

HOUSE BILL 183

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HB 176/03 - HGO

2004 Regular Session
4r0457

By: **Delegates Menes, Bobo, Gutierrez, Healey, Mandel, and Montgomery**
Introduced and read first time: January 21, 2004
Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement - Services Rendered in Foreign Country - Prohibition**

3 FOR the purpose of prohibiting a procurement unit from awarding a contract for
4 services to be rendered by certain persons from a site that is located outside the
5 United States; providing certain exceptions to the prohibition; establishing that
6 certain provisions of law apply to certain procurements; requiring certain notice
7 for certain invitations for bids and certain requests for proposals; and generally
8 relating to procurement for services to be rendered by persons from a site that is
9 located outside the United States.

10 BY repealing and reenacting, with amendments,
11 Article - State Finance and Procurement
12 Section 11-203(b)(1)(i), (d), and (e)(5)(i), 13-103(a), and 13-104(b)
13 Annotated Code of Maryland
14 (2001 Replacement Volume and 2003 Supplement)

15 BY repealing and reenacting, without amendments,
16 Article - State Finance and Procurement
17 Section 12-104
18 Annotated Code of Maryland
19 (2001 Replacement Volume and 2003 Supplement)

20 BY adding to
21 Article - State Finance and Procurement
22 Section 14-407
23 Annotated Code of Maryland
24 (2001 Replacement Volume and 2003 Supplement)

25 Preamble

26 WHEREAS, The State of Maryland consistently awards contracts for the
27 provision of services that are vital to its citizens; and

1 WHEREAS, A disturbing trend is developing where contractors and
2 subcontractors under service contracts awarded by state governments employ persons
3 in foreign countries to perform these vital services; and

4 WHEREAS, Persons performing these service contracts in foreign countries are
5 often paid wages that are significantly below the minimum wage in the United
6 States; and

7 WHEREAS, These cost-cutting measures are usurping jobs for Americans in
8 slow economic times; now, therefore,

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

11 **Article - State Finance and Procurement**

12 11-203.

13 (b) (1) (i) The following provisions of this Division II apply to each
14 procurement enumerated in subsection (a) of this section:

- 15 1. § 11-205 of this subtitle ("Fraud in procurement");
- 16 2. § 12-204 of this article ("Board approval for designated
17 contracts");
- 18 3. Title 12, Subtitle 2 of this article ("Supervision of Capital
19 Expenditures and Real Property Leases");
- 20 4. § 13-219 of this article ("Required clauses -
21 Nondiscrimination clause");
- 22 5. § 13-221 of this article ("Disclosures to Secretary of
23 State");
- 24 6. Title 16 of this article ("Debarment of Contractors"); [and]
- 25 7. Title 17 of this article ("Special Provisions - State and
26 Local Subdivisions"); AND
- 27 8. § 14-407 OF THIS ARTICLE ("FOREIGN CONTRACTS FOR
28 SERVICES").

29 (d) Except as provided in Title 14, Subtitle 3 AND § 14-407 of this article, this
30 Division II does not apply to the Board of Trustees of the State Retirement and
31 Pension System for:

- 32 (1) services of managers to invest the assets of the State Retirement and
33 Pension System, including real and personal property;

1 (2) expenditures to manage, maintain, and enhance the value of the
 2 assets of the State Retirement and Pension System in accordance with investment
 3 guidelines adopted by the Board of Trustees; and

4 (3) services related to the administration of the optional retirement
 5 program under Title 30 of the State Personnel and Pensions Article.

6 (e) (5) (i) Except as provided in paragraph (7) of this subsection, the
 7 following provisions of Division II of this article apply to the University:

- 8 1. § 11-205 of this subtitle ("Fraud in procurement");
- 9 2. § 11-205.1 of this subtitle ("Falsification of material
 10 facts");
- 11 3. § 13-219 of this article ("Required clauses -
 12 Nondiscrimination clause");
- 13 4. § 13-225 of this article ("Retainage");
- 14 5. Title 14, Subtitle 3 of this article ("Minority Business
 15 Participation");
- 16 6. Title 15, Subtitle 1 of this article ("Procurement Contract
 17 Administration");
- 18 7. § 15-226 of this article ("Prompt payment of
 19 subcontractors"); [and]
- 20 8. Title 16 of this article ("Debarment of Contractors"); AND
- 21 9. § 14-407 OF THIS ARTICLE ("FOREIGN CONTRACTS FOR
 22 SERVICES").

23 12-104.

24 (a) Except as provided in subsection (b) of this section, the Board may modify
 25 or waive any requirement under this Division II for a procurement contract or a class
 26 of procurement contracts that is to be performed entirely outside the United States, or
 27 any lease of real property outside this State, to the extent that:

- 28 (1) the purposes stated in § 11-201(a) of this article are fostered;
- 29 (2) the circumstances require the modification or waiver; and
- 30 (3) foreign or out-of-state contractors are expected to be involved in the
 31 procurement.

32 (b) The Board may not modify or waive the following requirements:

- 33 (1) § 14-404 of this article ("Coal in heating systems");

1 (2) Title 16, Subtitle 2 of this article ("Debarment from State and Local
2 Contracts -- Bribery"); and

3 (3) Title 17 of this article ("Special Provisions -- State and Local
4 Subdivisions").

5 13-103.

6 (a) (1) Whenever procurement is based on competitive sealed bids, a
7 procurement officer shall seek bids by issuing an invitation for bids.

8 (2) Subject to subsection (b) of this section, an invitation for bids shall
9 include:

10 (i) the specifications of the procurement contract;

11 (ii) whether the procurement contract will be awarded based on the
12 lowest bid price, the lowest evaluated bid price or, if the procurement is subject to §
13 11-202(3) of this article, the bid most favorable to the State;

14 (iii) if the procurement contract will be based on evaluated bid price,
15 the objective measurable criteria by which the lowest evaluated bid price will be
16 determined; [and]

17 (iv) if the Secretary of General Services, the Secretary of
18 Transportation, or the Chancellor of the University System of Maryland has so
19 designated, the small business preference; AND

20 (V) IF THE PROCUREMENT IS FOR SERVICES, A STATEMENT THAT A
21 CONTRACT FOR SERVICES TO BE RENDERED BY A CONTRACTOR OR SUBCONTRACTOR
22 FROM A SITE THAT IS OUTSIDE THE UNITED STATES WILL NOT BE AWARDED UNLESS
23 § 14-407(B) OF THIS ARTICLE IS SATISFIED.

24 13-104.

25 (b) (1) Whenever procurement is based on competitive sealed proposals, a
26 procurement officer shall seek proposals by issuing a request for proposals.

27 (2) A request for proposals shall include a statement [of]:

28 (i) OF the scope of the procurement contract;

29 (ii) OF the factors, including price, that will be used in evaluating
30 proposals; [and]

31 (iii) OF the relative importance of each factor; AND

32 (IV) IF THE PROCUREMENT IS FOR SERVICES, THAT A CONTRACT
33 FOR SERVICES TO BE RENDERED BY A CONTRACTOR OR SUBCONTRACTOR FROM A
34 SITE THAT IS OUTSIDE THE UNITED STATES WILL NOT BE AWARDED UNLESS §
35 14-407(B) OF THIS ARTICLE IS SATISFIED.

1 14-407.

2 (A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A UNIT MAY
3 NOT AWARD A PROCUREMENT CONTRACT FOR SERVICES TO BE RENDERED BY A
4 CONTRACTOR OR SUBCONTRACTOR FROM A SITE THAT IS OUTSIDE THE UNITED
5 STATES.

6 (B) A UNIT MAY AWARD A PROCUREMENT CONTRACT FOR SERVICES TO BE
7 RENDERED BY A CONTRACTOR OR SUBCONTRACTOR FROM A SITE THAT IS OUTSIDE
8 THE UNITED STATES:

9 (1) FOR SERVICES RELATED TO A PROCEEDING OR AN EVENT THAT
10 OCCURS OUTSIDE THE UNITED STATES; OR

11 (2) WITH BOARD APPROVAL.

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
13 effect October 1, 2004.