

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

House Bill 865

(Delegate Pena-Melnyk, *et al.*)

Health and Government Operations

Education, Health, and Environmental Affairs

State Procurement - Disclosure - Location of the Performance of Services

This bill prohibits a public employer, including the State and local governments, from knowingly entering into a contract for architectural, construction, engineering, or energy performance contract services with an estimated value of at least \$2.0 million unless the services are to be provided in the United States, subject to specified exemptions. It also requires bidders on any procurement contract with an estimated value of at least \$2.0 million to disclose whether the bidder or a subcontractor has plans, at the time the bid is submitted, to perform any services outside Maryland or the United States and, if so, where they will be performed and the reasons they are being performed outside the United States. The Board of Public Works (BPW) must adopt regulations defining specified terms used in the bill. The bill may not impair any existing obligation or contract.

Fiscal Summary

State Effect: Potential substantial increase in State expenditures (all funds) for procurement contracts, to the extent that contracts are awarded to bidders that provide services in the United States at higher costs than services can be provided in other countries. BPW can develop regulations with existing budgeted resources.

Local Effect: Local expenditures on service contracts for the four designated services increase, to the extent that local contracts are awarded to bidders that provide services in the United States at higher costs than services can be provided in other locations. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: Potential meaningful for small businesses that currently provide services outside the United States.

Analysis

Bill Summary: A public employer may knowingly contract for the services listed in the bill that are provided outside the United States if (1) the services are not available in the United States; (2) the price of services in the United States exceeds the price of services provided outside the country by an “unreasonable amount”; or (3) the quality of the services in the United States is “substantially less” than the quality of comparably priced services provided outside the United States. Regulations promulgated by BPW must define “unreasonable amount” and “substantially less.”

Current Law: Bidders or offerors are not required to disclose the location of the services they propose to provide during the bidding or proposal process. However, Chapter 314 of 2011 prohibits public employers in the State from knowingly purchasing, furnishing, or requiring employees to purchase or acquire uniforms or safety equipment and protective accessories that are manufactured outside of the United States, subject to similar exemptions as those provided in this bill.

Procurement preference can be given to resident bidders or offerors on State contracts only if a nonresident bidder or offeror with the lowest responsive bid or most advantageous proposal is from a state that gives preference to resident bidders.

The University System of Maryland, Morgan State University, and St. Mary’s College of Maryland are exempt from most provisions of State procurement law. In addition, the following agencies are exempted in whole or in part from most State procurement law. Any of their procurements that are subject to the exemption from State procurement law would not be subject to the bill’s requirements.

- Blind Industries and Services of Maryland;
- Maryland State Arts Council;
- Maryland Health and Higher Educational Facilities Authority;
- Department of Business and Economic Development;
- Maryland Food Center Authority;
- Maryland Public Broadcasting Commission;
- Maryland State Planning Council on Developmental Disabilities;
- Maryland Automobile Insurance Fund;
- Maryland Historical Trust;
- Rural Maryland Council;
- Maryland State Lottery Agency;
- Maryland Health Insurance Plan;
- Maryland Energy Administration;
- Maryland Developmental Disabilities Administration;

- Department of Natural Resources, for conservation service opportunities;
- Maryland Stadium Authority;
- Department of General Services, for the renovation of historic structures;
- State Retirement and Pension System;
- College Savings Plan of Maryland; and
- Chesapeake Bay Trust.

Background: Federal legislation has been introduced in the U.S. Congress that makes corporations that move call centers out of the United States ineligible for federal grants and loans for five years.

State Fiscal Effect: The bill allows the State to award service contracts of at least \$2.0 million for the four specified types of services to a bidder whose bid is not necessarily the lowest, if the bidder will provide the service in the country and the bidder with the lowest bid price will not. The exemption specifies only that the difference in price between the lowest bid price and the bid that is actually awarded the contract cannot be an “unreasonable amount,” as defined by BPW. To the extent that the bill requires the State to award contracts to bidders whose bid prices are not the lowest, State procurement costs (all funds) increase. Given that the bill applies to construction and construction-related services, which represent the largest component of State procurement costs, the overall effect may be substantial.

Small Business Effect: Small businesses that provide services outside the United States may be excluded from State procurement contracts for construction, architectural, engineering, and energy performance contract services with a value of at least \$2.0 million. The extent to which they are excluded depends on whether the difference between the cost of their services and the cost of similar services in the United States is an “unreasonable amount”, as defined by BPW. Conversely, businesses that provide those services in the United States benefit from a procurement preference.

Additional Information

Prior Introductions: None.

Cross File: SB 659 (Senator Pinsky, *et al.*) - Education, Health, and Environmental Affairs.

Information Source(s): Communication Workers of America, Department of Legislative Services

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