
JOINT TASK FORCE ON STATE CONTRACTS

FINAL REPORT

May 9, 2007

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**JOINT LEGISLATIVE TASK FORCE
ON STATE CONTRACTS**

May 9, 2007

Members of the Legislature:

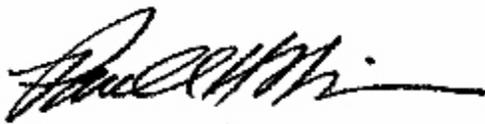
We are pleased to present to you the Final Report of the Joint Legislative Task Force on State Contracts.

In 2005 and 2006, the Joint Task Force studied issues related to state contracts performed outside the United States, and heard a wide range of perspectives on these issues. We heard from those who are concerned that offshoring results in jobs being lost and state tax dollars not being used to stimulate the state economy. We also heard from those who are concerned that restrictions on offshoring increase government procurement costs and invite retaliation by trading partners.

Given the diverse views shared with us, the Joint Task Force itself has not adopted findings or recommendations. The Final Report does, however, include the recommendations presented by Joint Task Force members, Advisory Committee members, and the public at our final meeting.

We believe that these recommendations, along with the other parts of the Final Report, will help the Legislature better understand the complexities of government procurement in a global economy.

Sincerely ,



Senator Paull Shin, Co-Chair



Representative Zack Hudgins, Co-Chair

Part I

Background on State Contracts Performed Outside the U.S.

Outsourcing was the subject of a dozen bills introduced in recent years. Half a dozen bills -- none of which passed -- dealt with offshore outsourcing of work performed under certain state contracts.¹ Several resolutions -- one of which was adopted -- called for studies of state contracts performed outside the United States.²

These bills raised questions about state laws that govern state procurement of services. These bills also raised questions about federal constitutional provisions that limit the exercise of state power and international agreements that apply to state procurement.

State Procurement

The State of Washington contracts with individuals and companies outside of state government to provide certain services to the state and its residents. The state's purchasing authority is generally organized into categories based on the type of service. These categories include the following:

- *Personal services.* This term refers to professional or technical expertise provided by a consultant to accomplish a specific study or project.
- *Purchased services.* These services are ones provided by a vendor to accomplish routine, continuing and necessary functions.
- *Information services.* These services include data processing, telecommunications, office automation, and computerized information systems.
- *Public works.* This term refers to the construction, repair, or alteration of buildings and other real property.
- *Highway design and construction.* This term includes both architectural and engineering services, as well as construction services related to highways.

¹ In 2004, these bills were: HB 2405, HB 2768, and SHB 3187. In 2005, these bills were: SSB 5777, HB 1724, HB 1725, HB 2144, and EHB 2257.

² In 2004, the resolution was EHCR 4419. In 2005, these resolutions were EHCR 4405 and ESCR 8407.

- *Printing services.* This term refers to the production of printed materials. In addition, the state may contract for services historically and traditionally provided by state employees, so long as the state complies with the contracting out provisions of the Civil Service Reform Act of 2002.

U.S. Constitution

Laws governing state procurement that give preference to domestic goods or prohibit purchasing foreign goods have been challenged on one or more grounds. These include arguments that such laws are: (1) invalid exercises of state power under the Foreign Commerce Clause and/or the Foreign Affairs Power; or (2) preempted by federal law.

The U.S. Constitution reserves to Congress the power "to regulate Commerce with foreign Nations, ..." The U.S. Supreme Court has struck down state laws that regulate commerce in a manner that promotes businesses in the state at the expense of businesses in other states or foreign countries. However, the U.S. Supreme Court has also recognized that when a state acts as a market participant, rather than a market regulator, it is not subject to the restraints of the Commerce Clause. Other federal and state courts, relying on the "market participant doctrine," have generally upheld state "Buy American" laws.

With regard to foreign policy, the federal government also has exclusive authority. The U.S. Supreme Court has said that the President has the "lead role" as well as "a degree of independent authority to act." The Court has struck down at least one state law as an "intrusion by the state into the field of foreign affairs which the Constitution entrusts to the President and the Congress."

The U.S. Supreme Court has found that state laws in conflict with federal laws or with foreign policies and diplomatic objectives of the President and Congress are preempted.

International Agreements

Laws governing state procurement that give preference to domestic goods or prohibit purchasing foreign goods have also been challenged as being in violation of international agreements on government procurement.

The Agreement on Government Procurement (GPA) is one of many World Trade Organization (WTO) agreements to which the United States is a party, and is one of several agreements that

apply to Washington³ and certain other states. The GPA is a plurilateral agreement, meaning that only some WTO members are parties to the agreement. For example, Ghana, India, Mexico, and the Philippines are members of the WTO, but are not parties to the GPA.

In Washington, state agencies subject to the GPA include certain executive branch agencies such as the Department of General Administration and the Department of Transportation, as well as state universities. State contracts subject to the GPA include contracts of \$477,000 or more for goods and services, and contracts of \$6,725,000 or more for construction services.

Article III of the GPA deals with national treatment and non-discrimination. It provides, in part that:

- Parties to the agreement must give the products, services and suppliers of other parties treatment no less favorable than that accorded to domestic products, services and suppliers;
- Parties must not treat locally-established suppliers less favorably than other suppliers on the basis of foreign affiliation or ownership; and
- Parties must not discriminate against locally-established suppliers on the basis of the country of production of the good or service being supplied.

According to the WTO Analytical Index for the GPA, there are no decisions of competent WTO bodies interpreting this article of the GPA. (In 1994 the European Union and Japan filed formal complaints against the United States in the WTO, claiming that Massachusetts' Burma law violated certain provisions of the GPA. In 1999, at the request of the European Union and Japan, these proceedings were suspended. Later, they automatically lapsed.)

Under the federal Uruguay Rounds Agreement Act (Act), Congress approved the WTO agreement and other agreements annexed to that agreement, including the Agreement on Government Procurement. The Act provides that no state law may be declared invalid on the ground that it is inconsistent with any of the Uruguay Round Agreements, except in an action brought by the United States for that purpose. The Act also sets forth procedures for dispute resolutions involving other WTO members and legal actions by the United States against states to declare state laws invalid as inconsistent with any of the Uruguay Round Agreements.

³ In a series of letters to the U.S. Trade Representative, Governors Mike Lowry and Gary Locke committed the executive branch agencies to the terms and conditions of the GPA.

Part II

Joint Task Force on State Contracts Performed Outside the U.S.

In 2005 the Legislature adopted a concurrent resolution, ESCR 8407, calling for a study of state contracts performed outside the United States. See Appendix A.

The concurrent resolution created a Joint Task Force to conduct the study, and an Advisory Committee to advise and monitor the Joint Task Force. It specified that the eight-member Joint Task Force consist of two legislators from each caucus of the Senate and the House of Representatives. It further specified that the eight-member Advisory Committee consist of three representatives of labor, three representatives of business (including one representative of small business), one representative of the Office of the Washington State Trade Representative, and one representative of the public.

The concurrent resolution required that the study evaluate the following:

1. The extent to which the performance of state contracts in other countries results in the creation or loss of jobs;
2. The degree to which the performance of contracts outside the United States helps Washington's economy and its companies remain competitive globally;
3. The extent to which state agency contracts being performed in other countries creates a need for adjustment assistance and retraining programs to ensure that Washington's business climate, its employers, and its workers remain competitive globally;
4. The degree to which state contracts and subcontracts are being performed at locations outside the United States;
5. The extent to which state contracts performed at locations outside the United States involve personal information, as well as a review of laws regarding the privacy of personal information;
6. Subject to available funding, the economic costs and benefit of awarding state contracts and subcontracts to Washington companies;
7. The applicability of international trade agreements and federal law to state procurement policies;

8. The extent to which legislative authority over state procurement is adequately protected;
and
9. The reasons Washington businesses choose to locate operations outside the United States.

The concurrent resolution also required that the Joint Task Force report its findings and recommendations to the Legislature by January 1, 2006.

In 2005 and 2006, the Joint Task Force studied the issues as specified in the concurrent resolution and as described in Part III of the Final Report.

Part III

Summary of Issues Reviewed by the Joint Task Force

Economic Issues

1. A presentation by Dr. Paul Sommers, Seattle University, summarized an estimate of the economic impact of contracts awarded by Washington State. Dr. Sommers indicated that his analysis was limited by the way in which data about state contracts is collected and maintained by state agencies.

State Procurement

2. Presentations were made on state agency contracts performed, at least in part, in locations outside the United States. Case studies reviewed four specific contracts: the OMNI Project at the Department of Corrections, the ORCA Project at the Department of Labor and Industries, the Electronic Benefits Transfer System at the Department of Social and Health Services, and the Tacoma Narrows Bridge at the Department of Transportation.
3. The Department of Information Services presented a review of its role in providing telecommunications and other information technology services primarily to state and local entities.
4. The Joint Task Force discussed the impact of various trade agreements on the state's ability to establish a Washington preference without violating any of these agreements.

Business Location Decisions

5. Presentations were made regarding why Washington businesses may choose to:
 - locate outside the United States. These presentations included a review of a questionnaire used by an offshore outsourcing firm to assess issues surrounding providing remote services to U.S. businesses, and a presentation on the factors (such as low foreign labor costs, quality of the product, and changing local worker aspirations) used by a local business in making decisions to outsource manufacturing offshore.
 - locate in Washington. A presentation was made on a business decision to relocate call centers in the Pacific Northwest region based on customer satisfaction and a business model that stresses quality, not low cost.

Part IV

Recommendations Presented to the Joint Task Force

Recommendations presented by Joint Task Force members, Advisory Committee members, and the public at the final meeting of the Joint Task Force on October 3, 2006, included the following:

Recommendations Presented By Representative Hudgins

RECOMMENDATION #1 : The Legislature should continue to work on and monitor the issue of outsourcing and off shoring of state contracts.

The issue clearly is on people's minds, and is impacting the economy. Following these concerns and accessing the positive or negative impact on our state is important. Standing committees in the House and Senate should be tasked with monitoring developments and reports regarding state contracts, outsourcing and off shoring as they affect the state economy.

RECOMMENDATION #2: Disclosure requirements should be included in all state contracts.

It was once required by state statute for vendors to declare where work was done for the state of Washington. This requirement should be returned to statute so that we can better track our contracts, especially making transparent where and how much work is done overseas. Better data will allow us to make better decisions around this complex and changing issue.

RECOMMENDATION #3: The Legislature should have a role in the process of signing trade agreements.

Currently the Governor can bind the state to international trade agreements without the Legislature's approval. A process should be developed that will allow input from the Legislature in this important process.

RECOMMENDATION #4: Review all state procurement criteria, and view state contracts as economic development opportunities.

The findings of the task force showed clear inconsistencies in how contracts are written and tracked by different agencies. There needs to be a review of accountability within state contracts, and the impact on our state economy. The definition of 'value', the use of tax dollars as an economic development tool, and the state as a customer of services should all be considered in this accountability and performance review.

RECOMMENDATION #5: State government should commit itself to finding better data for the impact of off shoring and outsourcing on our state.

It was clear from testimony that the estimates on the exact impact vary widely in both range and interpretation. We should find or collect data on job creation or loss and the connection of these jobs to wage impact within our state. There is clearly change occurring in the economy due to off shoring and outsourcing and there is clearly disagreement on what that change means for our globally integrated state. The state should continue to track data and look for data in order to make better decisions in the future. Funding for this task should be strongly considered.

Recommendations Presented By Senator Honeyford

RECOMMENDATION #6 - The Task Force should submit a final report to the 2007 Legislature, and the Legislature should conclude the activities of the Task Force.

Legislation Required: No.

Findings: The Task Force finds that the incidents and extent of state agency contract work being performed in whole or in part offshore are limited. Although the Task Force acknowledges the importance of international trade to the economic well-being of this state, and recognizes the complexities of existing international trade agreements and an increasingly global economy, the evidence gathered by the Task Force does not demonstrate a compelling need to consider legislative modifications to state agencies' contract management authority.

RECOMMENDATION #7 - The Task Force should submit a final report to the 2007 Legislature, and the Legislature should transfer the activities of this Task Force to the statutorily-created Joint Legislative Oversight Committee on International Trade Policy.

Legislation Required: Maybe. Chapter 404, Laws of 2003 could be amended to explicitly transfer the duties of this Task Force to the Joint Legislative Oversight Committee on International Trade Policy. To continue the role of the advisory committee would require an amendment to Chapter 404, Laws of 2003.

Findings: The Task Force finds that an increasingly global economy is accelerating the importance of international trade to the economic well-being of this state. The Task Force recognizes the inter-relationships between the state's role as a purchaser of goods and services and the complexities of existing international trade agreements. The Task Force also acknowledges that the Joint Legislative Oversight Committee on International Trade Policy, created by Chapter 404, Laws of 2003, has within its purview the authority to examine a wide range of aspects of international trade, international integration, and international trade agreements, which overlaps and duplicates the examination of many of the same issues directed to be studied by the Task Force. Consolidating the work of both study groups would increase efficiency and the comprehensiveness of the examination of these important issues.

Recommendation Presented
By Senator Shin

RECOMMENDATION #8 - The Joint Task Force and the Legislature should not take further action.

Legislation Required: No.

Findings: The Joint Task Force heard a wide range of perspectives on issues related to state contracts performed outside the United States. We have found no conclusive evidence that outsourcing was done by the state, although it may have been done by state contractors. Given the diverse views shared with the Joint Task Force, no further action is appropriate.

**Recommendation Presented
By Dean Hartman**

RECOMMENDATION #9

What we were asked to look at was if contracts were outsourced and we found no direct contracts outsourced out of the USA.

As a Washington business I still feel that if you are going to take the taxes from the taxpayers in Washington the government has a responsibility to do business with the Washington business first. We pay the taxes .

Sending tax money out of Washington to help the economies in other state is wrong. We must help Washington business first.

With the highest tax rates and employment cost of all states we are at a disadvantage for getting tax dollars from our state when bidding for business.

We need the legislatures help to keep Washington taxes in Washington business.

You need to come up with a way to reward business that locate in our state for government contracts. The cost of losing those jobs is much greater than the savings you might get up front these same business are voters to.

Recommendation Presented By Annette Jacobs

RECOMMENDATION #10

The work of the Joint Legislative Task Force has taken on a broad agenda to investigate the overreaching impact of outsourcing contracts that results in work performed outside of the State or offshore. The Task Force has evaluated and incorporated into their Final Report the wide range of perspectives on this topic.

As a chief executive for a growing technology services company that is headquartered in a rural community and conducts business with the State, this is clearly an issue of how to not only best serve the constituents of Washington, but provide ample opportunities to develop human capital that can compete and win business in a global market.

The Task Force has been insightful in recognizing that globalization is upon us, and restrictions on procurement from those sources would clearly limit the State's ability to provide the best service to its residents. However, as an employer of more than 100 individuals in Grays Harbor County, I ask that we have the opportunity to compete for those contracts.

Outsourcing, whether it is domestically or internationally, and subsequently the award and management of State contracts, require a new perspective on the key measurements and decision criteria to prove value and benefits. As an outsource provider of services for all business sizes, we are contractually obligated to not only a high level of service for our clients, but a high level of confidentiality regarding the information between the companies. This is not only measurable, but is subject to periodic security audits. I would strongly urge the State procurement departments to research and adopt private industry standards in both of these areas. I would also assert that when a much fuller review process is adopted, it would not only further protect the interests of Washington residents, but provide a much different light on the cost effectiveness and value of State operated business. Cost is clearly a decision driver, but many times a unit cost is only one component of the total cost structure. Repeat work, longer production times, clear measurement of deliverables or adept management of an off-site team structures can all be "hidden" costs of a contractual relationship that are not part of the evaluation criteria today.

The Task Force has developed a very broad list of evaluation topics. I urge the members to define the scope in phases or components that can provide clear priorities for this important study. In addition, the recommendations should also include executable areas where the State contract decision-makers have a good framework to evaluate the true cost benefits and value between offshore and Washington State resources.

**Recommendations Presented
By Stan Sorscher
(Alternate for Kristin Farr)**

RECOMMENDATION #11

We affirm the recommendations made by Representative Zach Hudgins regarding the Legislative Task Force on State Contracts.

We recognize that the study was never intended to settle the offshoring question. However, it has helped sharpen our focus on what needs to be done next.

Recommendation #4 interprets state contracts as opportunities for economic development. We understand this view was shared by the small business members of the task force, and seemed to be a consensus view in the meeting on Tuesday.

In that respect, it is entirely appropriate to collect better data, and monitor the issue, which were the goals of Representative Hudgin's first and fifth recommendations.

To meet those goals, we should re-establish a disclosure requirement under which vendors would report where work was done under State contracts. The second recommendation speaks to this point.

Finally, we concur that the legislature should be directly involved in any commitments that Washington State makes in future trade agreements. We believe that this issue will be increasingly important as instances come to light about the constraints trade agreements create for state policy-makers.

Recommendations Presented By Bob Doyle

In general I support Representative Hudgins' proposals. I would add the following

RECOMMENDATION #12

Appointment of appropriate classified state employees to the ISB do review the procurement of information services and technology. Essentially the state employees who use or maintain these systems can give guidance to how to purchase these systems.

RECOMMENDATION #13

Conservative purchasing practices based on the best practices of both government and the private sector when it comes to complex services or services which relate to a core function of an agency or in a broader context state government. The state should not be a risk taker when it comes to purchasing information systems or other services. Risks should be minimal so resources are not wasted, vital services are not compromised and information about recipients of benefits or services are not put at risk of disclosure or misuse.

RECOMMENDATION #14

Disclosure of contractors and sub-contractors, the work assigned, the location where the work will be performed and ongoing auditing of contractor performance in process.

RECOMMENDATION #15

Review of all state procurement laws and rules to determine if they are the best practices in state procurement.

RECOMMENDATION #16

While I agree with those who believe that the work of this joint committee can be directed to other appropriate committees and future task forces it is clear to me that the answers to the questions that we asked of OFM can be found if we change the process and mandate reporting and disclosure. The notion of a vendor having a right to protect the identities of subcontractors based on the theory of proprietary interest should be balanced against the legitimate rights of the state and the public to protect against waste and disclosure.

Recommendations Presented By Marcus Courtney

RECOMMENDATION #17 : The Legislature should pass a law banning state service contracts moving overseas. This would be the most efficient solution.

RECOMMENDATION #18: The Governor should make the tracking of service contracts moving overseas, dollar amounts and their success rates as part of her government accountability push.

RECOMMENDATION #19: Washington State is letting out contracts to vendors overseas but there is no baseline labor standards of what kind of conditions workers are working under. Could be potential sweat shop.

Appendix A Engrossed Senate Concurrent Resolution 8407

CERTIFICATION OF ENROLLMENT ENGROSSED SENATE CONCURRENT RESOLUTION 8407

59th Legislature
2005 Regular Session

Adopted by the Senate April 23, 2005

President of the Senate

Adopted by the House April 24, 2005

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is ENGROSSED SENATE CONCURRENT RESOLUTION 8407 as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

Secretary of State
State of Washington

ENGROSSED SENATE CONCURRENT RESOLUTION 8407

Passed Legislature - 2005 Regular Session

State of Washington 59th Legislature 2005 Regular Session

By Senators Shin, Berkey, Kastama, Doumit, Rockefeller, Keiser,
Esser, Kohl-Welles, Jacobsen, Kline and Rasmussen

Read first time 02/14/2005. Referred to Committee on Labor,
Commerce, Research & Development.

1 WHEREAS, There is concern about state contracts performed, in whole
2 or in part, outside the United States and its impacts on Washington's
3 economy, including its agricultural, manufacturing, and technology
4 sectors; and

5 WHEREAS, There is also concern about contracts entered into by
6 state agencies which are performed, in whole or in part, outside the
7 United States; and

8 WHEREAS, Business, labor, and government leaders recognize that an
9 objective and thorough study of the impact on Washington's economy of
10 state agency contracts that are performed in whole or in part outside
11 the United States is needed;

12 NOW, THEREFORE, BE IT RESOLVED, By the Senate of the state of
13 Washington, the House of Representatives concurring, That a study of
14 state contracts performed, in whole or in part, outside the United
15 States and its impacts on Washington's economy be conducted; and

16 BE IT FURTHER RESOLVED, That the study include, but not be limited
17 to, an evaluation of the following:

18 (1)(a) The extent to which the performance of state agency
19 contracts in whole or in part in other countries results in the
20 creation or loss of family-wage or other jobs in Washington;

1 (b) The degree to which the performance of state contracts in whole
2 or in part outside the United States helps Washington's economy and its
3 companies remain competitive globally; and

4 (c) The extent to which state agency contracts being performed in
5 whole or in part in other countries creates a need for adjustment
6 assistance and retraining programs to ensure that Washington's business
7 climate, its employers, and its workers remain competitive globally.

8 (2) (a) The degree to which state contracts, and any subcontracts
9 under such contracts, are being performed at locations outside the
10 United States;

11 (b) The extent to which state contracts performed at locations
12 outside the United States involve a risk of unauthorized use or
13 disclosure of personal information as well as a review of applicable
14 Washington state and federal laws regarding the privacy of personal
15 information;

16 (c) Subject to available funding, the economic costs and benefits
17 of awarding state contracts, and any subcontracts under such contracts,
18 to Washington companies;

19 (d) The applicability of international trade agreements and federal
20 law to state procurement policies; and

21 (e) The extent to which legislative authority over state
22 procurement is adequately protected, including the ability of state
23 agencies to adequately supervise the performance of contracts when all
24 or a portion of the work is performed in a country other than the
25 United States.

26 (3) The reasons Washington businesses choose to locate operations
27 outside the United States; and

28 BE IT FURTHER RESOLVED, That the study be conducted by a joint task
29 force of the Senate and the House of Representatives consisting of the
30 following: Two representatives to be appointed by the Speaker of the
31 House of Representatives, two representatives to be appointed by the
32 minority leader of the House of Representatives, two senators to be
33 appointed by the majority leader of the Senate, and two senators to be
34 appointed by the minority leader of the Senate; and

35 BE IT FURTHER RESOLVED, That the joint task force on state
36 contracts performed, in whole or in part, outside the United States
37 consult with and be advised and monitored by an advisory committee
38 consisting of eight members: Three members representing labor,

1 appointed jointly by the President of the Senate and the Speaker of the
2 House of Representatives, from a list of names recommended by a
3 statewide organization representing a cross-section of organized labor
4 in the state; three members representing business, one of whom shall
5 represent small business, appointed jointly by the President of the
6 Senate and the Speaker of the House of Representatives, from a list of
7 names recommended by a statewide organization of employers representing
8 a cross-section of employers of the state; one member representing the
9 office of the Washington state trade representative; and one member
10 representing the public; and

11 BE IT FURTHER RESOLVED, That the findings and recommendations of
12 the joint task force on state contracts performed, in whole or in part,
13 outside the United States shall be reported to the legislature by
14 January 1, 2006.

--- END ---