

AMENDED IN ASSEMBLY MAY 1, 2000
AMENDED IN ASSEMBLY MARCH 27, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 2304

Introduced by Assembly Member Davis

February 24, 2000

An act to amend Sections 10335, 10336, 10339, 10340, 10344, 10344.1, 10345, 10346, 10348, 10349, 10351, 10353, 10359, 10367, 10369, 10370, 10371, and 10381 of, to amend and renumber Section ~~10357, to add Sections 10335.5~~ *10357 of, to add Sections 10335.5, 10345.5, and 10348.5* to, to amend the heading of Article 4 (commencing with Section 10335) of Chapter 2 of Part 2 of Division 2 of, to repeal Sections 10343, 10344.3, 10355, 10356, 10358, 10360, 10362, 10363, 10364, 10365, 10366, 10372, 10373, 10374, 10375, 10376, 10377, 10378, 10379, 10380, and 10382 of, and to repeal the heading of Article 5 (commencing with Section 10355) of Chapter 2 of Part 2 of Division 2 of, the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2304, as amended, Davis. State contracts: personal and consulting services.

Existing law establishes various procedures for the procurement of state goods and services, including consulting services and personal services.

This bill would consolidate the provisions regulating consulting services and personal services.

This bill would revise these provisions with respect to covered contracts and notice by electronic media or the Internet and would make various technical changes. *This bill would provide for enactment of related provisions if AB 2100 is also enacted and becomes operative, as specified.*

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 heading of Article 4 (commencing
2 with Section 10335) of Chapter 2 of Part 2 of Division 2 of
3 the Public Contract Code is amended to read:

4
5 Article 4. Contracts for Services

6
7 SEC. 2. Section 10335 of the Public Contract Code is
8 amended to read:

9 10335. (a) This article shall apply to all contracts,
10 including amendments, entered into by any state agency
11 for services to be rendered to the state, whether or not the
12 services involve the furnishing or use of equipment,
13 materials, or supplies or are performed by an
14 independent contractor. Except as provided in Section
15 10351, all contracts subject to this article are of no effect
16 unless and until approved by the department. Each
17 contract shall be transmitted with all papers, estimates,
18 and recommendations concerning it to the department
19 and, if approved by the department, shall be effective
20 from the date of approval. This article shall apply to any
21 state agency that by general or specific statute is expressly
22 or impliedly authorized to enter into the transactions
23 referred to in this section. This article shall not apply to
24 contracts for the construction, alteration, improvement,
25 repair, or maintenance of real or personal property,
26 contracts for services subject to Chapter 10 (commencing
27 with Section 4525) of Division 5 of Title 1 of the
28 Government Code, to contracts that are listed as
29 exceptions in Section 10295, contracts of less than ~~two~~
30 ~~thousand five hundred dollars (\$2,500)~~ *five thousand*



1 *dollars (\$5,000)* in amount, contracts of less than five
2 thousand dollars (\$5,000) where only per diem or travel
3 expenses, or a combination thereof, are to be paid,
4 contracts between state agencies, contracts between a
5 state agency and local agency or federal agency, or
6 contracts for the development, maintenance,
7 administration, or use of licensing or proficiency testing
8 examinations.

9 (b) In exercising its authority under this article with
10 respect to contracts for the services of legal counsel, other
11 than the Attorney General, entered into by any state
12 agency that is subject to Section 11042 or Section 11043 of
13 the Government Code, the department, as a condition of
14 approval of the contract, shall require the state agency to
15 demonstrate that the consent of the Attorney General to
16 the employment of the other counsel has been granted
17 pursuant to Section 11040 of the Government Code. This
18 consent shall not be construed in a manner that would
19 authorize the Attorney General to establish a separate
20 program for reviewing and approving contracts in the
21 place of, or in addition to, the program administered by
22 the department pursuant to this article.

23 (c) Until January 1, 2001, the department shall
24 maintain a list of contracts approved pursuant to
25 subdivision (b). This list shall be filed quarterly with the
26 Senate Committee on Budget and Fiscal Review and the
27 Assembly Committee on Budget. The list shall be limited
28 to contracts with a consideration in excess of twenty
29 thousand dollars (\$20,000) during the life of the contract
30 and shall include sufficient information to identify the
31 provider of legal services, the length of each contract,
32 applicable hourly rates, and the need for the services. The
33 department shall add a contract that meets these
34 conditions to the list within 10 days after approval. A copy
35 of the list shall be made available to any requester. The
36 department may charge a fee to cover the cost of
37 supplying the list as provided in Section 6253 of the
38 Government Code.

39 (d) Contracts subject to the approval of the
40 department shall also have the department's approval for



1 a modification or amendment thereto, with the following
2 exceptions:

3 (1) An amendment to a contract that only extends the
4 original time for completion of performance for a period
5 of one year or less is exempt. If the original contract was
6 subject to approval by the department, one fully
7 executed copy including transmittal document,
8 explaining the reason for the extension, shall be sent to
9 the legal office of the department. A contract may only
10 be amended once under this exemption.

11 (2) Contracts let or awarded on the basis of a law
12 requiring competitive bidding may be modified or
13 amended only if the contract so provides or if authorized
14 by the law requiring competitive bidding.

15 (3) If an amendment to a contract has the effect of
16 giving the contract as amended an increase in monetary
17 amount, or an agreement by the state to indemnify or
18 save harmless any person, the amendment shall be
19 approved by the department.

20 SEC. 3. Section 10335.5 is added to the Public
21 Contract Code, to read:

22 10335.5. (a) "Consulting services contract," as used
23 in this article, means services that do all of the following:

- 24 (1) Are of an advisory nature.
- 25 (2) Provide a recommended course of action or
26 personal expertise.

27 (3) Have an end product that is basically a transmittal
28 of information either written or verbal and that is related
29 to the governmental functions of state agency
30 administration and management and program
31 management or innovation.

32 (4) Are obtained by awarding a contract, a grant, or
33 any other payment of funds for services of the above type.

34 The product may include anything from answers to
35 specific questions to design of a system or plan, and
36 includes workshops, seminars, retreats, and conferences
37 for which paid expertise is retained by contract.

38 (b) "Consulting services contract" does not include
39 any of the following:



1 (1) Contracts between a state agency and the federal
2 government.

3 (2) Contracts with local agencies, as defined in Section
4 2211 of the Revenue and Taxation Code, to subvene
5 federal funds for which no matching state funds are
6 required.

7 (c) The following consulting services contracts are
8 exempt from the advertising and bidding requirements
9 of this article:

10 (1) Contracts that are temporary or time-limited
11 appointments to a nontesting civil service classification
12 for the purpose of meeting a time-limited employment
13 need. Selection and compensation for these
14 appointments shall be made in accordance with state civil
15 service requirements. Payment under a consulting
16 service contract may be on the basis of each hour or day
17 devoted to the task or in one lump sum for the end
18 product.

19 (2) Contracts that can only be performed by a public
20 entity as defined in subdivision (b) of Section 605 of the
21 Unemployment Insurance Code.

22 (3) Contracts solely for the purpose of obtaining
23 expert witnesses for litigation.

24 (4) Contracts for legal defense, legal advice, or legal
25 services.

26 (5) Contracts in an amount of less than ~~two thousand~~
27 ~~five hundred dollars (\$2,500)~~ *five thousand dollars*
28 *(\$5,000)*.

29 (6) Contracts entered into pursuant to Section 14838.5
30 of the Government Code.

31 SEC. 4. Section 10336 of the Public Contract Code is
32 amended to read:

33 10336. The Department of Finance may establish
34 those controls over approval of contracts by the
35 department as are necessary to assure that approval is
36 consistent with program and budgetary determinations
37 of the Department of Finance. The controls established
38 under this section shall not be constructed in a fashion or
39 be construed in a manner which would authorize the
40 Department of Finance to establish a separate program



1 for reviewing and approving contracts in the place of, or
 2 in addition to, the program administered by the
 3 department pursuant to this article. The Department of
 4 Finance, when it has reason to believe that a proposed
 5 contract is not in compliance with its program and
 6 budgetary determinations, may direct a state agency to
 7 transmit the contract to it for review. It is the intent of the
 8 Legislature, however, that any review of this type shall be
 9 restricted to individual contracts and shall occur only if no
 10 alternative course of action satisfactory to the
 11 Department of Finance is available.

12 SEC. 5. Section 10339 of the Public Contract Code is
 13 amended to read:

14 10339. (a) Subject to the provisions of Section 10348,
 15 no state agency shall draft, or cause to be drafted, any
 16 invitation to bid or request for proposal, in connection
 17 with the awarding of a contract, in a manner that limits
 18 the bidding directly or indirectly to any one bidder.

19 (b) Any contract awarded in violation of subdivision
 20 (a) shall be void.

21 SEC. 6. Section 10340 of the Public Contract Code is
 22 amended to read:

23 10340. (a) Except as provided by subdivision (b),
 24 state agencies shall secure at least three competitive bids
 25 or proposals for each contract.

26 (b) Three competitive bids or proposals are not
 27 required in any of the following cases:

28 (1) In cases of emergency where a contract is
 29 necessary for the immediate preservation of the public
 30 health, welfare, or safety, or protection of state property.

31 (2) When the agency awarding the contract has
 32 advertised the contract in the California State Contracts
 33 Register and has solicited all potential contractors known
 34 to the agency, but has received less than three bids or
 35 proposals.

36 (3) The contract is with another state agency, a local
 37 governmental entity, an auxiliary organization of the
 38 California State University, an auxiliary organization of a
 39 California community college, a foundation organized to
 40 support the Board of Governors of the California



1 Community Colleges, or an auxiliary organization of the
2 Student Aid Commission established pursuant to Section
3 69522 of the Education Code. These contracts, however,
4 may not be used to circumvent the competitive bidding
5 requirements of this article.

6 (4) The contract meets the conditions prescribed by
7 the department pursuant to subdivision (a) of Section
8 10348.

9 (5) The contract has been awarded without
10 advertising and calling for bids pursuant to Section 19404
11 of the Welfare and Institutions Code.

12 (6) Contracts entered into pursuant to Section 14838.5
13 of the Government Code.

14 (c) Any agency which has received less than three bids
15 or proposals on a contract shall document, in a manner
16 prescribed by the department, the names and addresses
17 of the firms or individuals it solicited for bids or proposals.

18 SEC. 7. Section 10343 of the Public Contract Code is
19 repealed.

20 SEC. 8. Section 10344 of the Public Contract Code is
21 amended to read:

22 10344. (a) Contracts subject to the provisions of this
23 article may be awarded under a procedure which makes
24 use of a request for proposal. State agencies that use this
25 procedure shall include in the request for proposal a
26 clear, precise description of the work to be performed or
27 services to be provided, a description of the format that
28 proposals shall follow and the elements they shall contain,
29 the standards the agency will use in evaluating proposals,
30 the date on which proposals are due and the timetable the
31 agency will follow in reviewing and evaluating them.

32 State agencies which use a procedure that makes use of
33 a request for proposal shall evaluate proposals and award
34 contracts in accordance with the provisions of subdivision
35 (b) or (c). No proposals shall be considered that have not
36 been received at the place, and prior to the closing time,
37 stated in the request for proposal.

38 (b) State agencies that use the evaluation and
39 selection procedure in this subdivision shall include in the
40 request for proposal, in addition to the information



1 required by subdivision (a), a requirement that bidders
2 submit their proposals with the bid price and all cost
3 information in a separate, sealed envelope.

4 Proposals shall be evaluated and the contract awarded
5 in the following manner:

6 (1) All proposals received shall be reviewed to
7 determine those that meet the format requirements and
8 the standards specified in the request for proposal.

9 (2) The sealed envelopes containing the bid price and
10 cost information for those proposals that meet the format
11 requirements and standards shall then be publicly
12 opened and read.

13 (3) The contract shall be awarded to the lowest
14 responsible bidder meeting the standards.

15 (c) State agencies that use the evaluation and selection
16 procedure in this subdivision shall include in the request
17 for proposal, in addition to the information required by
18 subdivision (a), a description of the methods that will be
19 used in evaluating and scoring the proposals. Any
20 evaluation and scoring method shall ensure that
21 substantial weight in relationship to all other criteria
22 utilized shall be given to the contract price proposed by
23 the bidder.

24 Proposals shall be evaluated and the contract awarded
25 in the following manner:

26 (1) All proposals shall be reviewed to determine which
27 meet the format requirements specified in the request for
28 proposal.

29 (2) All proposals meeting the formal requirements
30 shall then be submitted to an agency evaluation
31 committee which shall evaluate and score the proposals
32 using the methods specified in the request for proposal.
33 All proposals and all evaluation and scoring sheets shall be
34 available for public inspection at the conclusion of the
35 committee scoring process.

36 (3) The contract shall be awarded to the bidder whose
37 proposal is given the highest score by the evaluation
38 committee.

39 (d) Nothing in this section shall require the awarding
40 of the contract if no proposals are received containing



1 bids offering a contract price that in the opinion of the
2 state agency is a reasonable price.

3 SEC. 9. Section 10344.1 of the Public Contract Code
4 is amended to read:

5 10344.1. The Department of Personnel
6 Administration, with respect to contracts it enters into for
7 state employees for employee benefits, occupational
8 health and safety, training services, or any combination
9 thereof, shall provide all qualified bidders with a fair
10 opportunity to enter the bidding process, therefore
11 stimulating competition in a manner conducive to sound
12 fiscal practices. The Department of Personnel
13 Administration shall make available to any member of the
14 public its guidelines for awarding these contracts, and to
15 the extent feasible, implement the objectives set forth in
16 Section 10351.

17 SEC. 10. Section 10344.3 of the Public Contract Code
18 is repealed.

19 SEC. 11. Section 10345 of the Public Contract Code is
20 amended to read:

21 10345. (a) Whenever a contract is awarded under a
22 procedure providing for competitive bidding, but the
23 contract is not to be awarded to the low bidder, the low
24 bidder shall be given notice five working days prior to the
25 award of the contract by telegram, electronic facsimile
26 transmission, overnight courier, Internet transmission, or
27 personal delivery.

28 (b) Upon written request by any bidder who has
29 submitted a bid, notice of the proposed award shall be
30 posted in a place accessible by the general public,
31 including any Internet site identified in the invitation for
32 bids at least five working days prior to awarding the
33 contract.

34 (c) Contracts awarded under the provisions of Section
35 10344 shall be awarded only after a notice of the proposed
36 award has been posted in a place accessible by the general
37 public, including any Internet site identified in the
38 request for proposal, for five working days. If, prior to the
39 award, any bidder files a protest with the awarding state
40 agency and the department against the awarding of the



1 contract, the contract shall not be awarded until either
2 the protest has been withdrawn or the department has
3 decided the matter.

4 Within five days after filing the protest, the protesting
5 bidder shall file with the department and awarding state
6 agency a full and complete written statement specifying
7 the grounds for the protest. Protests shall be limited to the
8 following grounds:

9 (1) The state agency failed to follow the procedures
10 specified in either subdivision (b) or (c) of Section 10344.

11 (2) The state agency failed to apply correctly the
12 standards for reviewing the format requirements or
13 evaluating the proposals as specified in the request for
14 proposal.

15 (3) The state agency used the evaluation and selection
16 procedure in subdivision (b) of Section 10344, but is
17 proposing to award the contract to a bidder other than
18 the lowest responsible bidder.

19 (4) The state agency used the evaluation and selection
20 procedure in subdivision (c) of Section 10344, but failed
21 to follow the methods for evaluating and scoring the
22 proposals specified in the request for proposal.

23 (5) The state agency used the evaluation and selection
24 procedure in subdivision (c) of Section 10344, but is
25 proposing to award the contract to a bidder other than
26 the bidder given the highest score by the state agency
27 evaluation committee.

28 (d) The department shall establish written procedures
29 for deciding protests under this section.

30 *SEC. 11.5. Section 10345.5 is added to the Public
31 Contract Code, to read:*

32 *10345.5. The department shall submit a proposal for
33 continued posting on the Internet, on or after July 1, 2001,
34 unless otherwise authorized by the Department of
35 Information Technology pursuant to Executive Order
36 D-3-99, of those bid notices authorized by Section 10345.
37 Proposals submitted for posting shall include content
38 maintenance provisions, as provided by the California
39 Electronic Government and Information Act.*



1 SEC. 12. Section 10346 of the Public Contract Code is
2 amended to read:

3 10346. Contracts may provide for progress payments
4 to contractors for work performed or costs incurred in the
5 performance of the contract. Not less than 10 percent of
6 the contract amount shall be withheld pending final
7 completion of the contract. However, if the contract
8 consists of the performance of separate and distinct tasks,
9 then any funds so withheld with regard to a particular
10 task may be paid upon completion of that task.

11 No state agency shall make progress payments on a
12 contract unless it first has established procedures,
13 approved by the department, which will ensure that the
14 work or services contracted are being delivered in
15 accordance with the contract.

16 SEC. 13. Section 10348 of the Public Contract Code is
17 amended to read:

18 10348. The department shall prescribe the following:

19 (a) The conditions under which a contract may be
20 awarded without competition, and the methods and
21 criteria which shall be used in determining the
22 reasonableness of contract costs when a contract is
23 awarded without competition.

24 (b) Any special requirements for evaluating
25 multiple-year contracts which the department deems
26 necessary to protect the financial interest of the state.

27 (c) For contracts of less than twenty thousand dollars
28 (\$20,000), the conditions under which some or all of the
29 provisions of this article may be waived in order to assist
30 agencies in obtaining services and consultant services in
31 an efficient and timely manner.

32 SEC. 14. Section 10348.5 is added to the Public
33 Contract Code, to read:

34 10348.5. Each state agency shall designate at least one
35 currently existing person or position within the state
36 agency as a contract manager. Every contract manager
37 shall have knowledge of legal contractual arrangements.

38 SEC. 15. Section 10349 of the Public Contract Code is
39 amended to read:



1 10349. The Department of Personnel Administration
2 shall establish a program for training state agency
3 contracting personnel in contract administration and
4 contract management. The cost of training state agency
5 contracting personnel shall be paid by state agencies out
6 of their appropriations for personnel training. The
7 Department of Personnel Administration shall, prior to
8 establishing the training program required by this
9 section, consult with the department concerning the
10 training curriculum and the development of a training
11 manual on contract administration.

12 SEC. 16. Section 10351 of the Public Contract Code is
13 amended to read:

14 10351. (a) The department shall exempt from its
15 approval contracts under seventy-five thousand dollars
16 (\$75,000) that any state agency awards if the state agency
17 does all of the following:

18 (1) Establishes written policies and procedures and a
19 management system that will ensure the state agency's
20 contracting activities comply with applicable provisions
21 of law and regulations and that it has demonstrated the
22 ability to carry out these policies and procedures and to
23 implement the management system.

24 (2) Establishes a plan for ensuring that contracting
25 personnel are adequately trained in contract
26 administration and contract management.

27 (3) Conducts an audit every two years of the
28 contracting program and reports to the department as it
29 may require.

30 (4) Establishes procedures for reporting to the
31 department and the Legislature on such contracts as the
32 Legislature may require in the Budget Act.

33 (b) Any state agency may request the department to
34 exempt from its approval classes or types of contracts
35 under this section. When the department receives a
36 request but refuses to grant the exemption, it shall state
37 in writing the reasons for the refusal. It is the intent of the
38 Legislature that the department shall actively implement
39 the provisions of this section and shall exempt from its
40 approval as wide a range of classes or types of contracts



1 as is consistent with proper administrative controls and
2 the best interests of the state.

3 SEC. 17. Section 10353 of the Public Contract Code is
4 amended to read:

5 10353. A contract in an amount in excess of two
6 hundred thousand dollars (\$200,000) that is governed by
7 the provisions of this part shall contain a provision
8 requiring the contractor to give priority consideration in
9 filling vacancies in positions funded by the contract to
10 qualified recipients of aid under Chapter 2 (commencing
11 with Section 11200) of Part 3 of Division 9 of the Welfare
12 and Institutions Code, in accordance with Article 3.9
13 (commencing with Section 11349) of Chapter 2 of Part 3
14 of Division 9 of the Welfare and Institutions Code.

15 This section and Article 3.9 (commencing with Section
16 11349) of Chapter 2 of Part 3 of Division 9 of the Welfare
17 and Institutions Code shall not be applicable to any
18 contracts for a project as defined in Section 10105.

19 This section and Article 3.9 (commencing with Section
20 11349) of Chapter 2 of Part 3 of Division 9 of the Welfare
21 and Institutions Code shall not be construed so as to do
22 any of the following:

23 (a) Interfere with or create a violation of the terms of
24 valid collective bargaining agreements.

25 (b) Require the contractor to hire an unqualified
26 recipient of aid.

27 (c) Interfere with, or create a violation of, any federal
28 affirmative action obligation of a contractor for hiring
29 disabled veterans or veterans of the Vietnam era.

30 (d) Interfere with, or create a violation of, the
31 requirements of Section 12990 of the Government Code.

32 If waivers are deemed necessary to implement this
33 section and Article 3.9 (commencing with Section 11349)
34 of Chapter 2 of Part 3 of Division 9 of the Welfare and
35 Institutions Code, and if the State Department of Social
36 Services has not obtained these waivers from the federal
37 government by March 1, 1985, the department shall
38 report on the barriers to the waivers and the expected
39 date of waiver approval.



1 This section is not applicable to consulting services
2 contracts.

3 SEC. 18. The heading of Article 5 (commencing with
4 Section 10355) of Chapter 2 of Part 2 of Division 2 of the
5 Public Contract Code is repealed.

6 SEC. 19. Section 10355 of the Public Contract Code is
7 repealed.

8 SEC. 20. Section 10356 of the Public Contract Code is
9 repealed.

10 SEC. 21. Section 10357 of the Public Contract Code is
11 amended and renumbered to read:

12 10335.7. "State agency," as used in this article, means
13 every state office, department, division, bureau, board, or
14 commission, but does not include the Legislature, the
15 courts, or any agency in the judicial branch of
16 government.

17 SEC. 22. Section 10358 of the Public Contract Code is
18 repealed.

19 SEC. 23. Section 10359 of the Public Contract Code is
20 amended to read:

21 10359. (a) Each state agency shall annually prepare
22 a report pursuant to this section that includes a list of the
23 consulting services contracts into which it has entered
24 during the previous fiscal year. The listing shall include
25 the following information:

26 (1) The name and identification of each contractor.

27 (2) The type of bidding entered into, the number of
28 bidders, whether the low bidder was accepted, and if the
29 low bidder was not accepted, an explanation of why
30 another contractor was selected.

31 (3) The amount of the contract price.

32 (4) Whether the contract was a sole-source contract,
33 and why the contract was a sole-source contract.

34 (5) The purpose of the contract and the potential
35 beneficiaries.

36 (6) The date on which the initial contract was signed,
37 the date on which the work began and was completed.

38 The report shall also include a separate listing of
39 consultant contracts completed during that fiscal year,
40 with the same information as above.



1 (b) The report this section requires shall also include
2 a list of any contracts underway during that fiscal year on
3 which any change was made regarding the following:

4 (1) The completion date of the contract.

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

8 (3) The purpose of the contract or duties of the
9 contractor. A brief explanation shall be given if the
10 change in purpose is significant.

11 (c) Copies of the annual report shall be sent within 30
12 working days after the end of the previous fiscal year to
13 the Legislative Analyst, the Department of Finance, the
14 Department of General Services, the Auditor General,
15 the Joint Legislative Budget Committee, the Senate
16 Appropriations Committee, and the Assembly Ways and
17 Means Committee.

18 (d) State agencies shall not use the temporary budget
19 allocation process as a means of circumventing the
20 requirements of this section.

21 (e) Sixty days after the close of the fiscal year, the
22 department shall furnish to the officials and committees
23 listed in subdivision (c), a list of the departments and
24 agencies that have not submitted the required report
25 specified in this section.

26 SEC. 24. Section 10360 of the Public Contract Code is
27 repealed.

28 SEC. 25. Section 10362 of the Public Contract Code is
29 repealed.

30 SEC. 26. Section 10363 of the Public Contract Code is
31 repealed.

32 SEC. 27. Section 10364 of the Public Contract Code is
33 repealed.

34 SEC. 28. Section 10365 of the Public Contract Code is
35 repealed.

36 SEC. 29. Section 10366 of the Public Contract Code is
37 repealed.

38 SEC. 30. Section 10367 of the Public Contract Code is
39 amended to read:



1 10367. (a) Each contractor shall be advised in writing
2 on the standard contract form that his or her
3 performance, or the firm's performance under the
4 contract will be evaluated.

5 (b) The department shall use standardized evaluation
6 forms and make them available to every state agency.
7 Each state agency shall use post-evaluation forms to
8 evaluate all consulting services contracts totaling five
9 thousand dollars (\$5,000) or more.

10 The department shall devise standards and criteria for
11 the post-evaluation forms. These standardized
12 post-evaluation forms shall consist of a form for assessing
13 the need and value of the consulting services contract to
14 the state, and a form for assessing the usability and utility
15 of the completed consulting services contract.

16 SEC. 31. Section 10369 of the Public Contract Code is
17 amended to read:

18 10369. (a) Each state agency shall conduct a
19 post-evaluation, by completing the post-evaluation form,
20 of each consulting services contract totaling five thousand
21 dollars (\$5,000) or more that it executes.

22 (b) The agency shall evaluate the performance of the
23 contractor in doing the work or delivering the services for
24 which the contract was awarded. The agency shall report
25 on all of the following:

26 (1) Whether the contracted work or services were
27 completed as specified in the contract, and reasons for
28 and amount of any cost overruns or delayed completions.

29 (2) Whether the contracted work or services met the
30 quality standards specified in the contract.

31 (3) Whether the contractor fulfilled all the
32 requirements of the contract and if not, in what ways the
33 contractor did not fulfill the contract.

34 (4) Factors outside the control of the contractor that
35 caused difficulties in contractor performance.

36 (5) Other information the department may require.

37 (6) How the contract results and findings will be
38 utilized to meet the agency goals.

39 (c) If the contractor's performance was judged
40 unsatisfactory on any of the factors specified in



1 subdivision (b) and was not mitigated by circumstances
2 specified in paragraph (4) of subdivision (b), the
3 evaluation shall be considered unsatisfactory for the
4 purposes of subdivisions (e) and (f).

5 (d) The post-evaluation shall be prepared within 60
6 days of the completion of the contract.

7 (e) Post-evaluations shall remain on file at the offices
8 of the awarding state agency for a period of 36 months
9 following contract completion. If the contractor did not
10 satisfactorily perform the work or service specified in the
11 contract, the state agency conducting the evaluation shall
12 place one copy of the evaluation form in the state
13 agency's contract file and send one copy of the form to the
14 department within five working days of the completion
15 of the evaluation.

16 (f) Upon filing an unsatisfactory evaluation with the
17 department, the state agency shall notify and send a copy
18 of the evaluation to the contractor within 15 days. The
19 contractor shall have the right, within 30 days after
20 receipt, to submit to the awarding state agency and the
21 department, a written response statement that shall be
22 filed with the evaluation in the state agency's contract file
23 and in the department.

24 SEC. 32. Section 10370 of the Public Contract Code is
25 amended to read:

26 10370. The evaluations and contractor responses on
27 file with the state agencies and the department shall not
28 be public records. The department shall act as a central
29 depository for all state agencies making evaluation or
30 desiring information on a contractor's record with the
31 state and shall send a copy of any post-evaluation report
32 and response to the contracting manager or contracting
33 officer of any state agency upon request. The
34 post-evaluations and contractor responses shall remain on
35 file for a period of 36 months only.

36 Failure by the awarding state agency to send a negative
37 post-evaluation to the department may be grounds for
38 rejection of future contracts or modification of
39 exemptions.



1 SEC. 33. Section 10371 of the Public Contract Code is
2 amended to read:

3 10371. The following provisions shall apply to all
4 consulting services contracts:

5 (a) Each state agency shall, regardless of the fiscal
6 amount involved, use available private resources only
7 when the quality of work of private resources is of at least
8 equal quality compared with the state agency operated
9 resources.

10 (b) Any state agency that enters into or expects to
11 enter into more than one consulting services contract
12 with the same individual, business firm, or corporation
13 within a 12-month period for an aggregate amount of
14 twelve thousand five hundred dollars (\$12,500) or more,
15 shall notify, in writing, the department and shall have
16 each contract that exceeds an aggregate amount of
17 twelve thousand five hundred dollars (\$12,500) approved
18 by the department.

19 (c) Each state agency shall, prior to signing a
20 consulting services contract totaling two thousand five
21 hundred dollars (\$2,500); or more, prepare detailed
22 criteria and a mandatory progress schedule for the
23 performance of the contract and shall require each
24 selected contractor to provide a detailed analysis of the
25 costs of performing the contract.

26 (d) Except in an emergency, no consulting services
27 contract shall be commenced prior to formal approval by
28 the department or, if the department's approval is not
29 otherwise required, by the director of the state agency.
30 No payments for any consulting services contract shall be
31 made prior to this approval of the award.

32 For the purpose of this subdivision an "emergency"
33 means an instance, as determined by the department,
34 where the use of contracted services appeared to be
35 reasonably necessary but time did not permit the
36 obtaining of prior formal approval of the contract.

37 (e) No consulting services contractor shall be awarded
38 a contract totaling five thousand dollars (\$5,000), or more,
39 unless all of the following apply:



1 (1) The state agency has reviewed any contractor
2 evaluation form on file with the department in
3 accordance with Section 10369.

4 (2) Each state agency shall require that a completed
5 resumé for each contract participant who will exercise a
6 major administrative role or major policy or consultant
7 role, as identified by the contractor, be attached to the
8 contract for public record and is made a part of the
9 contract.

10 (3) The department shall notify a state agency seeking
11 approval of a proposed contract within 10 working days
12 if it has a negative evaluation in its files on a previous
13 contract or contracts awarded to this contractor.

14 (f) The department may require special evaluation
15 procedures for multiyear contracts or for contracts
16 calling for special evaluation procedures beyond the
17 post-evaluation.

18 (g) Any contract for consulting services awarded
19 without competition shall be listed in the California State
20 Contracts Register. The information contained in the
21 listing shall include the contract recipient, amount, and
22 services covered. The requirement of this subdivision
23 shall not apply to any contract awarded without
24 competition executed with an expert witness for
25 purposes of civil litigation in a pending case.

26 (h) The department shall have the duty to restrict or
27 terminate the authority of a state agency to enter into
28 consultant contracts if the state agency has consistently
29 avoided the proper preparation, retention, or submission
30 of post-evaluation forms, as required by this article.

31 SEC. 34. Section 10372 of the Public Contract Code is
32 repealed.

33 SEC. 35. Section 10373 of the Public Contract Code is
34 repealed.

35 SEC. 36. Section 10374 of the Public Contract Code is
36 repealed.

37 SEC. 37. Section 10375 of the Public Contract Code is
38 repealed.

39 SEC. 38. Section 10376 of the Public Contract Code is
40 repealed.



1 SEC. 39. Section 10377 of the Public Contract Code is
2 repealed.
3 SEC. 40. Section 10378 of the Public Contract Code is
4 repealed.
5 SEC. 41. Section 10379 of the Public Contract Code is
6 repealed.
7 SEC. 42. Section 10380 of the Public Contract Code is
8 repealed.
9 SEC. 43. Section 10381 of the Public Contract Code is
10 amended to read:
11 10381. (a) The department shall ensure that all state
12 agencies are kept fully informed of the department's
13 plans and procedures for implementing the provisions of
14 this article. The department shall make information
15 available on implementation procedures to all interested
16 parties.
17 (b) The department shall ensure that every consultant
18 services contract contains standard language that fully
19 informs the contractor of his or her duties, obligations,
20 and rights under this article, and any additional
21 contractor rights and obligations which the department
22 determines should be included.
23 (c) Each consulting services contract shall have a
24 provision for settlement of contract disputes.
25 SEC. 44. Section 10382 of the Public Contract Code is
26 repealed.
27 *SEC. 45. Section 11.5 incorporates changes to the*
28 *Public Contract Code proposed by this bill that are*
29 *consistent with policies regarding electronic governance*
30 *as proposed by AB 2100 of the 1999–2000 Regular Session.*
31 *Section 11.5 shall only become operative if both bills are*
32 *enacted and become effective on or before January 1,*
33 *2001.*

O

