

BUSINESS & FACILITIES UPDATE

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Labor Code Section 1072 Requires Public Agencies to Provide a Ten Percent Bidding Preference to Service Contractors Only if Contractors Expressly State They Will Retain Employees of the Prior Contractor for at Least 90 Days in their Respective Written Bids.

Labor Code section 1072 creates a bid preference for service contractors that promise to retain employees in connection with their bid. Specifically, Section 1072 subdivision (a) states: “A bidder shall declare as part of the bid for a service contract whether or not the bidder will retain the employees of the prior contractor or subcontractor for a period of 90 days...if awarded the service contract.” Section 1072, subdivision (b) states an awarding authority “shall give a 10-percent preference to any bidder who agrees to retain the employees of the prior contractor or subcontractor” under subdivision (a).

The City of Monterey Park contracts with private companies to operate its municipal bus system. MV Transportation, the incumbent contractor, stated in its bid for a renewed contract that it would retain existing employees for at least 90 days, and the City awarded MV Transportation a 10 percent preference under Section 1072. However, the City also gave First Transit a 10 percent preference under Section 1072, even though First Transit did not state in its bid it would retain the employees of MV Transportation for 90 days. The City awarded the contract to First Transit. Three bus operators of MV Transportation and their union subsequently filed a petition for writ of mandate and a complaint for declaratory relief, alleging the City violated Section 1072 in awarding First Transit the 10 percent preference.

The City demurred to the union’s complaint, and the trial court sustained the demurrer without leave to amend. It concluded that Section 1072 does not require an express statement in a bid regarding the 90-day guarantee of employee retention. Instead, bidders may communicate to an awarding agency a “willingness to retain some or all of the employees of the prior contractor or subcontractor.” In such circumstances, the agency retains discretion to confer a 10 percent preference. The union appealed.

The Court of Appeal reversed. It held that Section 1072 is unambiguous and requires a bidder to state in its bid whether it will retain employees for at least 90 days in order to receive the preference. The Court expressly rejected the City’s argument that it had discretion to give the same 10 percent preference to award bidders the same preference even if they do not make any statement regarding 90-day employee retention. The City’s interpretation would undermine the purpose of the statute: to afford public transit employees a measure of job security by giving retained employees 90 days to prove their worth to the new contractor or to seek other employment. A bidder would have no incentive to offer to retain employees for at least 90 days

as part of its bid if the awarding agency could give the same preference to any bidder who did not make the same agreement.

International Brotherhood of Teamsters, Local 848 v. City of Monterey Park (2019) _ Cal.App.5th _ [2019 WL 117168].

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