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Committee Report: Favorable with amendments  
Senate action: Adopted with floor amendments  
Read second time: April 1, 2005

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CHAPTER \_\_\_\_\_

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 procurements~~; exempting constituent institutions of the University  
25 System of Maryland ~~University College~~ from a certain provision of law under  
26 certain circumstances; exempting the Port of Baltimore and the Board of

1 Trustees of the Maryland Teachers and State Employees Supplemental  
2 Retirement Plans from certain procurement prohibitions; and generally relating  
3 to procurement for services to be rendered by persons from a site that is located  
4 outside the United States.

5 BY repealing and reenacting, with amendments,  
6 Article - State Finance and Procurement  
7 Section 11-203(b)(1), ~~(d)~~, and (e)(5)(i) and 12-104  
8 Annotated Code of Maryland  
9 (2001 Replacement Volume and 2004 Supplement)

10 BY repealing and reenacting, without amendments,  
11 Article - State Finance and Procurement  
12 Section 11-203(d)  
13 Annotated Code of Maryland  
14 (2001 Replacement Volume and 2004 Supplement)

15 BY adding to  
16 Article - State Finance and Procurement  
17 Section 11-203(e)(8) and 14-407  
18 Annotated Code of Maryland  
19 (2001 Replacement Volume and 2004 Supplement)

20 Preamble

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

23 WHEREAS, Increasingly private vendors carry out these services, or  
24 subcontract or otherwise procure these services, from a location outside the United  
25 States; and

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

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

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

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

1 **Article - State Finance and Procurement**

2 11-203.

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

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

6 (ii) § 12-204 of this article ("Board approval for designated  
7 contracts");8 (iii) Title 12, Subtitle 2 of this article ("Supervision of Capital  
9 Expenditures and Real Property Leases");10 (iv) § 13-219 of this article ("Required clauses - Nondiscrimination  
11 clause");

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

13 (vi) Title 16 of this article ("Debarment of Contractors"); [and]

14 (vii) Title 17 of this article ("Special Provisions - State and Local  
15 Subdivisions"); AND16 (VIII) § 14-407 OF THIS ARTICLE ("FOREIGN CONTRACTS FOR  
17 SERVICES").18 (d) Except as provided in Title 14, Subtitle 3 ~~AND § 14-407~~ of this article, this  
19 Division II does not apply to the Board of Trustees of the State Retirement and  
20 Pension System for:21 (1) services of managers to invest the assets of the State Retirement and  
22 Pension System, including real and personal property;23 (2) expenditures to manage, maintain, and enhance the value of the  
24 assets of the State Retirement and Pension System in accordance with investment  
25 guidelines adopted by the Board of Trustees;26 (3) services related to the administration of the optional retirement  
27 program under Title 30 of the State Personnel and Pensions Article; and28 (4) services related to the administration of the Postretirement Health  
29 Benefits Trust Fund.30 (e) (5) (i) Except as provided in [paragraph (7)] PARAGRAPHS (7) AND (8)  
31 of this subsection, the following provisions of Division II of this article apply to a  
32 University:

33 1. § 11-205 of this subtitle ("Fraud in procurement");

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

15 (8) SECTION 14-407 OF THIS ARTICLE ("FOREIGN CONTRACTS FOR  
16 SERVICES") DOES NOT APPLY TO ANY PROCUREMENT BY ~~THE UNIVERSITY OF~~  
17 ~~MARYLAND UNIVERSITY COLLEGE~~ ANY CONSTITUENT INSTITUTION OF THE  
18 UNIVERSITY SYSTEM OF MARYLAND FOR ITS OVERSEAS PROGRAMS OR ITS  
19 RESEARCH PROGRAMS.

20 12-104.

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

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

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

- 30 (1) § 14-404 of this article ("Coal in heating systems");
- 31 (2) § 14-407 OF THIS ARTICLE ("FOREIGN CONTRACTS FOR SERVICES");
- 32 (3) Title 16, Subtitle 2 of this article ("Debarment from State and Local  
33 Contracts -- Bribery"); and

1 [(3)] (4) Title 17 of this article ("Special Provisions -- State and Local  
2 Subdivisions").

3 14-407.

4 (A) THIS SECTION DOES NOT APPLY TO ANY PROCUREMENT BY THE PORT OF  
5 BALTIMORE OR THE BOARD OF TRUSTEES OF THE MARYLAND TEACHERS AND STATE  
6 EMPLOYEES SUPPLEMENTAL RETIREMENT PLANS.

7 ~~(A)~~ (B) A UNIT MAY NOT AWARD A PROCUREMENT CONTRACT FOR SERVICES  
8 IF MORE THAN 5% OF THE SERVICES PROVIDED BY A CONTRACTOR OR  
9 SUBCONTRACTOR WILL BE RENDERED FROM A SITE THAT IS OUTSIDE THE UNITED  
10 STATES.

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

14 (2) IF ANY SERVICES PROVIDED BY A CONTRACTOR OR  
15 SUBCONTRACTOR WILL BE RENDERED FROM A SITE OUTSIDE THE UNITED STATES,  
16 ALONG WITH THE BID OR PROPOSAL, THE CONTRACTOR OR SUBCONTRACTOR SHALL  
17 GIVE THE UNIT WRITTEN NOTICE OF THE PERCENTAGE AND TYPE OF SERVICES  
18 THAT WILL BE RENDERED FROM A SITE OUTSIDE THE UNITED STATES.

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

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

25 ~~(C)~~ (D) IF, DURING THE LIFE OF THE CONTRACT, THE CONTRACTOR OR  
26 SUBCONTRACTOR SHIFTS WORK OUTSIDE THE UNITED STATES SO THAT MORE THAN  
27 5% OF THE SERVICES WILL BE RENDERED FROM A SITE OUTSIDE THE UNITED  
28 STATES OR IF THE UNIT DETERMINES THAT ANY OF THE SERVICES THAT ARE  
29 RENDERED FROM A SITE OUTSIDE THE UNITED STATES ARE NOT MERELY  
30 INCIDENTAL:

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

34 (2) THE UNIT SHALL TERMINATE THE CONTRACT FOR  
35 NONCOMPLIANCE.

36 ~~(D)~~ (E) (1) THE UNIT MAY BRING A CIVIL ACTION IN STATE OR FEDERAL  
37 COURT TO COMPEL ENFORCEMENT UNDER THIS SECTION.

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

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