Legislative Analysis

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MICHIGAN-BASED PROCUREMENT PREFERENCE

Senate Bill 363 as passed by the Senate
Sponsor: Sen. Rick Jones
House Committee: Commerce and Trade
Senate Committee: Commerce
Complete to 6-5-17

SUMMARY:

Senate Bill 363 would amend the Management and Budget Act (MCL 18.1261) to provide a new preference for "Michigan-based" companies bidding on specific contracts.

The bill would add:

"**If consistent with federal law, a preference of 8% of the amount of the contract shall be granted to Michigan-based firms for products mined in this state against a bidder that is not a Michigan-based firm and is located outside of the United States.**"

Under current statute, if consistent with federal law, the Department of Technology, Management, and Budget (DTMB) must give preference to Michigan-based firms, to facilities whose operator is designated as a clean corporate citizen, or to biobased products whose content is sourced in Michigan, when all other things are equal.

BRIEF BACKGROUND:

Senate Testimony
According to testimony in the Senate Commerce Committee (5-17-17), the bill addresses a situation involving the bidding between the Detroit Salt Company and Canadian-based salt companies for the contract to sell road salt. As far as is known at present, the Detroit Salt Company is the only business to which the preference would apply.

When a Bidder for a State Contract is a Michigan Business
Section 268 of the Management and Budget Act contains the following (slightly edited):

(1) A bidder for a state contract is a Michigan business for the purposes of this section if it certifies that it has done any of the following during the 12 months immediately preceding the bid deadline or for the period the business has been in existence, if the business is newly established within the 12 months immediately preceding the bid deadline:

(a) Filed a Michigan Single Business Tax return or Michigan Business Tax return showing a portion or all of the income tax base allocated or apportioned to the state of Michigan pursuant to the former Single Business Tax Act or the Michigan Business Tax Act.

(b) Filed a Michigan income tax return showing income generated in or attributed to the state of Michigan.

(c) Withheld Michigan income tax from compensation paid to the bidder's owners and remitted the tax to the Department of Treasury.

FISCAL IMPACT:

The bill would have a negative direct fiscal impact to the Department of Technology, Management, and Budget (DTMB) and an indeterminate indirect impact to the state over the following years. As the state's central purchasing office, the bill would require the DTMB to add 8% to the bid price submitted by a non-Michigan *and* non-U.S. based firm. This would result in a loss of *up to* 8% of the contract amount if a competing bid from a Michigan-based firm is within 8% of the lowest bid. The indirect impact to the state would depend on the economic benefit the bill would have in supporting a Michigan-based business and employer, which cannot be determined at this time.

According to the DTMB, the only state contractor impacted by the bill would be the Detroit Salt Company. The Detroit Salt Company currently holds two state contracts worth $20.1 million which is approximately one-fifth of the state's total salt contracts. The total value of salt deliveries awarded in 2016 was $17,860,344.00 split between four companies, Detroit received $6,078,428.50 of that amount. It is not known what other firms competed for those contracts. Assuming the Detroit Salt Company maintains the share of state contracts it won in 2016, and that it competes solely with non-U.S. based firms in the contracts it wins, and that the Detroit Salt Company is able to take advantage of the full 8% preference, the maximum estimated loss to the state per year would be around $480,000.

The 8% preference may not often be a deciding factor in awarding bids. According to a 2015 report on the price of salt by the Office of the Attorney General[1], winning salt bids can often exceed 8 percentage points from the next nearest bid, particularly in years following harsh winters. An example from 2014 showed that the Detroit Salt company won a Wayne County bid at $47.01 per ton compared to $58.95 and $65.07 to its next nearest bidders, a difference of 20% and 27% respectively. Of the locations that the Detroit Salt Company bid on, it won 100% in 2014, 54.4% in 2015, and 91% in 2016.

The Attorney General's report encouraged the state of Michigan to evaluate ways to better utilize the Detroit Salt Company. The report recommended the delivery methods of the Detroit Salt Mine to be addressed, particularly by taking advantage of the nearby docks to reduce its transportation costs, as well as exploring ways the state can support the improvement of its production methods in order to increase its competitive bids.

If the bill's language is interpreted as giving preference to the Detroit Salt Company in bidding with all non-Michigan based firms, including U.S. firms, instead of non-Michigan

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[1] Road Salt 2014-2015 Winter Season Pricing Report. State of Michigan Department of Attorney General. January 2015.

and non-U.S. firms, the expected yearly losses to the DTMB would be significantly greater. The bill could also potentially impact future contracts for aggregate materials or commodities mined in Michigan, such as sand and gravel, if DTMB's Central Procurement office contracted with these producers, which it currently does not. The DTMB reports that it previously held contracts for these materials as of a few years ago but has since delegated those categories to other agencies.

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