



## Legislation Text

**File #:** 11-0953, **Version:** 1

Resolution to Rescind City Requirement that Contractors Execute CUB Agreement with Washtenaw County Skilled Building Trades Council as Condition of Award of City Construction Contract

On July 19, 2011, the Fair and Open Competition in Governmental Construction Act (P.A. 98 of 2011) ("the Act") became law. For all construction contracts executed by the City after July 19, 2011, the Act prohibits the City from entering into or expending funds under a contract for construction, repair, remodeling, or demolition of a facility if the contractor or subcontractor is required under the terms of the contract to enter into or adhere to an agreement with a collective bargaining organization related to the construction project. Construction bids issued after July 19, 2011, may not include a bid specification requiring such an agreement with collective bargaining organizations. If included in the bid documents, project agreement, or other contractual agreements such language will have no effect.

City Council Resolution R-11-16-09, approved November 16, 2009, required the inclusion in City construction invitations to bid and awarded contracts the requirement that contractors and subcontractors execute Construction Unity Board (CUB) Agreements with the Washtenaw County Skilled Building Trades Council. In adopting R-11-16-09, Council noted the benefits of uniform wages, work rules, and benefits across multiple skilled trades and crafts employed on a project as well as the benefit of no-strike and no-lockout provisions in such CUB Agreements. While the Act prohibits the City from requiring CUB Agreements, the Act does not prohibit individual contractors and subcontractors from voluntarily entering into CUB Agreement to be governed by the current collective bargaining agreement of the appropriate Local Unions of the Washtenaw County Skilled Building Trades Council.

Prevailing wage law is not affected by P.A. 98 of 2011.

The attached resolution formally acknowledges the passage of the Fair and Open Competition in Governmental Construction Act and directs the City Administrator and City Attorney to implement the necessary changes to the City procurement procedures and contracting documents to bring the City in compliance with the Act.

Prepared by: Mary Joan Fales, Senior City Attorney

Approved by: Tom Crawford, City Administrator

Whereas, Public Act 98 of 2011, known as the Fair and Open Competition in Governmental Construction Act (the "Act"), effective July 19, 2011, prohibits governmental units from including either of the following as a term in a construction contract or as a condition in the award of a grant, tax abatement, or tax credit related to a construction contract:

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; or
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;

Whereas, Under the Act , the City, its purchasing officer, or construction manager is prohibited from placing such terms in bid specifications, project agreements, or other controlling documents related to the construction, repair, remodeling or demolition of a facility;

Whereas, On November 16, 2009, City Council approved Resolution R-09-459 which required execution of Construction Unity Board (CUB) Agreements by contractors and subcontractors with the Washtenaw County Skilled Building Trades Council as a condition of award for all City construction contracts and inclusion of the requirement in all construction bids issued by the City;

Whereas, The CUB Agreement requires that any labor used on a City construction project be governed by the current collective bargaining agreement of the appropriate Local Unions of the Washtenaw County Skilled Building Trades Council;

Whereas, Under the Act, the requirements of the Act do not apply to construction contracts executed before the effective date of the Act, being July 19, 2011; and

Whereas, The Act does not prohibit contractors and subcontractors from entering in to voluntary agreements to be governed by current collective bargaining agreements of appropriate local unions and the underlying benefits to such agreements remain valid;

RESOLVED, That City Council Resolution R-11-16-09 is hereby rescinded;

RESOLVED, That in all City construction contracts awarded after July 19, 2011 but not yet executed by the parties, the provision that contractors, and their subcontractors, execute a CUB Agreement with Washtenaw County Skilled Building Trades Council the term is acknowledged as invalid under Michigan law and ineffective to the extent of the invalidity without invalidating the remainder of the contract; and

RESOLVED, That the City Administrator and City Attorney are directed to implement the necessary changes to the City procurement procedures and contracting documents to bring the City in compliance with the Act.