

HOUSE BILL 183

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HB 176/03 - HGO

2004 Regular Session  
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By: ~~Delegates Menes, Bobo, Gutierrez, Healey, Mandel, and Montgomery~~  
McHale, Montgomery, Hurson, Hammen, Benson, Boutin, Costa,  
Donoghue, Goldwater, Hubbard, McDonough, Morhaim, Murray, Oaks,  
Rosenberg, Rudolph, Smigiel, and V. Turner

Introduced and read first time: January 21, 2004  
Assigned to: Health and Government Operations

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Committee Report: Favorable with amendments  
House action: Adopted  
Read second time: March 16, 2004

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CHAPTER \_\_\_\_\_

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; authorizing a  
8 procurement unit to consider whether certain services are to be rendered by  
9 certain persons from a site that is located outside the United States when  
10 awarding certain service contracts except under certain circumstances; and  
11 generally relating to procurement for services to be rendered by persons from a  
12 site that is located outside the United States.

13 BY repealing and reenacting, with amendments,  
14 Article - State Finance and Procurement  
15 Section 11-203(b)(1)(i), (d), and (e)(5)(i), 13-103(a), and 13-104(b)  
16 Annotated Code of Maryland  
17 (2001 Replacement Volume and 2003 Supplement)

18 BY repealing and reenacting, without amendments,  
19 Article - State Finance and Procurement  
20 Section 12-104  
21 Annotated Code of Maryland  
22 (2001 Replacement Volume and 2003 Supplement)

1 BY adding to  
 2 Article - State Finance and Procurement  
 3 Section 14-407  
 4 Annotated Code of Maryland  
 5 (2001 Replacement Volume and 2003 Supplement)

6 **Preamble**

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

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

12 ~~WHEREAS, Persons performing these service contracts in foreign countries are~~  
 13 ~~often paid wages that are significantly below the minimum wage in the United~~  
 14 ~~States; and~~

15 ~~WHEREAS, These cost cutting measures are usurping jobs for Americans in~~  
 16 ~~slow economic times; now, therefore,~~

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

19 **Article - State Finance and Procurement**

20 11-203.

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

- 23 1. § 11-205 of this subtitle ("Fraud in procurement");
- 24 2. § 12-204 of this article ("Board approval for designated  
 25 contracts");
- 26 3. Title 12, Subtitle 2 of this article ("Supervision of Capital  
 27 Expenditures and Real Property Leases");
- 28 4. § 13-219 of this article ("Required clauses -  
 29 Nondiscrimination clause");
- 30 5. § 13-221 of this article ("Disclosures to Secretary of  
 31 State");
- 32 6. Title 16 of this article ("Debarment of Contractors"); [and]

1 Title 17 of this article ("Special Provisions - State and  
2 Local Subdivisions"); AND

3 § 14-407 OF THIS ARTICLE ("FOREIGN CONTRACTS FOR  
4 SERVICES").

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

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

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

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

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

17 1. § 11-205 of this subtitle ("Fraud in procurement");

18 2. § 11-205.1 of this subtitle ("Falsification of material  
19 facts");

20 3. § 13-219 of this article ("Required clauses -  
21 Nondiscrimination clause");

22 4. § 13-225 of this article ("Retainage");

23 5. Title 14, Subtitle 3 of this article ("Minority Business  
24 Participation");

25 6. Title 15, Subtitle 1 of this article ("Procurement Contract  
26 Administration");

27 7. § 15-226 of this article ("Prompt payment of  
28 subcontractors"); [and]

29 8. Title 16 of this article ("Debarment of Contractors"); AND

30 9. § 14-407 OF THIS ARTICLE ("FOREIGN CONTRACTS FOR  
31 SERVICES").

32 12-104.

33 (a) Except as provided in subsection (b) of this section, the Board may modify  
34 or waive any requirement under this Division II for a procurement contract or a class

1 of procurement contracts that is to be performed entirely outside the United States, or  
 2 any lease of real property outside this State, to the extent that:

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

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

- 8 (1) § 14-404 of this article ("Coal in heating systems");  
 9 (2) Title 16, Subtitle 2 of this article ("Debarment from State and Local  
 10 Contracts -- Bribery"); and  
 11 (3) Title 17 of this article ("Special Provisions -- State and Local  
 12 Subdivisions").

13 13-103.

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

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

- 18 (i) the specifications of the procurement contract;  
 19 (ii) whether the procurement contract will be awarded based on the  
 20 lowest bid price, the lowest evaluated bid price or, if the procurement is subject to §  
 21 11-202(3) of this article, the bid most favorable to the State;  
 22 (iii) if the procurement contract will be based on evaluated bid price,  
 23 the objective measurable criteria by which the lowest evaluated bid price will be  
 24 determined; [and]

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

28 (V) IF THE PROCUREMENT IS FOR SERVICES, A STATEMENT THAT  
 29 A, IN AWARDING A CONTRACT FOR SERVICES, A UNIT MAY CONSIDER WHETHER THE  
 30 CONTRACT FOR SERVICES IS TO BE RENDERED BY A CONTRACTOR OR  
 31 SUBCONTRACTOR FROM A SITE THAT IS OUTSIDE THE UNITED STATES WILL NOT BE  
 32 AWARDED UNLESS IN ACCORDANCE WITH § 14-407(B) OF THIS ARTICLE IS SATISFIED.

1 13-104.

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

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

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

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

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

9 (IV) IF THE PROCUREMENT IS FOR SERVICES, THAT ~~A, IN AWARDING~~  
10 ~~A CONTRACT FOR SERVICES, A UNIT MAY CONSIDER WHETHER THE CONTRACT FOR~~  
11 ~~SERVICES IS TO BE RENDERED BY A CONTRACTOR OR SUBCONTRACTOR FROM A SITE~~  
12 ~~THAT IS OUTSIDE THE UNITED STATES WILL NOT BE AWARDED UNLESS IN~~  
13 ~~ACCORDANCE WITH § 14-407(B) OF THIS ARTICLE IS SATISFIED.~~

14 14-407.

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

19 ~~(B) A UNIT MAY AWARD A PROCUREMENT CONTRACT FOR SERVICES TO BE~~  
20 ~~RENDERED BY A CONTRACTOR OR SUBCONTRACTOR FROM A SITE THAT IS OUTSIDE~~  
21 ~~THE UNITED STATES:~~

22 ~~(1) FOR SERVICES RELATED TO A PROCEEDING OR AN EVENT THAT~~  
23 ~~OCCURS OUTSIDE THE UNITED STATES; OR~~

24 ~~(2) WITH BOARD APPROVAL. IN AWARDING A PROCUREMENT CONTRACT~~  
25 ~~FOR SERVICES, A UNIT MAY CONSIDER WHETHER A CONTRACTOR OR~~  
26 ~~SUBCONTRACTOR WILL RENDER THE SERVICES, IN WHOLE OR IN PART, FROM A SITE~~  
27 ~~THAT IS OUTSIDE THE UNITED STATES.~~

28 ~~(B) IF A CONTRACT IS RELATED TO A PROCEEDING OR AN EVENT THAT~~  
29 ~~OCCURS OUTSIDE THE UNITED STATES, A UNIT MAY NOT CONSIDER WHETHER THE~~  
30 ~~CONTRACTOR OR SUBCONTRACTOR WILL RENDER THE SERVICES FROM A SITE THAT~~  
31 ~~IS OUTSIDE THE UNITED STATES.~~

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

