Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

House Bill 510 (Delegate Menes, *et al.*)
Health and Government Operations

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

This bill prohibits a State agency from awarding a procurement contract for services if more that 5% of the service will be rendered by a contractor or subcontractor from a site outside the United States. Contractors are required to certify that at least 95% of the services will be performed inside the United States. The bill also provides for the State to receive damages if contractors or subcontractors violate the provisions of the bill.

Fiscal Summary

State Effect: State expenditures for service contracts could increase due to the inability of contractors or subcontractors to perform more than 5% of the services outside the United States. Higher education revenues could 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 United States. Units may terminate contracts if a contractor shifts more than 5% of the services outside the United States. 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.

The bill explicitly exempts the University of Maryland, University College from the requirements of this bill with respect to its overseas programs. Agencies exempt from Division II of the State procurement laws would still be required to comply with the provisions of the bill.

Current Law: There are no prohibitions against the State procuring services performed outside the United States, 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 United States 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.

Background: The National Conference of State Legislatures (NCSL) indicates that 36 states have recent or pending legislation to limit outsourcing of government contracts. Only Tennessee has passed legislation allowing a price preference for State contracts to companies using domestic workers for call centers or information technology (IT) work.

The federal government has, in recent years, reduced the number of H1-B visas available from 195,000 in 2001 to 65,000 in 2004. This number is the lowest permitted number of this category of entrance visas for specialized employment. 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. The department estimates that some additional administrative cost is possible to verify that contractors and subcontractors are vending services inside the United States. DBM also indicates that many IT service contracts (*e.g.*, software development, software maintenance, international phone services, satellite communications) would be restricted if not barred by the restrictions in this bill.

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.

Additional Information

Prior Introductions: SB 362, a similar bill, was introduced at the 2004 session. No action was taken by the Education, Health, and Environmental Affairs Committee.

Cross File: SB 402 (Senator Pinsky, *et al.*) – Education, Health, and Environmental Affairs.

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

Fiscal Note History: First Reader - February 22, 2005
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