

## SUMMARY

This measure requires a company that bids or submits a proposal for a contract for goods and services with a state agency to self-certify that it is not a scrutinized company engaged in specified activities in Sudan. The Director of General Services would be able to permit a scrutinized company to bid on or submit a proposal for a contract with a state agency if it is determined that it is in the best interest of the state to permit the company to do so. The Department of General Services (DGS) would be required to report the name of the company to the Attorney General in cases where it determines that a company has submitted a false certification that it is not a scrutinized company.

## PURPOSE OF THE BILL

To prevent state agencies that may have entered into contracts for goods and services with companies doing business in Sudan, from unwittingly contributing to the crisis in the Darfur region of Sudan.

## LEGISLATIVE HISTORY

AB 1089, Hernandez, 2006 requires DGS to identify a list of companies that have substantial business operations with the government of Sudan or are associated with the "Darfur genocide" and prohibits state entities from entering into contracts exceeding \$100,000 with such companies.

Chapter 442, Statutes of 2006 (A.B. 2941—Koretz) prohibits CalPERS and CalSTRS from investing in companies with business operations in the Sudan that are complicit in the Darfur genocide or have specified relationships with the Sudanese government or military. It also requires the boards of both retirement systems to divest from such companies, consistent with their fiduciary obligations.

Resolution Chapter 57, Statutes of 2005, (AJR 6-Koretz) urges the government of Sudan to condemn human rights abuses, war crimes, and crimes against humanity being committed by the state-sponsored Militia, and move towards national reconciliation. It requests the President and Congress to continue to take all prudent and necessary steps to ensure that these matters are addressed at the highest levels of the federal government.

## PROGRAM BACKGROUND

This measure seeks to address concerns regarding the events in the East African nation of Sudan. In September 2006 the governor signed AB 2941(Chapter 442, Statutes of 2006), which required CalSTRS and CalPERS to divest from companies with business operations in the Sudan that are complicit in the Darfur genocide or have specified relationships with the Sudanese government or military.

CalSTRS currently obtains most routine office supplies under a state contract entered into by DGS with a private vendor. For other goods, CalSTRS solicits price quotes from two or more vendors and selects the lowest responsive bidder. For purchases greater than \$25,000 CalSTRS

conducts a more formal request, which incorporates any special terms or conditions, and the lowest responsive bidder is awarded the contract.

## **ANALYSIS:**

### **Existing Law:**

The State Contract Act governs contracting between state agencies and private companies and sets forth requirements for the procurement of materials, supplies, equipment, and services by state agencies. Existing law establishes DGS as the state government entity responsible for providing a broad range of business services and functions to the state government. However, CalSTRS' Board policy provides that DGS approval is not required for acquisition of goods or services.

### **This bill:**

Requires a company submitting a bid or proposal with respect to a contract with a state agency for goods and services to certify that it is not a scrutinized company, if the company currently or within the previous three years has had business activities or other operations outside of the United States. A scrutinized company is a company in Sudan that is involved in power production activities, mineral extraction activities, oil-related activities, or the production of military equipment, but excludes a company that can demonstrate any of the following:

- Its business operations are conducted under contract directly and exclusively with the regional government of southern Sudan,
- Its business operations are conducted under a license from the Office of Foreign Assets Control, or are expressly exempted under federal law from the requirement to be conducted under such a license,
- Its business operations consist of providing goods or services to marginalized populations of Sudan,
- Its business operations exclusively consist of providing goods or services to an internationally recognized peacekeeping force or humanitarian organization.
- Its business operations consist of providing goods or services that are used only to promote health or education,
- Its business operations with the Government of Sudan will be voluntarily suspended for the entire duration of the contract for goods or services for which they have bid on, or submitted a proposal for, a contract with a state agency,
- It has adopted, publicized, and is implementing a formal plan to cease business operations within one year and to refrain from conducting any new business operations.

A scrutinized company is not eligible to bid on or submit a proposal for a contract with a state agency for goods or services. However, the Director of General Services, using resources specified in the bill, may permit a scrutinized company to bid or submit a proposal for a contract with a state agency for goods or services, if it is determined that it is in the best interest of the state to permit the scrutinized company to submit such a bid or proposal.

A state agency shall not require the certification if a company has obtained permission from DGS to bid on or submit a proposal for a contract with a state agency.

If DGS determines that a company submitted a false certification the company would be subject to the following:

- Be liable for a civil penalty equal to the greater of \$250,000 or twice the amount of the contract for which a bid or proposal was submitted,
- The state agency or DGS may terminate the contract with the ineligible company,
- The company would be ineligible to submit bids for a period of at least three years from the date it was determined the company submitted the false certification.
- DGS would report to the Attorney General the name of the company that submitted the false certification and the Attorney General would determine whether to bring civil action against the company. The company would pay all costs and fees incurred in any civil action and costs incurred for investigations that led to the finding of false certification.

CalSTRS does not currently conduct business with entities relating to Sudan due to the provisions of Chapter 442 of the Statutes of 2006, which prohibits CalPERS and CalSTRS from investing in companies with business operations in the Sudan that are complicit in the Darfur genocide or have specified relationships with the Sudanese government or military. However, this measure includes companies involved in power production activities or mineral extraction activities, as companies subject to its provisions. These two categories of activities were not included in the provisions of Chapter 442 of the Statutes of 2006, which included military equipment-related and oil-related activities. The scope of entities with which CalSTRS could not conduct business would be greater because this measure includes those two additional categories of activities.

## **FISCAL IMPACT**

Benefit Program Cost – None.

Administrative Costs/Savings – Costs are minor and absorbable.

## **SUPPORT**

Save Darfur Coalition  
American Jewish Coalition

## **OPPOSITION**

None known.

## **ARGUMENTS**

**Pro:** This measure helps ensure that state agencies do not indirectly contribute to the support of the Sudanese government.

**Con:** This measure may increase some state agencies' administrative costs.

**LEGISLATIVE STAFF CONTACT**

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