FAIR AND OPEN COMPETITION IN GOVERNMENTAL CONSTRUCTION ACT
Act 98 of 2011

AN ACT to provide for fair and open competition in governmental construction contracts, grants, tax abatements, and tax credits; to prohibit requirements for certain terms in government contracts; to prohibit certain terms in procurement documents for certain expenditures involving public facilities; and to provide for powers and duties of certain public officers, employees, and contractors.

History: 2011, Act 98, Imd. Eff. July 19, 2011;—Am. 2012, Act 238, Imd. Eff. June 29, 2012.

The People of the State of Michigan enact:

408.871 Short title.

Sec. 1. This act shall be known and may be cited as the "fair and open competition in governmental construction act".

History: 2011, Act 98, Imd. Eff. July 19, 2011.

408.872 Intent of legislature; purpose.

Sec. 2. 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.

History: Add. 2012, Act 238, Imd. Eff. June 29, 2012.

408.873 Definitions.

Sec. 3. As used in this act:

(a) "Facility" means any actual physical improvement to real property owned, or leased, directly or through a building authority, by a governmental unit, including, but not limited to, roads; bridges; runways; rails; or a building or structure along with the building's or structure's grounds, approaches, services, and appurtenances.

(b) "Governmental unit" means this state, a county, city, township, village, school district, intermediate school district, community college, or public university that receives appropriations from this state, or any agency, board, commission, authority, or instrumentality of the foregoing.

History: 2011, Act 98, Imd. Eff. July 19, 2011.

408.875 Contract for construction, repair, remodeling, or demolition of facility; prohibitions concerning bid specifications, project agreements, or other controlling documents.

Sec. 5. Subject to section 8, a governmental unit awarding a contract on or after the effective date of the amendatory act that added section 2 for the construction, repair, remodeling, or demolition of a facility and any construction manager acting on its behalf shall not, in any bid specifications, project agreements, or other controlling documents:

(a) Require or prohibit a bidder, offeror, contractor, or subcontractor from entering into or adhering to an agreement with 1 or more labor organizations in regard to that project or a related construction project.

(b) Otherwise discriminate 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 1 or more labor organizations in regard to that project or a related construction project.

History: 2011, Act 98, Imd. Eff. July 19, 2011;—Am. 2012, Act 238, Imd. Eff. June 29, 2012.

408.877 Grant, tax abatement, or tax credit; prohibitions.

Sec. 7. Subject to section 8, a governmental unit shall not award a grant, tax abatement, or tax credit that is conditioned upon a requirement that the awardee include a term described in section 5(a) or (b) in a contract document for any construction, improvement, maintenance, or renovation to real property or fixtures that are the subject of the grant, tax abatement, or tax credit.

History: 2011, Act 98, Imd. Eff. July 19, 2011;—Am. 2012, Act 238, Imd. Eff. June 29, 2012.

408.878 Agreement with labor organization.

Sec. 8. (1) This act does not prohibit a governmental unit from awarding a contract, grant, tax abatement, or tax credit to a private owner, bidder, contractor, or subcontractor who enters into or who is party to an agreement with a labor organization, if being or becoming a party or adhering to an agreement with a labor organization is not a condition for award of the contract, grant, tax abatement, or tax credit, and if the governmental unit does not discriminate against a private owner, bidder, contractor, or subcontractor in the

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awarding of that contract, grant, tax abatement, or tax credit based upon the status as being or becoming, or the willingness or refusal to become, a party to an agreement with a labor organization.

(2) This act does not prohibit a contractor or subcontractor from voluntarily entering into or complying with an agreement entered into with 1 or more labor organizations in regard to a contract with a governmental unit or funded in whole or in part from a grant, tax abatement, or tax credit from the governmental unit.

History: Add. 2012, Act 238, Imd. Eff. June 29, 2012.

408.879 Exemption of project, contract, subcontract, grant, tax abatement, or tax credit from certain requirements; special circumstances.

Sec. 9. The head of a governmental unit may exempt a particular project, contract, subcontract, grant, tax abatement, or tax credit from the requirements of any or all of the provisions of section 5 or 7 if the governmental unit finds, after public notice and a hearing, that special circumstances require an exemption to avert an imminent threat to public health or safety. A finding of special circumstances under this section shall not be based on the possibility or presence of a labor dispute concerning the use of contractors or subcontractors who are nonsignatories to, or otherwise do not adhere to, agreements with 1 or more labor organizations, or concerning employees on the project who are not members of or affiliated with a labor organization.

History: 2011, Act 98, Imd. Eff. July 19, 2011;—Am. 2012, Act 238, Imd. Eff. June 29, 2012.

408.881 Requirements; exceptions.

Sec. 11. The requirements of this act do not do either of the following:

(a) Affect any provision in 1965 PA 166, MCL 408.551 to 408.558.

(b) Apply to construction contracts executed before the effective date of this act.

History: 2011, Act 98, Imd. Eff. July 19, 2011.

408.883 Effect of act on activities protected by federal law.

Sec. 13. This act does not do either of the following:

(a) Prohibit employers or other parties from entering into agreements or engaging in any other activity protected by the national labor relations act, 29 USC 151 to 169.

(b) Interfere with labor relations of parties that are left unregulated under the national labor relations act, 29 USC 151 to 169.

History: 2011, Act 98, Imd. Eff. July 19, 2011;—Am. 2012, Act 238, Imd. Eff. June 29, 2012.

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