

CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor

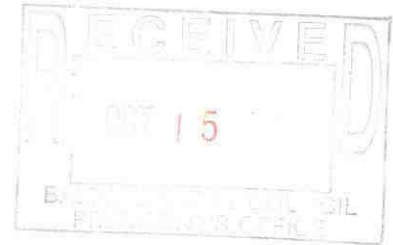


DEPARTMENT OF LAW

GEORGE A. NILSON, City Solicitor  
101 City Hall  
Baltimore, Maryland 21202

October 11, 2013

The Honorable President and Members  
of the Baltimore City Council  
Attn: Karen Randle, Executive Secretary  
Room 409, City Hall  
100 N. Holliday Street  
Baltimore, Maryland 21202



Re: City Council Bill 13-0250 – Finance and Procurement – Human Resources  
Certification of Training Contracts

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 13-0250 for form and legal sufficiency. The bill would amend the “miscellaneous Contract Provisions” Subtitle of Article 5 of the City Code to include the following:

EVERY CONTRACT AWARDED BY THE CITY THAT CALLS FOR A CONTRACTOR TO PROVIDE TRAINING OF ANY SORT TO CITY EMPLOYEES MUST CONTAIN A CERTIFICATION FROM THE DIRECTOR OF HUMAN RESOURCES THAT THE DEPARTMENT OF HUMAN RESOURCES IS UNABLE TO PROVIDE THE CONTRACTED FOR TRAINING THROUGH ITS OWN INTERNAL RESOURCES.

The Law Department notes that this requirement would not be an operative term of the contract because it does not bind the contractor. *See, e.g., Kiley v. First Nat'l Bank of Md.*, 102 Md. App. 317, 333 (1994), *cert. denied* 338 Md. 166, *cert. denied* 516 U.S. 866 (1995). It is a statement by the City and would therefore not prevent the vendor from providing the service. Moreover, if the BOE entered a contract without the certification, it is unclear whether the contract would be void or voidable. *See, e.g., Romm v. Flax*, 340 Md. 690, 697-98 (1995). Rather, it may be seen as an immaterial term. *See, e.g., Regal Sav. Bank, FSB v. Sachs*, 352 Md. 356, 363 (1999).

Additionally, this certification is contemplated after the contractor has already been awarded the contract by the BOE. *See* City Charter, Art. VI, §11. At that point, the Department of Human Resources or another City agency has already made the decision to utilize a contractor to perform the training and BOE has already awarded the contract. If the intent of the Council is to prohibit City agencies from contracting for outside vendors to perform training if the City is able to provide the training in-house, then the Charter must be changed to reflect that the City is no longer able to purchase training services without such a certification. *See* City Charter, Art.

F/Comments

VI, §11; Art. VII §17. Alternatively, the Department of Finance could include such a requirement in its purchasing standards under Section 17(c) of Article VII of the City Charter.

These comments are intended to aid in formulating a law that will be effective for whatever purpose the Council intends. However, the bill, as written is not legally insufficient and therefore the Law Department can approve it for form and legal sufficiency.

Very truly yours,



Hilary Ruley  
Assistant Solicitor

cc: George Nilson, City Solicitor  
Angela C. Gibson, Mayor's Legislative Liaison  
Elena DiPietro, Chief Solicitor  
Michael Schrock, Chief Solicitor  
Victor Tervalá, Assistant Solicitor  
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