DATE: June 26, 2017

TO: Brenda Narayan and Fran Mancia
MuniServices

FROM: Clare M. Gibson**,** Special Counsel

RE: AB 1250 (Jones-Sawyer) – Amended June 21, 2017
Legal Analysis and Commentary

I. INTRODUCTION

This memorandum provides legal analysis and comments regarding AB 1250, on "personal services contracts," as amended by the Senate on June 21, 2017 (eliminating provisions that applied to cities). AB 1250 now applies only to counties. Apart from a few very minor revisions, all of the provisions that previously applied to county service contracts remain in effect.[1] Even as amended to exclude cities, AB 1250 remains flawed in concept and inimical to the public interest. It will increase the cost and impede delivery of essential county services on a statewide basis, without any offsetting public benefit. Accordingly, I urge MuniServices to oppose this bill (as amended June 21, 2017).

II. SUMMARY

Proponents suggest that this bill will provide cost savings and increase transparency for county service contracts. It will not achieve either of those objectives. To the contrary, on a statewide basis, AB 1250 will substantially *increase the cost* for delivery of county services and substantially decrease delivery of county services—including critical public health and safety services.

AB 1250 will *not* increase the existing transparency requirements under the California open meeting laws (the "Brown Act"), the California Public Records Act, or local ordinances. It will not increase public access to public contracts or procurement processes. Instead, it mandates public disclosure of otherwise *private* information—an intrusive requirement that may violate constitutional privacy rights, without providing any public benefit.

[1] The City and County of San Francisco is excluded.

The bill will impose unprecedented and unjustifiable obstacles to even the smallest and most routine county service contracts, without regard for the nature of the services, community needs, financial resources, or existing laws. AB 1250 would add a new Government Code section 31000.10, a lengthy statute that would condition award of county services contracts on *dozens* of new and novel restrictions, including layers of complex analysis, findings, speculative forecasting, and costly audit requirements—even for small, routine service agreements. *These **unprecedented requirements** substantially exceed any state or federal requirements for awarding even major public works contracts.*

Concerns about the statewide impacts of AB 1250 are summarized as follows:

- **AB 1250 Will *Increase* Costs For County Services:** AB 1250 purports to require a county to demonstrate "overall cost savings" before awarding a service contract. But its mandates will tip the scales to disfavor service contracts - regardless of the actual cost impact or local needs. The procurement requirements for a routine short-term service agreement with a consultant will be substantially costlier and more demanding than any current requirements for multi-million dollar infrastructure projects. Under AB 1250 services will cost more and it will also be more costly to contract for services.

- **Counties Will Be Forced To Reduce Service Levels To Offset Increased Pension And Benefit Costs:** Counties are already struggling with escalating pension costs and unfunded liability. AB 1250 will force counties to choose between higher costs for service contracts or increasing long-term costs for permanent staff. Counties will have to reduce public services if they cannot fund the added costs.

- **Communities Will Suffer From Service Reductions:** Counties have historically contracted out for services that cannot be provided by county staff, including legal, financial, medical, therapeutic, and other special services. Counties are expressly authorized to do so by Government Code section 31000, et seq. Service contracts are particularly critical for small and rural counties which cannot staff full-time employees for all county services. This bill will obstruct delivery of essential county services, with a disproportionate impact on small and rural communities.

- **AB 1250 Is Inconsistent With Established Law and May Violate Constitutional Privacy Guarantees:** AB 1250 is inconsistent with existing laws which provide broad discretion for counties to contract for a wide range of services based on *specific local needs and resources*. This bill would undermine and conflict with long-established laws. AB 1250 also threatens constitutional privacy rights by requiring publication of financial

information about private individuals—including individuals who have no direct involvement in providing county service.

- **Counties And Courts Will Be Burdened By Litigation:** The dozens of complicated new requirements in AB 1250 will generate costly disputes and litigation, including constitutional challenges. Its core provisions are open to conflicting interpretations and are inconsistent with established laws. As discussed in greater detail below in Part III, most of these novel requirements rely on subjective rather than objective determinations. Without objective requirements or metrics, disputes are certain to arise. It will be left to the courts to untangle the many ambiguities and conflicts, imposing new burdens on the court system. Meanwhile, public funds will be diverted to pay for litigation costs instead of public services.

- **AB 1250 Will Hurt Local Businesses:** By obstructing service contracts, AB 1250 will hurt local businesses that depend on county contracts. Even for contracts that can clear the bill's hurdles, the intrusive and unjustifiable requirements for publishing private financial information and the threat of litigation will discourage many qualified service providers from considering future county contracts.

There is an evident disconnect between the provisions of AB 1250 and the established body of law that applies to county service contracts. Unlike current laws, including Government Code section 31000 et seq., this bill is not predicated on real world understanding of how county services are delivered or the varied needs of individual communities that depend on these services. AB 1250 would eliminate long-established authority to sensibly tailor procurement procedures and contract requirements to fit the nature and scope of various services, which is is essential to economical and efficient delivery of county services.

III. ANALYSIS OF THE AMENDMENTS

The following more detailed analysis of some of the more problematic provisions in proposed new Government Code section 31000.10.

- **Conditions on Contracting.** Subdiv. (a): "*If otherwise permitted by law, a county or county agency may contract for* ***personal services*** *currently or* ***customarily*** *performed by that county's employees when all the following conditions are met:*" (Emphasis added.)

This key provision will be subject to dispute and to litigation because there is no *objective* basis to determine what is meant by "personal services currently or customarily performed by that county's employees."

- The term "personal services" is not defined, and therefore subject to dispute.

- "Customarily" is a subjective term, and is likewise subject to dispute. For example, who has authority to determine which services are "customarily" performed by county employees?

- It is impossible to determine which county service contracts will clearly be subject to this bill. It will be left to the courts to determine the scope and reach of this bill. That will take years. In the meantime, the bill is highly susceptible to inconsistent implementation from county to county and to generating inconsistent judicial determinations. Until there is clear appellate case law guidance, counties and service providers throughout the state will be burdened with costly legal challenges.

- **"Overall cost savings."** Subdiv. (a)(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:"* (Emphasis added.)

  - The requirement to demonstrate "overall cost savings" is inconsistent with the expansive discretion granted under section 31000 which provides that a county "may pay . . . such compensation as it deems proper for these special services." It is difficult to predict how the courts would resolve this apparent inconsistency, given that it is not clear whether AB 1250 applies to service contracts subject to section 31000.

  - The requirement to demonstrate "overall cost savings" implies that the purpose of this statute is to promote cost savings. However, the procurement procedures required under AB 1250 would substantially increase the cost for contracting for services that cannot be provided by a county's employees.

  - It will also be difficult to implement or enforce this provision because it is not possible to objectively determine "the county's **actual costs** of providing the **same services**." (Emphasis added.)

- It cannot be objectively determined what constitutes the "same services." For example, if a county employs a county attorney with general expertise in county law, but requires the highly specialized services of bond counsel, would that constitute the "same services" since both the county attorney and bond counsel provide legal services? As drafted, that is a plausible interpretation.

- The "actual costs" cannot be determined if there are no "actual costs" to use as a point of comparison. For example, if a county needs to hire a tax or revenue specialist and there is no county employee providing such services, how would "actual costs" be determined?

- **"Same Service."** Subdiv. (a)(1)(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.*" (Emphasis added.)

  Again, it cannot be objectively determined what constitutes the "same service." There cannot be any meaningful cost comparison without defining the "same service." For example, does "same" mean "identical" or "similar"? Unless this critical term is unambiguously defined the scope and application of AB 1250 will remain uncertain and subject to dispute.

- **Exclusion of County Overhead.** Subdiv. (a)(1)(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, rents, equipment costs, utilities, and materials.*"

  Excluding the county's "indirect overhead costs," but not the consultant's overhead, will improperly skew the outcome of a cost comparison, because a consultant's fees, whether charged on a lump sum or hourly basis, must factor in the consultant's "indirect overhead costs."

- **"Continuing county costs."** Subdiv. (a)(1)(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 inspections, supervision, and monitoring." (Emphasis added.)

It is not clear which "continuing county costs" would be "directly associated with the contracted function." More importantly, it would not be relevant to a cost comparison since those county costs (whatever they might be) would presumably be incurred regardless of whether the services are being provided by an employee or an outside specialist.

- **Cost Savings *Disfavored*.** Subdiv. (a)(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.*"

  This provision would *disfavor* cost savings—in clear contradiction to proponents' argument that AB 1250 will result in cost savings—and will do so based on irrelevant information. Information on the wages paid by a service provider on a company-wide basis are not relevant to determining "actual overall cost savings," because the cost savings analysis relates solely to the cost of the *particular contract*. The requirement that the service provider's wages are at the "industry's level" is vague, as is the requirement that those wages not "significantly undercut" county wages. Forcing a comparison of public sector compensation with private sector compensation is not reasonable, particularly since this would operate to eliminate public cost savings.

- **Vacant Positions.** Subdiv. (a)(4): "*The contract does not cause vacant positions in county employment to remain unfilled.*"

  This provision would be difficult to implement or enforce because there is no objective basis to determine the causal relationship between retention of services under contract and vacancy of a position. A position may be vacant due to the lack of interested or qualified candidates, which is a recurring problem for counties in remote and rural areas. This requirement would place an additional burden on remote and rural counties.

- **Nondiscrimination.** Subdiv. (a)(5): "*The contract does not adversely affect any of the county's nondiscrimination, affirmative action efforts.*"

There is no correlation between "affirmative action efforts" and "overall cost savings." Additionally, it is standard practice statewide to include requirements in all county service contracts prohibiting discriminatory practices and requiring compliance with all applicable anti-discrimination laws and requirements—federal, state, and local.

- Further, the reference to "affirmative action efforts" is unclear because preferential treatment is illegal in California. (Cal. Const. Art. I, § 31, subd. (a).)

- It is also unclear how a county could affirmatively *prove* that a given contract would not affect any of the county's non-discrimination efforts. As such, this provision will be difficult to interpret, to apply, and to enforce.

- **Predicting "cost fluctuations."** Subdiv. (a)(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.*"

  This provision would be subject to abuse because it appears to require economic forecasting without any objective standard or metrics. Moreover, most service contracts are not subject to cost fluctuations: the cost is set when the parties enter into the contract and cannot change unless the contract expressly allows for cost adjustments.

- **Subjective justification.** Subdiv. (a)(7): "*The amount of savings **clearly justifies** the size and duration of the contracting agreement.*" (Emphasis added.)

  This provision would be difficult to implement or enforce because the term "clearly justifies" is subjective. There is no objective standard or metric for a county to determine whether the cost savings from a proposed personal services contract would "clearly" justify the proposed contract. Since opinions will differ, the lack of objective metrics will result in disputes and litigation.

- **Unspecified "bidding process."** Subdiv. (a)(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.*" (Emphasis added.)

  This provision would significantly increase the cost for procurement of county services that are not currently subject to a public "bidding process," as that term is generally used, and would be inconsistent with current laws and policies pertaining to public service procurements.

- Public *bidding* is generally limited to procurements where the end product is (at least in theory) identical, regardless of who provides the services, most notably for construction contracts where the final product is pre-determined by the project specifications rather than by the competing bidders. As such, cost can be the sole determinative factor (on the assumption that the competing bidders meet the threshold qualifications as "responsible" bidders).

- A *bid* is simply a price quote, as distinguished from a service *proposal* that is evaluated based on components in addition to price, such as experience, qualifications, proposed schedule, proposed staffing, etc. That is why service contracts are generally awarded on the basis of *proposals* instead of *bids*, and based on more nuanced selection criteria that award to the lowest bidder. This is reflected in the unfettered discretion afforded under section 31000 to pay "such compensation as it [a county] deems proper." Public bidding is a problematic procurement method for special services where cost should not be the sole determining factor.

- Although the requirements are not specified, a "publicized, competitive bidding process" would presumably require 1) published notice in a newspaper of general circulation, 2) submission of bids, and 3) award to the lowest bidder without regard to any other qualifications.

- Eliminating a county's discretion to retain the best qualified consultants by limiting award to the low bidder is likely to result in a substantial and statewide reduction in the level of services provided if public services are provided by cheap, but underqualified, consultants.

- Finally, noticed public bidding is time-consuming and costly. Requiring public bidding for routine service or consulting contracts will add a new layer of costs to the services, which is inconsistent with the ostensible objective of "overall actual cost savings."

- **Unspecified "standards."** Subdiv. (a)(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 applicable nondiscrimination, affirmative action* ***standards****.*" (Emphasis added.)

This provision imposes mandatory contract terms, rather than a basis for comparing cost savings. While standards for the qualifications of individuals providing special services are important, they are not relevant to determining "overall actual cost savings." It is also unclear what "standards" are referenced. If this is intended to refer to existing laws, regulations, or ordinances prohibiting discrimination, the law is already applicable, regardless of whether it is referenced in the contract. Most county service contracts routinely include provisions pertaining to staffing qualifications and most also prohibit discrimination. This provision is unnecessary. In addition, as already noted, preferential treatment is illegal in California. (Cal. Const. Art. I, § 31, subd.(a).)

- **"Risk" of Rate Increases.** Subdiv. (a)(10): "*The potential for future economic risk to the county from potential contractor rate increases is minimal.*"

  This provision requires speculations as to potential rate increases. It is problematic both for requiring vague speculation with no objective metrics, and also because it erroneously assumes that there is a risk from rate increases. However, most county service contracts are not at "risk" for rate increases, either because 1) they are based on a lump sum price, 2) the hourly rates are fixed, or 3) the contract forbids any cost increases without board of supervisor approval. Like so many of the vague and ambiguous provisions in AB 1250, this provision will invite disputes and litigation, yet provide no added benefit to the public.

- **Restriction to "firms."** Subdiv. (a)(11): "*The contract is with a firm. 'Firm' means a corporation, partnership, nonprofit organization, or sole proprietorship.*"

  The public interest is unlikely to be served by limiting service contracts to "firms." The best qualified and/or most affordable service provider for a particular need may be a sole practitioner, particularly in remote or rural areas. This provision will impair cost-effective delivery of public services.

- **Subjective Balancing Test.** Subdiv. (a)(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.*

  The balancing test required by this provision is predicated on the assumption that there is a public interest "in having a particular function performed directly by county government [employees]." This assumption may be subject to legal challenge on the basis that it is inconsistent with the well-established public interest in cost-effective

procurement that results in retention of the best qualified service provider. Moreover, because this provision calls for a subjective determination, implementation and enforcement would be uncertain and subject to litigation.

- **Restricting Rights for Early Termination.** Subdiv. (a)(13): "*The contract shall provide that it may be terminated at any time by the county without the penalty if there is a material breach of the contract and notice is provided at least 30 days before termination.*"

  This provision, which imposes mandatory contract terms, is also unrelated to assessment of cost savings during a procurement process and will do more harm than good. Most county service contracts already contain effective and much more sophisticated termination provisions which often include the opportunity to cure and correct a breach, as well as a shorter time period for notice, both of which inure to the benefit of the county and the public its serves. Thirty days is an unreasonably long termination period for many services contracts—especially for those that are very short term to begin with. This requirement would impair a county's ability to craft termination terms that are more tailored to the particular procurement and to the county's specific needs.

- **Contracts Over $100,000.** Subdiv. (a)(14): "*If the contract is for personal services in excess of one hundred thousand dollars ($100,000) annually, all of the following shall occur:"*

  The disclosures required by this provision are not relevant to determining the "overall actual cost savings," and the sole effect of these intrusive requirements will be to discourage even highly qualified and reputable service providers from considering a county service agreement of this size. Reducing the pool of available providers will drive down competition, at the public's expense.

  - Subdiv. (a)(14)(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." (Emphasis added.)

The requirements under (A)(v) and (vi) mandating public disclosure of a private individual's compensation and benefits provided within an organization would force publication of private financial information, and would include *private individuals who may not have any direct involvement with the subject services*.

- There is no public benefit: this information is not relevant in any way to evaluating the merits or the cost efficiencies provided by a public service contract.

- This requirement is also subject to constitutional challenge for violating the "inalienable" right to privacy. (Cal. Const. Art. I, § 1.)

- County requests for qualifications (RFQs) or requests for proposals (RFPs) routinely seek background information similar to that required under items (i)-(iv). Counties are already well-versed in crafting RFQs and RFPs to elicit information relevant to the specific procurement.

- Mandating such needless and intrusive disclosures will place an undue burden on counties and on service providers.

- **Superfluous Contract Records Mandate.** Subdiv. (a)(14)(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 (i) the name 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 such 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."

The mandated contract requirements under (B) are unnecessary because most county service contracts already require the service provider to maintain records related to the services provided, and most specify a period of 3-4 years for retaining those records.

- In addition, the last sentence in this provision will be difficult to implement or enforce because there is no objective way to determine which records would "ordinarily be maintained by the county," or to interpret the scope and meaning of "the same functions."

- The provisions mandating that all county service contracts require monthly submission of the names and compensation for each individual providing services, without regard to the utility of the information or potential infringement on constitutionally protected individual privacy rights.

- In fact, for most service contracts, counties customarily require that invoices indicate the name, position, and hourly *rate* charged by each individual providing services. Requesting the *rate charged is* relevant to evaluating the invoice. Mandating disclosure of the salary or wages the consultant *pays* to each individual is not relevant to evaluation of the invoice or even to the relative value of the contract pricing as a whole.

  Example: If an environmental consulting firm is retained under a county services contract to prepare an environmental impact report for a large county project, the contract will likely require that each invoice provide a breakdown of the hours worked by each individual providing services along with the hourly rate agreed upon in the contract. Under this provision, the

consulting firm would be required to disclose, on a monthly basis, the salary and hourly wages paid to each private individual providing services, including each consultant and even administrative staff. This intrusive requirement offers no cost benefit to the public, is potentially unconstitutional, and likely to discourage local businesses from contracting with counties, thereby reducing competition to the detriment of the public.

- **Independent Performance Audits.** Subdiv. (a)(14)(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.*

  The mandated contract requirements under (C) are unnecessary because most county service agreements already specify the performance standards that are important to that county for that particular service agreement. These service agreements are managed and administered by knowledgeable county staff who are in a better position than an outside auditor to evaluate the service provider's performance relative to the county's needs and expectations. This provision will add cost to county service contracts with no added public benefit.

- **Audit Costs.** Subdiv. (a)(14)(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 their contract costs with the county."*

  Requiring the service provider to pay for the cost of the audit will only add to the cost for special services, since the cost for such an audit will inevitably be factored in to the cost for providing the services. In other words, the public, and not the service provider, will ultimately pay for the cost of the audit.

  - The final sentence attempts to eliminate the argument that the public will ultimately pay for the audit costs. However, even if a request for bids or proposals specifies that the proposed price cannot include the cost of the audit, it will not be possible to police or enforce this requirement. That cost will likely

be invisibly factored in to the markup for overhead and profit, regardless of whether the services are provided on a lump sum basis or on an hourly basis.

- The only effect of this added prohibition will be to provide another basis for a potential litigant (such as a competing service provider) to allege non-compliance with the provisions of this bill. Litigators and forensic accounting expert witnesses will profit from these proposed provisions. The public will not.

- **Legal Services.** Subdiv. (c)(7): "*The contractor will provide legal services to the county solely on a contingency fee or hourly basis.*" (Added language underlined.)

  This subsection was revised on June 21, 2017 as indicated by the underlined text. Effectively, this is now a *de facto* exclusion for nearly all county legal services contracts, which begs the question of which legal services are intended to be covered by this bill—*if any*. Most contract legal services are already provided on an hourly basis for services, and only rarely on a contingency basis (primarily bond counsel services which are contingent upon issuance of bonds). *All* county legal services, and other similarly specialized services, including those already governed by Government Code section 31000, et seq., should be entirely exempted from operation of this bill without regard to payment methodology, because of the specialized nature of those services, as already recognized under existing law.

- **Fire Protection Services.** Subdiv. (f): *"This section shall not be construed to authorize or otherwise permit the contracting out of fire protection services, other than 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."*

  This limited exception for two categories of inter-agency agreements for fire-protection services raises the question of what other types of agreements for provision of fire-protection services would nevertheless be subject to the burdensome procedural and contract requirements of AB 1250. ***This is a public safety issue.*** If this bill would imperil persons or property by placing roadblocks to a county's ability to contract for additional fire protection services—particularly during high hazard periods—then ***all*** contracts for fire protection services should be exempted from this bill.

- **Scope and Effective Date.** Subdiv. (g): *"This section shall apply to contracts for personal services currently or customarily performed by the employees of a county entered into, renewed, or extended on or after January 1, 2018."*

  As discussed above, this section applies to "personal services contracts" but there is *no definition for "personal services contracts."* Without a clear definition for this key term there is no way to objectively determine which contracts would be subject to these provisions and which would not.

  - Contracting parties—both the awarding agency and the service provider—would be deprived of certainty as to applicable procurement requirements at the outset, and this may result in over-application or under-application of the law. It will take years of costly litigation and appeals before the precise scope of this bill can be fully resolved by the courts.

  - As a matter of custom and practice, the term "personal services contracts" is generally used to refer to a wide variety of service contracts, including, but not limited to, the specialized services addressed in Government Code section 31000 et seq. Without a clear and precise definition, it is not possible to discern whether this bill applies only to those specialized service contracts encompassed by Government Code section 31000 et seq., or whether this has an even broader reach to *all* types of personal services contracts—unless expressly exempted.

Enforcement and Litigation:

AB 1250 does not specify how its provisions would be enforced, but as noted in the comments above, many of its provisions are likely to attract legal challenges. If an unsuccessful competitor for a county services contract could bring a lawsuit challenging the award of a contract based on a claimed violation of these statutes—in whole or in part—counties may find themselves mired in litigation between economic rivals. The threat of litigation could also arise from special interests seeking to oppose a county's action for other reasons. As such, this bill could steeply increase the cost to contract for any special services that might *arguably* be subject to the strictures of this bill—even contracts for services that the drafters did not intend to include within the ambit of this bill.

IV. CONCLUSION

In sum, I strongly urge opposition to AB 1250 because it will:

- Increase costs for county services with burdensome procurement requirements that are unprecedented under California law;
- Force counties to reduce or eliminate services, including public health and safety, to offset or avoid increases in pension and benefit costs;
- Harm local communities that depend on county services, with disproportionate impact on small and rural communities;
- Likely infringe on constitutionally protected privacy rights;
- Clog the courts with years of litigation to address the many subjective and ambiguous terms, all at taxpayer expense; and
- Hurt local businesses, including sole practitioners, with the many provisions that will either discourage or disallow a wide range of county service contracts.