STATE OF OKLAHOMA

1st Session of the 54th Legislature (2013)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL 788 By: Newberry of the Senate

and

McDaniel (Randy) of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to contractors; amending 68 O.S. 2011, Sections 1701.1, 1704, and Section 1, Chapter 351, O.S.L. 2012 (68 O.S. Supp. 2012, Section 1708), which relate to employer identification numbers, failure to give surety bond, and public bid contractors; modifying requirements for certain contractors relating to proof of identification numbers and workers' compensation policy; recognizing certain association for certain purpose of insurance; specifying certain requirement for nonresident contractor policy; making gender neutral; updating references; providing certain fine for failure to provide required information or bond; setting maximum fine percentage of contract; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 68 O.S. 2011, Section 1701.1, is amended to read as follows:

Section 1701.1. A. All ~~resident and nonresident~~ contractors ~~shall have in their possession~~ as defined in Section 1701 of this

title shall have and be able to prove current employer identification numbers issued to them by the Oklahoma Tax Commission, the Oklahoma Employment Security Commission, the Internal Revenue Service, and the Social Security Administration, and a workers' compensation policy in compliance with the provisions of Title 85 of the Oklahoma Statutes. A bona fide association representing construction related entities may, through such insurance carriers and products approved by the Commissioner, offer benefits plans and insurance coverage to a particular trade, business, profession or industry or their subsidiaries as authorized by Title 85 of the Oklahoma Statutes. Any workers' compensation policy for a nonresident contractor shall show "Oklahoma" or "All States" for Other States Insurance on Section 3C of the policy. Each contractor shall be responsible for maintaining his or her own payroll reports and records including reports and records required by the Oklahoma Tax Commission, the Oklahoma Employment Security Commission, the Internal Revenue Service, and the Social Security Administration. No contractor shall be required to keep payroll records or make any other report for any other contractor.

B. Owners, lessees, or renters awarding a contract shall not be required to ascertain if a contractor has complied with the provisions of subsection A of this section or be responsible for a contractor's reports, records, or be liable for any penalty resulting from the contract.

C. Any contractor who violates or does not comply with the provisions of subsection A of this section shall be liable for any unpaid taxes and wages resulting from ~~his~~ the contract in addition to the penalties provided in Section 1707 of ~~Title 68 of the Oklahoma Statutes~~ this title. The failure of a contractor to comply with the provisions of subsection A of this section shall neither present any liability or responsibility for any unpaid taxes, wages, or penalties resulting from ~~his~~ the contract upon any other contractor nor shall any future contracts of ~~said~~ the contractor be impaired because of ~~his~~ a failure to comply with the provisions of subsection A of this section on a prior contract.

D. Subsection A of this section shall not apply ~~where~~ if a contract for an entire project requires the services of less than three employees. A resident contractor shall not be required to comply with the provisions of subsection A of this section in the construction of a single family dwelling when the total cost of the project is less than the average sales price of a single family dwelling in this state as set each year by the National Association of Home Builders. This subsection shall not be construed to exempt any person of any tax liabilities or other requirements provided for by law.

SECTION 2. AMENDATORY 68 O.S. 2011, Section 1704, is amended to read as follows:

Section 1704. Every contractor ~~failing to give notice as required by this article or to execute the~~ shall provide the information required in subsection A of Section 1701.1 of this title and shall provide proof of the executed bond ~~herein~~ provided by Section 1703 of this title, if required, to the agency or entity administering the contract before actually commencing work or undertaking ~~beginning~~ the performance of any ~~such contract, shall be denied the right to perform such contract until he complies with such requirement~~ services. Any contractor who fails to provide the required information or proof of bond, if required, shall be fined by the Oklahoma Tax Commission in an amount not to exceed ten percent (10%) of the contractor's total bid, which shall be in addition to any other penalties allowed by law.

SECTION 3. AMENDATORY Section 1, Chapter 351, O.S.L. 2012 (68 O.S. Supp. 2012, Section 1708), is amended to read as follows:

Section 1708. A. All contractors ~~submitting a written bid~~ as defined in Section 1701 of this title signing any contract to provide materials or labor on a public construction project ~~offered for bid~~ in this state shall ~~upon written request~~ show proof of all documentation required ~~to be in their possession~~ pursuant to Section 1701.1 of ~~Title 68 of the Oklahoma Statutes~~ this title.

B. Any contractor ~~that~~ who fails to provide proof as required in subsection A of this section, or any contractor ~~that~~ who performs

work in this state as a ~~resident or nonresident~~ contractor without registration as required by Section 1701.1 of ~~Title 68 of the Oklahoma Statutes~~ this title, shall be fined by the Oklahoma Tax Commission an amount not to exceed ten percent (10%) of the contractor's total bid, which shall be in addition to any other penalties allowed by law.

C. Any contractor ~~that~~ who intentionally misclassifies individuals as independent contractors rather than employees for the purpose of affecting procedures and payments relating to withholding and social security, unemployment tax or workers' compensation premiums shall be fined by the Oklahoma Tax Commission an amount not to exceed ten percent (10%) of the contractor's total bid, which shall be in addition to any other penalties allowed by law.

SECTION 4. This act shall become effective July 1, 2013.

SECTION 5. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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