

Senate Bill No. 861

CHAPTER 715

An act to add Section 10490 to the Public Contract Code, relating to public contracts.

[Approved by Governor October 9, 2011. Filed with
Secretary of State October 9, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

SB 861, Corbett. Public contracts: contract eligibility: conflict minerals in the Democratic Republic of the Congo.

Existing law authorizes contracting between state agencies and private contractors and sets forth requirements for the procurement of goods and services by state agencies and the various responsibilities of state agencies and the Department of General Services in implementing state contracting procedures and policies.

This bill would prohibit a scrutinized company, as defined, from entering into a contract with a state agency for goods or services, as provided.

This bill would not become operative until the later of January 1, 2012, or the date the United States Securities and Exchange Commission issues the final rules and regulations on the implementation of Section 1502 of Public Law 111-203, and would become inoperative upon a specified date.

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

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

(a) The Democratic Republic of Congo was devastated by a civil war carried out in 1996 and 1997 and a war that began in 1998 and ended in 2003, which resulted in widespread human rights violations and the intervention of multiple armed forces or armed nonstate actors from other countries in the region.

(b) Despite the signing of a peace agreement and subsequent withdrawal of foreign forces in 2003, the eastern region of the Democratic Republic of Congo has continued to suffer from high levels of poverty, insecurity, and a culture of impunity, in which illegal armed groups and military forces continue to commit widespread human rights abuses.

(c) According to a study by the International Rescue Committee released in January 2008, conflict and the related humanitarian crisis in the Democratic Republic of Congo have resulted in the deaths of an estimated 5,400,000 people since 1998 and continue to cause as many as 45,000 deaths each month.

(d) Sexual violence and rape remain pervasive tools of warfare used by all parties in eastern region of the Democratic Republic of Congo to terrorize and humiliate communities, resulting in community breakdown which causes a decrease in the ability of affected communities to resist control by illegal armed forces and a loss of community access to minerals. Sexual violence and rape affect hundreds of thousands of women and girls, frequently resulting in traumatic fistula, other severe genital injuries, and long-term psychological trauma.

(e) A report released by the Government Accountability Office in December 2007 describes how the mismanagement and illicit trade of extractive resources from the Democratic Republic of Congo supports conflict between militias and armed domestic factions in neighboring countries.

(f) In October 2002, the United Nations Group of Experts on the Democratic Republic of Congo called on member states of the United Nations to adopt measures, consistent with the guidelines established for multinational enterprises by the Organization for Economic Co-operation and Development, to ensure that enterprises in their jurisdiction do not abuse principles of conduct that they have adopted as a matter of law.

(g) In February 2008, the United Nations Group of Experts on the Democratic Republic of Congo stated, “individuals and entities buying mineral output from areas of the eastern part of the Democratic Republic of Congo with a strong rebel presence are violating the sanctions regime when they do not exercise due diligence to ensure their mineral purchases do not provide assistance to illegal armed groups” and defined due diligence as including the following: determining the precise identity of the deposits from which the minerals they intend to purchase have been mined; establishing whether or not these deposits are controlled or taxed by illegal armed groups; and refusing to buy minerals known to originate, or suspected to originate, from deposits controlled or taxed by illegal armed groups.

(h) In its final report, released on December 12, 2008, the United Nations Group of Experts on the Democratic Republic of the Congo found that official exports of columbite-tantalite, cassiterite, wolframite, and gold are grossly undervalued and that various illegal armed groups in the eastern region of the Democratic Republic of Congo continue to profit greatly from these natural resources by coercively exercising control over mining sites from where they are extracted and locations along which they are transported for export.

(i) United Nations Security Council Resolution 1857, unanimously adopted on December 22, 2008, broadens existing sanctions relating to the Democratic Republic of Congo to include “individuals or entities supporting the illegal armed groups ... through illicit trade of natural resources”; and encourages member countries to ensure that companies handling minerals from the Democratic Republic of Congo exercise due diligence on their suppliers.

(j) Continued weak governance in the Democratic Republic of Congo has allowed the illicit trade in the minerals columbite-tantalite, cassiterite,

wolframite, and gold to flourish, which empowers illegal armed groups, undermines local development, and results in a loss or misuse of tax revenue for the Government of the Democratic Republic of Congo. The development of stronger governance and economic institutions that support legitimate cross-border trade in such minerals would help prevent the exploitation of such minerals by illegal armed groups and enable the hundreds of thousands of people who depend on such minerals for their livelihoods to benefit from such minerals.

(k) Metals derived from columbite-tantalite, cassiterite, wolframite, and gold from the Democratic Republic of Congo are used in diverse technological products sold worldwide, including mobile telephones, laptop computers, and digital video recorders.

(l) In February 2009, the Electronic Industry Citizenship Coalition and the Global e-Sustainability Initiative released a statement asserting that use by the information communications technology industry of mined commodities that support conflict in such countries as the Democratic Republic of Congo is unacceptable and electronics companies can and should uphold responsible practices in their operations and work with suppliers to meet social and environmental standards with respect to the raw materials used in the manufacture of their products.

(m) Notwithstanding the extensiveness of the supply chains of technological products and the extensiveness of the processing stages for the metals derived from columbite-tantalite, cassiterite, wolframite, and gold used in such products, companies that create and sell products that include such metals have the ability to influence the situation in the Democratic Republic of Congo by doing all of the following: exercising due diligence in ensuring that their suppliers provide raw materials in a manner that does not directly finance armed conflict, result in labor or human rights violations, or damage the environment; verifying the country from which the minerals used to derive such metals originate, the identity of the exporter of the minerals, and that all appropriate tax payments are made; and committing to support mineral exporters from the Democratic Republic of Congo that fully disclose their export payments and certify that their minerals do not directly finance armed conflict, result in labor or human rights violations, or damage the environment.

(n) It is the sense of the Legislature that the exploitation and trade of conflict minerals originating in the Democratic Republic of Congo is helping to finance conflict characterized by extreme levels of violence in the eastern Democratic Republic of Congo, particularly sexual- and gender-based violence, and contributing to an emergency humanitarian situation.

(o) The Dodd-Frank Wall Street Reform and Consumer Protection Act was signed into law by President Barack Obama on July 21, 2010. This law requires those who file with the Securities Exchange Commission and use minerals originating in the Democratic Republic of Congo in manufacturing to disclose measures taken to exercise due diligence on the source and chain of custody of the materials and the products manufactured.

SEC. 2. Section 10490 is added to the Public Contract Code, to read:

10490. (a) A scrutinized company is ineligible to, and shall not, bid on or submit a proposal for a contract with a state agency for goods or services related to products or services that are the reason the company must comply with Section 13(p) of the Securities Exchange Act of 1934.

(b) For purposes of this section, a “scrutinized company” is a person that has been found to be in violation of Section 13(p) of the Securities Exchange Act of 1934 by final judgment or settlement entered in a civil or administrative action brought by the Securities and Exchange Commission and the person has not remedied or cured the violation in a manner accepted by the commission on or before final judgment or settlement.

(c) A person shall cease to be regarded as a scrutinized company when the person is no longer deemed to be in violation of Section 13(p) of the Securities Exchange Act of 1934, or upon filing by such person of an amended or corrective filing under Section 13(p) of the Securities Exchange Act of 1934, which filing corrects the violations described in subdivision (b), or after three years from the date of final judgment or settlement, whichever is earlier.

(d) The Department of General Services shall establish in the State Administrative Manual or the State Contracting Manual policies and procedures for all state agencies, departments, boards, and commissions to implement the contract prohibition of this section.

(e) For purposes of this section, “goods or services” includes goods and services subject to this chapter (commencing with Section 10290), information technology goods and services subject to Chapter 3 (commencing with Section 12100), and telecommunication goods and services subject to Chapter 3.5 (commencing with Section 12120).

SEC. 3. (a) Section 2 of this bill shall not become operative until the later of January 1, 2012, or the date the United States Securities and Exchange Commission issues the final rules and regulations on the implementation of Section 1502 of Public Law 111-203.

(b) Section 2 of this bill shall become inoperative upon the disclosure requirements termination date specified pursuant to Section 1502(b)(4) of Public Law 111-203.