

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE
Revised

House Bill 183

(Delegate Menes, *et al.*)

Health and Government Operations

Education, Health, and Environmental Affairs

Procurement - Services Rendered in Foreign Country

This bill authorizes procurement officers to consider whether a contract for services will be rendered by a contractor or subcontractor from a site that is outside the U.S. unless the contract for services is related to a proceeding or event outside the U.S.

Fiscal Summary

State Effect: None. This bill could be handled with existing resources.

Local Effect: None.

Small Business Effect: Potential minimal.

Analysis

Current Law: There are no prohibitions against the State procuring services performed outside the U.S., although the State is required to buy domestic steel for certain public works projects. Economic benefit to the State is a minor criterion in evaluating bids for State services, but is not a significant factor in awarding contracts.

Board of Public Works reviews all State contracts with a value greater than \$200,000. The board does not review University System of Maryland (USM) or Morgan State contracts. USM is exempt from most provisions of the State Procurement Article provided that it develops regulations that maintain the intent of the procurement code. USM is required to participate in the State's Minority Business Enterprise program.

Background: A human services contract with the state of New Jersey was recently renegotiated when the state learned that the vendor had moved the call center from Wisconsin to Mumbai, India. The renegotiated contract required the company to maintain the call center in the U.S., with the state paying for the additional cost that would be incurred using American workers instead of Indian outsourced labor. Contract costs increased \$73,800; 28% over the cost of operating the call center in India.

USM indicates that it procures service contracts from foreign vendors for two primary functions: (1) service contracts related to maintaining facilities and programs that are administered abroad by University of Maryland, University College; and (2) service contracts related to research that various system institutions are performing.

The National Conference of State Legislatures indicates the eight states (Maryland, Connecticut, Florida, Indiana, Michigan, North Carolina, New Jersey, and New York) have considered legislation similar to this bill. An independent review of the issue by a Baruch College professor consulting with the United Nations indicates that legislation on this topic is being considered in 11 states; and some press accounts of the trend estimate that 14 states have pending legislation to limit outsourcing of government contracts. Legislation in the states takes two main forms. First, like this bill, states are considering legislation to prohibit companies that receive state funds from recruiting employees or subcontractors from outside of the country. The second policy option would require that all workers involved in a state contract be U.S. citizens or legal aliens.

This bill and related policy concerns are also being addressed by employee associations and unions in the U.S., who are proposing affirmative consumer rights including: (1) disclosure of the city, state, and country in which a customer service employee is located; (2) the name or registered alias of the customer service employee; and (3) the name of the employer. These “Consumer Right to Know” policies also require that: (1) consumers be permitted to have their call routed to their country or state of origin; (2) speak to a qualified employee of the company/state agency with which they are conducting business; and (3) have none of their financial credit, and identification information, sent to any foreign country without their express written permission.

The federal government has, in recent years, reduced the number of H1-B visas available from 195,000 in 2000 to 65,000 in 2003. This number is the lowest permitted number of this category of entrance visas for membership in the World Trade Organization. The federal government has also restricted the use of L-1 visas to recruit workers from other countries by any domestic firm that laid off workers in the six months prior to applying for an L-1 visa.

Many articles and research in the past several years has focused on information technology (IT) services contracts, and specifically on the impact of exporting services to India. According to the National Association of Software and Service Companies, a trade association representing the Indian information technology industry, Indian exports of software and IT services to North America will total approximately \$8.5 billion in 2002-2003. The association notes that outsourcing contracts from state and federal governments in the U.S. account for less than 1% of the total software and business process outsourcing exports from India.

State Fiscal Effect: The Department of Budget and Management (DBM) is the primary procurement unit for service contracts. DBM indicates that the nature of service contracts typically requires them to be performed in or near Maryland. To the extent that consideration of foreign contractors and subcontractors leads to more contracts being awarded to domestic firms, procurement costs could increase. The Department of Legislative Services advises that the scope and magnitude of any cost increases cannot be reliably estimated.

USM estimates that any loss in the ability to enter into research contracts with foreign academicians would impact the ability of USM, and individual member institutions, to compete for academic research funds.

Small Business Effect: To the extent that procurement officers are more aware of the effect foreign outsourcing can have on Maryland small businesses, consideration of foreign outsourcing may lead to a greater level of small business participation in the procurement process and more opportunities for small businesses to receive State contracts that might otherwise have been awarded to foreign contractors or subcontractors.

Additional Information

Prior Introductions: In 2003, HB 176, a similar bill, was referred to the Health and Government Operations Committee.

Cross File: None.

Information Source(s): Department of General Services, Board of Public Works, University System of Maryland, Maryland Department of Transportation, Department of Budget and Management, National Association of Software and Service Companies, The Site Selection Online Insider, Department of Legislative Services

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