

## **CHAPTER 48-12**

### **COMPETITION IN GOVERNMENTAL CONSTRUCTION CONTRACTS**

#### **48-12-01. Definitions.**

As used in this chapter:

1. "Facility" means a physical improvement to real property owned or leased, directly or through a building authority, by a governmental unit, including a road, bridge, runway, rails, or building or structure along with the building's or structure's grounds, approaches, services, and appurtenances.
2. "Governmental unit" means the state or a political subdivision.

#### **48-12-02. Prohibited labor organization terms in construction contract clauses.**

A governmental unit awarding a contract for the construction, repair, remodeling, or demolition of a facility and any construction manager acting on that governmental unit's behalf may not include any of the following in the bid specifications, project agreements, or other controlling documents:

1. A term that requires or prohibits a bidder, an offeror, a contractor, or a subcontractor from entering or adhering to agreements with one or more labor organizations relating to the construction project or a related construction project; or
2. A term that otherwise discriminates against a bidder, an offeror, a contractor, or a subcontractor for becoming, remaining, or refusing to become or remain a signatory to or for adhering to or refusing to adhere to an agreement with one or more labor organizations in regard to that project or a related construction project.

#### **48-12-03. Prohibited labor organization terms in a grant, tax abatement, and tax credit.**

1. A governmental unit may not award a grant, tax abatement, or tax credit that is conditioned upon a requirement that the awardee include a term prohibited under section 48-12-02 in a contract document for any construction, improvement, maintenance, or renovation of real property or fixtures that are the subject of the grant, tax abatement, or tax credit.
2. This chapter does not prohibit a governmental unit from awarding a contract, grant, tax abatement, or tax credit to a private owner, bidder, contractor, or subcontractor that enters, is a party to, or adheres to an agreement with a labor organization, if:
  - a. Being or becoming a party or adhering to an agreement with a labor organization is not a condition for the award of the contract, grant, tax abatement, or tax credit; and
  - b. The governmental unit does not discriminate against a private owner, bidder, contractor, or subcontractor in the awarding of that contract, grant, tax abatement, or tax credit based upon the status as being or becoming, or the willingness or refusal to become, a party to an agreement with a labor organization.
3. This chapter does not prohibit a contractor or subcontractor from voluntarily entering or complying with an agreement entered with one or more labor organizations in regard to a contract with a governmental unit or a contract funded in whole or in part from a grant, tax abatement, or tax credit from a governmental unit.

#### **48-12-04. Exemptions.**

The head of a governmental unit may exempt a particular project, contract, subcontract, grant, tax abatement, or tax credit from the requirements of any or all of the provisions in this chapter if after public notice and hearing the governmental unit finds special circumstances require an exemption to avert an imminent threat to public health or safety. A finding of special circumstances under this section may not be based on the possibility or presence of a labor dispute concerning:

1. The use of contractors or subcontractors that are nonsignatories to or otherwise do not adhere to agreements with one or more labor organizations; or

2. Employees on the project who are not members of or affiliated with a labor organization.

**48-12-05. Limitations.**

This chapter may not be construed to:

1. Prohibit an employer or other party from entering an agreement or engaging in any other activity protected by the National Labor Relations Act [29 U.S.C. 151 et seq.]; or
2. Interfere with labor relations of a party which are left unregulated under the National Labor Relations Act [29 U.S.C. 151 et seq.].