

Senate Bill No. 117

CHAPTER 231

An act to amend Section 10295.3 of the Public Contract Code, relating to public contracts.

[Approved by Governor September 6, 2011. Filed with Secretary of State September 6, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

SB 117, Kehoe. Public contracts: prohibitions: discrimination based on gender or sexual orientation.

Existing law prohibits a state agency from entering into a contract for the acquisition of goods or services in the amount of \$100,000 or more with a contractor who, in the provision of benefits, discriminates between employees with spouses and employees with domestic partners, or discriminates between the domestic partners and spouses of those employees.

This bill would also prohibit a state agency from entering into a contract in the amount of \$100,000 or more with a contractor who discriminates between employees with spouses or domestic partners of a different sex and employees with spouses or domestic partners of the same sex, or discriminates between same-sex and different-sex domestic partners of employees or between same-sex and different-sex spouses of employees.

The people of the State of California do enact as follows:

SECTION 1. Section 10295.3 of the Public Contract Code is amended to read:

10295.3. (a) (1) Notwithstanding any other provision of law, no state agency may enter into any contract for the acquisition of goods or services in the amount of one hundred thousand dollars (\$100,000) or more with a contractor who, in the provision of benefits, discriminates between employees with spouses and employees with domestic partners, or discriminates between employees with spouses or domestic partners of a different sex and employees with spouses or domestic partners of the same sex, or discriminates between same-sex and different-sex domestic partners of employees or between same-sex and different-sex spouses of employees.

(2) For purposes of this section, "contract" includes contracts with a cumulative amount of one hundred thousand dollars (\$100,000) or more per contractor in each fiscal year.

(3) For purposes of this section, "domestic partner" means one of two persons who has filed a declaration of domestic partnership with the

Secretary of State pursuant to Division 2.5 (commencing with Section 297) of the Family Code.

(4) (A) Subject to subparagraph (B), this section does not apply to any contracts executed or amended prior to January 1, 2007, or to bid packages advertised and made available to the public, or any competitive or sealed bids received by the state, prior to January 1, 2007, unless and until those contracts or property contracts are amended after December 31, 2006, and would otherwise be subject to this section.

(B) If a duration of a contract executed or amended prior to January 1, 2007, is for more than one year going beyond January 1, 2008, this section shall apply to the contract on January 1, 2008.

(5) The requirements of this section shall apply only to those portions of a contractor's operations that occur under any of the following conditions:

(A) Within the state.

(B) On real property outside the state if the property is owned by the state or if the state has a right to occupy the property, and if the contractor's presence at that location is connected to a contract with the state.

(C) Elsewhere in the United States where work related to a state contract is being performed.

(b) Contractors shall treat as confidential to the maximum extent allowed by law or by the requirement of the contractor's insurance provider, any request by an employee or applicant for employment for domestic partner or spousal benefits or any documentation of eligibility for domestic partner or spousal benefits submitted by an employee or applicant for employment.

(c) After taking all reasonable measures to find a contractor that complies with this section, as determined by the state agency, the requirements of this section may be waived under any of the following circumstances:

(1) Whenever there is only one prospective contractor willing to enter into a specific contract with the state agency.

(2) If the contract is necessary to respond to an emergency, as determined by the state agency, that endangers the public health, welfare, or safety, or the contract is necessary for the provision of essential services, and no entity that complies with the requirements of this section capable of responding to the emergency is immediately available.

(3) Where the requirements of this section violate, or are inconsistent with, the terms or conditions of a grant, subvention, or agreement, provided that a good faith attempt has been made by the agency to change the terms or conditions of any grant, subvention, or agreement to authorize application of this section.

(4) Where the contractor is providing wholesale or bulk water, power, or natural gas, the conveyance or transmission of the same, or ancillary services, as required for assuring reliable services in accordance with good utility practice, provided that the purchase of the same may not practically be accomplished through the standard competitive bidding procedures, and further provided that this exemption does not apply to contractors providing direct retail services to end users.

(d) (1) If there is a difference in the cost to provide a certain benefit to a domestic partner or spouse, the contractor is not deemed to be in violation of this section so long as the contractor permits the employee to pay any excess costs.

(2) The contractor is not deemed to discriminate in the provision of benefits if the contractor, in providing the benefits, pays the actual costs incurred in obtaining the benefit.

(3) In the event a contractor is unable to provide a certain benefit, despite taking reasonable measures to do so, the contractor may not be deemed to discriminate in the provision of benefits.

(4) For any contracts executed or amended on or after July 1, 2004, and prior to January 1, 2007, and to bid packages advertised and made available to the public, or any competitive or sealed bids received by the state, on or after July 1, 2004, and prior to January 1, 2007, unless and until those contracts or bid packages are amended after June 30, 2004, but prior to January 1, 2007, and would otherwise be subject to this section, a contractor may require an employee to pay the costs of providing additional benefits that are offered to comply with this section if an employee elects to have the additional benefits. This paragraph shall not be construed to permit a contractor to require an employee to cover the costs of providing any benefits, which have otherwise been provided to all employees regardless of marital or domestic partner status.

(e) A contractor is not deemed to be in violation of this section if the contractor does any of the following:

(1) Offers the same benefits to employees with domestic partners and employees with spouses and offers the same benefits to domestic partners and spouses of employees.

(2) Elects to provide the same benefits to individuals that are provided to employees' spouses and employees' domestic partners.

(3) Elects to provide benefits on a basis unrelated to an employee's marital status or domestic partnership status, including, but not limited to, allowing each employee to designate a legally domiciled member of the employee's household as being eligible for benefits.

(4) Elects not to provide benefits to employees based on their marital status or domestic partnership status, or elects not to provide benefits to employees' spouses and to employees' domestic partners.

(f) (1) Every contract subject to this chapter shall contain a statement by which the contractor certifies that the contractor is in compliance with this section.

(2) The department or other contracting agency shall enforce this section pursuant to its existing enforcement powers.

(3) (A) If a contractor falsely certifies that it is in compliance with this section, the contract with that contractor shall be subject to Article 9 (commencing with Section 10420), unless, within a time period specified by the department or other contracting agency, the contractor provides to the department or agency proof that it has complied, or is in the process of complying, with this section.

(B) The application of the remedies or penalties contained in Article 9 (commencing with Section 10420) to a contract subject to this chapter shall not preclude the application of any existing remedies otherwise available to the department or other contracting agency under its existing enforcement powers.

(g) Nothing in this section is intended to regulate the contracting practices of any local jurisdiction.

(h) This section shall be construed so as not to conflict with applicable federal laws, rules, or regulations. In the event that a court or agency of competent jurisdiction holds that federal law, rule, or regulation invalidates any clause, sentence, paragraph, or section of this code or the application thereof to any person or circumstances, it is the intent of the state that the court or agency sever that clause, sentence, paragraph, or section so that the remainder of this section shall remain in effect.