

Date of Hearing: April 25, 2012

ASSEMBLY COMMITTEE ON JOBS, ECONOMIC DEVELOPMENT AND THE
ECONOMY

V. Manuel Pérez, Chair

AB 2508 (Bonilla) – As Amended: April 19, 2012

SUBJECT: Public benefit programs and state contracts for call centers

SUMMARY: Prohibits state contracts that include call center services related to specified public benefit programs if the bid fails to provide certification that the call center work will be performed solely by workers employed in California. Specifically, this bill:

- 1) Provides that, notwithstanding any other law, a state agency authorized to enter into a public benefit program contract, as defined, is prohibited from contracting for call center services unless the contractor certifies in the bid, under penalty of perjury, that every portion of the call center services will be performed solely with workers employed in California. This prohibition applies to subcontracts as well.
- 2) Defines "call center" to mean a building, facility, or operation where customers or client services or assistance is provided by telephone, fax, email, text, or web-based interaction.
- 3) Requires state contracts that include call centers to include a termination for noncompliance provision, which becomes operative should the contractor use non-California workers. The contractor is also required to pay a penalty in an amount equal to the amount paid by the state for the percentage of noncompliant work performed.
- 4) Defines "public benefit program" to mean the California Work Opportunity and Responsibility to Kids (CalWorks), CalFresh, Healthy Families, and the California Healthcare Eligibility, Enrollment, and Retention System.
- 5) Authorizes a state agency to waive in-state work requirements for a particular contract up to one year, upon submitting a written finding to the Controller that is not rejected within 30 days, declaring that either of the following are true:
 - a) The contract is an emergency necessity because the ability to provide essential services would otherwise be adversely affected, public health and safety would be endangered, and the sole use of in-state workers is not immediately available; or
 - b) The contract is necessary to provide a unique and mandatory service and in-state workers cannot adequately perform the unique services.
- 6) Requires a state agency seeking a waiver to provide copies of the written finding to specified legislative committees when submitting them to the Controller.
- 7) Requires a contractor to pay a penalty to the state in an amount equal to the cost of work performed by out-of state workers if the Controller rejects the state agency's written finding submitted during the performance of the work or after the work is performed.

- 8) Specifies that the California-only worker requirement does not apply to a contract if in doing so, the requirement would violate the terms of the Agreement on Government Procurement of the World Trade Organization or any other bilateral or regional free trade agreement to which California has consented.
- 9) Does not apply to existing contracts or subcontracts, if it would result in the violation of the terms of the contract. Upon the expiration of those contracts, however, the provisions of this bill would be applied before any new contract is executed or renewed.
- 10) Makes legislative findings and declarations that tax revenues should be used to create jobs in the U.S. and California.

EXISTING STATE LAW requires a state agency to comply with specified procedures in awarding agency contracts, but has no provisions addressing the use of offshore contracting.

EXISTING FEDERAL LAW establishes the General Agreement on Tariffs and Trade (GATT), a multilateral trade agreement, to reduce tariff duties for trade between participating countries and to promote free trade.

FISCAL EFFECT: Unknown

COMMENTS:

- 1) Author's Purpose: According to the author, "Public assistance and health benefit programs are funded for the purpose of helping people who are unable to find jobs. State and federal funds to administer these programs should be spent on creating jobs in California, not in other countries. AB 2508 ensures that state funds for public benefit assistance programs are used to create jobs in the state. The current economic crisis has put millions of Californians out of work, through no fault of their own. Every job that is sent offshore adds another Californian to the unemployment rolls and further impacts our already struggling economy. Public dollars should especially not offshore jobs when those dollars fund programs meant to create jobs and address problems associated with joblessness.

AB 2508 guarantees that the money the state spends on public assistance and health benefit programs will help grow our economy and create urgently-needed jobs for the millions of unemployed Californians, not displace jobs."

- 2) Government Procurement and the Economy: State contracts for goods and services are significant revenues for a wide range of private sector businesses, including, but not limited to, office suppliers, health care providers, food producers, and property managers. Businesses that contract with the state use those moneys to pay workers; buy materials; finance their growth and expansion; and pay local, state and federal taxes. According to the DGS website, the state annually purchases nearly \$10 billion in goods and services annually.

When the state expends these tax payer dollars, including those that flow through the federal government, those dollars begin to circulate throughout the economy. Depending on the type and source of the expenditure, tax payer dollars can have large or small re-circulation impact. Economists measure these circulating effects using a model called multiplier effect.

Some industries have very high multipliers, such as 16 to one for computer manufacturing, while others are more limited. This means that state contracting laws that do not account for the multiplier effect of where work and corporate headquarters are located may be artificially low, therefore creating a false sense of the state getting "the biggest bang for its buck" when choosing the lowest bidder. From a state economic standpoint, offshoring of state contracts negatively impacts California by directly removing tax payer dollars from the state economy.

- 3) Reports and Audits: In 2005, the California Bureau of State Audits (Bureau) released a report outlining the extent of offshoring for service-related contracts and subcontracts for state services. The Bureau surveyed 35 state agencies and five University of California Campuses with medical centers regarding their use of contractors that performed work outside of the United States. The Bureau identified 185 contracts totaling \$638.9 million in which a portion of the work had been performed outside of the country. Approximately 55% of these contracts were for computer-related services including information technology consulting, software development, and maintenance.

When asked to identify the value of services offshored under each contract, state administrators were unable to provide data for 76 contracts. For the remaining 109 contracts, administrators estimated \$9.7 million worth of services, or 2.8% of the total value of the contracts, had had been performed outside of the United States.

Overall, the Bureau concluded that state entities were inconsistent in their use of provisions relating to the subcontracting, delegation, or assignment of contract duties. In some cases, agencies did not require notification when contractors subcontract, assigned, or delegated services, making it difficult for state officials to accurately ascertain where contract work was performed.

In 2006, the United States General Accountability Office (GAO) went a step further and released a report outlining the extent of state offshoring of government contracts nationwide. Specifically, GAO analyzed the offshoring activities of states across four federally-funded, state-administered programs –Child Support Enforcement, Food Stamp, Temporary Assistance for Needy Families (TANF), and Unemployment Insurance—and two federally-administered programs that provide financial assistance to students –Pell Grant and Federal Family Education Loans (FFEL).

The GAO found that 43 of 50 states and the District of Columbia used contractors that offshored some or all of the services associated with at least one of the four state-administered, federally-funded programs. The services most frequently offshored were the customer service functions (call centers) of the Food Stamp and TANF programs, and the software development work associated with the Unemployment Insurance and Child Support Enforcement programs. Geographically, work was most frequently offshored to India and Mexico.

Moreover, 15 state program directors reported performing cost comparisons for vendor contracts and, on average, concluded that offshoring services saved their states between 0.3% and 24% as compared to using contractors that only performed work domestically.

Overall, the GAO concluded that contracts worth \$335 million had at least some portion of their work offshored, representing 18% of the total value of state contracts for the four state-administered, federally-funded programs.

With respect to the two federally-administered student aid programs, Pell Grant and FFEL, the GAO found no evidence of offshoring. The GAO concluded that the Department of Education's (DOE) criteria for vendors managing "high risk contracts" significantly limited offshoring. For example, prior to initiating a contract, DOE requires contractors to certify the work will be performed by U.S. citizens or lawful permanent residents who have resided in the U.S. for at least three years. While this requirement is intended to facilitate the required background investigations and ensure that contractor employees are legally permitted to work in the U.S., it limits the extent to which DOE can enter into contracts with companies that perform services offshore.

- 4) The Role of Federal Law in Driving State Offshoring: In 1996, Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA). The statute required states to establish centralized units for receipt and disbursement of child support payments from non-custodial parents and employers. In response, 27 states executed contracts with private vendors to handle all or some of these requirements. PRWORA also required states to implement electronic benefits transfer (EBT) systems for the reimbursement of food stamp benefits. EBT allows food stamp recipients to use a plastic card, much like a debit card, to pay for their food from authorized retailers. In response, 48 states and the District of Columbia executed contracts with private vendors to handle all or some EBT services. Many of these vendors in turn performed all or some of their contract responsibilities outside of the United States.
- 5) State Offshoring-Legislative and Executive Actions: In December 2003, offshoring legislation had appeared before only four state legislatures. By early 2004, nearly 100 offshoring bills had been introduced by state legislatures across the nation. By the end of 2004, the number of offshoring bills introduced had ballooned to over 200 in over 40 states. Five of these bills became law, including a Tennessee statute authorizing preferences for service contracts performed in the United States. During the 2005-2006 legislative cycle, state lawmakers introduced another 190 bills on the subject of offshoring, 10 of which became law. Among the new statutes were laws adopted in Colorado, Illinois, and North Dakota that gave preference to domestic products; a North Carolina contract location disclosure law; and New Jersey's Senate Bill 494, a highly restrictive offshore contract ban introduced in response to reports that the private contractor administering New Jersey's welfare benefits had moved the state customer service call center to India.

In addition to legislative actions, a handful of governors have issued executive orders limiting public sector offshoring. In 2007, the Governor of Idaho barred state contractors from offshoring American jobs. In 2004, the Governor of Alaska ordered the State Executive Branch to ensure that service contracts were performed in the United States. Accordingly, the State's Division of General Services now requires state service contracts above \$25,000 to be performed domestically. Other states with executive orders enforce on the subject of offshoring include Indiana, Michigan, Missouri, North Carolina, and Pennsylvania. Administrators in West Virginia have restricted offshoring of state contracts despite no legislative or executive mandates. Currently, California has no limitation on offshoring of state contracts.

- 6) World Trade Organization and the Agreement on Government Procurement: Government procurement of goods and services is estimated to account for 10-15% of GDP for developed countries, and up to as much as 20% of GDP for developing countries. Due to its significance, 42 WTO members signed the plurilateral (only binding to WTO members who choose to sign) Agreement on Government Procurement (GPA) at the Uruguay Round in 1994. A majority of the signatories come from economies with developed industrial based economies, including Canada, the E.U. (27 countries), the U.K. and the U.S. China is not a signatory, but is in the process of negotiating accession to the agreement. Mexico is not a signatory and is not an observer to the GPA.

The intention of the GPA is to ensure that government purchases of goods and services do not depend upon where the good is produced or the service rendered, nor upon the supplier's foreign affiliations. Countries place restrictions on government procurement of goods and services for a variety of reasons, most significantly, to protect and/or encourage domestic industry.

According to research by Harvard University, several developed countries would like to see the GPA become a multilateral agreement, which the proponents believe would increase market opportunities for their own firms, allowing them to bid for foreign government purchases on a "level playing field." The most vocal proponents of a multilateral GPA are the U.S. and E.U. Some of the opposition to a multilateral agreement come from developing countries and relief organizations, such as Oxfam, who argue that opening government procurement will not result in a "level playing field," but rather as a situation in which developing countries will lose ground to expanding industrial countries. Other countries opposed to a multilateral agreement are concerned that open government procurement laws restrain their ability to address non-trade issues, such as the environment, eco-labeling, and human rights issues.

In March 2012, the WTO Committee on Government Procurement adopted a revised GPA, which now goes to the legislative bodies of the signatories for ratification, including the U.S. Congress. The WTO estimates that the new agreement will expand market access coverage valued at between \$80 to \$100 billion dollars a year, partly by bringing in new signatories including subnational governments, such as states. AB 2508 has a severability clause, which provides that any contract covered under the GPA would be excluded from the provisions of the bill.

- 7) Exemptions from the Bill: AB 2508 allows a state agency to waive the in-state worker requirement for certain specified reasons including that the work is necessary to respond to an emergency, California workers are not reasonably available and that California workers cannot adequately perform the required service. While the state is annually subjected to a number of natural disasters and other types of emergencies, it is unclear what conditions would arise that a call center service was needed and there were no qualified California workers to fill the jobs. The Committee may wish to consider limiting the exemptions to emergencies.

The measure proposes to track and oversee the waivers by requiring submittal of written findings by the state agency to the State Controller and key legislative committees. The Controller is authorized to reject the findings within 30 days or the waiver is deemed to be

in-force. These are both sound initial approaches for monitoring waiver usage. The Committee may wish to also consider tracking whether the Controller rejects a submitted finding. This would allow for a more comprehensive understanding of the waivers proposed and those that were ultimately implemented.

Finally, the author may want to provide more clarity as to when the waiver may be applied to a contract. Is it envisioned that a state agency could determine that a waiver is necessary prior to submitting the contract to bid, something the agency can determine when no bidders qualify to perform the contract, and/or should the waiver requests be available to contractors who had previously committed to the adhere to in-state worker requirement and then find themselves out of compliance?

REGISTERED SUPPORT / OPPOSITION:

Support

California Labor Federation (co-sponsor)
Western Center on Law and Poverty (co-sponsor)

Opposition

None Received

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