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Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

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

4 FOR the purpose of prohibiting a procurement unit from awarding a contract for
5 services to be rendered by certain persons from a site that is located outside the
6 United States if the services to be rendered from a site that is located outside
7 the United States exceed a certain percentage under certain circumstances;
8 requiring a certain contractor or subcontractor to certify that at least a certain
9 amount of certain services will be performed in the United States; requiring a
10 certain contractor or subcontractor to give certain notice; requiring certain
11 services that are to be rendered from a site that is located outside the United
12 States be merely incidental to the main purpose of the contract under certain
13 circumstances; requiring a unit to make a certain determination under certain
14 circumstances; requiring a contractor or subcontractor to pay certain damages
15 to a certain procurement unit under certain circumstances; requiring a unit to
16 terminate a certain contract under certain circumstances; authorizing a
17 procurement unit to bring a certain civil action in a certain court under certain
18 circumstances; requiring a certain court to award reasonable attorney's fees and
19 costs under certain circumstances; providing that a provision that authorizes
20 the Board of Public Works to modify or waive certain requirements for certain
21 procurement contracts that are to be performed outside the United States or
22 certain leases of real property outside the State does not apply to certain
23 contracts for services; establishing that certain provisions of law apply to certain
24 procurement; exempting the University of Maryland University College from a
25 certain provision of law under certain circumstances; and generally relating to
26 procurement for services to be rendered by persons from a site that is located
27 outside the United States.

28 BY repealing and reenacting, with amendments,
29 Article - State Finance and Procurement
30 Section 11-203(b)(1), (d), and (e)(5)(i) and 12-104
31 Annotated Code of Maryland
32 (2001 Replacement Volume and 2004 Supplement)

1 BY adding to
2 Article - State Finance and Procurement
3 Section 11-203(e)(8) and 14-407
4 Annotated Code of Maryland
5 (2001 Replacement Volume and 2004 Supplement)

6 Preamble

7 WHEREAS, The State of Maryland procures services in part through contracts
8 with private vendors; and

9 WHEREAS, Increasingly private vendors carry out these services, or
10 subcontract or otherwise procure these services, from a location outside the United
11 States; and

12 WHEREAS, Such international outsourcing exacerbates unemployment and
13 workforce dislocation and deprives Maryland residents of job opportunities, including
14 industries and jobs this State has expended resources to attract; and

15 WHEREAS, International outsourcing erodes State and local revenues by
16 drawing jobs and income away from the State; and

17 WHEREAS, International outsourcing additionally may provide less privacy
18 protections for State residents whose personal information may, in the course of
19 service delivery, be transmitted to locations outside the United States; now, therefore,

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

22 **Article - State Finance and Procurement**

23 11-203.

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

26 (i) § 11-205 of this subtitle ("Fraud in procurement");

27 (ii) § 12-204 of this article ("Board approval for designated
28 contracts");

29 (iii) Title 12, Subtitle 2 of this article ("Supervision of Capital
30 Expenditures and Real Property Leases");

31 (iv) § 13-219 of this article ("Required clauses - Nondiscrimination
32 clause");

33 (v) § 13-221 of this article ("Disclosures to Secretary of State");

- 1 (vi) Title 16 of this article ("Debarment of Contractors"); [and]
 2 (vii) Title 17 of this article ("Special Provisions - State and Local
 3 Subdivisions"); AND
 4 (VIII) § 14-407 OF THIS ARTICLE ("FOREIGN CONTRACTS FOR
 5 SERVICES").

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

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

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

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

16 (4) services related to the administration of the Postretirement Health
 17 Benefits Trust Fund.

18 (e) (5) (i) Except as provided in [paragraph (7)] PARAGRAPHS (7) AND (8)
 19 of this subsection, the following provisions of Division II of this article apply to a
 20 University:

- 21 1. § 11-205 of this subtitle ("Fraud in procurement");
 22 2. § 11-205.1 of this subtitle ("Falsification of material
 23 facts");
 24 3. § 13-219 of this article ("Required clauses -
 25 Nondiscrimination clause");
 26 4. § 13-225 of this article ("Retainage");
 27 5. Title 14, Subtitle 3 of this article ("Minority Business
 28 Participation");
 29 6. Title 15, Subtitle 1 of this article ("Procurement Contract
 30 Administration");
 31 7. § 15-226 of this article ("Prompt payment of
 32 subcontractors"); [and]
 33 8. Title 16 of this article ("Debarment of Contractors"); AND

1 9. § 14-407 OF THIS ARTICLE ("FOREIGN CONTRACTS FOR
2 SERVICES").

3 (8) SECTION 14-407 OF THIS ARTICLE ("FOREIGN CONTRACTS FOR
4 SERVICES") DOES NOT APPLY TO ANY PROCUREMENT BY THE UNIVERSITY OF
5 MARYLAND UNIVERSITY COLLEGE FOR ITS OVERSEAS PROGRAMS.

6 12-104.

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

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

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

- 16 (1) § 14-404 of this article ("Coal in heating systems");
17 (2) § 14-407 OF THIS ARTICLE ("FOREIGN CONTRACTS FOR SERVICES");
18 (3) Title 16, Subtitle 2 of this article ("Debarment from State and Local
19 Contracts -- Bribery"); and
20 [(3)] (4) Title 17 of this article ("Special Provisions -- State and Local
21 Subdivisions").

22 14-407.

23 (A) A UNIT MAY NOT AWARD A PROCUREMENT CONTRACT FOR SERVICES IF
24 MORE THAN 5% OF THE SERVICES PROVIDED BY A CONTRACTOR OR
25 SUBCONTRACTOR WILL BE RENDERED FROM A SITE THAT IS OUTSIDE THE UNITED
26 STATES.

27 (B) (1) EACH CONTRACTOR OR SUBCONTRACTOR SUBMITTING A BID OR
28 PROPOSAL TO PROVIDE SERVICES FOR THE STATE SHALL CERTIFY THAT AT LEAST
29 95% OF THE SERVICES WILL BE PERFORMED IN THE UNITED STATES.

30 (2) IF ANY SERVICES PROVIDED BY A CONTRACTOR OR
31 SUBCONTRACTOR WILL BE RENDERED FROM A SITE OUTSIDE THE UNITED STATES,
32 ALONG WITH THE BID OR PROPOSAL, THE CONTRACTOR OR SUBCONTRACTOR SHALL
33 GIVE THE UNIT WRITTEN NOTICE OF THE PERCENTAGE AND TYPE OF SERVICES
34 THAT WILL BE RENDERED FROM A SITE OUTSIDE THE UNITED STATES.

1 (3) ALL SERVICES RENDERED FROM A SITE OUTSIDE THE UNITED
2 STATES MUST BE MERELY INCIDENTAL TO THE MAIN PURPOSE OF THE CONTRACT.

3 (4) IF THE UNIT DETERMINES THAT THE SERVICES TO BE RENDERED
4 FROM A SITE OUTSIDE THE UNITED STATES ARE NOT MERELY INCIDENTAL TO THE
5 MAIN PURPOSE OF THE CONTRACT, THEN THE UNIT MAY NOT AWARD THE
6 CONTRACT TO THE CONTRACTOR OR SUBCONTRACTOR.

7 (C) IF, DURING THE LIFE OF THE CONTRACT, THE CONTRACTOR OR
8 SUBCONTRACTOR SHIFTS WORK OUTSIDE THE UNITED STATES SO THAT MORE THAN
9 5% OF THE SERVICES WILL BE RENDERED FROM A SITE OUTSIDE THE UNITED
10 STATES OR IF THE UNIT DETERMINES THAT ANY OF THE SERVICES THAT ARE
11 RENDERED FROM A SITE OUTSIDE THE UNITED STATES ARE NOT MERELY
12 INCIDENTAL:

13 (1) THE CONTRACTOR OR SUBCONTRACTOR SHALL PAY DAMAGES TO
14 THE UNIT IN AN AMOUNT EQUAL TO THE AMOUNT PAID BY THE UNIT FOR THE
15 PERCENTAGE OF WORK ABOVE 5% PERFORMED OUTSIDE THE UNITED STATES; AND

16 (2) THE UNIT SHALL TERMINATE THE CONTRACT FOR
17 NONCOMPLIANCE.

18 (D) (1) THE UNIT MAY BRING A CIVIL ACTION IN STATE OR FEDERAL COURT
19 TO COMPEL ENFORCEMENT UNDER THIS SECTION.

20 (2) THE COURT SHALL AWARD REASONABLE ATTORNEY'S FEES AND
21 COSTS TO THE UNIT.

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
23 effect October 1, 2005.