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Senate Bill 1085 (as introduced 4-19-12)
Sponsor: Senator John Moolenaar
Committee: Reforms, Restructuring and Reinventing

Date Completed: 4-24-12

CONTENT

The bill would amend the Fair and Open Competition in Governmental Construction Act to:

- **Prohibit governmental units from awarding construction contracts that include certain terms related to agreements with labor organizations (rather than prohibiting governmental units from entering into a contract or making payments under a contract if the contract or a subcontract contains prohibited terms).**
- **Provide that the Act would not prohibit a governmental unit from awarding a contract to a private owner or contractor who is a party to an agreement with a labor organization under certain circumstances (which currently apply to awarding a grant, tax abatement, or tax credit).**
- **Provide that the Act would not prohibit a contractor from voluntarily entering into or complying with an agreement with a labor organization in regard to a contract with a governmental unit or funded from a grant, tax abatement, or tax credit.**
- **Allow a governmental unit to make an exemption from requirements of the Act in order to avert an imminent threat to public health or safety.**
- **Revise a provision limiting the scope of the Act.**
- **Add a statement of legislative intent.**

(The Act defines "governmental unit" as the State, a county, city, township, village, school district, intermediate school district, community college, or public university that receives appropriations from the State, or any agency, board, commission, authority, or instrumentality of any of those entities.)

Exception to Avert Imminent Threat

The bill would allow the head of a governmental unit to exempt a particular project, contract, subcontract, grant, tax abatement, or tax credit from the requirements of any or all of the Act's provisions concerning prohibited contract terms, if the governmental unit found, after public notice and a hearing, that special circumstances required an exemption to avert an imminent threat to public health or safety.

A finding of special circumstances could not be based on the possibility or presence of a labor dispute concerning the use of contractors or subcontractors who did not sign or

otherwise adhere to agreements with one or more labor organizations, or concerning employees on the project who were not members of or affiliated with a labor organization.

Prohibited Contract Terms

The Act prohibits a governmental unit from entering into or spending funds under a contract for the construction, repair, remodeling, or demolition of a facility if the contract or a subcontract under it contains either of the following:

- A term that requires, prohibits, encourages, or discourages bidders, contractors, or subcontractors from entering into or adhering to agreements with a collective bargaining organization (CBO) relating to the construction project or other related projects.
- A term that discriminates against bidders, contractors, or subcontractors based on the status of a party or nonparty to an agreement with a CBO, or willingness or refusal to enter into such an agreement, relating to the construction project or other related projects.

Also, a governmental unit or a construction manager or other contracting entity acting on its behalf may not place any of the prohibited terms in bid specifications, project agreements, or other controlling documents relating to the construction, repair, remodeling, or demolition of a facility.

The bill would delete all of those provisions. Instead, the bill would prohibit a governmental unit awarding a contract after July 19, 2011 (the Act's effective date), for the construction, repair, remodeling, or demolition of a facility, and any construction manager acting on its behalf, from including any of the following in bid specifications, project agreements, or other controlling documents:

- A term that required or prohibited a bidder, offeror, contractor, or subcontractor from entering into or adhering to an agreement with one or more labor organizations in regard to that project or a related construction project.
- A term that otherwise discriminated against a bidder, offeror, contractor, or subcontractor for becoming or remaining or refusing to become or remain a signatory to, or for adhering or refusing to adhere to, an agreement with one or more labor organizations in regard to that or a related construction project.

Award of Contract, Grant, Abatement, or Credit

Section 7 of the Act prohibits a governmental unit from awarding a grant, tax abatement, or tax credit that is conditioned on a requirement that the awardee include a prohibited term in a contract document for any construction, improvement, maintenance, or renovation to real property or fixtures that are the subject of the grant, abatement, or credit.

Section 7 states that it does not prohibit a governmental unit from awarding a grant, tax abatement, or tax credit to a private owner, bidder, contractor, or subcontractor who enters into or is a party to an agreement with a CBO, if being or becoming a party or adhering to an agreement with a CBO is not a condition for award of the grant, abatement, or credit, and if the governmental unit does not discriminate against a private owner, bidder, contractor, or subcontractor in awarding that grant, abatement, or credit based on the status of being or becoming a party to an agreement with a CBO, or willingness or refusal to become a party to such an agreement.

The bill states that the Act (rather than Section 7) would not prohibit a governmental unit from awarding a grant, tax abatement, or tax credit—or awarding a contract—to a private owner, bidder, contractor, or subcontractor under essentially the same circumstances. The bill would refer to an agreement with a labor organization, rather than a CBO.

In addition, under the bill, the Act would not prohibit a contractor or subcontractor from voluntarily entering into or complying with an agreement entered into with one or more labor organizations in regard to a contract with a governmental unit or funded entirely or partly from a grant, tax abatement, or tax credit from the governmental unit.

Scope of the Act

The Act states that it does not interfere with labor relations of parties that are "protected" under the National Labor Relations Act. The bill would refer, instead, to labor relations of parties that are "left unregulated" under that Act.

Legislative Intent

The bill states, "The legislature intends this act to provide for more economical, nondiscriminatory, neutral, and efficient procurement of construction-related goods and services by this state and political subdivisions of this state as market participants and providing for fair and open competition best effectuates this intent."

MCL 408.875 et al.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The Department of Technology, Management, and Budget (DTMB) states that there would be no fiscal implications for State of Michigan facility projects. The Department's contracts regarding State buildings and facilities already comply with the terms of this bill. The DTMB states that the State's contracts and bidding documents also comply with bill's requirements and that the Department's facilities contracting documents do not in any way address union or non-union status. The Department also states that competition for governmental construction is fair and open.

The bill would have an indeterminate fiscal impact on local units of government, school districts, intermediate school districts, community colleges, and public universities receiving appropriations from the State. Depending on the contracts, governmental entities could potentially see cost savings from entering into construction contracts that would have to adhere to the provisions of the bill.

The amount of savings is indeterminate and would depend on the difference in the cost of the contracts among the bidders and on the number of affected governmental units.

Fiscal Analyst: Joe Carrasco

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.