

Chapter 559

(Senate Bill 659)

AN ACT concerning

State Procurement – ~~Preference and~~ Disclosure of the Relocation of Jobs to a Foreign Country – Location of the Performance of Services

FOR the purpose of ~~requiring a prospective bidder or offeror to disclose certain information to the Department of General Services concerning plans to relocate jobs to a foreign country when submitting a bid or an offer to a unit of State government; requiring a contractor to notify the Department of certain job relocations within a certain time period; prohibiting a certain contractor from receiving certain benefits or incentives from the State under certain circumstances; requiring a certain contractor to repay certain incentives and benefits within a certain time period; requiring, under certain circumstances, a bidder to disclose certain information regarding whether services required under a procurement contract will be performed outside the State or the United States; prohibiting a public employer from knowingly contracting for certain services unless the services are to be provided in the United States, except under certain circumstances; requiring the Board of Public Works to adopt certain regulations; providing for the application of this Act; providing that this Act may not impair any existing obligation or contract right; defining a certain term~~ certain terms; and generally relating to State procurement and ~~the disclosure of certain information concerning the relocation of jobs to foreign countries~~ preferences and disclosures regarding the location of the performance of services required under procurement contracts.

BY adding to

Article – State Finance and Procurement

Section ~~11-401 through 11-403 to be under the new subtitle “Subtitle 4. Disclosure of the Relocation of Jobs to a Foreign Country” 14-413~~ 12-110

Annotated Code of Maryland

(2009 Replacement Volume and 2011 Supplement)

Preamble

WHEREAS, The State of Maryland spends significant taxpayer dollars to provide goods and services to maintain and operate the State; and

WHEREAS, Over 14,000,000 workers in the United States remain unemployed, including over 200,000 Maryland residents; and

WHEREAS, When the State of Maryland spends taxpayer dollars, it should collect relevant employment information from its contractors and vendors so as to aid industries with the potential to employ more Maryland residents; and

WHEREAS, The State of Maryland must determine if its taxpayer dollars for goods and services result in contractors and vendors exporting jobs outside the United States; and

WHEREAS, Location disclosure legislation is necessary to ensure that taxpayer dollars are invested in a way that helps struggling Maryland families and, in turn, spurs economic recovery in the State of Maryland and the United States; now, therefore,

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

Article – State Finance and Procurement

~~14-413~~ 12-110.

(A) (1) IN THIS SECTION, “PUBLIC EMPLOYER” THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “PUBLIC EMPLOYER” MEANS:

~~(1)~~ **(I) A UNIT;**

~~(2)~~ **(II) A COUNTY;**

~~(3)~~ **(III) A MUNICIPALITY;**

~~(4)~~ **(IV) A COUNTY BOARD OF EDUCATION; OR**

~~(5)~~ **(V) A SPECIAL TAXING DISTRICT.**

(3) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, “SERVICES” HAS THE MEANING STATED IN § 11-101(T) OF THIS ARTICLE.

(II) “SERVICES” INCLUDES:

1. CONSTRUCTION-RELATED SERVICES;

2. ARCHITECTURAL SERVICES;

3. ENGINEERING SERVICES; OR

4. ENERGY PERFORMANCE CONTRACT SERVICES.

(B) THIS SECTION APPLIES TO A PROCUREMENT CONTRACT WITH AN ESTIMATED VALUE OF \$2,000,000 OR MORE.

(C) IN RESPONSE TO A SOLICITATION FOR A PROCUREMENT CONTRACT ISSUED BY A PUBLIC EMPLOYER, A BIDDER SHALL DISCLOSE TO THE PUBLIC EMPLOYER THE FOLLOWING:

(1) WHETHER THE BIDDER ~~ANTICIPATES THAT THE BIDDER~~ OR ANY CONTRACTOR ~~THAT~~ THE BIDDER WILL SUBCONTRACT WITH TO PERFORM THE CONTRACT ~~WILL~~ HAS PLANS, AT THE TIME THE BID IS SUBMITTED, TO PERFORM ANY SERVICES REQUIRED UNDER THE CONTRACT OUTSIDE ~~THE STATE OR~~ THE UNITED STATES; AND

(2) IF SERVICES REQUIRED UNDER THE CONTRACT ARE ANTICIPATED TO BE PERFORMED OUTSIDE ~~THE STATE OR~~ THE UNITED STATES:

(I) WHERE THE SERVICES WILL BE PERFORMED; AND

(II) THE REASONS WHY IT IS NECESSARY OR ADVANTAGEOUS TO PERFORM THE SERVICES OUTSIDE ~~THE STATE OR~~ THE UNITED STATES.

(D) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A PUBLIC EMPLOYER MAY NOT KNOWINGLY CONTRACT FOR THE FOLLOWING SERVICES UNLESS THE SERVICES ARE TO BE PROVIDED IN THE UNITED STATES:

(I) ARCHITECTURAL SERVICES;

(II) CONSTRUCTION SERVICES;

(III) ENGINEERING SERVICES; OR

(IV) ENERGY PERFORMANCE CONTRACT SERVICES.

(2) A PUBLIC EMPLOYER MAY CONTRACT FOR SERVICES LISTED IN PARAGRAPH (1) OF THIS SUBSECTION THAT ARE PROVIDED OUTSIDE THE UNITED STATES, IF:

(I) THE SERVICES ARE NOT AVAILABLE IN THE UNITED STATES;

(II) THE PRICE OF THE SERVICES IN THE UNITED STATES EXCEEDS BY AN UNREASONABLE AMOUNT THE PRICE OF SERVICES PROVIDED OUTSIDE THE UNITED STATES; OR

(III) THE QUALITY OF THE SERVICES IN THE UNITED STATES IS SUBSTANTIALLY LESS THAN THE QUALITY OF COMPARABLY PRICED SERVICES PROVIDED OUTSIDE THE UNITED STATES.

(3) THE BOARD SHALL ADOPT REGULATIONS DEFINING THE FOLLOWING TERMS FOR THE PURPOSES OF THIS SUBSECTION:

(I) "UNREASONABLE AMOUNT"; AND

(II) "SUBSTANTIALLY LESS".

~~SUBTITLE 4. DISCLOSURE OF THE RELOCATION OF JOBS TO A FOREIGN COUNTRY.~~

~~11-401.~~

~~THIS SUBTITLE APPLIES TO A PROCUREMENT CONTRACT WITH AN ESTIMATED VALUE OF \$2,000,000 OR MORE.~~

~~11-402.~~

~~WHEN A PROSPECTIVE BIDDER OR OFFEROR SUBMITS A BID OR AN OFFER TO A UNIT, THE BIDDER OR OFFEROR SHALL NOTIFY THE DEPARTMENT OF GENERAL SERVICES WHETHER THE BIDDER OR OFFEROR:~~

~~(1) HAS PLANS, AT THE TIME THE BID OR OFFER IS SUBMITTED, TO RELOCATE JOBS FROM THE UNITED STATES TO A FOREIGN COUNTRY; OR~~

~~(2) WILL BE SUBCONTRACTING WITH A CONTRACTOR THAT HAS PLANS, AT THE TIME THE BID OR OFFER IS SUBMITTED, TO RELOCATE JOBS FROM THE UNITED STATES TO A FOREIGN COUNTRY.~~

~~11-403.~~

~~(A) THIS SECTION APPLIES TO A PROSPECTIVE BIDDER OR OFFEROR THAT DISCLOSED UNDER § 11-402 OF THIS SUBTITLE THAT THE BIDDER OR OFFEROR:~~

~~(1) HAD PLANS, AT THE TIME THE BID OR OFFER WAS SUBMITTED, TO RELOCATE JOBS FROM THE UNITED STATES TO A FOREIGN COUNTRY; OR~~

~~(2) WOULD BE SUBCONTRACTING WITH A CONTRACTOR THAT HAD PLANS, AT THE TIME THE BID OR OFFER WAS SUBMITTED, TO RELOCATE JOBS FROM THE UNITED STATES TO A FOREIGN COUNTRY.~~

~~(B) A PROSPECTIVE BIDDER OR OFFEROR THAT IS AWARDED A CONTRACT SHALL NOTIFY THE DEPARTMENT OF GENERAL SERVICES WITHIN 60 DAYS AFTER THE BIDDER OR OFFEROR RELOCATES JOBS:~~

~~(1) FROM THE UNITED STATES TO A FOREIGN COUNTRY; OR~~

~~(2) TO THE UNITED STATES FROM A FOREIGN COUNTRY.~~

~~(C) (1) A PROSPECTIVE BIDDER OR OFFEROR THAT IS AWARDED A CONTRACT:~~

~~(I) MAY NOT RECEIVE A STATE GRANT, A STATE GUARANTEED LOAN, A TAX BENEFIT, OR ANY OTHER BENEFIT OR INCENTIVE FROM THE STATE; AND~~

~~(II) SHALL REPAY ANY BENEFIT OR INCENTIVE RECEIVED FROM THE STATE WITHIN 5 YEARS BEFORE THE DISCLOSURE UNDER § 11 402 OF THIS SUBTITLE WAS MADE.~~

~~(2) THE REPAYMENT OF A BENEFIT OR AN INCENTIVE REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE MADE WITHIN 3 YEARS AFTER THE DISCLOSURE UNDER § 11 402 OF THIS SUBTITLE WAS MADE.~~

SECTION 2. AND BE IT FURTHER ENACTED, That a presently existing obligation or contract right may not be impaired in any way by this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 22, 2012.