Contract Code, to
4 read:

5
6 CHAPTER 3.3. ACQUISITION OF AUTOMATED DECISION SYSTEMS
7 FOR HIGH-RISK APPLICATIONS
8

9 12114. This chapter shall be known and may be cited as the
10 Automated Decision Systems Accountability Act.

11 12114.5. It is the intent of the Legislature that agencies of the
12 state use an acquisition method that minimizes the risk of adverse
13 and discriminatory impacts resulting from the design and
14 application of automated decision systems.

15 12115. For purposes of this chapter, the following shall apply:

16 (a) (1) “Automated decision system” means a computational
17 process, including one derived from machine learning, statistical
18 modeling, data analytics, or artificial intelligence, that issues
19 simplified output, including a score, classification, or
20 recommendation, that is used to support or replace human
21 decisionmaking and materially impacts natural persons.

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

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

29 (1) Poses a significant risk to the privacy or security of personal
30 information or is likely to result in inaccurate, unfair, biased, or
31 discriminatory decisions impacting natural persons, taking into
32 account the novelty of the technology used and the nature, scope,
33 context, and purpose of the automated decision system.

34 (2) Affects the legal rights, health and well-being, or economic,
35 property, or employment interests of a natural person.

36 (3) Involves the personal information of a significant number
37 of individuals with regard to race, color, national origin, political
38 opinions, religion, trade union membership, genetic data, biometric
39 data, health, gender, gender identity, sexuality, sexual orientation,

1 criminal record, or any other characteristic identified in the Unruh
2 Civil Rights Act (Section 51 of the Civil Code).

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

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

7 ~~(d) “Value-effective” includes, but is not limited to, the
8 following:~~

9 ~~(1) The quality and effectiveness of steps taken by the
10 prospective contractor to prevent disparate impacts on the basis
11 of characteristics identified in the Unruh Civil Rights Act (Section
12 51 of the Civil Code).~~

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

19 12115.3. On or before January 1, 2023, the ~~department~~
20 *Department of Technology, in consultation with the Department*
21 *of General Services and with stakeholder input*, shall establish and
22 make public guidelines for identifying automated decision systems
23 that are subject to the requirements set forth in Section 12115.5 in
24 a manner generally consistent, if appropriate, with international
25 high-risk frameworks and standards.

26 12115.4. (a) *On or before June 30, 2023, the Department of*
27 *Technology shall conduct a comprehensive inventory of all*
28 *high-risk automated decision systems that have been proposed for,*
29 *or are being used, developed, or procured by, state agencies. The*
30 *department shall submit a report of the comprehensive inventory*
31 *to the Legislature by July 31, 2023.*

32 (b) *The report shall be submitted in compliance with Section*
33 *9795 of the Government Code.*

34 (c) *Pursuant to Section 10231.5 of the Government Code, this*
35 *section is repealed on July 31, 2027.*

36 ~~12115.5. (a) Contract awards for goods or services that include~~
37 ~~the use, licensing, or development of an automated decision system~~
38 ~~for a high-risk application shall be based on the proposal that~~
39 ~~provides the most value-effective solution to the state’s~~
40 ~~requirements, as determined by the evaluation criteria contained~~

1 in the solicitation document, and shall be determined based on
2 comprehensive assessment of objective criteria not limited to cost
3 alone.

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

10 (c) A bid response submitted by a prospective contractor for a
11 good or service that includes the use, licensing, or development
12 of an automated decision system for a high-risk application shall
13 not be considered responsive to the solicitation document unless
14 the bid response includes an automated decision system impact
15 assessment that makes the following disclosures to the contracting
16 agency:

17 *12115.5. Beginning January 1, 2023, the Department of*
18 *Technology or any other state agency seeking to award a contract*
19 *for goods or services that includes the use, licensing, or*
20 *development of an automated decision system for a high-risk*
21 *application shall encourage a bid response submitted by a*
22 *prospective contractor to include an automated decision system*
23 *impact assessment report that makes the following disclosures to*
24 *the contracting agency:*

25 (1)

26 (a) 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)

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

36 (3)

37 (c) Provide a thorough explanation of how the automated
38 decision system functions, the logical relationship between data
39 inputs and outputs, and how those outputs relate to the decision
40 or decisions made or supported by the system, including, but not

1 limited to, limitations on inferences that can be drawn from those
 2 results.

3 ~~(4)~~

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

10 ~~(5)~~

11 (e) Describe any potential disparate impacts on the basis of
 12 characteristics identified in the Unruh Civil Rights Act (Section
 13 51 of the Civil Code) from the proposed use of the automated
 14 decision system, including, but not limited to, reasonably
 15 foreseeable capabilities outside the scope of its proposed use.

16 ~~(6)~~

17 (f) Describe any internal policies the prospective contractor has
 18 adopted for identifying potential disparate impacts on the basis of
 19 characteristics identified in the Unruh Civil Rights Act (Section
 20 51 of the Civil Code) resulting from the proposed use of the
 21 automated decision system.

22 ~~(7)~~

23 (g) Provide best practices for the proposed high-risk application
 24 of the automated decision system to avoid or minimize any
 25 disparate impacts on the basis of characteristics identified in the
 26 Unruh Civil Rights Act (Section 51 of the Civil Code), including
 27 all of the following:

28 ~~(A)~~

29 (1) How and when the automated decision system should be
 30 deployed or used, and the relevant technical expertise necessary
 31 to minimize the potential for inaccurate, unfair, biased, or
 32 discriminatory decisions impacting natural persons.

33 ~~(B)~~

34 (2) How to limit the collection and retention of information to
 35 that which is directly relevant and necessary for the specified
 36 purpose.

37 ~~(C)~~

38 (3) How automated decision system data should be stored and
 39 accessed to mitigate security risks and threats.

40 ~~(8)~~

1 (h) Any additional information specified in the solicitation, or
2 otherwise required by the contracting agency for the purpose of
3 effectively evaluating and avoiding or minimizing disparate
4 impacts on the basis of characteristics identified in the Unruh Civil
5 Rights Act (Section 51 of the Civil Code) from the use of the
6 automated decision system.

7 ~~(9)~~

8 (i) Any additional information required in accordance with
9 regulations adopted by the Department of Technology pursuant to
10 Section 12117.

11 12116. ~~A~~ *On and after January 1, 2023, a state agency that*
12 *awards a contract for goods or services that ~~include~~ includes the*
13 *use, licensing, or development of an automated decision system*
14 *for a high-risk ~~application~~ application shall, within 30 days of*
15 *awarding that contract, submit to the Department of Technology*
16 *a high-risk automated decision system accountability report that*
17 *copy of the automated decision system impact assessment report,*
18 *if any, included in the bid response pursuant to Section 12115.5*
19 *that also includes a clear and understandable statement of the*
20 *following:*

21 ~~(a) The name, vendor, and version of the automated decision~~
22 ~~system.~~

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

27 ~~(c) A description of the purpose of the automated decision~~
28 ~~system, including what decision or decisions it will be used to~~
29 ~~make or support, and a detailed determination of whether, and~~
30 ~~how, the system serves reasonable objectives and furthers a~~
31 ~~legitimate interest.~~

32 ~~(d) A clear use and data management policy that includes~~
33 ~~protocols for the following:~~

34 ~~(1) How and when the automated decision system will be~~
35 ~~deployed or used and by whom, including, but not limited to, the~~
36 ~~relevant technical expertise of the user or users, the factors that~~
37 ~~will be used to determine where, when, and how the technology~~
38 ~~will be deployed, whether the technology will be operated~~
39 ~~continuously or used only under specific circumstances, if the~~
40 ~~system will be operated or used by another entity on behalf of the~~

1 agency, and, if so, an explicit description of the conditions of that
2 entity's access and applicable protocols.

3 ~~(2) Any additional rules and processes that will govern the use
4 of the automated decision system.~~

5 ~~(3) How automated decision system data will be securely stored
6 and accessed, whether the agency intends to share access to the
7 automated decision system or the data from that automated decision
8 system with any other entity, and, if so, the purpose for sharing
9 that access or data, the specific entities with whom that access or
10 data will be shared, and the manner in which that access or data
11 will be shared, including, but not limited to, specific protocols to
12 ensure compliance with any applicable privacy and security laws.~~

13 ~~(4) How the agency will ensure that all personnel who operate
14 the automated decision system or access its data are knowledgeable
15 about, and able to ensure compliance with, the use and data
16 management policy prior to the use of the automated decision
17 system and throughout its contracted use.~~

18 ~~(e) A description of how the agency will ensure that all
19 personnel responsible for the adoption and operation of the
20 automated decision system understand the system's decisional
21 criteria, the respective weights of those criteria, and the factors
22 that may affect or underlie specific results the system produces.~~

23 ~~(f) A description of any public or community engagement that
24 has been carried out, and any intended future public or community
25 engagement, pertaining to the use of the automated decision
26 system.~~

27 ~~(g) A description of any potential disparate impacts on the basis
28 of characteristics identified in the Unruh Civil Rights Act (Section
29 51 of the Civil Code) from the proposed use of the automated
30 decision system, and a detailed mitigation plan for identifying and
31 minimizing the potential for any disparate impacts throughout the
32 contracted use of the system, including, but not limited to, any
33 procedures to regularly audit its performance.~~

34 ~~(h) A description of the fiscal impact of the use, licensing, and
35 deployment of the automated decision system, including, but not
36 limited to, initial acquisition costs, ongoing operating costs such
37 as maintenance, personnel, legal compliance, auditing, data
38 retention, and security costs, and any cost savings that would be
39 achieved through the use of the automated decision system, as well~~

1 as a comparison with the costs of alternative solutions for achieving
2 the agency's purposes.

3 (i)

4 (a) The extent to which members of the public have access to
5 the results of the automated decision system, including an
6 explanation for the basis of a resulting decision in terms
7 understandable to a layperson, and are able to correct or object to
8 its results, and where and how that information will be made
9 available and any applicable procedures for initiating corrections
10 or objections, as appropriate.

11 (j)

12 (b) Any other information the Department of Technology
13 determines to be reasonably necessary to carry out the provisions
14 of this chapter.

15 ~~12116.5. (a) Within 30 days of a contract award by a state~~
16 ~~agency for goods or services that include the use, licensing, or~~
17 ~~development of an automated decision system for a high-risk~~
18 ~~application, and for the duration of that contract, the Department~~
19 ~~of Technology shall publish on its internet website the automated~~
20 ~~decision system impact assessment submitted pursuant to~~
21 ~~subdivision (c) of Section 12115.5 and the report prepared pursuant~~
22 ~~to Section 12116: state agency's submission of an automated~~
23 ~~decision system impact assessment report, the Department of~~
24 ~~Technology may publish the report on its internet website.~~

25 (b) This section shall not be construed to require the publication
26 of trade secrets, as defined in Section 3426.1 of the Civil Code. *If*
27 *a prospective contractor or third-party vendor discloses any*
28 *proprietary information or intellectual property to the Department*
29 *of Technology, the proprietary information or intellectual property*
30 *shall be kept strictly confidential and shall not be subject to public*
31 *disclosure.*

32 ~~12117. The~~ *On or before January 1, 2023, the Department of*
33 *Technology shall develop a sample automated decision system*
34 *impact assessment report for prospective contractors and may*
35 *adopt regulations and publish guidelines as necessary to effectuate*
36 *the purposes of this chapter. chapter and shall do so in a manner*
37 *consistent, where possible, with international high-risk frameworks*
38 *and impact assessment requirements.*

O