

AMENDED IN ASSEMBLY MAY 2, 2012
AMENDED IN ASSEMBLY APRIL 19, 2012
AMENDED IN ASSEMBLY MARCH 29, 2012
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2508

Introduced by Assembly Member Bonilla
(Coauthor: Assembly Member Beall)

February 24, 2012

An act to *amend Section 10111 of, and to add Chapter 3.7* (commencing with Section 12140) to Part 2 of Division 2 of, the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2508, as amended, Bonilla. Public contracts: public health agencies.

Existing law requires a state agency to comply with specified procedures in awarding agency contracts.

This bill would also prohibit a state agency authorized to contract for public benefit programs from contracting for call center services with a contractor or subcontractor unless that contractor or subcontractor certifies under penalty of perjury in his or her bid for the contract that the contract, and any subcontract performed under that contract, will be performed solely with workers employed in California. This bill would authorize these agencies to waive this requirement, with the consent of the Controller, if certain conditions are met, *and would require the Department of General Services to include specified information relating to these waivers in an annual report, as provided.* This bill would also require the contract to include a clause for

termination for noncompliance and specified penalties, if the contractor or subcontractor performs the contract or the subcontract with workers outside of California during the life of the contract. This bill would also specify that these provisions do not apply to an existing contract, as provided, or to a contract if the refusal to award that contract would violate the specific terms of federal trade treaties or bilateral or regional free trade agreements, as specified.

By requiring contractors and subcontractors to make certifications under penalty of perjury, this bill would create a new crime and thereby impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. The Legislature finds and declares the following:

2 (a) The federal and state economies are recovering from the
3 great recession and California still has a high unemployment rate.
4 Millions of Californians are not working or working less than they
5 want and need full-time employment. California continues to allow
6 state public benefit call center contracts to be awarded to
7 contractors that perform the work outside the United States.

8 (b) By contracting and subcontracting outside of the country,
9 jobs are displaced in the United States and in California, and
10 taxpayer dollars are used to create jobs in foreign countries. State
11 tax revenues should be used to create jobs in the United States and
12 in California, especially when the taxpayer dollars are designated
13 for programs meant to create jobs and address problems associated
14 with joblessness.

15 SEC. 2. Section 10111 of the Public Contract Code is amended
16 to read:

17 10111. Commencing January 1, 2007, the department shall
18 make available a report on contracting activity containing the
19 following information:

1 (a) A listing of consulting services contracts that the state has
2 entered into during the previous fiscal year. The listing shall
3 include the following:

4 (1) The name and identification number of each contractor.

5 (2) The type of bidding entered into, the number of bidders,
6 whether the low bidder was accepted, and if the low bidder was
7 not accepted, an explanation of why another contractor was
8 selected.

9 (3) The amount of the contract price.

10 (4) Whether the contract was a noncompetitive bid contract,
11 and why the contract was a noncompetitive bid contract.

12 (5) Justification for entering into each consulting services
13 contract.

14 (6) The purpose of the contract and the potential beneficiaries.

15 (7) The date when the initial contract was signed, and the date
16 when the work began and was completed.

17 (b) The report shall also include a separate listing of consultant
18 contracts completed during that fiscal year, with the same
19 information specified in subdivision (a).

20 (c) The information specified in subdivisions (a) and (b) shall
21 also include a list of any contracts underway during that fiscal year
22 on which any change was made regarding the following:

23 (1) The completion date of the contract.

24 (2) The amount of money to be received by the contractor, if it
25 exceeds 3 percent of the original contract price.

26 (3) The purpose of the contract or duties of the contractor. A
27 brief explanation shall be given if the change in purpose is
28 significant.

29 (d) The level of participation, by agency, of disabled veteran
30 business enterprises in statewide contracting and shall include
31 dollar values of contract award for the following categories:

32 (1) Construction.

33 (2) Architectural, engineering, and other professional services.

34 (3) Procurement of materials, supplies, and equipment.

35 (4) Information technology procurements.

36 Additionally, the report shall include a statistical summary
37 detailing each awarding department's goal achievement and a
38 statewide total of those goals.

39 (e) The level of participation by small business in state
40 contracting including:

1 (1) Upon request, an up-to-date list of eligible small business
2 bidders by general procurement and construction contract
3 categories, noting company names and addresses and also noting
4 which small businesses also qualify as microbusinesses.

5 (2) By general procurement and construction contract categories,
6 statistics comparing the small business and microbusiness contract
7 participation dollars to the total state contract participation dollars.

8 (3) By awarding department and general procurement and
9 construction categories, statistics comparing the small business
10 and microbusiness contract participation dollars to the total state
11 contract participation dollars.

12 (4) Any recommendations for changes in statutes or state policies
13 to improve opportunities for small businesses and microbusinesses.

14 (5) A statistical summary of small businesses and
15 microbusinesses certified for state contracting by the number of
16 employees at the business for each of the following categories:
17 0–5, 26–50, 51–75, and 76–100.

18 (6) To the extent feasible, beginning in the year 2008, the
19 number of contracts awarded by the department in the categories
20 specified in paragraph (5).

21 (7) The number of contracts and dollar amounts awarded
22 annually pursuant to Section 14838.5 of the Government Code to
23 small businesses, microbusinesses, and disabled veteran business
24 enterprises.

25 (f) The level of participation of business enterprises, by race,
26 ethnicity, and gender of owner, in contracts as identified in Section
27 2051 of the Government Code, to the extent that the information
28 has been voluntarily reported to the department. In addition, the
29 report shall contain the levels of participation of business
30 enterprises, by race, ethnicity, and gender of owner, for the
31 following categories of contracts, to the extent that the information
32 has been voluntarily reported to the department:

33 (1) Construction.

34 (2) Purchases of materials, supplies, or equipment.

35 (3) Professional services.

36 (g) In the years 2011 and 2012, any errors reported to the
37 department by an awarding agency as required by Sections 10302,
38 10344, and 12104.5, in the previous fiscal year.

39 (h) *Beginning in the year 2013, a list of in-state worker waivers*
40 *requested by state agencies pursuant to subdivision (d) of Section*

1 12140, including an indication as to whether the Controller
2 rejected the waiver request.

3 ~~SEC. 2.~~

4 SEC. 3. Chapter 3.7 (commencing with Section 12140) is added
5 to Part 2 of Division 2 of the Public Contract Code, to read:

6

7 CHAPTER 3.7. PROHIBITION OF THE OFFSHORING OF STATE
8 PUBLIC BENEFITS CONTRACTS

9

10 12140. (a) Notwithstanding any other law, any state agency
11 authorized to enter into contracts for public benefits programs shall
12 not contract for call center services for those public benefit
13 programs; with a contractor unless that contractor certifies under
14 penalty of perjury in his or her bid for the contract that the contract,
15 or any part thereof, and any subcontract performed under that
16 contract, will be performed solely with workers employed in
17 California.

18 (b) For purposes of this section:

19 (1) "Call center" means a building, facility, or operation where
20 customer or client services or assistance is provided by telephone,
21 fax, ~~email, e-mail~~, text, or ~~web-based~~ *Web-based* interaction.

22 (2) "Public benefit programs" means California Work
23 Opportunity and Responsibility to Kids (CalWORKs), CalFresh,
24 *Medi-Cal*, Healthy Families, and the California Healthcare
25 Eligibility, Enrollment, and Retention System.

26 (c) The contract shall provide that in the event a contractor or
27 subcontractor performs the contract or the subcontract for call
28 center services with workers outside of California during the life
29 of the contract, the contract shall be terminated for noncompliance
30 and the contractor or subcontractor shall pay a penalty to the state
31 agency in an amount equal to the amount paid by the state agency
32 for the percentage of work that was performed with workers outside
33 of California.

34 (d) (1) ~~A~~ *In the case of an emergency, a state agency may waive*
35 *the requirements of subdivision (a) for a particular contract prior*
36 *to the notice inviting bids if that state agency submits a written*
37 *finding relative to the nature of the emergency and facts related*
38 *to the contract meeting the requirements of subparagraphs (A),*
39 *(B), and (C) to the Controller, and the Controller does not reject*
40 *that finding within 30 days of receipt. The term of the waiver shall*

1 *be for no longer than six months. The finding shall detail how the*
 2 *contract is necessary to respond to an emergency, as determined*
 3 *by the state agency, and that all of the following are true:*

4 (A) *The ability of the state agency to provide essential services*
 5 *would be adversely affected if the contract is not performed.*

6 (B) *The public health, safety, and welfare would be endangered*
 7 *if the contract is not performed.*

8 (C) *A contractor or subcontractor that has the ability to perform*
 9 *the contract solely with workers within California is not*
 10 *immediately available to perform the contract.*

11 (2) *In the case of an emergency, a state agency may waive the*
 12 *requirements of subdivision (a) for a particular contract already*
 13 *in force, for a period not to exceed one year per waiver, if that*
 14 *state agency submits a written finding relative to the nature of the*
 15 *emergency and facts related to the contract meeting the*
 16 *requirements of subparagraphs (A), (B), and (C) to the Controller,*
 17 *and the Controller does not reject that finding within 30 days of*
 18 ~~*receipt,*~~ *receipt. The finding shall detail how the contract is*
 19 *necessary to respond to an emergency and that either all of the*
 20 *following are true:*

21 ~~(A) The contract is necessary to respond to an emergency, as~~
 22 ~~determined by the state agency, for all of the following reasons:~~

23 ~~(i) The ability of the state agency to provide essential services~~
 24 ~~would be adversely affected if the contract is not performed.~~

25 ~~(ii) The public health, safety, and welfare would be endangered~~
 26 ~~if the contract is not performed.~~

27 ~~(iii) A contractor or subcontractor that has the ability to perform~~
 28 ~~the contract solely with workers within California is not~~
 29 ~~immediately available to perform the contract.~~

30 ~~(B) The contract is necessary to provide a unique service, as~~
 31 ~~determined by the state agency, for both of the following reasons:~~

32 ~~(i) The state agency deems as mandatory the particular service~~
 33 ~~to be performed under the contract.~~

34 ~~(ii) Workers employed in California cannot adequately perform~~
 35 ~~the unique service to be performed under the contract.~~

36 (A) *The ability of the state agency to provide essential services*
 37 *would be adversely affected if the contract is not performed.*

38 (B) *The public health, safety, and welfare would be endangered*
 39 *if the contract is not performed.*

1 (C) A contractor or subcontractor that has the ability to perform
2 the contract solely with workers within California is not
3 immediately available to perform the contract.

4 (3) If a state agency seeks a waiver pursuant to paragraph (1)
5 or (2), the waiver shall include the facts the agency used to make
6 the findings in paragraph (1) or (2), including, but not limited to,
7 the estimated number of jobs affected and the estimated duration
8 of employment, and salaries of the noncompliant workers. Every
9 contract subject to the provisions of this section shall include
10 information on the conditions and the procedural requirements
11 for making a waiver request to the contracting state agency. The
12 contract shall also include the penalties conferred upon the
13 contractor pursuant to subdivision (c) and paragraph (5) for using
14 out-of-state workers to perform the state contract.

15 ~~(2)~~

16 (4) (A) A state agency that seeks a waiver under paragraph (1)
17 or (2) shall, at the same time that the entity provides the written
18 finding to the Controller, *post a copy of the written finding on the*
19 *agency's Internet Web site and provide a copy of that written*
20 ~~finding~~ *written notice to the Assembly Committee on Business,*
21 *Professions, and Consumer Protection, the Assembly Committee*
22 *on Jobs, Economic Development, and the Economy, the Assembly*
23 *Committee on Budget, the Senate Committee on Governmental*
24 *Organization, and the Senate Committee on Budget and Fiscal*
25 *Review.*

26 (B) *The Controller shall annually provide the Department of*
27 *General Services with a list of waivers requested by state agencies*
28 *pursuant to paragraph (1) or (2) with an indication of whether the*
29 *Controller rejected the waiver. The Department of General*
30 *Services shall include this information in the annual report*
31 *required in Section 10111 of the Public Contract Code.*

32 ~~(3)~~

33 (5) If the Controller rejects a written finding while the contract
34 is being performed or after the contract has been performed, the
35 contractor or subcontractor shall pay a penalty to the state agency
36 in an amount equal to the amount paid by the state agency for the
37 percentage of work that was performed with workers outside of
38 California.

39 (e) This section shall not apply to a contract if the refusal to
40 award that contract, on the basis that the contractor or subcontractor

1 does not certify under penalty of perjury that the contract and any
2 subcontract performed under that contract will be performed solely
3 with workers within California, would violate the specific terms
4 of the Agreement on Government Procurement of the World Trade
5 Organization or any other bilateral or regional free trade agreement
6 that California has consented to.

7 (f) This section shall not apply to a contract; or subcontract,
8 currently in place, if it would result in a violation of the terms of
9 the contract, but upon expiration of that contract, these provisions
10 shall be added before a new contract can be executed or renewed.

11 ~~SEC. 3.~~

12 *SEC. 4.* No reimbursement is required by this act pursuant to
13 Section 6 of Article XIII B of the California Constitution because
14 the only costs that may be incurred by a local agency or school
15 district will be incurred because this act creates a new crime or
16 infraction, eliminates a crime or infraction, or changes the penalty
17 for a crime or infraction, within the meaning of Section 17556 of
18 the Government Code, or changes the definition of a crime within
19 the meaning of Section 6 of Article XIII B of the California
20 Constitution.