

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)
(Coauthor: Senator Leno)
(Coauthors: Assembly Members Portantino and Solorio)

January 20, 2011

An act to add Section 10111.5 to the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 172, as amended, Eng. Public contracts: information: Internet Web site.

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 ~~the Department 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. Section 10111.5 is added to the Public Contract
2 Code, to read:

3 10111.5. (a) (1) Each state agency shall provide a link to a
4 centrally located and accessible state-run Internet Web site that
5 includes a listing of the personal services contracts and consulting
6 services contracts that it entered into during the fiscal year.

7 (2) The Director of General Services shall maintain the Internet
8 Web site described in paragraph (1) and shall establish the
9 publishing of the contract listing information specified in
10 subdivision (c). In implementing this section, the Director of
11 General Services may use the services of any state agency, as that
12 term is defined in Section 11000 of the Government Code.

13 (3) It is the intent of the Legislature that the contract listing
14 information be made available to the public in an electronic format
15 that is searchable and easy to use in order to promote and support
16 government transparency.

17 (b) Contract listings shall be organized and reported in one of
18 the following manners:

19 (1) Using the maximum level of specificity available through
20 the United Nations Standard Products and Services Code
21 (UNSPSC).

22 (2) Covering the following broad category names:

23 (A) Architectural, engineering, and environmental services and
24 consulting services.

25 (B) Information technology personal services and consulting
26 services.

1 (C) All other contracts that include personal services and
2 consulting services.

3 (c) The contract listings shall include, but are not limited to, the
4 following information:

5 (1) The name and license, registration, certification, or
6 identification number of each contractor, as well as whether the
7 contractor is a for profit, nonprofit, small business, microbusiness,
8 disabled veteran, or nonprofit veteran's service agency.

9 (2) The statutory basis for the authorization of each contract,
10 including, if relevant, any applicable condition permitting personal
11 services contracts provided by Section 19130 of the Government
12 Code.

13 (3) The duration of each contract.

14 (4) The number of amendments to each contract and the number
15 of renewals of each contract, where applicable.

16 (5) Reason why low bid was not accepted, if applicable.

17 (6) Reason for noncompetitive bidding, if applicable.

18 (7) (A) The total amount of the contract allocation over the
19 duration of the contract, including all known amendments to the
20 contract, the total amount paid by the state agency during the most
21 recently completed fiscal year, and the number, cost, bill rate, and
22 staffing levels associated with each type of contract employee
23 retained during the most recently completed fiscal year. In a time
24 and material contract, staffing levels shall also be described or
25 accounted for in personnel years or full-time equivalent terms. In
26 deliverables based contracts, average staffing levels and bill rates
27 shall be listed on the Internet Web site described in subdivision
28 (a), as follows:

29 (i) 90 days after the completion of the contract.

30 (ii) For a contract of a term of more than one year, ~~_____~~ 90 days
31 after June 30 of each year until completion of the contract.

32 (B) To facilitate state agency reporting of information for the
33 listings, contractors shall electronically provide to the state agencies
34 all of the staffing and cost information specified in subparagraph

35 (A) in a useful and usable manner, which shall be reportable ~~_____~~
36 60 days after the completion of the contract, and, for a contract of
37 a term of more than one year, ~~_____~~ 60 days after June 30 of each
38 year until completion of the contract. State agencies shall make
39 this information available to the Director of General Services in a
40 manner prescribed by the director.

1 (C) Failure to provide the staffing and cost information required
2 by subparagraph (B) in a useful and usable manner shall be deemed
3 a material breach of contract. A contractor who fails to provide
4 the information shall be ineligible for any future personal services
5 contracts and consulting services contracts and payments for any
6 ongoing contracts shall cease until the required information is
7 provided.

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

9 (d) (1) On and after July 1, 2013, and before January 1, 2014,
10 a summary of a contract shall be initially posted within 30 business
11 days of the contract being signed by all parties. On and after
12 January 1, 2014, the summary of a contract shall be initially posted
13 within 15 business days of the contract being signed by all parties.
14 The contract summary shall be updated as necessary to include
15 any information required by this section that is not available at the
16 time of posting.

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

21 (3) This subdivision shall only apply to contracts solicited after
22 January 1, 2012.

23 (e) (1) This section shall not require the posting of information
24 in a contract, including the identity of any undisclosed expert
25 consultant, that is confidential pursuant to a court order, the
26 attorney client privilege, or the attorney work product exception
27 or information, that, if posted, would jeopardize peace officer
28 safety, criminal intelligence information, ongoing investigatory
29 activities or any security procedure, or any information the
30 disclosure of which is prohibited by law.

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

36 (f) Any inquiries about a specific contract shall be handled by
37 the contracting state agency. Each contract posted on the Internet
38 Web site shall include the contact information of the contracting
39 state agency, or a link to that information.

1 (g) State agencies that are not required to report to the State
2 Contract and Procurement Registration System (SCPRS) shall be
3 exempt from the requirements of this section.

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

5 (1) “Consulting services contracts” has the same meaning as
6 defined in Section 10335.5.

7 (2) “Deliverables” means any contract, requisition, or purchasing
8 order for products or services that must be completed and delivered
9 as final products under the terms of an agreement or contract.

10 “Deliverables” do not include public works contracts that does not
11 specify actual cost of direct labor at specified hourly rates or actual
12 cost of materials.

13 (3) “Personal services contracts” means any contract, requisition,
14 or purchase order under which labor or personal services is a
15 separately identifiable element.

16 (4) “Time and material contract” means a contract under which
17 the contractor agrees to furnish and install materials or fixtures,
18 or both, and which sets forth separately a charge for the materials
19 or fixtures and a charge for their installation or fabrication.