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DEPARTMENT OF
FINANCE

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May 15, 2003

Law and Legislation Committee
Sacramento, California

Honorable Members in Session:

SUBJECT: SB 163, AS AMENDED, (ALARCON). SERVICE CONTRACTS: COUNTIES AND CITIES – OPPOSE

LOCATION AND COUNCIL DISTRICT: Citywide

RECOMMENDATION:

Staff recommends that the Law and Legislation Committee oppose this bill.

CONTACT: Aaron B. Chong, Senior Management Analyst, 808-6762

FOR THE COMMITTEE MEETING OF: May 20, 2003

SUMMARY:

This bill authorizes a city or county to enter into a personal services contract if the contract would achieve cost savings and be for new functions that the Legislature mandates or authorizes to be performed by independent contractors or cannot be satisfactorily performed by district employees. It exempts specified contracts for public transit, architectural, engineering, land surveying and construction projects.

In its current form, the legislation does not apply to charter counties or charter cities. There is currently an exclusion for charter counties for the provisions applicable to counties, and an exclusion for charter cities for the provisions applicable to cities.

Although this bill in its current form does not currently apply to charter cities, it would however reduce the options, alternatives and flexibility available to cities in general with dealing with local problems and issues and would go against the guidelines and policies approved by the Law and Legislation Committee. As such, staff recommends that the Committee oppose this bill.

BACKGROUND:

Cities and counties are general purpose governments that provide a variety of goods and services to their residents. Ranging from law enforcement, public health, and child protective services to libraries, parks, and fire protection, cities and counties provide these services through a variety of personnel and financial arrangements - including contracting out to the private sector.

For charter cities and charter counties, contracting arrangements can be governed by their charters. General law cities and general law counties must follow the standards and procedures in the state statutes. General law counties are generally restricted to contracting out for a limited list of specialized services identified in state law. General law cities have limited authority to contract for services, augmented by the principle "complementary powers" that gives general law cities the powers necessary to achieve their authorized goals. Both cities and counties face additional restrictions on the use of contract employment by the Internal Revenue Service, and from standards for permanent employment used by retirement systems.

State law requires state departments that contract for personal services to follow specific criteria: a clear demonstration of cost savings, a clear definition of costs, ensuring that work will not be contracted out solely on the basis of lower pay rates or benefits, and justification of savings based on the size and duration of the contract. Last year the Legislature passed and Governor Davis signed legislation requiring school districts and community college districts to comply with the same standards that apply to state departments (AB 1419, Alarcon, 2002).

Some critics worry that current contracting allows local officials to misuse and waste taxpayer dollars. They cite examples that resulted in losses of efficiency and wasted public money. To improve accountability, the Service Employees International Union wants to extend the standards that apply to state departments, schools, and community colleges to cities and counties.

DISCUSSION:

Under the proposed bill, Senate Bill 163 authorizes counties and cities to contact for services if they meet 10 conditions:

1. The county or city clearly demonstrates that the proposed contract will result in actual overall cost savings. The cost savings comparison must include the additional cost of providing the same service as proposed by the contractor, including salaries and benefits of needed additional staff, the cost of additional space, equipment, and materials, and any continuing costs associated with the service. The costs must not include indirect overhead costs unless they are attributable solely to the function being contracted out.

2. A proposal to contract out is not approved solely on the basis of savings from lower wages and benefits. The contractor must pay industry wages and not undercut the city or county pay rates.
3. The contract does not cause the displacement of any county or city workers including layoffs, demotions, or involuntary transfers.
4. The savings are large enough to ensure that they will not be eroded by normal cost fluctuations.
5. The savings clearly justify the size and duration of the contract.
6. The contract is awarded through a publicized, procurement bidding process.
7. The contract specifies the qualifications of the staff who will perform the work and contains assurances that the contractor's hiring practices contain nondiscrimination standards.
8. There is minimal potential future risk to the city or county from contractor rate increases.
9. The contract is with a private entity.
10. The potential economic advantage of contracting is not outweighed by the public's interest in having the function performed directly by the city or county.

SB 163 also allows contracting out by cities and counties when any of the following seven conditions are met:

1. The contract is for new city or county functions and the Legislature has mandated or authorized the work by independent contractors.
2. The services are not available within the city or county workforce, cannot be satisfactorily performed by city or county employees, or are of such a highly specialized or technical nature that the city or county workforce lacks the expertise.
3. The services are incidental to a contract for the purchase or lease of real or personal property.
4. The contract is to protect against a conflict of interest or to ensure independent or unbiased findings. This includes obtaining expert witnesses in litigation.
5. The contract is for emergency services.
6. The contract is for equipment, materials, facilities, or support services that are not feasibly provided in that particular location by the city or county.
7. The required services are so urgent, temporary, or occasional that to wait for the city or county implementation process would frustrate their very purpose.

SB 163 explicitly applies to all cities and counties, including those that have merit or civil services systems, but SB 163 currently explicitly excludes charter cities and counties from its provisions.

SB 163 explicitly excludes any contract for architectural and engineering services. SB 163 also explicitly excludes any contract for public transit services, including paratransit, where the county receives Federal Transit Administration funds and therefore is subject to federal procurement guidelines.

SB 163 requires that if any contract for transit services is not renewed or is terminated because of the bill's requirements, and if the county then performs the transit services

provided by the former contractor, the county must offer employment on a preferential basis to any qualified employee of the former contractor based on seniority. If the employees of the former contractor were represented by an exclusive bargaining representative, and the service provided was not previously performed by county employees and the county commences to perform the service, the affected employees must be placed in the appropriate bargaining units. SB 163 further requires that the county recognize and bargain with the exclusive representative of the former contractor's employees.

SB 163 explicitly excludes contract renewals, whether renewed, modified, or rebid with the existing or a new contractor, for contracts entered into before January 1, 2004.

Planning, Utilities, and Labor Relations staff have reviewed this bill and recommend that the City oppose the bill.

FINANCIAL CONSIDERATIONS:

There are no financial considerations to the City of Sacramento the way the bill is currently drafted.

ENVIRONMENTAL CONSIDERATIONS:

There are no environmental considerations associated with this report.

POLICY CONSIDERATIONS:

In its current form, the legislation does not apply to charter counties or charter cities. There is currently an exclusion for charter counties for the provisions applicable to counties, and an exclusion for charter cities for the provisions applicable to cities.

Although this bill does not currently apply to charter cities, it would however reduce the options, alternatives and flexibility available to cities in general with dealing with local problems and issues and would go against the guidelines and policies approved by the Law and Legislation Committee. As such, staff recommends that the Committee oppose this bill.

ESBD CONSIDERATIONS:

There are no ESBD considerations. No goods or services are being purchased at this time.

Respectfully submitted:

Aaron B. Chong
Senior Management Analyst

RECOMMENDATION APPROVED:

KEN NISHIMOTO
Deputy City Manager

April 29, 2003

The Honorable Dede Alpert
Chair, Senate Appropriations Committee
California State Senate
State Capitol
Sacramento, CA 95814

RE: SB 163 (Alarcon): Service Contracts: Counties and Cities – **OPPOSE**

Dear Senator Alpert,

The City of Sacramento is opposed to SB 163 (Alarcon): Service Contracts: Counties and Cities.

Senate Bill 163 would significantly limit authority of general law counties, cities and counties, and cities to enter into personal service contracts. Substantial limitations already exist in law. General law counties are generally restricted to a limited list of specialized services identified in Government Code 31000 and other service-specific code sections. General law cities have limited authority for contract services granted by Government Code Section 53060 that is augmented by a general principle of municipal law known as city "complimentary" powers that, as a general rule, permits general law cities to utilize powers necessary to achieve the goals authorized by the legislature. Both cities and counties face additional restrictions on use of contract employment due to Internal Revenue Service rulings related to factors indicating employment status, and due to standards for permanent employment used by retirement systems.

SB 163 proposes to add a number of new and additional conditions that must be satisfied by a general law county or city prior to entering into a service contract. It would require demonstration that the contract would achieve cost savings. Savings would be precluded from including in county cost comparisons certain indirect overhead costs but contractor comparison costs must include county oversight costs and must pay industry comparable wages that do not undercut local agency wages. The contract must not result in displacement of local agency workers. In a provision that will obfuscate and encourage litigation, the potential economic advantage of contracting must not outweigh the public's interest in having a particular function performed directly by the local agency. In addition, the contract must achieve one of the following conditions: (1) the contract would be for new functions that the Legislature mandates or authorizes be performed by independent contractors, (2) the services would not be available within the county, city, or county and city and cannot be satisfactorily performed by local agency employees; (3) the services would be incidental to a purchase or lease contract, (4) the policy, administrative, or legal goals and purposes of the county, city, or city and county could not be accomplished through the regular or ordinary hiring process, (5) the work would meet criteria for emergency appointment, (6) equipment, materials, facilities, or support services would be provided that could not feasibly be provided by the local agency, and (7) the services would be of an urgent, temporary or occasional nature.

We are opposed to SB 163 for numerous reasons including the following:

1. There is no need for this bill. Local agencies can already establish the provisions of SB 163 without this statewide prescriptive mandate. SB 163 represents yet another significant erosion of local control of administrative tools necessary to manage local government.
2. General law counties and cities already face significant limitations on their ability to seek cost and administrative efficiencies through contracting-out for services. This bill would add yet additional restrictions and administrative costs. It would further restrict availability of this infrequently used tool during this time of economic downturn when it could be most beneficial in preservation of essential public services.
3. This bill would expose local governments to expensive and time-consuming litigation due to the vague requirement that potential economic advantage of contracting must not outweigh the public's interest in having a particular function performed directly by the local agency.
4. Cost comparison provisions of the bill are overly prescriptive and weighted to the disadvantage of the contract by precluding the local agency cost comparison from including various indirect overhead costs, but requiring contractor costs to include local agency oversight costs.
5. This bill would neutralize compensation saving advantages of contract services by requiring that contractors pay industry wages (however that is defined) and not undercut local agency wages.
6. The bill mandates that it not result in displacement of existing public agency workers without providing ample flexible options such as administrative protection of salary and transfer to other jobs in the local agency with different job titles, or offer of employment with the contractor.
7. This bill would reduce alternatives and flexibility available to cities and local government with dealing with local problems, issues and policies.

SB 163 seems to be a solution in search of a problem. We would be pleased to continue to work with the author and sponsors to resolve any demonstrated problems in existing law. However, for the reasons stated above, we are opposed to this bill.

If you have any questions or comments, please contact Aaron Chong at 808-6762.

Sincerely yours,

STEVE COHN, Chair
Law and Legislation Committee

cc: Members, Senate Local Government Committee
Consultant, Senate Local Government Committee