

The Open and Fair Competition Act for Water and Wastewater Projects

Summary

It is the intention of this Act to ensure that all proven and acceptable piping materials be included in all bids for water and wastewater projects. This promotion of free competition will ensure limited government resources are being used to the greatest advantage. The goal is to construct a project at the best price and best value for system customers and taxpayers.

Model Legislation

{Title, Enacting clause, etc.}

Be it enacted by the legislature of the state of [insert state].

Section 1. {Definitions}

(A) “Governmental Agency” refers to any state agency, state district, county government, municipality, and including a school district, public district, county board of education, joint powers authority, water or sewer district, special district, or any other public or municipal corporation.

(B) “Acceptable Piping Material” refers to piping material that meets current and recognized standards as issued by the American Society for Testing and Materials (ASTM) and the American Water Works Association (AWWA).

Section 2. {Procurement Procedures for Water and Wastewater Piping}

(A) Government agencies shall engage in open competitive bidding to study, plan, design, construct, develop, finance, maintain, rebuild, improve, repair, or operate water and wastewater utilities; and

(B) All procurement transactions for piping material shall be conducted in a manner that provides for open and free competition. All acceptable piping materials shall be considered in the procurement process.

(C) Government agencies shall consider the quality, sustainability, durability, and corrosion resistance when procuring piping material.

(D) This Act specifically prohibits government agency employees from participating in the selection process when those employees have a relationship with private entities seeking a contract under this Act or as proscribed by existing state or local contracting law.

(E) All procurement transactions, regardless of whether by sealed bids or by negotiation and without regard to dollar value, shall be conducted in a manner that provides maximum open and free competition. Procurement procedures shall not restrict or eliminate competition.

(F) Unlawful restrictions on competition include, but are not limited to:

- (1) Placing unreasonable requirements on firms in order for them to qualify to do business; noncompetitive practices between firms;
- (2) Organizational conflicts of interest;
- (3) And unnecessary experience and bonding requirements.

(G) In addition the Government Agency shall consider all materials normally suitable for the project commensurate with sound engineering practices and project requirements.”

Section 3. {Severability clause}

Section 4. {Repealer clause}

Section 5. {Effective date}

Approved by the Commerce, Insurance, and Economic Development Task Force on July 27, 2012. Approved by the ALEC Legislative Board on October 18, 2012.