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GOVERNMENT CODE - GOV

TITLE 2. GOVERNMENT OF THE STATE OF CALIFORNIA [8000 - 22980] (Title 2 enacted by Stats. 1943, Ch. 134.)

DIVISION 5. PERSONNEL [18000 - 22980] (Division 5 added by Stats. 1945, Ch. 123.)

PART 2. STATE CIVIL SERVICE [18500 - 19799] (Part 2 added by Stats. 1945, Ch. 123.)

CHAPTER 5. Appointments [19050 - 19238] (Heading of Chapter 5 renumbered from Chapter 6 by Stats. 1985, Ch. 794, Sec. 18.)

ARTICLE 4. Personal Services Contracts [19130 - 19135] (Heading of Article 4 renumbered from Article 4.5 by Stats. 1985, Ch. 794, Sec. 21.)

19130. The purpose of this article is to establish standards for the use of personal services contracts.

(a) Personal services contracting is permissible to achieve cost savings when all the following conditions are met:

(1) The contracting agency clearly demonstrates that the proposed contract will result in actual overall cost savings to the state, provided that:

(A) In comparing costs, there shall be included the state's additional cost of providing the same service as proposed by a contractor. These additional costs shall include the salaries and benefits of additional staff that would be needed and the cost of additional space, equipment, and materials needed to perform the function.

(B) In comparing costs, there shall not be included the state's indirect overhead costs unless these costs can be attributed solely to the function in question and would not exist if that function was not performed in state service. Indirect overhead costs shall mean the pro rata share of existing administrative salaries and benefits, rent, equipment costs, utilities, and materials.

(C) In comparing costs, there shall be included in the cost of a contractor providing a service any continuing state costs that would be directly associated with the contracted function. These continuing state costs shall include, but not be limited to, those for inspection, supervision, and monitoring.

(2) Proposals to contract out work shall not be approved solely on the basis that savings will result from lower contractor pay rates or benefits. Proposals to contract out work shall be eligible for approval if the contractor's wages are at the industry's level and do not significantly undercut state pay rates.

(3) The contract does not cause the displacement of civil service employees. The term "displacement" includes layoff, demotion, involuntary transfer to a new class, involuntary transfer to a new location requiring a change of residence, and time base reductions. Displacement does not include changes in shifts or days off, nor does it include reassignment to other positions within the same class and general location.

(4) The contract does not adversely affect the state's affirmative action efforts.

(5) The savings shall be large enough to ensure that they will not be eliminated by private sector and state cost fluctuations that could normally be expected during the contracting period.

(6) The amount of savings clearly justify the size and duration of the contracting agreement.

(7) The contract is awarded through a publicized, competitive bidding process.

(8) The contract includes specific provisions pertaining to the qualifications of the staff that will perform the work under the contract, as well as assurance that the contractor's hiring practices meet applicable nondiscrimination, affirmative action

standards.

(9) The potential for future economic risk to the state from potential contractor rate increases is minimal.

(10) The contract is with a firm. A "firm" means a corporation, partnership, nonprofit organization, or sole proprietorship.

(11) The potential economic advantage of contracting is not outweighed by the public's interest in having a particular function performed directly by state government.

(b) Personal services contracting also shall be permissible when any of the following conditions are met:

(1) The functions contracted are exempted from civil service by Section 4 of Article VII of the California Constitution, which describes exempt appointments.

(2) The contract is for a new state function and the Legislature has specifically mandated or authorized the performance of the work by independent contractors.

(3) 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.

(4) The services are incidental to a contract for the purchase or lease of real or personal property. Contracts under this criterion, known as "service agreements," shall include, but not be limited to, agreements to service or maintain office equipment or computers that are leased or rented.

(5) The legislative, administrative, or legal goals and purposes cannot be accomplished through the utilization of persons selected pursuant to the regular civil service system. Contracts are permissible under this criterion to protect against a conflict of interest or to ensure independent and unbiased findings in cases where there is a clear need for a different, outside perspective. These contracts shall include, but not be limited to, obtaining expert witnesses in litigation.

(6) The nature of the work is such that the standards of this code for emergency appointments apply. These contracts shall conform with Article 8 (commencing with Section 19888) of Chapter 2.5 of Part 2.6.

(7) State agencies need private counsel because a conflict of interest on the part of the Attorney General's office prevents it from representing the agency without compromising its position. These contracts shall require the written consent of the Attorney General, pursuant to Section 11040.

(8) The contractor will provide equipment, materials, facilities, or support services that could not feasibly be provided by the state in the location where the services are to be performed.

(9) The contractor will conduct training courses for which appropriately qualified civil service instructors are not available, provided that permanent instructor positions in academies or similar settings shall be filled through civil service appointment.

(10) The services are of such an urgent, temporary, or occasional nature that the delay incumbent in their implementation under civil service would frustrate their very purpose.

(c) All persons who provide services to the state under conditions the board determines constitute an employment relationship shall, unless exempted from civil service by Section 4 of Article VII of the California Constitution, be retained under an appropriate civil service appointment.

(Amended by Stats. 2016, Ch. 86, Sec. 160. (SB 1171) Effective January 1, 2017.)

19131. Any state agency proposing to execute a contract pursuant to subdivision (a) of Section 19130 shall notify the State Personnel Board of its intention. All organizations that represent state employees who perform the type of work to be contracted, and any person or organization which has filed with the board a request for notice, shall be contacted immediately by the State Personnel Board upon receipt of this notice so that they may be given a reasonable opportunity to comment on the proposed contract. Departments or agencies submitting proposed contracts shall retain and provide all data and other information relevant to the contracts and necessary for a specific application of the standards set forth in subdivision (a) of Section 19130. Any employee organization may request, within 10 days of notification, the State Personnel Board to review any contract proposed or executed pursuant to subdivision (a) of Section 19130. The review shall be conducted in accordance with subdivision (b) of Section 10337 of the Public Contract Code. Upon such a request, the State Personnel Board shall review the contract for compliance with the standards specified in subdivision (a) of Section 19130.

(Amended by Stats. 1992, Ch. 1302, Sec. 13. Effective September 30, 1992.)

19132. (a) The State Personnel Board, at the request of an employee organization that represents state employees, shall review the adequacy of any proposed or executed contract that is of a type enumerated in subdivision (b) of Section 19130. The review shall be conducted in accordance with subdivision (c) of Section 10337 of the Public Contract Code. However, a contract that was reviewed at the request of an employee organization when it was proposed need not be reviewed again after its execution.

(b) (1) Unless a personal services contract pursuant to subdivision (b) of Section 19130 is necessary due to a sudden and unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services, the contract shall not be executed until the state agency proposing to execute the contract has notified all organizations that represent state employees who perform the type of work to be contracted.

(2) At a minimum, the notice shall include a full copy of the proposed contract. The notifying agency may redact specific confidential or proprietary information from the notice.

(3) The Department of General Services shall establish a process to certify the notification in paragraph (1).

(4) The notification and certification of notice requirements of this subdivision do not change the requirements for contracts under Section 11045 or require an additional notification.

(5) This subdivision does not apply to contracts executed by the Commission on Peace Officer Standards and Training pursuant to subdivision (c) of Section 13503 of the Penal Code and this article.

(Amended by Stats. 2014, Ch. 504, Sec. 1. (AB 2387) Effective January 1, 2015.)

19133. (a) Any state agency may enter into an agreement with any public or private institution of higher education in California, nonprofit campus foundation, or state higher education foundation to provide part-time employment to students attending a public or private institution of higher education that contracts with the state agency, or to students attending a public or private institution which is affiliated with a nonprofit campus foundation, or a state higher education foundation, that contracts with a state agency, in work related to the field of study of the student.

(b) Notwithstanding any other provision of law to the contrary, no student employed pursuant to this section shall do any of the following:

(1) Accrue state civil service status.

(2) Be employed for more than 194 days in the 365 days following the initial date of employment.

(3) Cause the displacement of civil service employees.

(c) "Displacement," for the purposes of this section, includes layoffs, demotions, involuntary transfers to a new class, involuntary transfers to a new location requiring a change of residence, and time-based reductions. "Displacement," for the purposes of this section, shall not include changes in shifts or days off nor shall it include reassignment to other positions within the same class and general location.

(Added by Stats. 1989, Ch. 168, Sec. 2.)

19134. (a) Personal services contracts entered into by a state agency in accordance with Section 19130 for persons providing janitorial and housekeeping services, custodians, food service workers, laundry workers, window cleaners, and security guard services shall include provisions for employee wages and benefits that are valued at least 85 percent of the state employer cost of wages and benefits provided to state employees for performing similar duties.

(b) For purposes of this section, "benefits" includes "health, dental, retirement, and vision benefits, and holiday, sick, and vacation pay."

(c) (1) The Department of Human Resources shall establish annually the state employer wage and benefit costs for workers covered pursuant to this section.

(2) Benefit costs shall be established using rates based on single employee, employee plus one dependent, and employee plus two or more dependents, or the costs may be based on a blended rate, subject to the determination of the Department of Human Resources.

(d) In lieu of providing actual benefits, contractors may comply with this section by a cash payment to employees equal to the applicable determination under subdivision (c).

(e) Failure to provide benefits or cash in lieu to employees as required under this section shall be deemed to be a material breach for any contract for personal services covered by this section.

(f) The Department of General Services and the Department of Human Resources may adopt guidelines and regulations to implement the requirements of this section.

(g) This section applies to all contracts exceeding 90 days.

(h) Holiday pay shall be provided to employees of contractors providing services specified in subdivision (a) on any state holiday that the state facility in which the services are being provided is closed.

(i) This section also applies to wages and benefits of employees of subcontractors providing services specified in subdivision (a) in state-leased facilities where the facility is at least 50,000 square feet in area and the state leases all of the occupied floorspace of the facility.

(j) With the exception of subdivision (h), this section does not apply to personal services contracts for the services described in subdivision (a) performed by employees of nonprofit organizations that are employed in accordance with any of the following:

(1) A special license issued pursuant to Section 1191.5 of the Labor Code.

(2) A special certificate issued pursuant to Section 214 of Title 29 of the United States Code.

(3) A community rehabilitation plan described in Sections 19152 and 19404 of the Welfare and Institutions Code.

(4) A habilitation services program as described in Sections 19352 and 19356.6 of the Welfare and Institutions Code.

(Amended by Stats. 2012, Ch. 665, Sec. 67. (SB 1308) Effective January 1, 2013.)

19135. (a) If a contract is disapproved by action of the board or its delegate, a state agency shall immediately discontinue that contract unless ordered otherwise by the board or its delegate. The state agency shall not circumvent or disregard the board's action by entering into another contract for the same or similar services or to continue the services that were the subject of the contract disapproved by the board or its delegate.

(b) A state agency ordered to discontinue a contract shall serve notice of the discontinuation of the contract to the vendor within 15 days from the board's final action unless a different notice period is specified. A copy of the notice also shall be served on the board and the employee organization that filed the contract challenge. Failure to serve this notice may be grounds for rejection of future contracts for the same or similar services that were discontinued.

(Added by Stats. 2011, Ch. 684, Sec. 2. (AB 740) Effective January 1, 2012.)