

Assembly Bill No. 2508

CHAPTER 824

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

[Approved by Governor September 30, 2012. Filed with
Secretary of State September 30, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

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

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

This bill would prohibit, with specified exceptions, a state agency authorized to enter into contracts relating to public benefit programs from contracting for services provided by a call center that directly serves applicants for, recipients of, or enrollees in, those public benefit programs with a contractor or subcontractor unless that contractor or subcontractor certifies in its 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 impose a civil penalty, as provided, for knowingly providing false information in that certification. This bill would also require the contract to include a clause providing for a right by the state to terminate the contract for noncompliance and specified penalties, if the contractor or subcontractor performs the contract or the subcontract with workers not employed in California during the life of the contract. This bill would allow a state agency to conduct a solicitation without applying the provisions described above if the California Health and Human Services Agency or the board of the California Health Benefit Exchange makes certain determinations, including if a prior solicitation was conducted and the bids received were priced unreasonably high as a result of including these provisions.

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

SECTION 1. The Legislature finds and declares the following:

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

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

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

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

12140. (a) Notwithstanding any other law, any state agency authorized to enter into contracts relating to public benefit programs shall only contract for services provided by a call center that directly serves applicants for, recipients of, or enrollees in, those public benefit programs with a contractor that certifies in its bid for the contract that the services provided under the contract and any subcontract performed under that contract, to applicants for, recipients of, or enrollees in, those public benefit programs, will be performed solely with workers employed in California. Any contractor that knowingly provides false information in the certification required by this subdivision shall be subject to a civil penalty in an amount of up to ten thousand dollars (\$10,000), in addition to any other remedies available to the state agency. An action for a civil penalty under this subdivision may be brought by any public prosecutor in the name of the people of the State of California.

(b) For purposes of this section:

(1) "Call center" means a building, facility, or operation where customer or client services or assistance is provided by telephone, fax, email, text, or Web-based interaction.

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

(c) (1) The contract shall provide that in the event a contractor or subcontractor performs the contract or the subcontract for call center services with workers not employed in California during the life of the contract, the state has the right to terminate the contract for noncompliance and the contractor or subcontractor shall pay a penalty to the state agency in an amount equal to the amount paid by the state agency for the percentage of work that was performed with workers not employed in California.

(2) The penalty authorized in paragraph (1) shall be in addition to any other applicable penalty, including, but not limited to, the penalty provided in subdivision (a).

(d) (1) Notwithstanding subdivision (a), a state agency may conduct a solicitation without applying this section if the California Health and Human

Services Agency or the board of the California Health Benefit Exchange makes any of the following determinations:

(A) A prior solicitation was conducted and the bids received were priced unreasonably high as a result of including these provisions.

(B) A prior solicitation was conducted and fewer than two bids were received as a result of including these provisions.

(C) The services are needed in cases of emergency where immediate acquisition is necessary for the protection of the public health, welfare or safety.

(2) If the agency or board makes a determination described in paragraph (1), that entity shall submit a report to the Assembly Committee on Jobs, Economic Development and the Economy and to the Senate Committee on Labor and Industrial Relations on or before the last day of the quarter following the quarter in which the determination was made. The report shall include the reason for making the determination.

(e) This section shall not apply to the following:

(1) A contract or subcontract, if implementation would violate the specific terms of the Agreement on Government Procurement of the World Trade Organization or any other bilateral or regional free trade agreement to which the State of California has consented.

(2) A contract or subcontract, including extensions of that contract or subcontract, that results from a request for proposal or bid that occurred prior to the effective date of the act that adds this chapter.

(3) A contract for a public benefit program between a state agency and a health care service plan or a specialized health care service plan regulated by the Department of Managed Health Care, and any subcontract performed under that contract, or a disability insurer or specialized health insurer regulated by the Department of Insurance, and any subcontract performed under that contract.

(f) This section shall be construed so as to not conflict with, and be applied consistent with, federal law.