

ASSEMBLY BILL

No. 556

Introduced by Assembly Member Conway

February 25, 2009

An act to amend Section 19130 of the Government Code, relating to personal services contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 556, as introduced, Conway. Personal services contracts.

Existing law authorizes state agencies to use personal services contracts if, among other things, the contract does not adversely affect the state's affirmative action efforts and the contract includes assurance that the contractor's hiring practices meet applicable nondiscrimination, affirmative action standards. Existing law prohibits the state from discriminating against, or granting preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.

This bill would instead prohibit the personal services contract from adversely affecting the state's equal employment opportunity efforts and would require the contract to include assurances that the contractor's hiring practices meet applicable nondiscrimination, equal employment opportunity standards.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 19130 of the Government Code is amended to read:

19130. The purpose of this article is to establish standards for the use of personal services contracts.

(a) Personal services contracting is permissible to achieve cost savings when all the following conditions are met:

(1) The contracting agency clearly demonstrates that the proposed contract will result in actual overall cost savings to the state, provided that:

(A) In comparing costs, there shall be included the state's additional cost of providing the same service as proposed by a contractor. These additional costs shall include the salaries and benefits of additional staff that would be needed and the cost of additional space, equipment, and materials needed to perform the function.

(B) In comparing costs, there shall not be included the state's indirect overhead costs unless these costs can be attributed solely to the function in question and would not exist if that function was not performed in state service. Indirect overhead costs shall mean the pro rata share of existing administrative salaries and benefits, rent, equipment costs, utilities, and materials.

(C) In comparing costs, there shall be included in the cost of a contractor providing a service any continuing state costs that would be directly associated with the contracted function. These continuing state costs shall include, but not be limited to, those for inspection, supervision, and monitoring.

(2) Proposals to contract out work shall not be approved solely on the basis that savings will result from lower contractor pay rates or benefits. Proposals to contract out work shall be eligible for approval if the contractor's wages are at the industry's level and do not significantly undercut state pay rates.

(3) The contract does not cause the displacement of civil service employees. The term "displacement" includes layoff, demotion, involuntary transfer to a new class, involuntary transfer to a new location requiring a change of residence, and time base reductions. Displacement does not include changes in shifts or days off, nor does it include reassignment to other positions within the same class and general location.

1 (4) The contract does not adversely affect the state's ~~affirmative~~
2 ~~action~~ *equal employment opportunity* efforts.

3 (5) The savings shall be large enough to ensure that they will
4 not be eliminated by private sector and state cost fluctuations that
5 could normally be expected during the contracting period.

6 (6) The amount of savings clearly justify the size and duration
7 of the contracting agreement.

8 (7) The contract is awarded through a publicized, competitive
9 bidding process.

10 (8) The contract includes specific provisions pertaining to the
11 qualifications of the staff that will perform the work under the
12 contract, as well as assurance that the contractor's hiring practices
13 meet applicable nondiscrimination, ~~affirmative-action~~ *equal*
14 *employment opportunity* standards.

15 (9) The potential for future economic risk to the state from
16 potential contractor rate increases is minimal.

17 (10) The contract is with a firm. A "firm" means a corporation,
18 partnership, nonprofit organization, or sole proprietorship.

19 (11) The potential economic advantage of contracting is not
20 outweighed by the public's interest in having a particular function
21 performed directly by state government.

22 (b) Personal services contracting also shall be permissible when
23 any of the following conditions can be met:

24 (1) The functions contracted are exempted from civil service
25 by Section 4 of Article VII of the California Constitution, which
26 describes exempt appointments.

27 (2) The contract is for a new state function and the Legislature
28 has specifically mandated or authorized the performance of the
29 work by independent contractors.

30 (3) The services contracted are not available within civil service,
31 cannot be performed satisfactorily by civil service employees, or
32 are of such a highly specialized or technical nature that the
33 necessary expert knowledge, experience, and ability are not
34 available through the civil service system.

35 (4) The services are incidental to a contract for the purchase or
36 lease of real or personal property. Contracts under this criterion,
37 known as "service agreements," shall include, but not be limited
38 to, agreements to service or maintain office equipment or
39 computers that are leased or rented.

1 (5) The legislative, administrative, or legal goals and purposes
2 cannot be accomplished through the utilization of persons selected
3 pursuant to the regular civil service system. Contracts are
4 permissible under this criterion to protect against a conflict of
5 interest or to insure independent and unbiased findings in cases
6 where there is a clear need for a different, outside perspective.
7 These contracts shall include, but not be limited to, obtaining expert
8 witnesses in litigation.

9 (6) The nature of the work is such that the Government Code
10 standards for emergency appointments apply. These contracts shall
11 conform with Article 8 (commencing with Section 19888) of
12 Chapter 2.5 of Part 2.6.

13 (7) State agencies need private counsel because a conflict of
14 interest on the part of the Attorney General's office prevents it
15 from representing the agency without compromising its position.
16 These contracts shall require the written consent of the Attorney
17 General, pursuant to Section 11040.

18 (8) The contractor will provide equipment, materials, facilities,
19 or support services that could not feasibly be provided by the state
20 in the location where the services are to be performed.

21 (9) The contractor will conduct training courses for which
22 appropriately qualified civil service instructors are not available,
23 provided that permanent instructor positions in academies or similar
24 settings shall be filled through civil service appointment.

25 (10) The services are of such an urgent, temporary, or occasional
26 nature that the delay incumbent in their implementation under civil
27 service would frustrate their very purpose.

28 (c) All persons who provide services to the state under
29 conditions the board determines constitute an employment
30 relationship shall, unless exempted from civil service by Section
31 4 of Article VII of the California Constitution, be retained under
32 an appropriate civil service appointment.