

AMENDED IN ASSEMBLY MAY 27, 2011
AMENDED IN ASSEMBLY MARCH 31, 2011
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 172

Introduced by Assembly Member Eng
(Principal coauthor: Assembly Member Gatto)
(Coauthors: Assembly Members Portantino and Solorio)
(Coauthor: Senator Leno)

January 20, 2011

~~An act to add Section 10111.5 to the Public Contract Code, relating to public contracts.~~ *An act to add Sections 11004.4, 11004.5, 11004.6, and 11004.7 to the Government Code, relating to state agencies.*

LEGISLATIVE COUNSEL'S DIGEST

AB 172, as amended, Eng. ~~Public contracts:~~ *State agencies:* information: Internet Web site.

Existing law requires, subject to specific exemptions, public records to be open to public inspection.

This bill would require the California Technology Agency to create and maintain a Reporting Transparency in Government Internet Web site, as prescribed. It would require, subject to specific exemptions, state agencies to post specified audits to that Internet Web site, and would require the Department of General Services, the California Technology Agency, and other state agencies to post specified summary data regarding contracts awarded by the state to that Internet Web site. It would also require the office of the Governor to post specified financial statements and reports to that Internet Web site. The bill would exempt certain constitutional officers from the requirement of posting

the information to the Reporting Transparency in Government Internet Web site, if that officer posts the required information to his or her official Internet Web site, as specified.

~~Existing law governing contracting between state agencies and private contractors sets forth requirements for the procurement of supplies, materials, equipment, and services by state agencies and sets forth the various responsibilities of the Department of General Services and other state agencies in overseeing and implementing state contracting procedures and policies.~~

~~This bill would require a state agency, except as specified, to provide a link to a centrally located and accessible state-run Internet Web site that includes a list of the personal services and consulting services contracts, as defined, entered into by the agency. This bill would require the listings on the state's Internet Web site to include specified information, and would require a summary of a contract to be initially posted within 15 working days of being signed by all parties, as specified. This bill would require the Director of General Services to maintain the Internet Web site and to establish the publishing of the contract listing information. This bill would also authorize the department to use the services of any state agency.~~

~~This bill would require contractors to electronically provide specified information to assist state agencies in the reporting of information for the listings of personal services contracts and consulting services contracts. This bill would make contractors who fail to provide this information ineligible for any future personal services contracts or consulting services contracts and would cease payment for any ongoing contracts until the information is provided.~~

~~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. The Legislature finds and declares all of the*
- 2 *following:*
- 3 *(a) Transparency is fundamental to promoting efficiency and*
- 4 *effectiveness in state government and strengthening the democratic*
- 5 *process by giving citizens enough information to reach their own*
- 6 *conclusions about how their tax dollars are being spent.*

1 (b) Audits of state agencies and their operations can provide
2 objective and measurable performance reviews and identify and
3 correct inefficient or wasteful practices.

4 (c) Californians seeking information on state governmental
5 operations are often frustrated because a myriad of oversight
6 entities perform audits of state agencies, and the information can
7 be difficult to access due to the lack of an Internet Web-based,
8 central inventory of audits.

9 (d) Many internal audits that state agencies perform on their
10 own operations are finalized but never made public.

11 (e) Billions of dollars in state contracts are entered into each
12 year to purchase goods and services for the people of California,
13 and posting summary data regarding contracts on the Internet is
14 an effective way to help ensure that taxpayers are getting the best
15 value and that services are being provided in an efficient manner.

16 (f) The Legislature's continuing commitment to promoting
17 transparency in state government is especially critical while
18 California's economy continues to struggle.

19 SEC. 2. Section 11004.4 is added to the Government Code, to
20 read:

21 11004.4. (a) The California Technology Agency, or its
22 successor, shall create and maintain a Reporting Transparency
23 in Government Internet Web site for the purposes described in
24 Sections 11004.5, 11004.6, and 11004.7.

25 (b) In addition to the information required pursuant to Sections
26 11004.5, 11004.6, and 11004.7, the Reporting Transparency in
27 Government Internet Web site shall also include instructions for
28 the public that describe how a person may obtain more detailed
29 information for a contract.

30 (c) (1) Neither the Lieutenant Governor, nor the Attorney
31 General, Secretary of State, Treasurer, or Controller is required,
32 pursuant to Sections 11004.5 and 11004.6, to post information to
33 the Reporting Transparency in Government Internet Web site, if
34 that officer posts the information required by those sections on his
35 or her official Internet Web site.

36 (2) If the officer, acting pursuant to paragraph (1), determines
37 that information in a contract is exempt from disclosure pursuant
38 to the California Public Records Act (Chapter 3.5 (commencing
39 with Section 6250) of Division 7 of Title 1), then the officer shall

1 *post the following information on his or her official Internet Web*
2 *site:*

3 *(A) The contract number.*

4 *(B) The phrase “CPRA exemption claimed.”*

5 *(C) Other identifying information sufficient to enable a person*
6 *to submit a request for the information pursuant to the California*
7 *Public Records Act, for purposes of testing the exemption claimed*
8 *for the information.*

9 *(3) If an officer listed in paragraph (1) chooses, pursuant to*
10 *this subdivision, to post the required information to his or her*
11 *official Internet Web site, then the Secretary of California*
12 *Technology shall provide a clearly labeled link to that Internet*
13 *Web site on the Reporting Transparency in Government Internet*
14 *Web site.*

15 *SEC. 3. Section 11004.5 is added to the Government Code, to*
16 *read:*

17 *11004.5. (a) On or before February 15, 2012, a state agency*
18 *shall post to the Reporting Transparency in Government Internet*
19 *Web site every audit of its operations finalized from January 1,*
20 *2009, to December 31, 2011, inclusive.*

21 *(b) Within 15 calendar days of finalization, a state agency shall*
22 *post to the Reporting Transparency in Government Internet Web*
23 *site every audit of its operations finalized from January 1, 2012,*
24 *and forward.*

25 *(c) For purposes of this section, “audit” shall mean any review*
26 *or evaluation performed by a state agency on itself, or on the state*
27 *agency by another entity, including, but not limited to, the Bureau*
28 *of State Audits, the Controller, the Department of Finance, a*
29 *federal agency with oversight responsibility of the operations of*
30 *the state agency, or any nongovernmental organization that*
31 *monitors or oversees the state agency and that has received public*
32 *funds.*

33 *(d) The Department of General Services and the California*
34 *Technology Agency shall assist a state agency in complying with*
35 *the requirements of this section.*

36 *(e) This section shall not require the posting of information*
37 *contained in an audit, including, but not limited to, the identity of*
38 *any undisclosed expert consultant, that is confidential pursuant*
39 *to a court order, the attorney-client privilege, or the attorney work*
40 *product exception; or information that, if posted, would jeopardize*

1 *peace officer safety, criminal intelligence information, ongoing*
2 *investigatory activities, or any security procedure; or any*
3 *information the disclosure of which is prohibited by law. Nothing*
4 *in this section shall be construed to limit the rights of the public*
5 *to access information pursuant to the California Public Records*
6 *Act (Chapter 3.5 (commencing with Section 6250) of Division 7*
7 *of Title 1), or Section 3 of Article I of the California Constitution.*
8 *Any information withheld from posting shall be replaced with the*
9 *phrase, "CPRA exemption claimed."*

10 *SEC. 4. Section 11004.6 is added to the Government Code, to*
11 *read:*

12 *11004.6. (a) On or before February 15, 2012, the Department*
13 *of General Services and the California Technology Agency shall*
14 *post summary data regarding any contract awarded by the state*
15 *on or after March 31, 2010, valued at five thousand dollars*
16 *(\$5,000) or more to the Reporting Transparency in Government*
17 *Internet Web site. For purposes of this section, summary data*
18 *regarding a contract shall include, but not be limited to, all of the*
19 *following:*

- 20 *(1) The department name.*
- 21 *(2) The contract or order number.*
- 22 *(3) The total price.*
- 23 *(4) The contract start and termination dates.*
- 24 *(5) The supplier name.*
- 25 *(6) Any special instructions.*
- 26 *(7) The supplier classification codes.*
- 27 *(8) The acquisition type.*
- 28 *(9) The acquisition method.*
- 29 *(10) The item total.*
- 30 *(11) The quantity.*
- 31 *(12) The description.*
- 32 *(13) The classification codes.*

33 *(b) Within 15 calendar days of signing by all parties to the*
34 *contract, a state agency shall post to the Reporting Transparency*
35 *in Government Internet Web site summary data regarding any*
36 *contract it awarded from January 1, 2012, and forward that is*
37 *valued at five thousand dollars (\$5,000) or more.*

38 *(c) The Department of General Services and the California*
39 *Technology Agency shall assist a state agency in complying with*
40 *the requirements of this section.*

1 (d) This section shall not require the posting of information in
2 a contract, including, but not limited to, the identity of any
3 undisclosed expert consultant, that is confidential pursuant to a
4 court order, the attorney-client privilege, or the attorney work
5 product exception; or information that, if posted, would jeopardize
6 peace officer safety, criminal intelligence information, ongoing
7 investigatory activities, or any security procedure; or any
8 information the disclosure of which is prohibited by law. Nothing
9 in this section shall be construed to limit the rights of the public
10 to access information pursuant to the California Public Records
11 Act (Chapter 3.5 (commencing with Section 6250) of Division 7
12 of Title 1), or Section 3 of Article I of the California Constitution.
13 Any information withheld from posting shall be replaced with the
14 phrase, "CPRA exemption claimed."

15 SEC. 5. Section 11004.7 is added to the Government Code, to
16 read:

17 11004.7. The office of the Governor shall post every statement
18 of economic interest and travel and expense report of its senior
19 staff and deputies, agency secretaries and undersecretaries, and
20 department directors to the Reporting Transparency in Government
21 Internet Web site.

22 SECTION 1. Section 10111.5 is added to the Public Contract
23 Code, to read:

24 ~~10111.5. (a) (1) Each state agency shall provide a link to a~~
25 ~~centrally located and accessible state-run Internet Web site that~~
26 ~~includes a listing of the personal services contracts and consulting~~
27 ~~services contracts that it entered into during the fiscal year.~~

28 ~~(2) The Director of General Services shall maintain the Internet~~
29 ~~Web site described in paragraph (1) and shall establish the~~
30 ~~publishing of the contract listing information specified in~~
31 ~~subdivision (c). In implementing this section, the Director of~~
32 ~~General Services may use the services of any state agency, as that~~
33 ~~term is defined in Section 11000 of the Government Code.~~

34 ~~(3) It is the intent of the Legislature that the contract listing~~
35 ~~information be made available to the public in an electronic format~~
36 ~~that is searchable and easy to use in order to promote and support~~
37 ~~government transparency.~~

38 ~~(b) Contract listings shall be organized and reported in one of~~
39 ~~the following manners:~~

- 1 ~~(1) Using the maximum level of specificity available through~~
- 2 ~~the United Nations Standard Products and Services Code~~
- 3 ~~(UNSPSC):~~
- 4 ~~(2) Covering the following broad category names:~~
- 5 ~~(A) Architectural, engineering, and environmental services and~~
- 6 ~~consulting services.~~
- 7 ~~(B) Information technology personal services and consulting~~
- 8 ~~services.~~
- 9 ~~(C) All other contracts that include personal services and~~
- 10 ~~consulting services.~~
- 11 ~~(e) The contract listings shall include, but are not limited to, the~~
- 12 ~~following information:~~
- 13 ~~(1) The name and license, registration, certification, or~~
- 14 ~~identification number of each contractor, as well as whether the~~
- 15 ~~contractor is a for profit, nonprofit, small business, microbusiness,~~
- 16 ~~disabled veteran, or nonprofit veteran's service agency.~~
- 17 ~~(2) The statutory basis for the authorization of each contract,~~
- 18 ~~including, if relevant, any applicable condition permitting personal~~
- 19 ~~services contracts provided by Section 19130 of the Government~~
- 20 ~~Code.~~
- 21 ~~(3) The duration of each contract.~~
- 22 ~~(4) The number of amendments to each contract and the number~~
- 23 ~~of renewals of each contract, where applicable.~~
- 24 ~~(5) Reason why low bid was not accepted, if applicable.~~
- 25 ~~(6) Reason for noncompetitive bidding, if applicable.~~
- 26 ~~(7) (A) The total amount of the contract allocation over the~~
- 27 ~~duration of the contract, including all known amendments to the~~
- 28 ~~contract, the total amount paid by the state agency during the most~~
- 29 ~~recently completed fiscal year, and the number, cost, bill rate, and~~
- 30 ~~staffing levels associated with each type of contract employee~~
- 31 ~~retained during the most recently completed fiscal year. In a time~~
- 32 ~~and material contract, staffing levels shall also be described or~~
- 33 ~~accounted for in personnel years or full-time equivalent terms. In~~
- 34 ~~deliverables based contracts, average staffing levels and bill rates~~
- 35 ~~shall be listed on the Internet Web site described in subdivision~~
- 36 ~~(a), as follows:~~
- 37 ~~(i) 90 days after the completion of the contract.~~
- 38 ~~(ii) For a contract of a term of more than one year, 90 days after~~
- 39 ~~June 30 of each year until completion of the contract.~~

1 ~~(B) To facilitate state agency reporting of information for the~~
2 ~~listings, contractors shall electronically provide to the state agencies~~
3 ~~all of the staffing and cost information specified in subparagraph~~
4 ~~(A) in a useful and usable manner, which shall be reportable 60~~
5 ~~days after the completion of the contract, and, for a contract of a~~
6 ~~term of more than one year, 60 days after June 30 of each year~~
7 ~~until completion of the contract. State agencies shall make this~~
8 ~~information available to the Director of General Services in a~~
9 ~~manner prescribed by the director.~~

10 ~~(C) Failure to provide the staffing and cost information required~~
11 ~~by subparagraph (B) in a useful and usable manner shall be deemed~~
12 ~~a material breach of contract. A contractor who fails to provide~~
13 ~~the information shall be ineligible for any future personal services~~
14 ~~contracts and consulting services contracts and payments for any~~
15 ~~ongoing contracts shall cease until the required information is~~
16 ~~provided.~~

17 ~~(D) This paragraph shall become operative on January 1, 2013.~~

18 ~~(d) (1) On and after July 1, 2013, and before January 1, 2014,~~
19 ~~a summary of a contract shall be initially posted within 30 business~~
20 ~~days of the contract being signed by all parties. On and after~~
21 ~~January 1, 2014, the summary of a contract shall be initially posted~~
22 ~~within 15 business days of the contract being signed by all parties.~~
23 ~~The contract summary shall be updated as necessary to include~~
24 ~~any information required by this section that is not available at the~~
25 ~~time of posting.~~

26 ~~(2) Notwithstanding paragraph (1), a summary of a contract~~
27 ~~entered into by a special fund agency, as determined by the~~
28 ~~Department of General Services in consultation with the~~
29 ~~Department of Finance, shall be posted on and after July 1, 2012.~~

30 ~~(3) This subdivision shall only apply to contracts solicited after~~
31 ~~January 1, 2012.~~

32 ~~(e) (1) This section shall not require the posting of information~~
33 ~~in a contract, including the identity of any undisclosed expert~~
34 ~~consultant, that is confidential pursuant to a court order, the~~
35 ~~attorney-client privilege, or the attorney work product exception~~
36 ~~or information, that, if posted, would jeopardize peace officer~~
37 ~~safety, criminal intelligence information, ongoing investigatory~~
38 ~~activities or any security procedure, or any information the~~
39 ~~disclosure of which is prohibited by law.~~

1 ~~(2) Nothing in this subdivision shall be construed to limit the~~
2 ~~rights of the public to access information pursuant to the California~~
3 ~~Public Records Act (Ch. 3.5 (commencing with Section 6250) of~~
4 ~~Division 7 of Title 1 of the Government Code, or Section 3 of~~
5 ~~Article I of the California Constitution.~~

6 ~~(f) Any inquiries about a specific contract shall be handled by~~
7 ~~the contracting state agency. Each contract posted on the Internet~~
8 ~~Web site shall include the contact information of the contracting~~
9 ~~state agency, or a link to that information.~~

10 ~~(g) State agencies that are not required to report to the State~~
11 ~~Contract and Procurement Registration System (SCPRS) shall be~~
12 ~~exempt from the requirements of this section.~~

13 ~~(h) For purposes of this section, the following definitions apply:~~

14 ~~(1) "Consulting services contracts" has the same meaning as~~
15 ~~defined in Section 10335.5.~~

16 ~~(2) "Deliverables" means any contract, requisition, or purchasing~~
17 ~~order for products or services that must be completed and delivered~~
18 ~~as final products under the terms of an agreement or contract.~~
19 ~~"Deliverables" do not include public works contracts that does not~~
20 ~~specify actual cost of direct labor at specified hourly rates or actual~~
21 ~~cost of materials.~~

22 ~~(3) "Personal services contracts" means any contract, requisition,~~
23 ~~or purchase order under which labor or personal services is a~~
24 ~~separately identifiable element.~~

25 ~~(4) "Time and material contract" means a contract under which~~
26 ~~the contractor agrees to furnish and install materials or fixtures;~~
27 ~~or both, and which sets forth separately a charge for the materials~~
28 ~~or fixtures and a charge for their installation or fabrication.~~

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31 **CORRECTIONS:**

32 **Heading—Coauthors—Page 1.**

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