

New State Law Prohibits Union 'Favoritism' in Awarding Public Construction Contracts

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A new state law effectively levels the playing field for nonunion companies seeking construction contracts from state and local governmental entities, some of which previously favored or even required bidders to provide a unionized workforce.

The Fair and Open Competition in Governmental Construct Act, signed on July 19 by Michigan Gov. Rick Snyder, prohibits any government unit from awarding a public construction project, grant, tax abatement or credit based on whether the bidder, contractor or developer employs union or non-union laborers.

According to the new law, government units are defined to include the state of Michigan, as well as any counties, townships, cities, villages and school districts located within its borders.

The Act prohibits any government unit from entering into a construction contract or otherwise funding a construction project involving a contract containing any of the following terms or conditions:

(1) a term that requires, prohibits, encourages or discourages bidders, contractors or subcontractors from entering into or adhering to agreements with a collective bargaining organization relating to the construction project or related projects.

(2) A term that discriminates against bidders, contractors or subcontractors based on their status as a party or nonparty to, or the willingness or refusal to enter into, an agreement with a collective bargaining organization relating to the construction project or related projects.

In addition to the above prohibitions, the Act prevents governmental units from offering incentives such as grants, tax abatements or credits on the condition that the recipient enter into a collective bargaining organization relating to the underlying project or a related project.

However, government units are not prohibited from awarding such benefits to private owners, bidders, contractors or sub-contractors who enter into or are a party to an agreement with a collective bargaining organization as long as the government unit does not require it as part of the conditions to the award or otherwise discriminate against such an entity based upon their willingness, or lack thereof,

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to enter into a collective bargaining agreement in connection with the project or a related project.

The governmental manager, construction manager or other contracting entity is, likewise, prohibited from placing such terms in bid specifications, project agreements or other controlling documents relating to the construction, repair, remodeling or demolition of a facility.

The term “facility” is defined broadly to encompass any actual physical improvement to real property, owned or leased directly or through a building authority by a government unit, including roads, bridges, runways, rails, buildings or structures, along with their grounds, services and appurtenances.

Construction contracts executed prior to July 19 are unaffected by the new law's enactment.

With the Fair and Open Competition in Governmental Construct Act now in place, it remains to be seen whether it will impact the cost of public construction contracts or whether it will spur public construction projects. There are, however, a number of studies about the costs of public construction contract in union versus nonunion environments that could shed some light on the subject.

Researchers from Beacon Hill Institute (BHI) at Suffolk University in Massachusetts found that the existence of project labor agreements increased the cost of school construction projects in Massachusetts by 14 percent and in Connecticut by 18 percent. However, other researchers, including those from Michigan State University, have concluded that the use of project labor agreements does not have a significant effect on final project costs.

Regardless of the potential cost differentials, one thing is now abundantly clear - a construction services provider's union or nonunion employer status or affinity for working with like sub-contractors and suppliers is irrelevant to its ability to secure future public construction contracts.