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## BILL ANALYSIS



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Senate Bill 177 (as introduced 2-22-17)  
Sponsor: Senator Patrick J. Colbeck  
Committee: Elections and Government Reform

Date Completed: 6-8-17

**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 10% on technical and critical performance requirements, 70% on cost evaluation, and 20% on labor evaluation.**
- **Require the labor evaluation to award one quarter of its points each to employees who are State residents, employees who are veterans, businesses owned by a veteran, and businesses owned by a qualified disabled veteran.**
- **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.**
- **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.**
- **Delete current requirements for giving preference to qualified disabled veterans.**
- **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 or to bid for a State contract.**

**Bid Scorecard System**

The Act requires the Department of Technology, Management, and Budget (DTMB) to provide for the purchase of, the contracting for, and the provision of supplies, materials, services, insurance, utilities, third party financing, equipment, printing, and all other items needed by State agencies for which the Legislature has not expressly provided otherwise. The Department may delegate its procurement authority to other State agencies within dollar limitations and for designated types of procurements.

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 technical and critical performance requirements, cost evaluation, and labor evaluation.

The critical performance standards would have to be numerical and verifiable, and count for 10% of the points on the bid scorecard. The Department would have to use a weighted scale in judging the critical performance standards and in determining the points awarded. ("Critical performance standards" would mean "the specific technical or administrative requirements that the governing procurement authority believes would merit additional value to the citizens of this state if they were improved upon".)

The cost evaluation would have to be based on the bid price and count for 70% of the points on the bid scorecard.

The labor evaluation would have to count for 20% of the points on the bid scorecard. Subject to the following provision concerning prime contractors, the labor evaluation points would have to be awarded as follows, as determined by the Department:

- One quarter awarded for employees who are residents of the State.
- One quarter awarded for employees who are veterans.
- One quarter awarded for businesses owned by a veteran.
- One quarter 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.

"Qualified disabled veteran" means 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.)

The scope of the labor evaluation would have to include prime contracting agents and any other business that would fulfill contract delivery requirements as a subcontractor to a prime contractor. The Department would have to use a weighted scale in judging the labor evaluation and in determining the points awarded.

In addition, the bid scorecard system would have to provide that if any change were made to the evaluation criteria in a request for proposal, 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.

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

The Department 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 Department 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 in which 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.

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 contract value in which the false certification or false information was made.

Beginning October 1, 2017, the Department would have to maintain on its internet website a list of all certified Michigan businesses.

#### Disclosure Requirement

Beginning October 1, 2017, before a bidder was eligible to be certified as a Michigan business and before a bidder was eligible to bid for a State contract, the bidder would have to disclose to the Department 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.

#### Qualified Disabled Veteran Preference & Goal

The Act requires the Department, 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 Department 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 DTMB 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 on 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

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 in excess of \$100,000.

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.

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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.