

STATE PURCHASING: CONDUCT OF VENDOR, ETC.

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House Bill 4549 (Substitute H-1)

Sponsor: Rep. Marie Donigan

Committee: Oversight and Investigations

Complete to 10-20-10

A SUMMARY OF HOUSE BILL 4549 AS PASSED BY THE HOUSE

The bill would amend the Management and Budget Act to require the Department of Technology, Management and Budget to take certain specified past and present conduct of vendors into account when dealing with the solicitation, award, amendment, cancellation, or appeal of state contracts.

The bill would apply to the purchase, contracting for, or providing of supplies, materials, services, insurance utilities, third-part financing, equipment, printing and other items needed by state agencies. The past and present conduct would be taken into account in addition of the total overall value to the state when determining whether transactions are in the best interest of the state and in making all discretionary decisions.

The department would have to consider:

- Whether the vendor has been convicted of a criminal offense incident to the application for or performance of a state contract or subcontract. This applies to affiliates, subsidiaries, officers, directors, managerial employees and anyone who, directly or indirectly, holds a 20 percent or more pecuniary interest in the vendor.
- Whether the vendor has been convicted of a criminal offense or held liable in a civil proceeding that negatively reflects on the vendor's business integrity, based on a finding of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or a violation of federal or state antitrust statutes. Again, this applies to affiliates, subsidiaries, officers, directors, managerial employees and anyone who, directly or indirectly, holds a 20 percent or more pecuniary interest in the vendor.
- Whether a proposal by a vendor to provide services to the state using employees, contractors, subcontractors, or other individuals who are not citizens of the U.S., legal resident aliens, or individuals with a valid visa would be detrimental to the state, its residents, or this state's economy.
- Whether a proposal by a vendor to provide goods or services to Michigan from a location outside the state or the U.S. would be detrimental to the state, its residents, or its economy.

- Whether the acquisition of goods or services from a vendor that is an expatriated business entity located in a tax haven country of an affiliate of an expatriated entity would be detrimental to this state, its residents, or this state's economy.
- Whether the provision of services to this state at a location outside Michigan or the U.S. would be detrimental to the privacy interests of Michigan residents, or risk the disclosure of personal financial information of Michigan residents, such as Social Security, financial, or medical data.
- Whether a proposal by a vendor to provide goods services to the state from a state outside of Michigan or the U.S. would constitute undue risk under a risk management policy, practice, or procedure adopted by the DTMB.

(The department could decide to request the State Police to conduct a criminal records check on a vendor through the Federal Bureau of Investigation. The department could charge the vendor a fee for conducting the check.)

The DTMB would next have to consider the following:

- Whether a proposal by a vendor to provide services to the state using employees, contractors, subcontractors, or other individuals who are not citizens of the U.S., resident aliens, or individuals with a valid visa would be detrimental to the state or its residents by negatively affecting the economy of the U.S.
- Whether a proposal by a vendor to provide goods to the state produced outside of Michigan or the U.S. would be detrimental to the state or its residents by negatively affecting the economy of the U.S.
- Whether the acquisition of goods or services from a vendor that is an expatriated business entity located in a tax haven country (or an affiliate of the entity) would be detrimental to the state or its residents by negatively affecting the economy of the U.S.

(The term "expatriated business entity" means a corporation or its affiliate incorporated in a tax haven country after September 11, 2001, but with the U.S. as the principal market for the public trading of its stock. The term "tax haven country" includes a country with tax laws that facilitate avoidance by a corporation or its affiliate of U.S. tax obligations; these countries include, but are not limited to, Barbados, Bermuda, British Virgin Islands, Cayman Islands, Commonwealth of the Bahamas, Cyprus, Gibraltar, Isle of Man, the principalities of Liechtenstein and Monaco, and the Republic of the Seychelles.)

To help the DTMB make these determinations, a vendor or subcontractor may be required to provide:

- Information related to the location of work performed under a state contract by the vendor and any subcontractor, employees, or others.
- Information about the corporate structure and location of corporate employees and activities.
- Notice of the relocation of those performing services under a state contract outside of Michigan or the U.S.
- A written affirmation that the vendor or subcontractor will not use state funds or the proceeds of a state contract to induce a business enterprise to leave the state.
- A written affirmation that the vendor or subcontractor will not violate internationally recognized workers rights (as defined in the federal Trade Act of 1974).

(The bill also requires that a vendor or subcontractor that is providing call center services or contact center services disclose to inbound callers the location from which the services are being provided.)

The H-1 substitute carries an effective date of April 1, 2010.

FISCAL IMPACT:

The bill would have an indeterminate fiscal impact on state government. The vendor defined by the bill includes affiliates, subsidiaries, officers, directors, managerial employees, and any person who, directly or indirectly, holds a pecuniary interest in that business entity of 20% or more. There is no way to determine how many vendor employees would be required to undergo a background check under this definition.

The Michigan State Police charges \$49.25 to conduct background checks for for-profit entities. This includes \$19.25 needed to conduct an FBI background check.

Public safety agencies are not charged this fee by MSP. However, it is anticipated that DTMB would be charged because they are not a public safety agency. Or, if DTMB is not charged, MSP might require additional funding to absorb the increased workload required for the vendor background checks. The bill allows the DTMB to charge vendors a fee for the background checks.

It is likely that requiring background checks will result in delays in the procurement process.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.