

RULEMAKING NOTICE AND INITIAL STATEMENT OF REASONS

DATE: July 31, 1998
TO: ALL STATE AGENCIES AND EMPLOYEE ORGANIZATIONS
SUBJECT: Adoption of Regulations on Personal Services Contracts

NOTICE IS HEREBY GIVEN

Pursuant to the Administrative Procedure Act, this notice has been published in the California Regulatory Notice Register 98, No. 29-Z, and the notice is now being shared with state agencies and employee groups.

The State Personnel Board (Board) will, subject to consideration of the input received on this proposed regulatory action, create in Title 2, Article 29, Sections 547.60, 547.61, 547.62, 547.63, 547.64, 547.65, and 547.66, at its regularly scheduled meeting on September 1, 1998, 1:00 p.m. to 2:00 p.m. at the State Personnel Board, Room 150, 801 Capitol Mall, Sacramento, CA 95814.

PUBLIC HEARING

A public hearing will be held to receive oral and written input on the proposed regulatory action at the September 1, 1998, meeting of the Board.

DEADLINE FOR WRITTEN COMMENTS

Interested parties are invited to submit written comments no later than August 31, 1998, to

Jose L. Perez, State Personnel Board, Personnel Resources and Innovations Division, P.O. Box 944201, Sacramento CA 94244-2010.

AUTHORITY AND REFERENCE

The Board proposes to adopt these regulations under the authority granted by Government Code Section 18701 in order to implement, interpret or make specific Government Code Sections 19130 (a) and (b), 19131 and 19132; Public Contract Code Section 10337 (b) and (c); and California Code of Regulations 279.1, 279.2, 279.3 and 279.4.

INFORMATIVE DIGEST

Government Code Section 18701 authorizes the Board to prescribe, amend and repeal regulations for the administration of the Civil Service Act.

The State Personnel Board's role in personal services contracts is to ensure the merit and civil service provisions of the State's Constitution are enforced. Government Code Section 19130 (a)

Page 2

and (b) provide the standards pursuant to which state agencies may enter into personal services contracts.

California Code of Regulations Section 279.1 defines personal services contract. Sections 279.2, 279.3 and 279.4 also help interpret Government Code Section 19130 (a). (Once the proposed sections are adopted these existing Sections will be moved to the proposed Article 27 and renumbered accordingly.)

Government Code Section 19131 and Public Contract Code Section 10337 (b) set forth the procedures the Board follows when it reviews, at the request of an employee organization, a personal services contract proposed or entered into by a state agency under Government Code Section 19130(a).

Government Code Section 19132 and Public Contract Code Section 10337 (c) set forth the procedures the Board follows when it reviews, at the request of an employee organization, a personal services contract entered into by a state agency pursuant to Government Code Section

19130 (b).

INITIAL STATEMENT OF REASONS

To date the Board has not adopted regulations to implement Government Code Sections 19131 and 19132 or Public Contract Code Section 10337 (b) and (c) as it relates to contract disputes. Since these statutory provisions do not address all procedural rules that may arise during the course of contract reviews, regulations are necessary to provide comprehensive procedures.

The proposed regulations 547.60, 547.61, 547.62, 547.63, 547.64, 547.65, and 547.66, will help bring clarity to the administration of the law by making the contract dispute resolution process more timely, responsive and efficient to the parties involved in contract reviews under the applicable statutes.

Under the proposed process, whenever an employee organization requests review by the Board of the contract let under Government Code Section 19130 (b), the Board notifies the contracting agency that must, within 15 days, serve upon the employee organization and the Board, a response that includes a copy of the contract and the agency's written justification that demonstrates the contract complies with Government Code Section 19130 (b). The employee organization has 15 days to oppose the agency's justification and provide documentation which demonstrates that the contract fails to meet the requirements of Government Code Section 19130 (b) and, if desired, to request an evidentiary hearing.

The proposed regulations provide that, for both 19130 (a) and (b) contracts, within 30 days from the date the contract and agency justification is received, the Executive Officer of the Board will decide either that (1) the employee organization has shown good cause for and will refer the matter to an Administrative Law Judge, or (2) if good cause has not been shown for an evidentiary hearing, whether the contract complies with Government Code Section 19130 (a) or (b) and will issue a written decision approving or disapproving the contract. If the disputed contract is referred for an evidentiary hearing, the Administrative Law Judge will write a proposed decision that will be reviewed by the Board. If the Executive Officer issues a written

Page 3

decision either approving or disapproving the contract, that decision may be appealed to the

Board within 30 days after the Executive Officer has issued it. The proposed regulations grant the Executive Officer the right to grant continuances and extensions. The regulations also allow the Executive Officer, the Board or the Administrative Law Judge to grant intervention by third parties under certain circumstances.

FISCAL IMPACT

This proposed regulatory action imposes: (1) no additional cost to any state agency; (2) no cost on any local agency or school district that is required to be reimbursed under Part 7 (commencing with Sections 17500) of Division 4 of the Government Code; (3) no other non-discretionary costs or savings on local agencies; and, (4) no cost or savings in federal funding to the State.

COSTS TO LOCAL AGENCIES AND SCHOOL DISTRICTS AND EFFECT ON HOUSING COSTS

This proposed regulatory action does not impose a mandate on local agencies or school districts. This proposed regulatory action does not effect housing costs.

EFFECT ON BUSINESS

This proposed regulatory action will not have an adverse economic impact on business, including the ability of California businesses to compete with business in other states.

EFFECT ON SMALL BUSINESS

The proposed regulatory action will not effect small business because the process has been established for several years and the proposed regulations essentially formalize the process.

BUSINESS ASSESSMENT

The proposed regulatory action will neither create nor eliminate jobs or businesses in the State of

California, nor result in the elimination of existing businesses, nor create or expand business in the State of California.

POTENTIAL COST IMPACT ON DIRECTLY AFFECTED PRIVATE PERSONS OR BUSINESSES

This proposed regulatory action will have no new cost impact over and above cost that is already experienced by individuals or businesses doing business with the State.

ALTERNATIVE CONSIDERED

The State Personnel Board must determine that no alternative considered by the Board would be more effective in carrying out the purpose for which this action is proposed or would be effective and less burdensome to affected private person than the action.

Page 4

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board has prepared an Initial Statement of Reasons and the text of the proposed regulations. Both of these documents and all information on which the proposal is based are available to the public upon request. The rulemaking file will be available for public inspection at Room 555 of the State Personnel Board, 801 Capitol Mall, Sacramento, CA.

AVAILABILITY OF MODIFIED TEXT

Following the written comment period and the public hearing, the Board may take the proposed regulatory action substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the full modified text with changes clearly

indicated will be made available to the public for at least 15 days prior to the date on which the Board adopts the resulting regulatory action. Requests for copies of any modified regulations should be addressed to the contact person identified in this notice. Written comments on the modified regulations will be accepted for 15 days after the date on which they are first made available to the public.

CONTACT PERSON

Questions regarding this regulatory action should be directed to Jose L. Perez, at (916) 654-5283.

LAURA M. AGUILERA, Chief
Personnel Resources and Innovations Division

Attachment: Text of Proposed Regulations

State Personnel Board
Proposed Regulations Governing Board
Review of Personal Services Contracts

Title 2, Article 29 Personal Services Contracts

A. *Procedures for Reviewing Personal Services Contracts proposed or entered into pursuant to Government Code § 19130(b).*

§ 547.60. State Agency's Justification. The Board shall transmit to a state agency that proposes to execute or has executed a personal services contract under Government Code § 19130(b) a copy of any request the Board may receive from an employee organization which represents state employees that asks the Board to review the contract for compliance with Government Code § 19130(b). Within 15 days after the Board transmits to the state agency the employee organization's review request, the state agency shall file with the Board and serve upon the employee organization:

a. a copy of the proposed or executed contract; and

b. the state agency's written justification which shall include:

1. specific and detailed information that demonstrates how the contract meets one or more of the conditions specified in subdivision (b) of Government Code § 19130; and

2. evidence and/or declarations in support of the state agency's position.

Note: Authority Cited: Section 18701, Government Code. Reference: Section 19130, and 19132, Government Code; Section 10337, Public Contract Code.

§ 547.61. Employee Organization's Opposition.

a. Employee Organization's Position. Within 15 days after it receives from the state agency a copy of the contract and the state agency's justification, an employee organization shall file with the Board and serve upon the state agency its written opposition to the state agency's justification, which shall include the following:

(1) specific and detailed information that demonstrates how the contract fails to meet the conditions specified in subdivision (b) of Government Code § 19130; and

2) evidence and/or declarations that support the employee organization's position.

Note: Authority Cited: Section 18701, Government Code. Reference: Section 19130, and 19132, Government Code; Section 10337, Public Contract Code.

B. Supplemental Procedures for Reviewing Personal Services Contracts under either Government Code § 19130(a) or § 19130(b).

§ 547.62. Evidentiary Hearing.

a. Request for a Board Hearing. The employee organization may request that, in lieu of the Executive Officer making a decision approving or disapproving the proposed (*disputed*) contract, the proposed (*disputed*) contract to be referred to the Board for a hearing. To make such a request, the employee organization shall include with either its request for review or its opposition, written arguments, evidence and/or declarations which show that good cause exists for scheduling a hearing for the purpose of receiving evidence and hearing arguments concerning the propriety of the disputed contract.

b. Good Cause. In order to show that good cause exists for referring the disputed contract for a hearing for the purpose of taking evidence and hearing arguments, the employee organization must show that there are disputed issues of material fact regarding the contract that must be resolved by an evidentiary hearing in order to determine whether the contract meets the criteria of Government Code § 19130.

c. Executive Officer Determination. The determination as to whether the employee organization has shown that good cause exists for referring the disputed contract for a hearing shall be made by the Executive Officer. If the Executive Officer determines that good cause does not exist for referring the disputed contract for a hearing, the contract review process shall proceed as an investigation and the Executive Officer shall issue a decision approving or disapproving the contract.

d. Hearing before an Administrative Law Judge. Upon finding that the employee organization has shown good cause for referring the disputed contract for a hearing for the purpose of taking evidence and hearing arguments, the Executive Officer shall refer the contract to an administrative law judge to conduct an evidentiary hearing and submit to the Board a proposed decision in accordance with the procedures set forth in Government Code §§ 18671 and 19582.

Note: Authority Cited: Section 18701, Government Code. Reference: Section 19130, and 19132, Government Code; Section 10337, Public Contract Code.

§ 547.63. Executive Officer Decision. Within 30 days after receiving from the state agency a copy of the proposed or executed contract and the state agency's justification, the Executive Officer shall do one of the following:

a. If the employee organization has shown that good cause exists for referring the disputed contract for a hearing for the purpose of taking evidence and hearing arguments, the Executive Officer shall refer the matter to an administrative law judge to conduct an evidentiary hearing and submit a proposed decision in accordance with § 547.62c.

b. If the employee organization has not shown that good cause exists for referring the disputed contract for a hearing for the purpose of taking evidence and hearing arguments, the Executive Officer shall issue a written decision either approving or disapproving the contract and explaining the reasons for the decision.

Note: Authority Cited: Section 18701, Government Code. Reference: Section 19130, and 19132, Government Code; Section 10337, Public Contract Code.

C. Procedures for Appealing an Executive Officer's Decision Approving or Disapproving a Contract under Government Code § 19130(a) or §19130(b) to the Board.

§ 547.64. Appeal from an Executive Officer's Decision. Either the state agency or the employee organization may appeal the Executive Officer's decision to the Board by submitting a written request to the Board within 30 days after issuance of the Executive Officer's decision.

Upon receipt of a timely appeal, the Executive Officer shall schedule the matter for briefing and oral arguments before the Board.

Note: Authority Cited: Section 18701, Government Code. Reference: Section 19130, and 19132, Government Code; Section 10337, Public Contract Code.

D. Procedures that apply to all contract review proceedings.

§ 547.65. Continuances and Extensions. The Executive Officer may grant continuances of hearings before the Board and extensions of time for the issuance of a decision, the scheduling of a hearing or the filing of a justification, opposition, brief or other document upon the consent of all parties or for good cause shown.

Note: Authority Cited: Section 18701, Government Code. Reference: Section 19130, and 19132, Government Code; Section 10337, Public Contract Code.

§547.66. Intervention.

a. At any time after an employee organization requests that the Board review a contract for compliance with Government Code § 19130(a) or § 19130(b), a contractor with whom the state agency proposes to contract or has contracted may move to intervene as a party in the contract review process. Either the Executive Officer, administrative law judge who conducts an evidentiary hearing or Board may grant a motion for intervention if all the following conditions are satisfied:

(1) A written motion is filed with the Board, with copies served upon the state agency and the employee organization.

(2) The motion is made as early as practicable.

(3) The motion states facts demonstrating that the applicant's legal rights, duties, privileges, or immunities shall be substantially affected by a decision upon the disputed contract or that the applicant qualifies as an intervenor under a statute or regulation.

(4) The Executive Officer, administrative law judge or Board determines that the interests of justice and the orderly and prompt conduct of the contract review process shall not be impaired by allowing the intervention.

b. If an applicant qualifies for intervention, the Executive Officer, administrative law judge or Board may impose conditions on the intervenor's participation in the contract review process, either at the time that intervention is granted or at a subsequent time. Conditions may include the following:

(1) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the motion.

(2) Limiting or excluding the intervenor's participation in any proceedings so as to promote the orderly and prompt conduct of the Executive Officer's investigation, the administrative law judge's evidentiary hearing or the oral arguments before the Board.

(3) Requiring two or more intervenors to combine their presentations of evidence and arguments, and other participation during the Executive Officer's investigation, the administrative law judge's evidentiary hearing or oral arguments before the Board.

(4) Limiting or excluding the intervenor's participation in settlement negotiations.

c. As early as practicable in advance of the Executive Officer's investigation, the administrative law judge's evidentiary hearing or oral arguments before the Board, the Executive Officer, administrative law judge or Board shall issue an order granting or denying the motion for intervention, specifying any conditions, and briefly stating the reasons for the order. The Executive Officer, administrative law judge or Board may modify the order at any time, stating the reasons for the modification. The Executive

Officer, administrative law judge or Board shall promptly give notice of an order granting, denying, or modifying intervention to the applicant and to all parties.

d. Whether the interests of justice and the orderly and prompt conduct of the contract review process shall be impaired by allowing intervention is a determination to be made in the sole discretion, and based on the knowledge and judgment at that time, of the Executive Officer, administrative law judge or Board. The determination is not subject to administrative or judicial review.

e. If a motion for intervention is denied, the Executive Officer, administrative law judge or Board may permit a contractor to submit written arguments and participate in the Executive Officer's investigation, the evidentiary hearing before the administrative law judge or oral arguments before the Board as the Executive Officer, administrative law judge or Board may deem appropriate under the circumstances.

Note: Authority Cited: Section 18701, Government Code. Reference: Section 19130, 19131, 19132, 18654.5 and 18670 Government Code; Section 10337, Public Contract Code.

-

[contract.regs Rev 4]