

SENATE BILL 712

P4, P2

4lr2621
CF 4lr2613

By: **Senators Feldman, Astle, Benson, Frosh, Klausmeier, Manno, Muse, Pugh,
Ramirez, and Rosapepe**

Introduced and read first time: January 31, 2014

Assigned to: Finance

A BILL ENTITLED

AN ACT concerning

State Personnel – Service Contracts – Procurement, Audit, and Reporting Requirements

FOR the purpose of altering the definition of “service contract”, for purposes of provisions of law governing procurement contracts for certain services, to include services provided to a unit in the Executive Branch of State government that has an independent personnel system and to repeal the limitation that the services be performed within a State–operated facility; requiring that certain service contracts be subject to an audit under certain provisions of law to determine compliance with certain requirements; requiring that certain audit findings be reported to the General Assembly and made available to the public; requiring that certain units submit certain information to a certain exclusive representative and the public under certain circumstances; providing that a contractor under a certain service agreement is subject to a certain audit; and generally relating to procurement, audit, and reporting requirements relating to service contracts.

BY repealing and reenacting, with amendments,
Article – State Personnel and Pensions
Section 13–401 and 13–405
Annotated Code of Maryland
(2009 Replacement Volume and 2013 Supplement)

BY repealing and reenacting, with amendments,
Article – State Finance and Procurement
Section 15–110
Annotated Code of Maryland
(2009 Replacement Volume and 2013 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – State Personnel and Pensions

13–401.

(a) In this subtitle the following words have the meanings indicated.

(b) “Service contract” means a procurement contract for services that:

(1) will be provided to a unit in the Executive Branch of State government, **INCLUDING A UNIT WITH AN INDEPENDENT PERSONNEL SYSTEM; AND**

(2) [will be performed within a State–operated facility; and

(3)] in the estimation of the procurement officer, will exceed an annual cost of \$100,000.

(c) “Services” has the meaning stated in § 11–101 of the State Finance and Procurement Article.

(d) “Unit” has the meaning stated in § 11–101 of the State Finance and Procurement Article.

13–405.

(a) A unit that seeks to enter into a service contract that is not exempt under § 13–403(c) or § 13–404(b) of this subtitle shall submit to the Department, **THE EXCLUSIVE REPRESENTATIVE OF THE EMPLOYEES WHO MAY BE AFFECTED BY THE SERVICE CONTRACT, AND, ON REQUEST, A MEMBER OF THE PUBLIC** the information required by this section.

(b) The unit shall submit a demonstration that the unit has taken formal and positive steps to consider alternatives to the service contract, including reorganization, reevaluation of service, and reevaluation of performance.

(c) (1) The unit shall submit calculations that:

(i) compare the cost of the service contract with the cost of using State employees; and

(ii) show savings to this State, over the duration of the service contract, of 20% of the contract or \$200,000, whichever is less.

(2) In calculating the cost comparison required by this subsection, a unit shall include:

- (i) direct costs, including fringe benefits;
- (ii) indirect overhead costs, including the proportional share of existing administrative salaries and benefits, rent, equipment costs, utilities, and materials, but only to the extent that those costs are attributed solely to the service in question and would not exist if the service were not performed by State employees;
- (iii) any continuing or transitional costs that would be directly associated with contracting for the services, including unemployment compensation and the cost of transitional services; and
- (iv) additional costs of performance of the services by State employees, including salaries and benefits of additional staff and the cost of additional space, equipment, and materials needed to perform the services.

(D) (1) SERVICE CONTRACTS SHALL BE SUBJECT TO AUDIT UNDER § 15-110 OF THE STATE FINANCE AND PROCUREMENT ARTICLE TO DETERMINE COMPLIANCE WITH THE REQUIREMENTS OF SUBSECTION (C) OF THIS SECTION.

(2) AUDIT FINDINGS FROM AN AUDIT CONDUCTED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE REPORTED, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, TO THE GENERAL ASSEMBLY AND MADE AVAILABLE TO THE PUBLIC.

[(d)] (E) (1) The unit shall submit a formal plan of assistance for all State employees who will be adversely affected by the service contract.

- (2) The plan of assistance shall include:
- (i) efforts to place affected employees in vacant positions in the unit or in another unit;
 - (ii) provisions in the service contract, if feasible, for the hiring by the contractor of displaced employees; and
 - (iii) prior notification to affected employees in accordance with § 13-218.1 of the State Finance and Procurement Article.

Article – State Finance and Procurement

15-110.

(a) The following persons are subject to an audit of books, accounts, or records:

(1) before the expiration of the period of retention under subsection (c) of this section, a person who submits cost and price information under § 13–220 of this article, if the books, accounts, or records being audited are reasonably connected with the cost and price information;

(2) a contractor or subcontractor under a procurement contract if, from an audit of a cost–type contract, the unit has reason to believe that costs have been inappropriately assigned to the cost–type contract from a fixed–price contract; **[and]**

(3) a contractor or subcontractor under a procurement contract that:

(i) was awarded by a method other than competitive sealed bids; and

(ii) is not a firm fixed–price procurement contract; **AND**

(4) A CONTRACTOR UNDER A SERVICE CONTRACT SUBJECT TO TITLE 13, SUBTITLE 4 OF THE STATE PERSONNEL AND PENSIONS ARTICLE.

(b) An audit under this section may be conducted by:

(1) the Department of Legislative Services;

(2) a unit engaged in procurement; or

(3) as authorized by law, any other unit.

(c) A person subject to an audit under subsection (a) of this section shall keep books, accounts, and records for:

(1) at least 3 years after the day on which the person receives final payment under a procurement contract or a subcontract; or

(2) if longer, the period required under the procurement contract.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2014.