



**AB-1250 Counties and cities: contracts for personal services.** (2017-2018)

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CALIFORNIA LEGISLATURE— 2017-2018 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1250**

**Introduced by Assembly Member Jones-Sawyer  
(Coauthor: Assembly Member Gonzalez Fletcher)**

**February 17, 2017**

An act to add Sections 31000.10 and 37103.1 to the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 1250, as amended, Jones-Sawyer. Counties and cities: contracts for personal services.

Existing law authorizes the board of supervisors of a county to contract for special services on behalf of various public entities with persons who are specially trained, experienced, expert, and competent to perform the special services, as prescribed. These services include financial, economic, accounting, engineering, legal, and other specified services. Existing law also authorizes legislative bodies of cities to contract with any specially trained and experienced person, firm, or corporation for special services and advice in financial, economic, accounting, engineering, legal, or administrative matters.

This bill would establish specific standards for the use of personal services contracts by counties and cities. Beginning January 1, 2018, the bill would allow a county or county agency, or a city or city agency, to contract for personal services currently or customarily performed by employees, as applicable, when specified conditions are met. Among other things, the bill would require the county or city to clearly demonstrate that the proposed contract will result in actual overall costs savings to the county or city and also to show that the contract does not cause the displacement of county or city workers. The bill would require a contract entered into under these provisions to specify that it may be terminated upon material breach, if notice is provided, as specified. Additionally, the bill would require the county or city to conduct an audit of the contract to determine whether cost savings have been realized and would require the contractor to reimburse the cost of the audit. The bill would impose additional disclosure requirements for contracts exceeding \$100,000 annually. The bill would

exempt certain types of contracts from its provisions, and would exempt a ~~chapter~~ *charter* city from its provisions. By placing new duties on local government agencies, the bill would impose a state-mandated local program.

The bill also would provide that its provisions are severable.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** Section 31000.10 is added to the Government Code, to read:

**31000.10.** The purpose of this section is to establish standards for the use of personal services contracts by counties.

(a) If otherwise permitted by law, a county or county agency may contract for personal services currently or customarily performed by ~~county~~ *that county's* employees when all the following conditions are met:

(1) The board of supervisors or county agency clearly demonstrates that the proposed contract will result in actual overall cost savings to the county for the duration of the entire contract as compared with the county's actual costs of providing the same services, provided that:

(A) In comparing costs, there shall be included the county'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 county'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 county 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 county costs that would be directly associated with the contracted function. These continuing county 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 county pay rates.

(3) The contract does not cause the displacement of county employees. "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 or reassignment to other positions within the same class and general location.

(4) The contract does not cause vacant positions in county employment to remain unfilled.

(5) The contract does not adversely affect any of the county's nondiscrimination, affirmative action efforts.

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

(7) The amount of savings clearly justifies the size and duration of the contracting agreement.

(8) The contract is awarded through a publicized, competitive bidding process. The county shall reserve the right to reject any and all bids or proposals.

(9) 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 any applicable nondiscrimination, affirmative action standards.

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

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

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

(13) The contract shall provide that it may be terminated at any time by the county without penalty if there is a material breach of the contract and notice is provided at least 30 days before termination.

(14) If the contract is for personal services in excess of one hundred thousand dollars (\$100,000) annually, all of the following shall occur:

(A) The county shall require the contractor to disclose all of the following information as part of its bid, application, or answer to a request for proposal:

(i) A description of all charges, claims, or complaints filed against the contractor with any federal, state, or local administrative agency during the prior 10 years.

(ii) A description of all civil complaints filed against the contractor in any state or federal court during the prior 10 years.

(iii) A description of all state or federal criminal complaints or indictments filed against the contractor, or any of its officers, directors, or managers, at any time.

(iv) A description of any debarments of the contractor by any public agency or licensing body at any time.

(v) The total compensation, including salaries and benefits, the contractor provides to workers performing work similar to that to be provided under the contract.

(vi) The total compensation, including salaries, benefits, options, and any other form of compensation, provided to the five highest compensated officers, directors, executives, or employees of the contractor.

(vii) Any other information the county deems necessary to ensure compliance with this section.

(B) The contract shall provide that the county is entitled to receive a copy of any records related to the contractor's or any subcontractor's performance of the contract, and that, in addition to records specifically requested by the county, every month the contractor shall furnish the county with: (i) the names of any subcontractors providing services under the contract; (ii) the names of the employees of the contractor and any subcontractors providing services pursuant to the contract and their hourly rates; and (iii) the names of any workers providing services pursuant to the contract as independent contractors and the compensation rates for those workers. The contract shall provide that all records provided to the county by the contractor shall be subject to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1). In furtherance of this subdivision, contractors and any subcontractors shall maintain records related to performance of the contract that ordinarily would be maintained by the county in performing the same functions.

(C) The county shall include in the contract specific, measurable performance standards and provisions for a performance audit by the county, or an independent auditor approved by the county, to determine whether the performance standards are being met and whether the contractor is in compliance with applicable laws and regulations. The county shall not renew or extend the contract prior to receiving and considering the audit report.

(D) The contract shall include provisions for an audit by the county, or an independent auditor approved by the county, to determine whether and to what extent the anticipated cost savings have actually been realized. The county shall not renew or extend the contract before receiving and considering the audit report. The contractor shall reimburse the county for the cost of the audit. Contractors shall be prohibited from factoring the costs of the audit into the contract costs with the county.

(b) This section does not preclude a county from adopting more restrictive rules regarding the contracting of public services.

(c) When otherwise permitted by law, the absence of any requirement of subdivision (a) shall not prevent personal services contracting when any of the following conditions are met:

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



- (2) The contract is between the county and another government entity for services to be performed by employees of the other government entity.
- (3) The services contracted cannot be performed satisfactorily by county employees, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available among county employees.
- (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 county employees. 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 part for emergency appointments apply. These contracts shall conform with Section 31000.4.
- (7) Public entities or officials need private counsel because a conflict of interest on the part of the county counsel's office prevents it from representing the public entity or official without compromising its position. These contracts shall require the written consent of the county counsel.
- (8) The contractor will provide legal services to the county solely on a contingency fee basis.
- (9) The contractor will provide equipment, materials, facilities, or support services that could not feasibly be provided by the county in the location where the services are to be performed.
- (10) The contractor will conduct training courses for which appropriately qualified county employee instructors are not available, provided that permanent instructor positions in academies or similar settings shall be filled by county employees.
- (11) The services are of such an urgent, temporary, or occasional nature that the delay incumbent in their implementation by county employees would frustrate their very purpose.
- (d) This section shall apply to all counties, including counties that have adopted a merit or civil service system.
- ~~(e)(1) This section does not apply to any contract for services described in Section 4525 or 4529.10.~~
- ~~(2) This section does not apply to any contract that is subject to Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.~~
- ~~(3) This section does not apply to a contract for public transit services, including paratransit services, if the county's transit services are fully funded by Federal Transit Administration assistance and the county is thereby subject to the guidelines established in FTA Circular 4220.1F or any subsequent guidelines or revisions issued by the Federal Transit Administration.~~
- (e) This section does not apply to any of the following contracts:*
- (1) A contract for services described in Section 4525 or 4529.10.*
- (2) A contract that is subject to Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.*
- (3) A contract for public transit services, including paratransit services, if the county's transit services are fully funded by Federal Transit Administration assistance and the county is thereby subject to the guidelines established in FTA Circular 4220.1F or any subsequent guidelines or revisions issued by the Federal Transit Administration.*
- (4) A contract for street sweeping services.*
- (5) A contract for solid waste handling services authorized by or made pursuant to Section 40059 of the Public Resources Code. As used in this paragraph, "solid waste handling services" means the collection, transportation, storage, transfer, conversion, processing, recycling, composting, or disposal of solid wastes.*
- (f) This section shall not be construed to authorize or otherwise permit the contracting out of fire protection services, other than the contracts between public agencies that are explicitly authorized by Chapter 4

(commencing with Section 55600) of Part 2 of Division 2 of Title 5 of this code or by Article 4 (commencing with Section 4141) of Chapter 1 of Part 2 of Division 4 of the Public Resources Code.

(g) This section shall apply to contracts for personal services currently or customarily performed by ~~county employees~~ *the employees of a county* entered into, renewed, or extended on or after January 1, 2018.

**SEC. 2.** Section 37103.1 is added to the Government Code, to read:

**37103.1.** The purpose of this section is to establish standards for the use of personal services contracts by cities.

(a) If otherwise permitted by law, a city or city agency may contract for personal services currently or customarily performed by ~~city~~ *that city's* employees when all the following conditions are met:

(1) The city council or city agency clearly demonstrates that the proposed contract will result in actual overall cost savings to the city for the duration of the entire contract as compared with the city's actual costs of providing the same services, provided that:

(A) In comparing costs, there shall be included the city'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 city'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 city 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 city costs that would be directly associated with the contracted function. These continuing city 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 city pay rates.

(3) The contract does not cause the displacement of city employees. "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 or reassignment to other positions within the same class and general location.

(4) The contract does not cause vacant positions in city employment to remain unfilled.

(5) The contract does not adversely affect any of the city's nondiscrimination, affirmative action efforts.

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

(7) The amount of savings clearly justifies the size and duration of the contracting agreement.

(8) The contract is awarded through a publicized, competitive bidding process. The city shall reserve the right to reject any and all bids or proposals.

(9) 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 any applicable nondiscrimination, affirmative action standards.

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

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

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

(13) The contract shall provide that it may be terminated at any time by the city without penalty if there is a material breach of the contract and notice is provided at least 30 days before termination.

(14) If the contract is for personal services in excess of one hundred thousand dollars (\$100,000) annually, all of the following shall occur:

(A) The city shall require the contractor to disclose all of the following information as part of its bid, application, or answer to a request for proposal:

(i) A description of all charges, claims, or complaints filed against the contractor with any federal, state, or local administrative agency during the prior 10 years.

(ii) A description of all civil complaints filed against the contractor in any state or federal court during the prior 10 years.

(iii) A description of all state or federal criminal complaints or indictments filed against the contractor, or any of its officers, directors, or managers, at any time.

(iv) A description of any debarments of the contractor by any public agency or licensing body at any time.

(v) The total compensation, including salaries and benefits, the contractor provides to workers performing work similar to that to be provided under the contract.

(vi) The total compensation, including salaries, benefits, options, and any other form of compensation, provided to the five highest compensated officers, directors, executives, or employees of the contractor.

(vii) Any other information the city deems necessary to ensure compliance with this section.

(B) The contract shall provide that the city is entitled to receive a copy of any records related to the contractor's or any subcontractor's performance of the contract, and that, in addition to records specifically requested by the city, every month the contractor shall furnish the county with: (i) the names of any subcontractors providing services under the contract; (ii) the names of the employees of the contractor and any subcontractors providing services pursuant to the contract and their hourly rates; and (iii) the names of any workers providing services pursuant to the contract as independent contractors and the compensation rates for those workers. The contract shall provide that all records provided to the city by the contractor shall be subject to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1). In furtherance of this subdivision, contractors and any subcontractors shall maintain records related to performance of the contract that ordinarily would be maintained by the city in performing the same functions.

(C) (1) The city shall include in the contract specific, measurable performance standards and provisions for a performance audit by the city, or an independent auditor approved by the city, to determine whether the performance standards are being met and whether the contractor is in compliance with applicable laws and regulations. The legislative body shall not renew or extend the contract prior to receiving and considering the audit report.

(2) The contractor shall reimburse the city for the cost of the audit.

(D) The contract shall include provisions for an audit by the city, or an independent auditor approved by the city, to determine whether and to what extent the anticipated cost savings have actually been realized. The city shall not renew or extend the contract before receiving and considering the audit report. The contractor shall reimburse the city for the cost of the audit. Contractors shall be prohibited from factoring the costs of the audit into their contract costs with the city.

(b) This section does not preclude a city from adopting more restrictive rules regarding the contracting of public services.

(c) When otherwise permitted by law, the absence of any requirement of subdivision (a) shall not prevent personal services contracting when any of the following conditions are met:

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

(2) The contract is between a city and other government entity for services to be performed by employees of the other government entity.

(3) The services contracted cannot be performed satisfactorily by city employees, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available among city employees.



(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 city employees. 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 title for emergency appointments apply. These contracts shall conform with Section 45080.

(7) Public entities or officials need private counsel because a conflict of interest on the part of the city attorney's office prevents it from representing the public entity or official without compromising its position. These contracts shall require the written consent of the city attorney.

(8) The contract will provide legal services to the city solely on a contingency fee basis.

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

(10) The contractor will conduct training courses for which appropriately qualified city employee instructors are not available, provided that permanent instructor positions in academies or similar settings shall be filled by city employees.

(11) The services are of such an urgent, temporary, or occasional nature that the delay incumbent in their implementation by city employees would frustrate their very purpose.

(d) (1) Except as provided in paragraph (2), this section shall apply to all cities, including cities that have adopted a merit or civil service system.

(2) This section does not apply to a charter city formed pursuant to Section 3 of Article XI of the California Constitution.

~~(e)(1) This section does not apply to any contract for services described in Section 4525 or 4529.10.~~

~~(2) This section does not apply to any contract that is subject to Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.~~

~~(3) This section does not apply to a contract for public transit services, including paratransit services, if the county's transit services are fully funded by Federal Transit Administration assistance and the county is thereby subject to the guidelines established in FTA Circular 4220.1F or any subsequent guidelines or revisions issued by the Federal Transit Administration.~~

*(e) This section does not apply to any of the following contracts:*

*(1) A contract for services described in Section 4525 or 4529.10.*

*(2) A contract that is subject to Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.*

*(3) A contract for public transit services, including paratransit services, if the city's transit services are fully funded by Federal Transit Administration assistance and the city is thereby subject to the guidelines established in FTA Circular 4220.1F or any subsequent guidelines or revisions issued by the Federal Transit Administration.*

*(4) A contract for street sweeping services.*

*(5) A contract for solid waste handling services authorized by or made pursuant to Section 40059 of the Public Resources Code. As used in this paragraph, "solid waste handling services" means the collection, transportation, storage, transfer, conversion, processing, recycling, composting, or disposal of solid wastes.*

(f) This section shall not be construed to authorize or otherwise permit the contracting out of fire protection services other than the contracts between public agencies that are explicitly authorized by Chapter 4 (commencing with Section 55600) of Part 2 of Division 2 of Title 5 of this code or by Article 4 (commencing with Section 4141) of Chapter 1 of Part 2 of Division 4 of the Public Resources Code.

~~(g) This section shall apply to contracts for personal services currently or customarily performed by city employees entered into, renewed, or extended on or after January 1, 2018. not apply to the renewal of existing~~

*contracts or awards of contracts to perform the same services as other contractors, if those contracts cause neither the displacement of city employees nor the reduction of city employee positions.*

**SEC. 3.** The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

**SEC. 4.** If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.