

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

Senate Bill 362 (Senator Pinsky, *et al.*)
Education, Health, and Environmental Affairs

**Procurement - Contracts for Services Rendered Outside the United States -
Prohibitions**

This bill prohibits a State agency from awarding a procurement contract for services to be rendered by a contractor or subcontractor from a site outside the U.S. Contractors are required to certify that no work will be performed outside the U.S. The bill also provides for the State to receive damages if contractors or subcontractors violate the provisions of this bill.

Fiscal Summary

State Effect: State expenditures for services contracts would increase due to the inability of contractors or subcontractors to perform any services outside the U.S. Higher education revenues would decrease significantly due to the inability of the University System of Maryland (USM) to effectively compete for research funding.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill provides that the State may recover damages equal to the amount paid by the unit for the percentage of work performed outside the U.S. Units may terminate contracts if a contractor shifts any work outside the U.S. Units are authorized to bring civil actions in State or federal court to compel action under the provisions of this bill. The bill also requires courts to award reasonable attorney fees and costs to units.

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. The Board of Public Works (BPW) may modify or waive any portion of State procurement law for a contract or class of procurement contracts that is performed entirely outside the U.S. provided that the purposes of procurement listed in 11-201(a) of the State Finance and Procurement Article are maintained and the circumstances require the waiver. Economic benefit to the State is a minor criterion in evaluating bids for State services and is not a significant factor in awarding contracts.

BPW reviews all State contracts with a value greater than \$200,000. BPW does not review 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 (MBE) 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 (UMUC); and (2) service contracts related to research that various system institutions are performing.

UMUC provides courses in Europe and Asia. UMUC has awarded contracts for services abroad including accounting, legal services, and information technology. The Asia program offers courses in Australia, Guam, Okinawa, Japan, South Korea, the Marshall Islands, Singapore, and Thailand. UMUC Europe offers courses in dozens of locations and maintains offices in London, England and Heidelberg and Mannheim, Germany. These programs may involve service contracts in-country for instruction and other programmatic needs. In fiscal 2003, UMUC's overseas divisions offered classes at 123 locations in 24 countries throughout the world, enrolling 50,911 students in undergraduate and graduate programs in Asia and Europe.

UMUC is also a foreign contractor in Asia and Europe, providing undergraduate courses for the U.S. Department of Defense. The college has been awarded a 10-year contract (beginning in fiscal 2004) with the U.S. Army Contracting Command Europe offering courses and programs at 87 military sites across Europe and the Middle East. This 10-

year contract replaces UMUC's previous five-year contract to provide these services to military personnel in Europe.

There are varying estimates of the number of states considering legislation related to international outsourcing with publicly funded contracts. The National Conference of State Legislatures (NCSL) indicates that eight states (Maryland, Connecticut, Florida, Indiana, Michigan, North Carolina, New Jersey, and New York); a Baruch College professor consulting with the United Nations notes 11 states; and some press accounts of the trend estimate 14 states have pending legislation to limit outsourcing of government contracts. None of the eight states mentioned by NCSL have passed the legislation yet.

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 disclosure of (1) 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.

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. The department estimates that some additional administrative cost is possible to verify that contractors and subcontractors are vending services inside the U.S.

UMUC indicates it would be required to utilize an American vendor for services to be performed on campuses in Europe and Asia. The bill may effectively prohibit UMUC from providing any of its international programs. Additionally, UMUC is developing 24-hour per day (24/7) student services on a worldwide scale. The university currently has its student services infrastructure in the U.S., but UMUC may need to contract abroad to fully implement 24/7 student services globally.

USM also responded that the prohibition may encompass contracts with foreign researchers that partner with USM professors and institutions. 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.

The Department of Legislative Services concurs that USM would be precluded from entering into some service contracts under the provisions of this bill. The significant State impact of the bill is diffuse and hard to measure, but bears directly on the ability of USM to compete in the realm of academic research that requires foreign expertise. USM would be unable to compete for research funding and would forego substantial revenue from research grants.

Small Business Effect: Minimal.

Additional Information

Prior Introductions: None.

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, Department of Legislative Services

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lc/hlb

Analysis by: Daniel P. Tompkins

Direct Inquiries to:
(410) 946-5510
(301) 970-5510