

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 HOUSE BILL 3043

By: Osborn

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5
6 AS INTRODUCED

7 An Act relating to public buildings and public works;
8 creating the Fair and Open Competition in
9 Governmental Construction Act; declaring purposes;
10 defining terms; prohibiting public agencies from
11 entering into certain contracts; prohibiting certain
12 terms in certain documents; prohibiting public
13 agencies from making certain awards; prohibiting
14 certain persons from placing certain terms in certain
15 documents; providing exemptions; providing for
16 codification; and providing an effective date.

17 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

18 SECTION 1. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 81 of Title 61, unless there is
20 created a duplication in numbering, reads as follows:

21 This act shall be known and may be cited as the "Fair and Open
22 Competition in Governmental Construction Act". The purposes of this
23 act are to provide for the efficient procurement of goods and
24 services by governmental units; to promote the economical,
nondiscriminatory, and efficient administration and completion of
state and state-funded or state-assisted construction projects; to

1 provide for fair and open competition for construction contracts,
2 grants, tax abatements, and tax credits awarded by governmental
3 units; to prohibit requirements for certain terms in construction
4 contracts and construction contracts awarded by governmental units
5 and supported through grants and tax subsidies and abatements by
6 governmental units; to prohibit expenditure of public funds under
7 certain conditions; to prohibit certain terms in procurement
8 documents for certain expenditures by governmental units involving
9 public facilities; and to provide powers and duties for certain
10 public officers, employees, and contractors.

11 SECTION 2. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 82 of Title 61, unless there is
13 created a duplication in numbering, reads as follows:

14 As used in the Fair and Open Competition in Governmental
15 Construction Act:

16 1. "Public improvement" means any beneficial or valuable change
17 or addition, betterment, enhancement or amelioration of or upon any
18 real property, or interest therein, belonging to a public agency
19 intended to enhance its value, beauty or utility or to adapt it to
20 new or further purposes. The term does not include the direct
21 purchase of materials, equipment or supplies by a public agency, or
22 any personal property; and

23 2. "Public agency" means the State of Oklahoma, and any county,
24 city, town, school district or other political subdivision of the

1 state, any public trust, any public entity specifically created by
2 the statutes of the State of Oklahoma or as a result of statutory
3 authorization therefor, and any department, agency, board, bureau,
4 commission, committee or authority of any of the foregoing public
5 entities.

6 SECTION 3. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 83 of Title 61, unless there is
8 created a duplication in numbering, reads as follows:

9 A public agency awarding any contract for the construction,
10 repair, remodeling, or demolition of a public improvement or
11 obligating funds pursuant to such a contract, shall ensure that
12 neither the awarding public agency nor any construction manager
13 acting on behalf of the public agency shall, in its bid
14 specifications, project agreements, or other controlling documents,
15 include:

16 1. A term that requires, prohibits, encourages, or discourages
17 bidders, contractors, or subcontractors from entering into or
18 adhering to agreements with a collective bargaining organization
19 relating to the construction project or other related construction
20 projects; and

21 2. A term that discriminates against bidders, contractors, or
22 subcontractors based on the status as a party or nonparty to, or the
23 willingness or refusal to enter into, an agreement with a collective
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1 bargaining organization relating to the construction project or
2 other related construction projects.

3 SECTION 4. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 84 of Title 61, unless there is
5 created a duplication in numbering, reads as follows:

6 A public agency shall not award a grant, tax abatement, or tax
7 credit that is conditioned upon a requirement that the awardee
8 include a term described in Section 3 of the Fair and Open
9 Competition in Governmental Construction Act in a contract document
10 for any construction, improvement, maintenance, or renovation to
11 real property or fixtures that are the subject of the grant, tax
12 abatement, or tax credit.

13 SECTION 5. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 85 of Title 61, unless there is
15 created a duplication in numbering, reads as follows:

16 A public agency or a construction manager or other contracting
17 entity acting on behalf of a public agency shall not place any of
18 the terms described in Section 3 of the Fair and Open Competition in
19 Governmental Construction Act in bid specifications, project
20 agreements, or other controlling documents relating to the
21 construction, repair, remodeling, or demolition of a public
22 improvement. Any such included term is void and of no effect.

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1 SECTION 6. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 86 of Title 61, unless there is
3 created a duplication in numbering, reads as follows:

4 A. The requirements of the Fair and Open Competition in
5 Governmental Construction Act do not apply to public construction
6 contracts executed before November 1, 2012.

7 B. The Fair and Open Competition in Governmental Construction
8 Act does not:

9 1. Prohibit employers or other parties from entering into
10 agreements or engaging in any other activity protected by the
11 National Labor Relations Act, 29 U.S.C., Sections 151 to 169;

12 2. Interfere with labor relations of parties that are protected
13 under the National Labor Relations Act, 29 U.S.C., Sections 151 to
14 169; or

15 3. Prohibit a public agency from awarding a public contract,
16 grant, tax abatement, or tax credit to a private owner, bidder,
17 contractor, or subcontractor who enters into or who is party to an
18 agreement with a collective bargaining organization, if being or
19 becoming a party or adhering to an agreement with a collective
20 bargaining organization is not a condition for award of the public
21 contract, grant, tax abatement, or tax credit, and if the public
22 agency does not discriminate against a private owner, bidder,
23 contractor, or subcontractor in the awarding of that grant, tax
24 abatement, or tax credit based upon the status as being or becoming,

1 or the willingness or refusal to become, a party to an agreement
2 with a collective bargaining organization.

3 SECTION 7. This act shall become effective November 1, 2012.

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