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BILL



ANALYSIS

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Senate Bill 313 (as passed by the Senate)
Sponsor: Senator John Pappageorge
Committee: Senior Citizens and Veterans Affairs

Date Completed: 6-23-09

RATIONALE

Public Act 91 of 2005 amended the Management and Budget Act to require the Department of Management and Budget (DMB) to give qualified disabled veterans a preference of up to 10% of the amount of competitively bid contracts for items needed by State agencies. That legislation, however, did not amend the section of the Act that governs construction, repair, remodeling, or demolition of a facility. Consequently, qualified disabled veterans do not receive the 10% preference on those competitively bid contracts. Some people believe the preference should be offered to disabled veterans who bid on construction contracts as well as product procurement contracts.

CONTENT

The bill would amend the Management and Budget Act to require the Department of Management and Budget to give a preference of up to 10% of the amount of construction contracts to qualified disabled veterans.

Under the Act, except for certain contracts entered into for emergency repair or construction, a contract may not be awarded for the construction, repair, remodeling, or demolition of a facility unless it is let pursuant to a bidding procedure that is approved by the State Administrative Board. The DMB must issue directives prescribing procedures for a competitive solicitation in the award of any contract for construction, repair, remodeling, or demolition of a facility.

Under the bill, in awarding a contract described above, the DMB would have 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 met the requirements of the contract solicitation and, with the preference, were the lowest bidder, the DMB would have to enter into a construction contract with the veteran. If two or more qualified disabled veterans were the lowest bidders on a contract, all other things being equal, the one with the lowest bid would have to be awarded the contract.

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. "Service-connected disability" means a disability incurred or aggravated in the line of duty in the active military, naval, or air service as described in Federal law (38 USC 101(16)).

"Veteran" means a person who served in the Army, Air Force, Navy, Marine Corps, or Coast Guard and who was discharged or released from his or her service with an honorable or general discharge.

MCL 18.1241

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

America's armed forces rely on volunteers to fill their ranks, and one way to encourage

Michigan residents to continue enlisting is to let them know that the State will make efforts to provide for them should they become disabled in the line of duty. The State also has an obligation to assist its current disabled veterans in gratitude for their sacrifices. To that end, legislation enacted in 2005 provides a 10% preference to qualified disabled veterans who bid on contracts for 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 otherwise expressly provided. The State also has a statutorily stated goal to award each year at least 5% of its total expenditures for construction, goods, and services to qualified disabled veterans.

Many people, including DMB officials, apparently believed that the 10%-preference provision enacted in 2005 also applied to State-let construction contracts, but those projects actually are governed by a different section of the Management and Budget Act. Reportedly, a construction contract that the State initially awarded in 2008 to a qualified disabled veteran by applying the preference had to be re-bid when it was discovered that the preference should not have been given, and the disabled veteran lost out on the contract. By requiring the DMB to give a preference of up to 10% of the amount of a contract for construction, repair, remodeling, or demotion to a qualified disabled veteran, the bill would treat the awarding of those contracts consistently with the awarding of contracts for product procurement for State agencies.

Opposing Argument

The bill is inconsistent with Article I, Section 26 of the State Constitution, which was added by a voter-approved citizen initiative in 2006. That provision prohibits the State from granting preferential treatment to any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting. Giving a contracting preference to another group, such as disabled veterans, would run counter to the spirit of that prohibition. Under the bill, a disabled veteran could benefit from a preference granted to him or her while another bidder is strictly denied any preference, which evidently is what

nearly happened in the situation described above: The bidder who originally was denied the 2008 State construction contract because a preference was improperly given to a disabled veteran happened to be a minority contractor to whom the State is constitutionally prohibited from giving a preference under Article I, Section 26. That minority contractor, who was the low bidder on the project, apparently was awarded the contract only after the project was re-bid without preferential treatment for anyone.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

There potentially could be some increased costs to the State under the proposed legislation. The State could be required to pay more for a construction contract granted to a disabled veteran if there were relatively few bids on a contract, but the additional amount is indeterminate. In FY 2007-08, an estimated \$5.0 million worth of construction contracts were awarded to service disabled veterans.

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.