

BILL ANALYSIS

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Department, Board, Or Commission	Author	Bill Number
Franchise Tax Board	Eng/Lieu	AB 756

SUBJECT

State Agencies Prepare Annual Report Available On Internet Website Of Personal Services & Consulting Services Contracts

SUMMARY

This bill would require state agencies to provide a link to a state run Internet web site that contains a listing of the personal services and consulting services contracts entered into by the agency as specified.

PURPOSE OF BILL

According to the author's office, the purpose of this bill is to bring transparency to the contracting processes that involve personal service or consulting service contracts in lieu of using state employees.

EFFECTIVE/OPERATIVE DATE

This bill would become effective January 1, 2010, and would be specifically operative for any contract solicited on or after that date. The bill specifies that the requirement for a state agency to report contract allocation information and the requirement for contractors to electronically provide staffing and cost information would become operative January 1, 2011.

ANALYSIS

STATE LAW

Each state agency is responsible for its own services acquisitions program.

This responsibility includes ensuring the necessity of the services, securing appropriate funding, complying with laws and policies, writing the contract in a manner that safeguards the state's interests, and obtaining required approvals. State agencies use contracts, purchase orders, interagency agreements, and memorandums of understanding to effectuate services acquisition programs in place.

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Personal service contracting is permitted under state law to achieve cost savings under specified conditions.¹ Those conditions include among other things, the following:

- The actual overall cost savings can be demonstrated by the agency;
- The contractor pays a competitive wage and does not cause the displacement of state employees;
- The contract supports the states affirmative action goals;
- The contract is for a new state function, and the Legislature has specifically mandated or authorized the performance of the work by independent contractors;
- The services contracted are not available within civil service, cannot be performed satisfactorily by civil service employees, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the civil service system; and
- The amount of savings justifies the duration and size of the contract.

THIS BILL

This bill would require a state agency to provide a link to a centrally located and accessible state run Internet Web site that includes a listing of the personal services and consulting services contracts that are entered into during the fiscal year. The Director of the Department of General Services (DGS) would maintain the Internet Web site and would establish the publishing of the contract listing information required by the bill. The bill would specify that DGS may use the services of any state agency to implement the requirements of this bill.

The bill would provide Legislative intent language that the contract listing information be made available to the public in an electronic format that is searchable and easy to use in order to promote and support government transparency.

The bill would require contract listings to be organized and reported in one of the following manners:

1. Using the maximum level of specificity available through the United Nations Standard Products and Services Code (UNSPSC), or
2. Covering the following broad categories:
 - Architectural, engineering, and environmental services and consulting services.
 - Information technology, personal services, and consulting services.
 - Other personal services and consulting services.

¹ Government Code section 19130

The contract listing would require the following information:

- The name and license, registration, certification, or identification number of each contractor, including whether the contractor is a for profit, nonprofit, small business, micro-business, disabled veteran, or nonprofit veteran's service agency;
- The statutory basis for the authorization of each contract;
- The duration of each contract;
- The number of amendments to each contract and the number of renewals of each contract, where applicable;
- The reason why low bid was not accepted;
- The reason for noncompetitive bidding; and
- The total amount of the contract allocation over the duration of the contract, including all known amendments to the contract, the total amount paid by the state agency during the most recently completed fiscal year, and the number, cost, bill rate, and staffing levels that would be associated with each type of contract, employee retained during the most recently completed fiscal year. For time and material contracts, staffing levels would be required to be described or accounted for in personnel years or full-time equivalent terms. For deliverables based contracts, average staffing levels and bill rates would be required to be available and reportable 90 days after the completion of the contract or after one year, whichever occurs first. To facilitate state agency reporting of information for the listings, the bill would require contractors to electronically provide all of the staffing and cost information specified to the agencies 90 days after the completion of the contract or after one year for each and every personal services and consulting services contract operative during that fiscal year. This requirement is specifically operative January 1, 2011.

The bill would require that a summary of a contract be initially posted within 30 working days of the contract being signed by all parties. Beginning on or after January 1, 2012, the summary of a contract would be initially posted within 15 working days of the contract being signed by all parties. The bill would require the contract summary to be updated as necessary to include any information required that is not available by the time of posting. The bill would require contracts entered into by a special fund agency to be posted beginning July 1, 2010, upon consultation with DGS and Department of Finance. A summary of a contract entered into by all other agencies is required to be posted beginning July 1, 2011.

The bill specifies it is applicable to contracts solicited after the effective date of the bill. Inquiries regarding a specific contract are to be handled by the contracting state agency by including contact information for the contracting agency with each contract listed on the Web site. State agencies exempt from reporting under the State Contract and Procurement Registration System (SCPRS) are exempt from the requirements of this bill.

The bill would exempt from posting any information that is confidential pursuant to a court order, the attorney client privilege, or the attorney work product exemption. The bill would further exempt the posting of information that, if posted, would jeopardize peace officer safety, intelligence information, ongoing investigator activities, or any security procedure, or any information the disclosure of which is prohibited by law. The bill specifies that it is not be construed to limit the rights of the public to access information under the California Public Records Act or the California Constitution.

The bill would provide definitions for “consulting services contracts”, “deliverables”, “personal services contracts”, and “time and material contracts”.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would not significantly impact the department’s programs or operations.

LEGISLATIVE HISTORY

AB 400 (De Leon, 2009) would require state agencies to provide annually a detailed breakdown of specified fund expenditures on their Web site. This bill was referred to the Assembly Appropriations Committee on March 31, 2009.

AB 1194 (Strickland, 2009) would require a state agency to develop a publicly accessible Web site containing specified information detailing expenditures by that agency of state funds. This bill would require the Web site to be available by July 2010 and be updated monthly. This bill was introduced on February 27, 2009, and has not yet been referred to a committee.

SB 502 (Walters, 2009) would require a state agency to develop a publicly accessible Web site containing specified information detailing expenditures by that agency of state funds. This bill would require the Web site to be available January 1, 2010, and be updated annually. This bill was introduced on February 26, 2009, and has not yet been referred to a committee.

SB 719 (Huff, 2009) would require a state agency to develop a publicly accessible Web site containing specified information detailing expenditures by that agency of state funds. This bill would require the Website to be available January 1, 2010, and be updated annually. This bill was introduced on February 26, 2009, and has not yet been referred to a committee.

PROGRAM BACKGROUND*

The SCPRS is a centralized database of information on state contracts and purchases over \$5,000 established in 2003. This database is available on the DGS Web site. Each state agency is required to report its contracts to DGS. The public can download information on the procurement expenditures of each state department and agency.

FISCAL IMPACT

Because the provisions of the bill would be prospective, the department's costs to implement the bill would be insignificant.

ECONOMIC IMPACT

The provisions of this bill would not impact state income tax revenue.

Appointments

None.

Support/Opposition

According to the Senate Committee on Government Organization analysis of July 7, 2009, the following support and opposition are noted:

SUPPORT:

Service Employees International Union Local 1000 (sponsor)
American Federation of State, County and Municipal Employees (AFSCME)
California Association of Professional Scientists
Professional Engineers in California Government

OPPOSE:

American Council of Engineering Companies of California

VOTES

Assembly Floor – Ayes: 51, Noes: 27

Senate Floor – Ayes: 24, Noes: 14

Concurrence – Ayes: 52, Noes: 26

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