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BILL ANALYSIS



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Senate Bill 177 (Substitute S-2 as reported)
Sponsor: Senator Patrick J. Colbeck
Committee: Elections and Government Reform

Date Completed: 6-16-17

RATIONALE

The Management and Budget Act makes the Department of Technology, Management, and Budget (DTMB) responsible for purchasing supplies and contracting for services needed by State agencies. Within dollar limits and for designated types of procurements, the DTMB may delegate this authority to other State agencies. Unless a specific exception applies, the Department is required to use competitive bidding for all purchases authorized under the Act. The Act also requires the DTMB to give a preference of up to 10% of the amount of a contract to a qualified disabled veteran, and states that it a goal of the Department to award at least 5% of its total expenditures for construction, goods, and services to qualified disabled veterans. Both the preference and the goal were enacted in 2005. Originally 3%, the goal was increased to the current 5% by an amendment enacted in 2008.

Despite these measures, the DTMB has not always been able to achieve the statutory goal, or at least not in all categories of contracting. Apparently, one reason for this is the difficulty in finding businesses that qualify. The Act defines "qualified disabled veteran" as a business entity that is 51% or more owned by one or more veterans with a service-connected disability, i.e., a disability incurred or aggravated in the line of duty in the active military, naval, or air service. Thus, it has been suggested that a preference also should be given to businesses owned by veterans who are not disabled, as well as businesses that employ veterans. In addition, because the Act makes it a goal of "the department" to award 5% of its expenditures to qualified disabled veterans, apparently there is some uncertainty as to whether the goal applies to other State agencies with procurement authority delegated by the DTMB.

Another concern involves the potential for fraud on the part of people representing themselves as disabled veteran business owners. The Act prescribes a criminal penalty for a business that purposefully or willfully submits a false certification that it is a Michigan business (which may receive a preference over a business from a state that applies a preference law against out-of-state bidders). Some people believe that any bidder that intentionally submits false information should be penalized.

CONTENT

The bill would amend the Management and Budget Act to do the following:

- Require the Department of Technology, Management, and Budget and all State agencies with procurement authority to use a bid scorecard system when awarding contracts with an expected award of \$100,000 or more.**
- Require the bid scorecard system to tally contract bids based on cost, quality, service, and other relevant factors.**
- Require the DTMB to assign a percentage preference for certain veteran businesses under the cost component, awarding a preference of at least 2% each to employees**

who were veterans, businesses owned by a veteran, and businesses owned by a qualified disabled veteran.

- Require the DTMB to assign a percentage preference of 2% to Michigan-based firms, under the cost component.**
- Specify that the percentages would be for evaluation purposes only.**
- Require a request for proposal to clearly state how the factors and points would be awarded, scaled, and evaluated in the bid scorecard system.**
- Allow bidders to use subcontractors to fulfill the requirements for a preference, if the subcontractors were registered to do business in Michigan.**
- Require the Department to award a contract to the bidder with the highest point tally if that bidder met the minimum technical and administrative requirements.**
- Require simultaneous communication to all bidders on a contract of any change made to the evaluation criteria in a request for proposal, as well as any responses to an inquiry from an individual bidder.**
- Make it a civil violation, rather than a felony, for a business to submit a false certification that it is a Michigan business, revise the fine, and extend it to any business that submitted false information in support of a bid.**
- Require a bidder to disclose certain employee information before it would be eligible to be certified as a Michigan business.**
- Delete current requirements for giving preference to qualified disabled veterans.**

Bid Scorecard System

Beginning October 1, 2017, the bill would require the DTMB and all State agencies with delegated procurement authority to award contracts with an expected contract award of \$100,000 or more by using a bid scorecard system that would tally contract bids based on cost, quality, service, and other relevant factors as determined by the Department.

Under the cost component, the DTMB would have to assign a percentage preference for certain veteran businesses. When applicable, when a bid or offer was not from a veteran business, the preference would have to be applied to the veteran business bids offering a domestic source and product or service. The percentage would have to be used for evaluation purposes only. The veteran business percentage preference would have to be awarded as follows, as determined by the DTMB:

- A preference of at least 2% would be awarded for employees who were veterans.
- A preference of at least 2% would be awarded for businesses owned by a veteran.
- A preference of at least 2% would be awarded for businesses owned by a qualified disabled veteran.

(The Act defines "veteran" as an individual who 1) is a veteran as defined in Public Act 190 of 1965 (an individual who served in the United States Armed Forces, including the reserve components, and was discharged or released under conditions other than dishonorable); and 2) was released from his or her service with an honorable or general discharge.)

Under the cost component, the DTMB also would have to assign a percentage preference of 2% to Michigan-based firms. When applicable, when a bid or offer was not from a Michigan-based firm or a firm located in a state that borders Michigan, the 2% preference would have to be applied to the Michigan-based firm and firms located in border states that offered a domestic source end product or service. The percentage would have to be used for evaluation purposes only.

A bidder could use subcontractors to fulfill the requirements for a preference under the bill. If a bidder wanted to use a subcontractor for this purpose, however, the subcontractor would have to be registered to do business in Michigan.

As long as the bidder with the highest point tally met the minimum technical and administrative requirements determined by the DTMB, the Department would have to award the contract to that bidder.

When the DTMB or a State agency with procurement authority delegated to it issued a request for proposal (RFP), the RFP would have to clearly state how the factors and points would be awarded, scaled, and evaluated in the bid scorecard system.

In addition, the bid scorecard system would have to provide that if any change were made to the evaluation criteria in an RFP, the Department or the State agency with procurement authority would be required to simultaneously communicate those changes to all bidders on that contract as well as simultaneously communicate any responses to an inquiry from an individual bidder to all bidders on that contract.

The DTMB would have to develop automation tools to assist in the application of the bid scorecard system, and make the system available to the public on the Department's internet website.

Michigan Business

Under the Act, a bidder that has certified that it is a Michigan business is entitled to have the DTMB apply a reciprocal preference in its favor against a business that submits a bid from a state that applies a preference law against out-of-state bidders. If the low bid for a State procurement contract exceeds \$100,000 and is from a business located in a state that applies such a preference law, the Department is required to prefer a bid from a Michigan business in the same manner as the out-of-state bidder would be preferred in its home state. A business that does not certify that it is a Michigan business must indicate in its bid the state in which it maintains its principal place of business for the purpose of applying that state's preference law against the bidder.

In order to be a Michigan business for this purpose, a bidder on a State contract must certify that it did one of the following during the 12 months immediately preceding the bid deadline: filed a Michigan business tax return showing all or a portion of the income tax base allocated or apportioned to Michigan; filed a Michigan income tax return showing income generated in or attributed to the State; or withheld Michigan income tax from compensation paid to the bidder's owners and remitted it to the Department of Treasury.

Under the bill, beginning October 1, 2017, before a bidder was eligible to be certified as a Michigan business, the bidder would have to disclose to the DTMB the number and percentage of its employees who worked more than 20 hours per week and who had been employed by the business for the immediate and preceding 90-day period who were 1) Michigan residents, 2) veterans, or 3) qualified disabled veterans.

The bill would require the DTMB, beginning October 1, 2017, to maintain on its internet website a list of all certified Michigan businesses.

Currently, a business that purposefully or willfully submits a false certification that it is a Michigan business or falsely indicates the state in which it has its principal place of business is guilty of a felony, punishable by a minimum fine of \$25,000. The bill provides, instead, that a business that purposefully or willfully submitted a false certification that it was a Michigan business or any other false information in support of a bid would be responsible for a civil violation. The Department would be required to impose a civil fine against that entity in an amount equal to 10% of the value of the contract in which the false certification or false information was made.

Qualified Disabled Veteran Preference & Goal

The Act requires the DTMB, in awarding a contract, to give a preference of up to 10% of the amount of the contract to a qualified disabled veteran. If the qualified disabled veteran otherwise

meets the requirements of the contract solicitation and with the preference is the lowest bidder, the DTMB must enter into a procurement contract with the veteran.

The Act states that it is the goal of the Department to award each year at least 5% of its total expenditures for construction, goods, and services to qualified disabled veterans.

Each year, the DTMB must report to the Legislature on the number of qualified disabled veterans who submitted a bid for a State procurement contract, the number who entered into a contract and the total value of those contracts, and whether the Department achieved the 5% goal. The Department also must review the progress of all State agencies in meeting that goal, and make recommendations to the Legislature regarding continuation, increases, or decreases in the percentage goal. To assist the Department in reaching the goal, the Governor is required to recommend to the Legislature changes in programs to assist businesses owned by qualified disabled veterans.

The bill would delete all of these provisions.

MCL 18.1261 & 18.1268

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

When the goal of awarding 3% of State contracts to qualified disabled veterans was enacted in 2005, large numbers of Michigan residents were serving overseas as members of the military. It was suggested that the State should assist veterans who were injured in the line of duty and trying to support themselves through their own business ventures, and the goal was consistent with a similar Federal program. When the goal was increased to 5% in 2008, State departments were making efforts to engage disabled veterans who were business owners, and encouraging them to register as State vendors and bid on State contracts. Today, the Michigan Veterans Affairs Agency continues to help veterans find employment and become business owners. Nevertheless, many veterans still struggle with unemployment or underemployment.

The bill would increase employment opportunities for veterans and expand State contracting opportunities for veteran-owned businesses. While the current preference and statutory goal apply only to businesses owned by disabled veterans, the bill also would require preference to be given to businesses that are owned by nondisabled veterans and businesses that hire veterans. According to the DTMB, although it is able to fulfill the 5% goal in some categories, such as construction, the Department cannot meet the goal in others, such as information technology, because there are not enough "service disabled veteran business owners" (SDVBOs) who bid on or are qualified for these contracts. Under the bill, this challenge would be mitigated because any veteran-owned business or business employing veterans could receive a preference. In addition to benefiting veterans who own businesses, this would give other businesses an incentive to hire veterans. Also, the bill would eliminate ambiguity by requiring every State agency with delegated procurement authority, rather than just the DTMB, to award these preferences in any contract expected to be at least \$100,000.

In addition, under the bill, a bidder could receive a preference by subcontracting with a business that was owned by a veteran or a disabled veteran or that employed veterans. This would expand contracting opportunities for small veteran-owned businesses that might lack the scale to engage in large projects, such as road building.

Supporting Argument

The bill would increase transparency in State contracting in several ways. First, the bill would establish a bid scorecard system that would apply to all contract awards expected to be \$100,000

or more, and would require the DTMB to make the bid scorecard system available to the public on its website. When the Department or a State agency with procurement authority issued a request for proposal, it would have to state clearly how the scorecard factors and points would be awarded, weighed, and evaluated. Also, when any change was made to the evaluation criteria in an RFP, the Department or agency would have to inform all bidders simultaneously. In addition, if the Department or agency responded to an inquiry from any individual bidder, that response would have to be communicated to all bidders at the same time.

The proposed preferences for veteran-owned businesses, businesses employing veterans, and Michigan-based firms, as well as firms in states that border Michigan, would have to be used in the evaluation of bids under the scorecard system.

Supporting Argument

Currently, a firm that purposefully or willfully submits a false certification that it is a Michigan-based business is guilty of a felony and subject to a minimum fine of \$25,000. Under the bill, a business that did so or that purposefully or willfully submitted *any* false information in support of a bid would be subject to a civil fine equal to 10% of the contract value. This would address concerns that someone might falsely claim to be a veteran or a qualified disabled veteran in order to receive a preference. Although the Department examines the credentials of bidders, the bill would help ensure that only legitimate veteran-owned businesses received contracting preferences.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill could have an indeterminate fiscal impact on the budgets of affected State departments and agencies. Potentially, State departments and agencies could have increased administrative costs associated with the proposed changes; however, the costs are indeterminate and would depend on the number of contracts awarded by a State department or agency of \$100,000 or more.

In addition, the proposed civil fine for a business submitting a false certification or other false information would have an indeterminate fiscal impact on State and local government. The bill would make it a violation to submit any false information in support of a bid, thus expanding the scope of the penalty. However, the current penalty is a criminal fine of at least \$25,000 and the penalty in the bill would be a civil fine equal to 10% of the value of the contract for which the false certification or false information was submitted. Since contracts are awarded for varying amounts, it is unknown whether the proposed fine would be greater or less than the current fine for any given violation. Penal fine revenue is dedicated to public libraries. Since the bill does not indicate how the revenue from the civil fine would be allocated, presumably it would be deposited in the State General Fund.

Fiscal Analyst: Ryan Bergan
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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.