



Legislation Text

File #: 12-0921, **Version:** 1

Resolution to Suspend Use of Construction Unity Board (CUB) Agreement in Bid Specifications and New Construction Contracts Over \$25,000.00

Prepared by: Mary Joan Fales, Senior Assistant City Attorney

Reviewed by: Stephen K. Postema, City Attorney

Approved by: Steven D. Powers, City Administrator

Whereas, Project Labor Agreements are negotiated between local trade unions and contractors to insure labor peace on construction projects;

Whereas, On June 4, 2012, City Council adopted Resolution R-12-246 requiring the execution of CUB Agreements, a form of Project Labor Agreement, by contractors and subcontractors with the Washtenaw Skilled Building Trades Council as a condition of City contracts for City-bid new construction projects over \$25,000;

Whereas, R-12-246 directed the City Administrator and the City Attorney to implement changes to the City procurement procedures and contracting documents to require CUB Agreements as a condition of award of new construction projects over \$25,000;

Whereas, Effective June 29, 2012, Governor Snyder signed into law Public Act 238 of 2012, amending the Michigan Fair and Open Competition Act, and prohibiting a governmental unit from awarding a contract for the construction, repair, remodeling or demolition of a facility and any construction manager acting on behalf of the City from

- requiring or prohibiting a bidder, offeror, contractor, or subcontractor from entering into or adhering to an agreement with one or more labor organization(s) in regard to that project or related construction project;
- otherwise discriminating against a bidder, offeror, contractor, or subcontractor for becoming or remaining or refusing to become or remain a signatory to, or for adhering or refusing to adhere to, an agreement with one or more labor organization(s) in regard to that project or a related construction project;

Whereas, P.A. 238 also provides that the Act does not either prohibit employers or other parties from entering into agreements or engaging in any other activity protected by the National Labor Relations Act or interfere with labor relations of parties that are unregulated under the National Labor Relations Act ("NLRA")(29 USC 151 to 169);

Whereas, The question of whether the Michigan Fair and Open Competition Act as originally enacted (P.A. 98 of 2011) is valid and enforceable or pre-empted by the Supremacy Clause of the U.S. Constitution and the NLRA and violates the Contract Clause of the U.S. Constitution is before the 6th Circuit Court of Appeal;

Whereas, While P.A. 238 is current state law, it is also likely to be challenged in Court and as such, it

is appropriate to suspend the CUB Agreements and the provisions of R-12-246 to avoid being in violation of the law;

Whereas, Suspending the CUB Agreement requirement has no affect upon the City enforcement of prevailing wage law which mandates certain wage level for building trades or the right of a contractor or subcontractor to voluntarily enter into or comply with an agreement entered into prior to the enactment date for P.A. 238 with one or more labor organization(s) in regard to a contract with a governmental unit;

RESOLVED, That City Council suspend the use of Construction Unity Board (CUB) Agreement in Bid Specifications and New Construction Contracts Over \$25,000 required under R-12-246 pending final resolution of the validity and enforceability of the Michigan Fair and Open Competition Act by a Court of appropriate jurisdiction.