AMENDED IN ASSEMBLY SEPTEMBER 1, 2005

AMENDED IN SENATE MAY 4, 2005

SENATE BILL No. 828

Introduced by Senator Maldonado

February 22, 2005

An act to amend Sections 8355 and 12990 of, and to amend and repeal Section 14851 of, the Government Code, to amend Sections 6108, 10286.1, 10295.1~~, 10296, 12163, and 12205~~ *and 10296* of the Public Contract Code, and to amend Sections 42480 and 42498 of the Public Resources Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 828, as amended, Maldonado. Public contracts.

Existing law imposes various requirements and prohibitions on parties that provide goods to the state under a contract. Among these requirements is a requirement that the contractor certify that it will provide a drug-free workplace, that it has not provided goods under the contract that were produced under specified prohibited labor conditions~~, that, in the case of specified contracts, the goods provided meet the statutory minimum percentage of recycled paper,~~ and that, in the case of contracts for the sale or lease of covered electronic devices or cell phones, the contractor has complied with specified provisions of law. Existing law also requires, in the case of specified contracts, that the contractor provide a sworn declaration that it is not in violation of an order from the National Labor Relations Board. Existing law further requires each party, and its affiliates, that are offered a contract to do business with the state to provide a seller's permit or certificate of registration that was issued under the State Sales and Use Tax Law, as specified. Existing law also prohibits the state from contracting with an expatriate corporation, as defined.

Existing law also requires every state contract and subcontract to contain a nondiscrimination clause, as provided, and further requires contractors and subcontractors to give written notice of their obligations under the clause to labor organizations, as specified.

This bill would specify that these requirements and prohibitions do not apply to a credit card purchase of goods of $2,500 or less, as specified.

Existing law, until December 31, 2005, authorizes the Office of State ~~Printing~~ *Publishing* to accept paid advertisements in materials printed or published by the state.

This bill would extend to an indefinite time period the authorization for the Office of State ~~Printing~~ *Publishing* to accept paid advertisements. This bill would also require any state agency that was not authorized to accept paid advertising in its publications before the operative date of the bill to use the Office of State ~~Printing~~ *Publishing* for all paid advertising in its publications.

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. Section 8355 of the Government Code is amended to read:

8355. (a) Every person or organization awarded a contract or a grant for the procurement of any property or services from any state agency shall certify to the contracting or granting agency that it will provide a drug-free workplace by doing all of the following:

(1) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's workplace and specifying the actions that will be taken against employees for violations of the prohibition.

(2) Establishing a drug-free awareness program to inform employees about all of the following:

(A) The dangers of drug abuse in the workplace.

(B) The person's or organization's policy of maintaining a drug-free workplace.

(C) Any available drug counseling, rehabilitation, and employee assistance programs.

(D) The penalties that may be imposed upon employees for drug abuse violations.

(3) Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required by subdivision (a) and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

(b) (1) The certification requirement set forth in subdivision (a) does not apply to a credit card purchase of goods of two thousand five hundred dollars ($2,500) or less.

(2) The total amount of exemption authorized herein shall not exceed seven thousand five hundred dollars ($7,500) per year for each company from which a state agency is purchasing goods by credit card. It shall be the responsibility of each state agency to monitor the use of this exemption and adhere to these restrictions on ~~such~~ *these* purchases.

SEC. 2. Section 12990 of the Government Code is amended to read:

12990. (a) Any employer who is, or wishes to become, a contractor with the state for public works or for goods or services is subject to the provisions of this part relating to discrimination in employment and to the nondiscrimination requirements of this section and any rules and regulations that implement it.

(b) Prior to becoming a contractor or subcontractor with the state, an employer may be required to submit a nondiscrimination program to the department for approval and certification and may be required to submit periodic reports of its compliance with that program.

(c) Every state contract and subcontract for public works or for goods or services shall contain a nondiscrimination clause prohibiting discrimination on the bases enumerated in this part by contractors or subcontractors. The nondiscrimination clause shall contain a provision requiring contractors and subcontractors to give written notice of their obligations under that clause to labor organizations with which they have a collective bargaining or other agreement. These contractual provisions shall be fully and effectively enforced. This subdivision does not apply to a credit card purchase of goods of two thousand five hundred dollars ($2,500) or less. The total amount of exemption authorized herein shall not exceed seven thousand five hundred dollars

($7,500) per year for each company from which a state agency is purchasing goods by credit card. It shall be the responsibility of each state agency to monitor the use of this exemption and adhere to these restrictions on ~~such~~ *these* purchases.

(d) The department shall periodically develop rules and regulations for the application and implementation of this section, and submit them to the commission for consideration and adoption in accordance with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1. Those rules and regulations shall describe and include, but not be limited to, all of the following:

(1) Procedures for the investigation, approval, certification, decertification, monitoring, and enforcement of nondiscrimination programs.

(2) The size of contracts or subcontracts below which any particular provision of this section shall not apply.

(3) The circumstances, if any, under which a contractor or subcontractor is not subject to this section.

(4) Criteria for determining the appropriate plant, region, division, or other unit of a contractor's or subcontractor's operation for which a nondiscrimination program is required.

(5) Procedures for coordinating the nondiscrimination requirements of this section and its implementing rules and regulations with the California Plan for Equal Opportunity in Apprenticeship, with the provisions and implementing regulations of Article 9.5 (commencing with Section 11135) of Chapter 1 of Part 1, and with comparable federal laws and regulations concerning nondiscrimination, equal employment opportunity, and affirmative action by those who contract with the United States.

(6) The basic principles and standards to guide the department in administering and implementing this section.

(e) Where a contractor or subcontractor is required to prepare an affirmative action, equal employment, or nondiscrimination program subject to review and approval by a federal compliance agency, that program may be filed with the department, instead of any nondiscrimination program regularly required by this section or its implementing rules and regulations. Such a program shall constitute a prima facie demonstration of compliance with this section. Where the department or a federal compliance agency has required the preparation of an affirmative action, equal employment, or nondiscrimination program subject to review and approval by the department or a federal compliance agency, evidence of such a program shall also constitute prima facie compliance with an ordinance or regulation of any city, city and county, or county that requires an employer to submit such a program to a local awarding agency for its approval prior to becoming a contractor or subcontractor with that agency.

(f) Where the department determines and certifies that the provisions of this section or its implementing rules and regulations are violated or where the commission, after hearing an accusation pursuant to Section 12967, determines a contractor or subcontractor is engaging in practices made unlawful under this part, the department or the commission may recommend appropriate sanctions to the awarding agency. Any such recommendation shall take into account the severity of the violation or violations and any other penalties, sanctions, or remedies previously imposed.

SEC. 3. Section 14851 of the Government Code, as amended by Section 1 of Chapter 220 of the Statutes of 2002, is amended to read:

14851. (a) The Office of State ~~Printing~~ *Publishing* may accept paid advertisements in materials printed or published by the state, except that the department shall not print or publish paid political advertising.

(b) The Office of State ~~Printing~~ *Publishing* may print checks and other printed matter necessary for the operation of any industry board or state agricultural district board at the expense of the state.

(c) To reduce duplication of staff resources and to provide consistency in the review for appropriateness of advertisements, an agency of the state that was not authorized to accept paid advertising in its publications before January 1, 2006, shall use the services of the Office of State ~~Printing~~ *Publishing* for all paid advertising in its publications.

SEC. 4. Section 14851 of the Government Code, as added by Section 2 of Chapter 220 of the Statutes of 2002, is repealed.

SEC. 5. Section 6108 of the Public Contract Code is amended to read:

6108. (a) (1) Every contract entered into by any state agency for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, shall require that a contractor certify that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The contractor shall agree to comply with this provision of the contract.

(2) The contract shall specify that the contractor is required to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations, or the Department of Justice determine the contractor's compliance with the requirements under paragraph (1).

(b) (1) Any contractor contracting with the state who knew or should have known that the apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state were laundered or produced in violation of the conditions specified in subdivision (a) when entering into a contract pursuant to subdivision (a), may, subject to subdivision (c), have any or all of the following sanctions imposed:

(A) The contract under which the prohibited apparel, garments or corresponding accessories, equipment, materials, or supplies were laundered or provided may be voided at the option of the state agency to which the equipment, materials, or supplies were provided.

(B) The contractor may be assessed a penalty which shall be the greater of one thousand dollars ($1,000) or an amount equaling 20 percent of the value of the apparel, garments or corresponding accessories, equipment, materials, or supplies that the state agency demonstrates were produced in violation of the conditions specified in paragraph (1) of subdivision (a) and that were supplied to the state agency under the contract.

(C) The contractor may be removed from the bidder's list for a period not to exceed 360 days.

(2) Any moneys collected pursuant to this subdivision shall be deposited into the General Fund.

(c) (1) When imposing the sanctions described in subdivision (b), the contracting agency shall notify the contractor of the right to a hearing, if requested, within 15 days of the date of the notice. The hearing shall be before an administrative law judge of the Office of Administrative Hearings in accordance with the procedures specified in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The administrative law judge shall take into consideration any measures the contractor has taken to ensure compliance with this section, and may waive any or all of the sanctions if it is determined that the contractor has acted in good faith.

(2) The agency shall be assessed the cost of the administrative hearing, unless the agency has prevailed in the hearing, in which case the contractor shall be assessed the cost of the hearing.

(d) (1) Any state agency that investigates a complaint against a contractor for violation of this section may limit its investigation to evaluating the information provided by the person or entity submitting the complaint and the information provided by the contractor.

(2) Whenever a contracting officer of the contracting agency has reason to believe that the contractor failed to comply with the requirements under paragraph (1) of subdivision (a), the agency shall refer the matter for investigation to the head of the agency and, as the head of the agency determines appropriate, to either the Director of Industrial Relations or the Department of Justice.

(e) (1) For purposes of this section, the term "forced labor" shall have the same meaning as in Section 1307 of Title 19 of the United States Code.

(2) "Abusive forms of child labor" means any of the following:

(A) All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage, and serfdom and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict.

(B) The use, procuring, or offering of a child for prostitution, for the production of pornography, or for pornographic performances.

(C) The use, procuring, or offering of a child for illicit activities, in particular for the production and trafficking of illicit drugs.

(D) All work or service exacted from or performed by any person under the age of 18 either under the menace of any penalty for its nonperformance and for which the worker does not offer oneself voluntarily, or under a contract, the enforcement of which can be accomplished by process or penalties.

(E) All work or service exacted from or performed by a child in violation of all applicable laws of the country of manufacture governing the minimum age of employment, compulsory education, and occupational health and safety.

(3) "Exploitation of children in sweatshop labor" means all work or service exacted from or performed by any person under the age of 18 years in violation of more than one law of the country of manufacture governing wage and benefits, occupational health and safety, nondiscrimination, and freedom of association.

(4) "Sweatshop labor" means all work or service extracted from or performed by any person in violation of more than one law of the country of manufacture governing wages, employee benefits, occupational health, occupational safety, nondiscrimination, or freedom of association.

(5) "Apparel, garments or corresponding accessories" includes, but is not limited to, uniforms.

(6) Notwithstanding any other provision of this section, "forced labor" and "convict labor" do not include work or services performed by an inmate or a person employed by the Prison Industry Authority.

(7) "State agency" means any state agency in this state.

(f) (1) On or before February 1, 2004, the Department of Industrial Relations shall establish a contractor responsibility program, including a Sweatfree Code of Conduct, to be signed by all bidders on state contracts and subcontracts. Any state agency responsible for procurement shall ensure that the Sweatfree Code of Conduct is available for public review at least 30 calendar days between the dates of receipt and the final award of the contract. The Sweatfree Code of Conduct shall list the requirements that contractors are required to meet, as set forth in subdivision (g).

(2) Upon implementation in the manner described in paragraph (4), every contract entered into by any state agency for the procurement or laundering of apparel, garments or corresponding accessories, or for the procurement of equipment or supplies, shall require that the contractor certify in accordance with the Sweatfree Code of Conduct that no apparel, garments or corresponding accessories, or equipment, materials, or supplies, furnished to the state pursuant to the contract have been laundered or produced, in whole or in part, by sweatshop labor.

(3) The appropriate procurement agency, in consultation with the Director of Industrial Relations, shall employ a phased and targeted approach to implementing the Sweatfree Code of Conduct. Sweatfree Code of Conduct procurement policies involving apparel, garments and corresponding accessories may be permitted a phasein period of up to one year for purposes of feasibility and providing sufficient notice to contractors and the general public. The appropriate procurement agency, in consultation with the Director of Industrial Relations, shall target other procurement categories based on the magnitude of verified sweatshop conditions and the feasibility of implementation, and may set phasein goals and timetables of up to three years to achieve compliance with the principles of the Sweatfree Code of Conduct.

(4) In order to facilitate compliance with the Sweatfree Code of Conduct, the Department of Industrial Relations shall explore mechanisms employed by other governmental entities, including, but not limited to, New Jersey Executive Order 20, of 2002, to ensure that businesses that contract with this state are in compliance with this section and any regulations or requirements promulgated in conformance with this section, as amended by the act adding this paragraph. The mechanisms explored may include, but not be limited to, authorization to contract with a competent nonprofit organization that is neither funded nor controlled, in whole or in part, by a corporation that is engaged in the procurement or laundering of apparel, garments, or corresponding accessories, or the procurement of equipment, materials, or supplies. The Department of Industrial Relations, in

complying with this paragraph, shall also consider any feasible and cost-effective monitoring measures that will encourage compliance with the Sweatfree Code of Conduct.

(5) To ensure public access and confidence, the Department of Industrial Relations shall ensure public awareness and access to proposed contracts by postings on the Internet and through communication to advocates for garment workers, unions, and other interested parties. The appropriate agencies shall establish a mechanism for soliciting and reviewing any information indicating violations of the Sweatfree Code of Conduct by prospective or current bidders, contractors, or subcontractors. The agencies shall make their findings public when they reject allegations against bidding or contracting parties.

(6) Contractors shall ensure that their subcontractors comply in writing with the Sweatfree Code of Conduct, under penalty of perjury. Contractors shall attach a copy of the Sweatfree Code of Conduct to the certification required by subdivision (a).

(g) No state agency may enter into a contract with any contractor unless the contractor meets the following requirements:

(1) Contractors and subcontractors in California shall comply with all appropriate state laws concerning wages, workplace safety, rights to association and assembly, and nondiscrimination standards as well as appropriate federal laws. Contractors based in other states in the United States shall comply with all appropriate laws of their states and appropriate federal laws. For contractors whose locations for manufacture or assembly are outside the United States, those contractors shall ensure that their subcontractors comply with the appropriate laws of countries where the facilities are located.

(2) Contractors and subcontractors shall maintain a policy of not terminating any employee except for just cause, and employees shall have access to a mediator or to a mediation process to resolve certain workplace disputes that are not regulated by the National Labor Relations Board.

(3) Contractors and subcontractors shall ensure that workers are paid, at a minimum, wages and benefits in compliance with applicable local, state, and national laws of the jurisdiction in which the labor, on behalf of the contractor or subcontractor, is performed. Whenever a state agency expends funds for the

procurement or laundering of apparel, garments, or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, the applicable labor standards established by the local jurisdiction through the exercise of either local police powers or local spending powers in which the labor, in compliance with the contract or purchase order for which the expenditure is made, is performed shall apply with regard to the contract or purchase order for which the expenditure is made, unless the applicable local standards are in conflict with, or are explicitly preempted by, state law. A state agency may not require, as a condition for the receipt of state funds or assistance, that a local jurisdiction refrain from applying the labor standards that are otherwise applicable to that local jurisdiction. The Department of Industrial Relations may, without incurring additional expenses, access information from any nonprofit organization, including, but not limited to, the World Bank, that gathers and disseminates data with respect to wages paid throughout the world, to allow the Department of Industrial Relations to determine whether contractors and subcontractors are compensating their employees at a level that enables those employees to live above the applicable poverty level.

(4) All contractors and subcontractors shall comply with the overtime laws and regulations of the country in which their employees are working.

(5) All overtime hours shall be worked voluntarily. Workers shall be compensated for overtime at either (A) the rate of compensation for regular hours of work, or (B) as legally required in the country of manufacture, whichever is greater.

(6) No person may be employed who is younger than the legal age for children to work in the country in which the facility is located. In no case may children under the age of 15 years be employed in the manufacturing process. Where the age for completing compulsory education is higher than the standard for the minimum age of employment, the age for completing education shall apply to this section.

(7) There may be no form of forced labor of any kind, including slave labor, prison labor, indentured labor, or bonded labor, including forced overtime hours.

(8) The work environment shall be safe and healthy and, at a minimum, be in compliance with relevant local, state, and national laws. If residential facilities are provided to workers, those facilities shall be safe and healthy as well.

(9) There may be no discrimination in hiring, salary, benefits, performance evaluation, discipline, promotion, retirement or dismissal on the basis of age, sex, pregnancy, maternity leave status, marital status, race, nationality, country of origin, ethnic origin, disability, sexual orientation, gender identity, religion, or political opinion.

(10) No worker may be subjected to any physical, sexual, psychological, or verbal harassment or abuse, including corporal punishment, under any circumstances, including, but not limited to, retaliation for exercising his or her right to free speech and assembly.

(11) No worker may be forced to use contraceptives or take pregnancy tests. No worker may be exposed to chemicals, including glues and solvents, that endanger reproductive health.

(12) Contractors and bidders shall list the names and addresses of each subcontractor to be utilized in the performance of the contract, and list each manufacturing or other facility or operation of the contractor or subcontractor for performance of the contract. The list, which shall be maintained and updated to show any changes in subcontractors during the term of the contract, shall provide company names, owners or officers, addresses, telephone numbers, e-mail addresses, and the nature of the business association.

(h) Any person who certifies as true any material matter pursuant to this section that he or she knows to be false is guilty of a misdemeanor.

(i) The provisions of this section, as amended by the act adding this subdivision, shall be in addition to any other provisions that authorize the prosecution and enforcement of local labor laws and may not be interpreted to prohibit a local prosecutor from bringing a criminal or civil action against an individual or business that violates the provisions of this section.

(j) (1) The certification requirements set forth in subdivisions (a) and (f) do not apply to a credit card purchase of goods of two thousand five hundred dollars ($2,500) or less.

(2) The total amount of exemption authorized herein shall not exceed seven thousand five hundred dollars ($7,500) per year for each company from which a state agency is purchasing goods by credit card. It shall be the responsibility of each state agency to monitor the use of this exemption and adhere to these restrictions on ~~such~~ *these* purchases.

SEC. 6. Section 10286.1 of the Public Contract Code is amended to read:

10286.1. (a) For purposes of this part, except as otherwise provided in subdivisions (b) and (c), a state agency shall not enter into any contract with an expatriate corporation or its subsidiaries.

(b) (1) For purposes of this article, an "expatriate corporation" means a foreign incorporated entity that is publicly traded in the United States to which all of the following apply:

(A) The United States is the principal market for the public trading of the foreign incorporated entity.

(B) The foreign incorporated entity has no substantial business activities in the place of incorporation.

(C) Either clause (i) or clause (ii) applies:

(i) The foreign entity was established in connection with a transaction or series of related transactions pursuant to which (I) the foreign entity directly or indirectly acquired substantially all of the properties held by a domestic corporation or all of the properties constituting a trade or business of a domestic partnership or related foreign partnership, and (II) immediately after the acquisition, more than 50 percent of the publicly traded stock, by vote or value, of the foreign entity is held by former shareholders of the domestic corporation or by former partners of the domestic partnership or related foreign partnership. For purposes of subclause (II), any stock sold in a public offering related to the transaction or a series of transactions is disregarded.

(ii) The foreign entity was established in connection with a transaction or series of related transactions pursuant to which (I) the foreign entity directly or indirectly acquired substantially all of the properties held by a domestic corporation or all of the properties constituting a trade or business of a domestic partnership or related foreign partnership, and (II) the acquiring foreign entity is more than 50 percent owned, by vote or value, by domestic shareholders or partners.

(iii) For purposes of this subparagraph, indirect acquisition of property includes the acquisition of a stock share, or any portion thereof, of the owner of that property.

(2) Notwithstanding subdivision (a), a state agency may contract with an expatriate corporation, or its subsidiary, if it was an expatriate corporation before January 1, 2004, to which both of the following apply:

(A) The foreign entity provides, by operation of law, by provisions of its governing documents, by resolution of its board of directors, or in any other manner, at least the following shareholders' rights:

(i) Shareholders of the entity have the right to inspect, at a principal place of business in the United States, copies of the entity's books and records, including, but not limited to, shareholder names, addresses, and shareholdings in accordance with the corporation law, as amended from time to time and as that law is interpreted by the courts, of the United States jurisdiction in which the entity was previously incorporated, or, if the entity was not previously incorporated, in accordance with the terms set forth in the Model Business Corporation Act, as that act may be amended from time to time, provided that, if the corporate law of the United States jurisdiction in which the entity was previously incorporated or the Model Business Corporation Act does not provide access to the shareholder names, addresses, and shareholdings, these books and records are available for inspection by shareholders for purposes properly related to their status as shareholders of the entity.

(ii) The entity permits its shareholders to bring derivative proceedings on behalf of the entity, provided that these derivative proceedings are brought on a basis and under the terms applicable under the law, as amended from time to time and as interpreted by, or required by, the courts of the United States jurisdiction in which the entity was previously incorporated, or, if the entity was not previously incorporated, on a basis and under the terms set forth in the Model Business Corporations Act as that act may be amended from time to time and as it is interpreted by, or required by, the courts.

(iii) Entity transactions in which any director is interested are approved in accordance with the applicable law, as amended from time to time and as interpreted by the courts, of the United States jurisdiction in which the entity was previously incorporated, or, if the entity was not previously incorporated, in accordance with the terms set forth in the Model Business Corporations Act, as may be amended from time to time and as interpreted by the courts.

(iv) The entity has consented to the jurisdiction, for any otherwise available cause of action by or on behalf of the entity's shareholders, including any pendent state causes of action, of all of the following courts:

(I) The state courts of one or more states.

(II) The United States federal courts in any state in which the entity consents to the jurisdiction of that state's courts pursuant to subclause (I).

(v) The entity has appointed an agent for service of process in the state or states in which the entity has consented to jurisdiction, as described in clause (iv), and the entity meets at least one of the following conditions:

(I) The entity has unencumbered assets in the United States, which assets may include equity or debt investments in United States companies, with a book value in excess of fifty million dollars ($50,000,000), and the entity delivers to the Secretary of State an opinion of an attorney licensed in the United States that judgments rendered against the entity may be satisfied by using these assets.

(II) The entity posts a bond or similar security in an amount of at least fifty million dollars ($50,000,000).

(III) The entity has directors' and officers' insurance in an amount of at least fifty million dollars ($50,000,000).

(vi) The entity agrees that, in connection with any lawsuit brought against it by its shareholders in any court in which the entity has consented to jurisdiction as described in clause (iv), the entity will provide to the court notice of the manner in which the entity complied with clause (v) and, if the entity complied with that clause in the manner specified in subclause (I) of clause (v), a copy of the opinion described in that subclause.

(vii) Shareholder approval is required for any sale of all or substantially all of the entity's assets in accordance with the law, as amended from time to time and as it is interpreted by the courts, of the United States jurisdiction in which it was previously incorporated, or, if it was not previously incorporated, in accordance with the terms set forth in the Model Business Corporations Act, as it may be amended from time to time.

(viii) The directors and officers of the entity occupy a fiduciary relationship with the entity and its shareholders and these directors and officers, in performing their duties, act in good faith in a manner that a director or officer believes to be in the best interests of the entity and its shareholders, as that standard of care is interpreted by the courts.

(ix) The entity agrees to hold no more than one of every four annual shareholder meetings in a location outside the United States and, in the event that the entity holds an annual meeting outside the United States, the entity agrees to provide access to that meeting through a Web cast or other technology that allows the entity's shareholders to do both of the following:

(I) Listen to the meeting, watch the meeting, or both.

(II) Send questions that will be addressed at the meeting.

(x) The entity provides a description of the shareholder rights described in clauses (i) to (ix), inclusive, and any subsequent changes to these rights, on the entity's Web site or in its 10K filings with the United States Securities and Exchange Commission.

(B) The entity uses worldwide combined reporting to calculate the income on which it pays taxes to the state.

(c) The chief executive officer of a state agency or his or her designee may waive the prohibition specified in subdivision (a) if the executive officer or his or her designee has made a written finding that the contract is necessary to meet a compelling public interest. For purposes of this section, a "compelling public interest" includes, but is not limited to, ensuring the provision of essential services, ensuring the public health and safety, or an emergency as defined in Section 1102. If a waiver is granted to a vendor pursuant to this subdivision, the requirement to submit a declaration of compliance, as set forth in paragraph (1) of subdivision (d), does not apply to that vendor.

(d) (1) For purposes of this chapter, "state agency" means every state office, department, division, bureau, board, commission, and the California State University, but does not include the University of California, the Legislature, the courts, or any agency in the judicial branch of government.

(2) On or after January 1, 2004, all state agencies shall, as a condition of the contract, require any vendor that is offered a contract to do business with the state to submit a declaration stating that the vendor is eligible to contract with the state pursuant to this section.

(3) A vendor that declares as true any material matter in a declaration described in this subdivision that he or she knows to be false is guilty of a misdemeanor.

(e) (1) Except as provided in paragraph (2) and subdivision (f), this section applies to contracts that are entered into on or after January 1, 2004.

(2) With respect to an entity that was an expatriate corporation, as defined in paragraph (1) of subdivision (b), before January 1, 2004, this section applies to contracts that are entered into on or after April 1, 2004.

(f) (1) The declaration requirement set forth in subdivision (d) does not apply to a credit card purchase of goods of two thousand five hundred dollars ($2,500) or less.

(2) The total amount of exemption authorized herein shall not exceed seven thousand five hundred dollars ($7,500) per year for each company from which a state agency is purchasing goods by credit card. It shall be the responsibility of each state agency to monitor the use of this exemption and adhere to these restrictions on ~~such~~ *these* purchases.

SEC. 7. Section 10295.1 of the Public Contract Code is amended to read:

10295.1. (a) A state department or agency shall not contract for the purchase of tangible personal property from a vendor, contractor, or an affiliate of a vendor or contractor, unless that vendor, contractor, and all of its affiliates that make sales for delivery into California are holders of a California seller's permit issued pursuant to Article 2 (commencing with Section 6066) of Chapter 2 of Part 1 of Division 2 of the Revenue and Taxation Code, or are holders of a certificate of registration issued pursuant to Section 6226 of the Revenue and Taxation Code. A vendor or contractor that sells tangible personal property to a state department or agency, and each affiliate of that vendor or contractor that makes sales for delivery into California, shall be regarded as a "retailer engaged in business in this state" and shall be required to collect the California sales or use tax on all its sales into the state in accordance with Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

(b) Beginning on and after January 1, 2004, each vendor, contractor, or affiliate of a vendor or contractor that is offered a contract to do business with a state department or state agency shall submit to that state department or agency a copy, as applicable, of that retailer's seller's permit or certificate of registration, and a copy of each of the retailer's applicable affiliate's seller's permit or certificate of registration, as described in subdivision (a). This subdivision does not apply to a credit card purchase of goods of two thousand five hundred dollars ($2,500) or less. The total amount of exemption authorized herein shall not exceed seven thousand five hundred dollars ($7,500) per year for each company from which a state agency is purchasing goods by credit card. It shall be the responsibility of each state agency to monitor the use of this exemption and adhere to these restrictions on ~~such~~ *these* purchases.

(c) A state department or state agency is exempted from the provisions of subdivision (a) if the executive director, or his or her designee, of that state department or agency makes a written finding that the contract is necessary to meet a compelling state interest.

(d) For the purposes of this section:

(1) "Affiliate of the vendor or contractor" means any person or entity that is controlled by, or is under common control of, a vendor or contractor through stock ownership or any other affiliation.

(2) "Compelling state interest" includes, but is not limited to, the following:

(A) Ensuring the provision of essential services.

(B) Ensuring the public health, safety and welfare.

(C) Responding to an emergency, as defined in Section 1102.

(3) "State department or agency" means every state office, department, division, bureau, board, commission and the California State University, but does not include the University of California, the Legislature, the courts, and any agency in the judicial branch of government.

SEC. 8. Section 10296 of the Public Contract Code is amended to read:

10296. (a) Every contract entered into by any state agency for any purpose specified in subdivisions (a) to (d), inclusive, of Section 10295 shall contain a statement by which the contractor swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against the contractor within the immediately preceding two-year period because of the contractor's failure to comply with an order of a federal court which orders the contractor to comply with an order of the National Labor Relations Board. For purposes of this section, a finding of contempt does not include any finding that has been vacated, dismissed, or otherwise removed by the court because the contractor has complied with the order which was the basis for the finding. The state may rescind any contract in which the contractor falsely swears to the truth of the statement required by this section.

(b) (1) This section does not apply to a credit card purchase of goods of two thousand five hundred dollars ($2,500) or less.

(2) The total amount of exemption authorized herein shall not exceed seven thousand five hundred dollars ($7,500) per year for each company from which a state agency is purchasing goods by credit card. It shall be the responsibility of each state agency to monitor the use of this exemption and adhere to these restrictions on ~~such~~ *these* purchases.

~~SEC. 9. Section 12163 of the Public Contract Code is amended to read:~~

~~12163. (a) The director, in consultation with the board, shall review the procurement specifications currently used by the department in order to eliminate, wherever economically feasible, discrimination against the procurement of recycled paper products.~~

~~(b) The director, in consultation with the board, shall review the recycled paper product specifications at least annually to consider increasing the percentage of recycled paper product in paper and woodpulp product purchases. The director shall include his or her conclusions and recommendations in the department's annual report pursuant to Section 12225.~~

~~(c) When contracting with the department for the sale of material subject to this article, the contractor shall certify in writing to the contracting officer or his or her representative that the material offered contains the minimum percentage of recycled paper required by Section 12161 and shall specify the minimum, if not exact, percentage of secondary and postconsumer material in the paper products. The certification shall be furnished under penalty of perjury. The certification requirement set forth in this subdivision does not apply to a credit card purchase of goods of two thousand five hundred dollars ($2,500) or less. The total amount of exemption authorized herein shall not exceed seven thousand five hundred dollars ($7,500) per year for each company from which a state agency is purchasing goods by credit card. It shall be the responsibility of each state agency to monitor the use of this exemption and adhere to these restrictions on such purchases.~~

~~(d) The department, in consultation with the board, shall establish purchasing practices which, to the maximum extent economically feasible, assure purchase of materials which may be recycled or reused when discarded.~~

~~(e) The department shall make every effort to eliminate purchases of paper products deemed potential contaminants to the state's recycling program pursuant to Section 12165.~~

~~SEC. 10. Section 12205 of the Public Contract Code is amended to read:~~

~~12205. (a) (1) All state agencies shall require all contractors to certify in writing the minimum percentage, if not the exact percentage, of postconsumer and secondary material in the materials, goods, or services provided or used. This certification shall be furnished under penalty of perjury.~~

~~(2) The certification requirement set forth in paragraph (1) does not apply to a credit card purchase of goods of two thousand five hundred dollars ($2,500) or less. The total amount of exemption authorized herein shall not exceed seven thousand five hundred dollars ($7,500) per year for each company from which a state agency is purchasing goods by credit card. It shall be the responsibility of each state agency to monitor the use of this exemption and adhere to these restrictions on such purchases.~~

~~(b) The department, in consultation with the board, shall review and revise the procurement specifications used by state agencies in order to eliminate restrictive specifications and discrimination against the procurement or purchase of recycled products. Fitness and quality being equal, all state agencies shall purchase recycled products instead of nonrecycled products whenever recycled products are available at the same total cost as nonrecycled products. All state agencies shall allow a price preference, as determined by the board pursuant to Section 12162. In determining procurement specifications, with the exception of any specifications that have been established to preserve the public health and safety, all state procurement and purchasing specifications shall be established in a manner that results in the maximum state procurement and purchase of recycled products.~~

~~(c) (1) To assist the state in meeting the requirements of subdivision (a) of Section 12162 and subdivision (c) of this section, the department, in consultation with the board, may also establish recycled-content disclosure, recycled product-only bids, cooperative purchasing arrangements, or conduct an analysis of solid waste diversion from disposal facilities, to meet the requirements for recycled products and to encourage the maximum state procurement and purchase of recycled products. All state agencies shall, if feasible, implement recycled product-only bids for recycled products as defined in subdivision (a) of Section 12200, in order to meet the requirements for recycled products set forth in this section and Section 12162.~~

~~(2) This subdivision applies to the procurement or purchase of the following materials, goods, and supplies, or products containing the following recycled resources:~~

~~(A) Paper products, that include, but are not limited to, fine papers, such as xerographic and envelope papers and form bond, corrugated boxes, newsprint, tissue, and toweling.~~

~~(B) Compost and cocompost products.~~

~~(C) Glass.~~

~~(D) Oil.~~

~~(E) Plastic.~~

~~(F) Solvents and paint, including water-based paint.~~

~~(G) Tires.~~

~~(H) Steel.~~

~~(I) Antifreeze.~~

~~(d) All state agencies shall, if feasible, establish purchasing practices that ensure the purchase of materials, goods, and supplies that may be recycled or reused when discarded.~~

~~(e) The department shall set the following requirements for purchases made by state agencies:~~

~~(1) By January 1, 1996, at least 20 percent of state purchases are of recycled products.~~

~~(2) By January 1, 1998, at least 30 percent of state purchases are of recycled products.~~

~~(3) On and after January 1, 2000, at least 50 percent of state purchases are of recycled products.~~

~~(4) The requirements specified in this subdivision shall be applied to the purchases of state agencies for products listed in this section, except in subparagraph (A) of paragraph (2) of subdivision (c) for which requirements are specified in Section 12162.~~

~~(f) The purchases of the state agencies shall meet each requirement for, and be applied to the total dollar amount of, each specified product category as defined in this section. The purchase of a recycled-content product from one category may not be applied toward the requirements for, or the total dollar amount of, any other category listed in this section or Section 12157, 12162, 12301, or 12305.~~

~~SEC. 11.~~

SEC. 9. Section 42480 of the Public Resources Code is amended to read:

42480. (a) (1) A state agency that purchases or leases covered electronic devices shall require each prospective bidder, to certify that it, and its agents, subsidiaries, partners, joint venturers, and subcontractors for the procurement, have complied with this chapter and any regulations adopted pursuant to this chapter, or to demonstrate that this chapter is inapplicable to all lines of business engaged in by the bidder, its agents, subsidiaries, partners, joint venturers, or subcontractors.

(2) The certification requirement set forth in paragraph (1) does not apply to a credit card purchase of goods of two thousand five hundred dollars ($2,500) or less. The total amount of exemption authorized herein shall not exceed seven thousand five hundred dollars ($7,500) per year for each company from

which a state agency is purchasing goods by credit card. It shall be the responsibility of each state agency to monitor the use of this exemption and adhere to these restrictions on ~~such~~ *these* purchases.

(b) Failure to provide certification pursuant to this section shall render the prospective bidder and its agents, subsidiaries, partners, joint venturers, and subcontractors ineligible to bid on the procurement of covered electronic devices.

(c) The bid solicitation documents shall specify that the prospective bidder is required to cooperate fully in providing reasonable access to its records and documents that evidence compliance with this chapter.

(d) Any person awarded a contract by a state agency that is found to be in violation of this section is subject to the following sanctions:

(1) The contract shall be voided by the state agency to which the equipment, materials, or supplies were provided.

(2) The contractor is ineligible to bid on any state contract for a period of three years.

(3) If the Attorney General establishes in the name of the people of the State of California that any money, property, or benefit was obtained by a contractor as a result of violating this section, the court may, in addition to any other remedy, order the disgorgement of the unlawfully obtained money, property, or benefit in the interest of justice.

~~SEC. 12.~~

SEC. 10. Section 42498 of the Public Resources Code is amended to read:

42498. (a) (1) A state agency that purchases or leases cell phones shall require each prospective bidder, to certify that it, and its agents, subsidiaries, partners, joint venturers, and subcontractors for the procurement, have complied with this chapter and any regulations adopted pursuant to this chapter, or to demonstrate that this chapter is inapplicable to all lines of business engaged in by the bidder, its agents, subsidiaries, partners, joint venturers, or subcontractors.

(2) The certification requirement set forth in paragraph (1) does not apply *to* a credit card purchase of goods of two thousand five hundred dollars ($2,500) or less. The total amount of exemption authorized herein shall not exceed seven thousand

five hundred dollars ($7,500) per year for each company from which a state agency is purchasing goods by credit card. It shall be the responsibility of each state agency to monitor the use of this exemption and adhere to these restrictions on ~~such~~ *these* purchases.

(b) Failure to provide certification pursuant to this section shall render the prospective bidder and its agents, subsidiaries, partners, joint venturers, and subcontractors ineligible to bid on the procurement of cell phones.

(c) The bid solicitation documents shall specify that the prospective bidder is required to cooperate fully in providing reasonable access to its records and documents that evidence compliance with this chapter.

(d) Any person awarded a contract by a state agency that is found to be in violation of this section is subject to the following sanctions:

(1) The contract shall be voided by the state agency to which the equipment, materials, or supplies were provided.

(2) The contractor is ineligible to bid on any state contract for a period of three years.

(3) If the Attorney General establishes in the name of the people of the State of California that any money, property, or benefit was obtained by a contractor as a result of violating this section, the court may, in addition to any other remedy, order the disgorgement of the unlawfully obtained money, property, or benefit in the interest of justice.

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