



## **Stop Bad Contracts and Protect Public Jobs Sample Legislative Language**

### **Establish a Presumption of Public Service Delivery**

Maryland

Personnel and Pensions Code Sec. 13-402: “The policy of this State is to use state employees to perform all state functions in state-operated facilities in preference to contracting with the private sector to perform those functions.”

Illinois (Private Prisons)

730 ILCS 140: “... the State shall not contract with a private contractor or private vendor for the provision of services relating to the operation of a correctional facility or the incarceration of persons.... “

### **Think Before You Act! Examine Alternatives First**

Maryland

Personnel and Pension Code Sec. 13-405: “The unit shall submit a demonstration that the unit has taken formal and positive steps to consider alternatives to the service contract, including reorganization, reevaluation of service, and reevaluation of performance.”

Wisconsin

16.705: “The director ... shall review contracts for contractual services in order to ensure that agencies properly utilize the services of state employees.”

Minnesota

16C.07: “Before an agency may seek approval of a professional or technical services contract valued at more than \$25,000, it must certify to the commissioner that it has publicized the contract by posting notice at appropriate worksites

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within agencies. The agency must also certify that it has made reasonable efforts to determine that no state employee or agency could have performed the work.”

## **Prescribe a Prudent and Fair Contracting Process**

### **Notice to Unions, Opportunity to Bid**

#### Rhode Island

Gen. Laws Sec. 42-148-3: The director of administration shall notify the bargaining representatives of state employees who will be directly impacted by a potential privatization in writing at least six (6) months in advance of its consideration of privatizing a state service.... Prior to, or up until the time when a prospective offeror is required to submit to the state a proposal for a privatization contract, directly impacted state employees and their bargaining representatives shall be afforded an opportunity to present a new cost estimate, reflecting any innovations that they could incorporate into the work performance standards. This new cost estimate shall be deemed an in-house bid, which shall form the basis for the eventual cost comparison. The director shall provide technical and informational assistance to the in-house state work group in its preparation of an in-house bid.”

#### Massachusetts

G.L. Ch. 7, Sec. 54: “After consulting any relevant employee organization, the agency shall provide adequate resources for the purpose of encouraging and assisting present agency employees to organize and submit a bid to provide the subject services.... The agency shall consider any such employee bid on the same basis as all other bids.”

#### California

Gov. Code Sec. 19131: “All organizations that represent state employees who perform the type of work to be contracted, and any person or organization which has filed with the board a request for notice, shall be contacted immediately by the State Personnel Board upon receipt of this notice so that they may be given a reasonable opportunity to comment on the proposed contract.... Any employee organization may request, within 10 days of notification, the State Personnel Board to review any contract proposed or executed.”

#### Vermont

Title 3, Ch. 14, Sec. 343: “No agency may enter a privatization contract, unless ... 35 days prior to the beginning of any open bidding process, the agency provides written notice to the collective bargaining representative of the intent to seek to

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enter a privatization contract. During those 35 days, the collective bargaining representative shall have the opportunity to discuss alternatives to contracting. Such alternatives may include amendments to the contract if mutually agreed upon by the parties. Notices regarding the bid opportunity may not be issued during the 35-day discussion period.”

## **Labor Standards**

### California

Gov. Code Sec. 19130: Contractor wages must be "at the industry level and [must] not significantly undercut state pay rates."

### Massachusetts

G.L. Ch. 7, Sec. 54: Contractors are required to provide their employees wages and benefits comparable to those paid to state employees performing similar services or to the average private sector wage for that occupation. The wages and benefits must be included in the bid and must be reported to the contracting agency on a quarterly basis.

### Rhode Island

Gen. Laws Sec. 36-16.1-1: "The rates of wages to be paid the various classes of service employees in the performance of the contract or any subcontract thereunder shall be based upon the prevailing rates for employment in the state."

### Connecticut (Food and Building Services)

Gen. Stat. Sec. 31-57f: "The wages paid ... shall be at a rate not less than the standard rate determined by the Labor Commissioner ... which shall be equivalent to the minimum hourly wages set forth in the federal Register of Wage Determinations under the Service Contract Act, plus a thirty per cent surcharge to cover the cost of any health, welfare and retirement plans or, if no such plan is in effect between the employees and the employer, an amount equal to thirty per cent of the hourly wage which shall be paid directly to the employees."

## **Accurate Cost Comparisons**

### Maryland

Personnel and Pension Code Sec. 13-405: The cost comparison shall include "direct costs, including fringe benefits, indirect overhead costs ... but only to the extent that those costs are attributed solely to the service in question and would not exist if the service were not performed by State employees," and "any continuing or transitional costs that would be directly associated with contracting

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for the services, including unemployment compensation and the cost of transitional services.”

**California**

Gov. Code Sec. 19130: “Proposals to contract out work shall not be approved solely on the basis that savings will result from lower contractor pay rates or benefits. Proposals to contract out work shall be eligible for approval if the contractor's wages are at the industry's level and do not significantly undercut state pay rates.”

**Maine**

M.R.S. Sec. 1825-B: “State departments and agencies may not achieve cost savings due to cost differentials that derive from a bidder’s failure to provide health and retirement benefits to its employees.... The rules must adjust the bid prices to establish an equivalent basis for bid price and cost comparison among businesses when awarding contracts and between businesses and state employees when determining whether or not a contract is permitted....”

**Rhode Island**

Gen. Laws Sec. 42-148-4: “Any cost comparison must include an analysis of comparative benefits for employees ... all transition costs ... any conversion costs ... and areas where the bidder's costs appear artificially low, thereby putting the state at risk for further cost overruns. In the event that the state will incur new program costs related to the statement of work and performance standards, such costs shall be included in the cost comparison. All cost comparisons must include an analysis of whether the cost savings will result in meeting the performance and qualitative measures set out in the statement of work and performance standards

**Connecticut**

Gen. Stat. Sec. 31-57f: “Employers with employees covered by collective bargaining agreements which call for wages and benefits that are reasonably related to the standard rate shall not be economically disadvantaged in the bidding process, provided the collective bargaining agreement was arrived at through arms-length negotiations.”

**Social Goals and the Public Interest**

**Massachusetts**

G.L. Ch. 7, Sec. 54: “If the designated bidder proposes to perform any or all of the contract outside the boundaries of the commonwealth, said contract cost shall

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be increased by the amount of income tax revenue, if any, which will be lost to the commonwealth by the corresponding elimination of agency employees.”

**Maryland**

Personnel and Pensions Code Sec. 13-404: Requirement that “contract does not adversely affect the affirmative action efforts of this State.”

**California**

Gov. Code Sec. 19130: Any economic advantage can be outweighed by the public’s interest in having the function performed by state employees.

**Minimum Savings**

**Maryland**

Personnel and Pensions Code Sec. 13-405: “The unit shall submit calculations that ... show savings to this State, over the duration of the service contract, of 20% of the contract or \$200,000, whichever is less.”

**Michigan**

Civil Service Rules, Ch. 7-3(d). “an appointing authority may make or authorize disbursements for personal services outside the classified service only if ... the personal services would be obtained at substantial savings ... when compared with having the same personal services performed by the classified work force. The personal services do not meet this standard if, despite the savings over the proposed period of disbursements, substantial savings would not likely be realized over the long term.” [‘Substantial’ is defined as 5% to 25% depending on the size of the contract.]

**Vermont**

Title 3, Ch. 14, Sec. 343: “No agency may enter a privatization contract, unless ... the proposed contract is projected to result in overall cost savings to the state of at least ten percent above the projected cost of having the services provided by classified state employees.”

**Legislative Notice and Approval**

**Rhode Island**

Gen. Laws Sec. 42-148-7: “The director of the department of administration shall notify the chairpersons of the house and senate finance committees of their intent

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to request bids or proposals to privatize state services. The notice to the committees shall be provided thirty (30) days prior to issuing the request.”

**District of Columbia**

D.C. Code Sec. 1-204.51: “No contract involving expenditure in excess of \$1,000,000 during a 12-month period may be made unless the Mayor submits the contract to the Council for its approval and the Council approves the contract.”

**San Diego, California**

Municipal Code Ch. 2, Art. 2, Div. 32 requires contracts with non-profit organizations in excess of \$500,000, and contracts for consulting services in excess of \$250,000, to be approved by the City Council.

**Block Deals With Bad Actors**

**Massachusetts**

G.L. Ch. 7, Sec. 54: “The head of the agency and the commissioner of administration shall each certify in writing to the state auditor, that ... the designated bidder and its supervisory employees, while in the employ of said designated bidder, have no adjudicated record of substantial or repeated willful noncompliance with any relevant federal or state regulatory statute including, but not limited to, statutes concerning labor relations, occupational safety and health, nondiscrimination and affirmative action, environmental protection and conflicts of interest.”

**Hawaii**

HRS Sec. 103D-702: “The causes for debarment or suspension include ... conviction under state or federal statutes relating to embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property ... conviction under state or federal antitrust statutes arising out of the submission of bids or proposals ... or a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts....”

**Connecticut (Information Technology and Communications Contracts)**

Gen. Stat. Sec. 4d-48: Businesses debarred “if such business entity or individual previously had a contract with the state ... and such prior contract was finally terminated by the state or a state agency within the previous five years for the reason that such business entity or individual failed to perform or otherwise breached a material obligation of the contract....”

## **Provide Assistance to Affected Employees**

### Maryland

Personnel and Pensions Code Sec. 13-405: “The unit shall submit a formal plan of assistance for all State employees who will be adversely affected by the service contract. The plan of assistance shall include efforts to place affected employees in vacant positions in the unit or in another unit; provisions in the service contract, if feasible, for the hiring by the contractor of displaced employees; and prior notification to affected employees.”

### Connecticut (Information Technology and Communications Contracts)

Gen. Stat. Sec. 4d-47: “The contractor shall hire the [displaced state] employee, upon application by the employee, unless the employee is hired by a subcontractor of the contractor, or the employee may transfer to any vacant position in state service for which such employee is qualified, to the extent allowed under the provisions of existing collectively bargained agreements and the general statutes. If the contractor or any such subcontractor hires any such state employee and does not provide the employee with fringe benefits which are equivalent to, or greater than, the fringe benefits that the employee would have received in state service, the state shall, for two years after the employee terminates from state service, provide to the employee either the same benefits that such employee received from the state, or compensation in an amount which represents the difference in the value of the fringe benefits that such employee received when in state service and the fringe benefits that such employee receives from the contractor or subcontractor.”

### California

Gov. Code Sec. 19130: “Personal services contracting is permissible [only if] ... the contract does not cause the displacement of civil service employees. The term "displacement" includes layoff, demotion, involuntary transfer to a new class, involuntary transfer to a new location requiring a change of residence, and time base reductions. Displacement does not include changes in shifts or days off, nor does it include reassignment to other positions within the same class and general location.”

## **Improve Oversight of Existing Contracts**

### **Contract Sunset**

#### Minnesota

Stat. Sec. 16C.08: For service contracts, the combined duration including amendments cannot exceed 5 years, "unless otherwise provided for by law." The term of the original contract cannot exceed two years unless the commissioner determines that a longer duration is in the best interest of the state.

#### Vermont

Title 3, Ch. 14, Sec. 342: Contracts for professional services "such as legal, engineering, or architectural services," are limited to two years, and contracts for "urgent, temporary or occasional" services are limited to 90 days.

### **Public Access to Contractor Data**

#### Florida

Stat. Sec. 287.0574: "Each contract for a proposed outsourcing, pursuant to this section, must include ... a provision that requires the contractor and its subcontractors to comply with public records laws, specifically to keep and maintain the public records that ordinarily and necessarily would be required by the state agency in order to perform the service or activity ... provide the public with access to such public records on the same terms and conditions that the state agency would provide the records ... meet all requirements for retaining records and transfer to the state agency, at no cost, all public records in possession of the contractor upon termination of the contract...."

### **Contract Expenditure Report**

#### Rhode Island

Gen. Laws Sec. 37-2.3-4 "As part of the budgetary process, each state agency shall provide an addendum to their submitted budget request listing all privatization contracts; the name of each contractor, subcontractor, duration of the contract provided and services provided; the total cost of each contract(s) for the prior year; and the projected number of privatization service contracts for the current and upcoming year, the total cost of each contract(s) for the prior year; the estimated costs of each contract(s) for the current and upcoming year. The addendum for each agency shall also contain a summary of contracted private contractor employees for each contract, reflected as full-time equivalent positions, their hourly wage rate, and the number of private contractor employees and

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consultants for the current and previous fiscal year. The addendums shall be open records.”

**Minnesota**

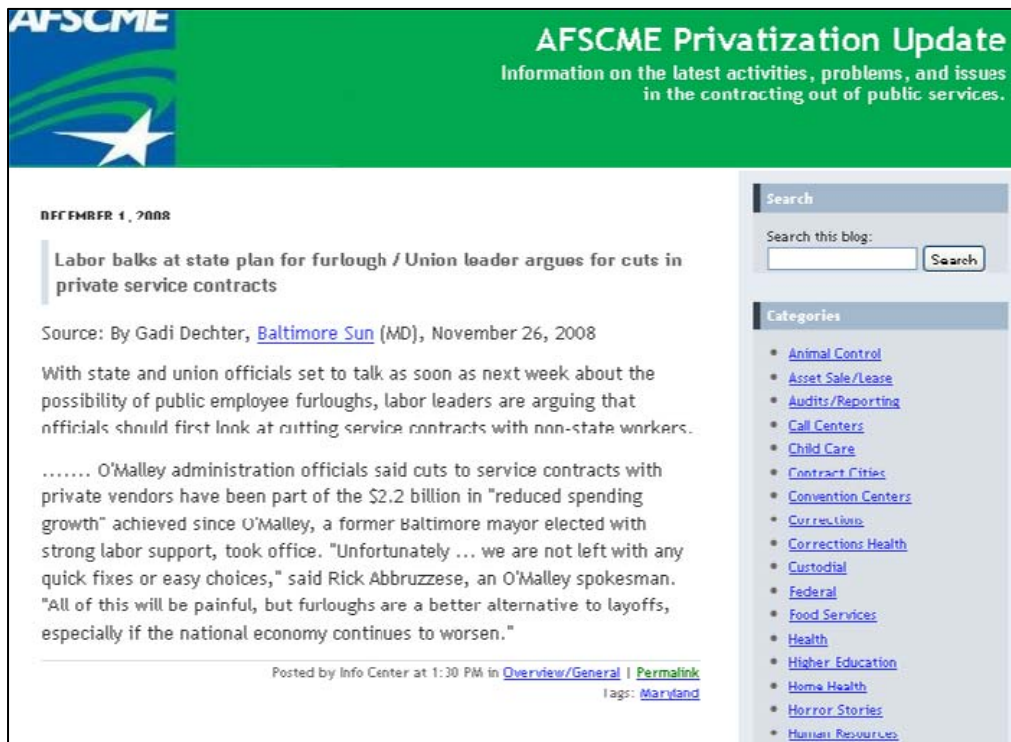
Stat. Sec. 16C.046: “The commissioner of administration must maintain a Web site with a searchable database providing the public with information on state contracts, including grant contracts. The database must include the following information for each state contract valued in excess of \$25,000: (1) the name and address of the entity receiving the contract; (2) the name of the agency entering into the contract; (3) whether the contract is: (i) for goods; (ii) for professional or technical services; (iii) for services other than professional and technical services; or (iv) a grant; (4) a brief statement of the purpose of the contract or grant; (5) the amount of the contract or grant and the fund from which this amount will be paid; and (6) the dollar value of state contracts, other than grants, the entity has received in each fiscal year and the dollar value of state grants the entity has received in each fiscal year.”

**Wisconsin**

Stat. Sec. 16.705: The Department of Administration shall, "annually submit to the governor, the joint committee on finance, the joint legislative audit committee and the chief clerk of each house of the legislature for distribution to the appropriate standing committees, a report on the number, value and nature of contractual service procurements authorized for each agency during the preceding fiscal year."

## Resources

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Information on the latest activities, problems, and issues  
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**Labor balks at state plan for furlough / Union leader argues for cuts in private service contracts**

Source: By Gadi Dechter, [Baltimore Sun](#) (MD), November 26, 2008

With state and union officials set to talk as soon as next week about the possibility of public employee furloughs, labor leaders are arguing that officials should first look at cutting service contracts with non-state workers.

..... O'Malley administration officials said cuts to service contracts with private vendors have been part of the \$2.2 billion in "reduced spending growth" achieved since O'Malley, a former Baltimore mayor elected with strong labor support, took office. "Unfortunately ... we are not left with any quick fixes or easy choices," said Rick Abbruzzese, an O'Malley spokesman. "All of this will be painful, but furloughs are a better alternative to layoffs, especially if the national economy continues to worsen."

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