

To Bid or Not to Bid? That is (no longer) the Question

November 1, 2007

Effective October 1, 2007, public employers in Michigan--including school districts and municipalities--may be required to solicit bids as often as every three years for the medical, optical, and dental benefits that they provide to their employees.

The Public Employees Health Benefit Act, Public Act 106 of 2007 (PEHBA), authorizes--subject to collective bargaining requirements--provision of health benefits through self-insured plans, employer-provided plans or pooled plans.

A public employer or a pooled plan that procures coverage or benefits is required, under the new law, to solicit at least four bids when the benefit plan is established, and at least one of those bids must be from a voluntary employees' beneficiary association (VEBA), as described in Section 501(c)(9) of the federal Internal Revenue Code.

The employer or pooled plan is required to solicit bids even after a plan is in place; the law requires a similar bidding process "every three years when renewing or continuing a medical benefit plan."

When a public employer or pool uses a third party administrator to manage a benefit plan, even the administrative services must be bid at the establishment of the benefit plan and every three years when renewing or continuing the plan.

The PEHBA also includes requirements for creating and maintaining pooled plans, and sets parameters on the requirements for the pool including, for example, that a pool generally must include at least 250 public employees; it must accept any public employer that applies, agrees to make the required payments and to remain in the pool for at least three years, and satisfies other reasonable provisions of the pooled plan. Any employer who leaves a pooled plan is precluded from rejoining it for at least two years.

Predicting the practical and legal issues that may arise with implementation of new laws is never easy, but among the most obvious questions for public employers with unionized employees are:

- How will the three-year-requirement for bidding under the PEHBA mesh with expiration dates of labor contracts?
- Will the bidding requirements of the new law complicate already-complex labor negotiations?
- How will terms of the PEHBA, such as the provision that bidding is required "when establishing" a plan, be interpreted?

For more information on this alert or other matters of Education Law, please contact our Labor and Employment Law Group; Christopher Trebilcock at 313.496.7647 or Beverly Hall Burns at 313.496.7508.