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HOUSE REPUBLICAN STAFF ANALYSIS

Bill: House File 473
Committee: Labor
Member: Rep. Horbach
Date: July 1, 2011
Staff: Louis Vander Streek (1-3626)

Pre-Qualifying, PLA Prohibition and Reciprocal Preference

House File 473 is a bill that addresses bidding and contracting for public improvement, public works, and public road projects. The bill addresses three particular issues. It forbids requiring bidders to pre-qualify for eligibility. The bill forbids Project Labor Agreements (PLAs). The bill also expands Iowa's reciprocal preference law.

Summary of Action

Passed Labor Committee 11-6
Passed House 59-37
Died in the Senate

Section by Section Analysis

Section 1 – Disclosure

This section requires that all bidders bidding on a state construction contract disclose to the Agency awarding the contract the names of all subcontractors and suppliers, also requires a notification of change to replace a subcontractor or supplier, and shall also disclose the reason for a change in subcontractor or supplier as well as the name of the new one(s), shall also disclose if the cost of work is changed.

Section 2 – Prequalifying

This section prevents a governmental entity to require proof of satisfaction (pre-qualifying) as long as the bidder and its subcontractors meet all bond requirements required by state law.

Section 3 – Public Works – Contractor Qualifications

This section adds language to the Duties Relating to Public Contracts section of Chapter 72. First, it defines a number of terms including ‘public owner’, ‘public road project’, ‘public works’, and ‘public works project.’

The second portion of the section creates a list of prohibited criteria. In determining the lowest responsible bidder, a public owner is forbidden from selecting a bidder based on a consideration of whether the bidder’s employees belong to or are represented by a labor union or labor organization. The public owner is also forbidden from requiring the bidder to enter into an agreement that requires the bidder to recruit, train, or hire employees from a particular source to perform work on the public works project or public road project. Lastly, the public owner is forbidden from requiring the bidder or the bidder’s subcontractors or their agents to enter into an agreement which imposes requirements, controls, or limitations on:

- staffing
- sources of employee referrals
- assignment of work
- sources of insurance and benefits
- training
- wages

This does **not**, however, apply to requirements imposed by federal law.

The third portion of the section requires that the prohibited criteria list be included on any document requesting or inviting bids on public works projects or public road projects.

Section 4 – Reciprocal Preference

This section expands the reciprocal preference language already present in Iowa code to include ‘resident labor force preference’. Currently, the reciprocal preference in place applies to resident bidders. A ‘resident labor force preference’ means a requirement in which all or a portion of a labor force working on a public improvement is a resident of a particular state or country. The section requires that a nonresident bidder apply the same resident labor force preference to a public improvement in this state as would be required in the construction of a public improvement by the state or foreign country in which the nonresident bidder is a resident. (This would have Iowa hold a mirror to other states reflecting laws *they* currently have on the books. For instance, Missouri has a preference law that requires all Iowa contractors bidding on in-state projects to only use Missouri resident workers. Illinois has a 90% requirement for resident workers. This would mean a Missouri contractor would have to use all Iowa resident workers).

The section requires that any nonresident bidders specify on all bids and specifications whether any preference is in effect in the nonresident bidder’s state or country.

The section also creates an enforcement provision. The section states that the Labor Commissioner or his/her designee shall administer and enforce the section and adopt rules in relation to its application. The section specifically lists the powers and duties of the commissioner:

- may hold hearings and investigate charges of violations
- may enter a place of employment, consistent with due process and upon a written complaint to:
 - inspect records
 - question an employer or employee
 - investigate facts
- shall develop a written complaint form
- may sue for injunctive relief
- may investigate and ascertain the residency of a worker

- may administer oaths, take depositions, and requisition by subpoena
- may employ qualified personnel to enforce the section
- shall require a contractor or subcontractor to file applicable records

The section requires a nonresident bidder from a state or country with a labor preference to keep and maintain, for three years, records of workers employed. The section states that a violation of the section results in a civil penalty in an amount not to exceed \$1,000 for each violation found in a first investigation, an amount not to exceed \$5,000 for each violation found in a second investigation, an amount not to exceed \$15,000 for a third or subsequent violation. Each violation for each worker and each day the violation continues constitutes a separate and distinct violation. A review process for penalties assessed is also created by the section. The Division of Labor is responsible for hearing arguments and issuing a final written decision.

Section 5- County Contract Preference

This section strikes the provision that county's give preference to Iowa labor under Chapter 331, County Home Rule Implementation

Section 6 – Repeals

This section repeals the requirement that the state and its political subdivisions give preference to Iowa labor in the constructing or building of any public improvement or works. The section also repeals the definition of domestic laborer. (This will change Iowa's status in the eyes of Missouri so that Iowa is a 'non-restrictive state', which would allow Iowa contractor's to avoid using 100 percent Missouri-based labor.)

Section 7 – Effective Date

The act is effective upon enactment

Section 8 – Applicability

The act applies to all public improvement, public works, and public road projects, and to public improvement, public works, and public road contracts entered into on or after July 1, 2011.