ORDINANCE NO. 06-2014

AN ORDINANCE OF THE COUNTY OF BERKS TO GUARANTEE FAIR AND OPEN COMPETITION FOR CONSTRUCTION PROJECTS

WHEREAS, The County Commissioners of Berks County (the "County") wish to promote competition in government contracting and to encourage efficient use of government funds; and

WHEREAS, The County believes that it is in the public's best interest to fairly consider all qualified and capable contractors and workers for government contracts; and

WHEREAS, The County believes enacting an ordinance to guarantee fair and open competition on taxpayer funded construction would benefit county taxpayers; and

WHEREAS, The County believes that allowing every qualified contractor to compete fairly for and to be awarded work on every construction project based on the contractor's merit is in the proprietary interest of the County.

NOW, THEREFORE, BE IT FURTHER ENACTED AND ORDAINED by the Board of County Commissioners of the County of Berks, Pennsylvania, as follows:

SECTION 1:

For the purpose of this Ordinance, the following definitions shall apply:

a. "Contractor" shall mean and include a contractor, subcontractor, material supplier, carrier or other person or firm engaged in the completion of a construction project.

b. "Construction project" shall mean and include any project for the construction, rehabilitation, alteration, conversion, extension, maintenance, repair, or improvement of any structures or real property.

SECTION 2:

The County when awarding a contract after the enactment date of this ordinance for a construction project and any construction manager acting on behalf of the County shall not include any of the following in bid specifications, project agreements or other controlling documents:

a. A term that requires or prohibits a bidder, offeror, contractor or subcontractor from entering into or adhering to an agreement with one or more labor organizations in regard to that project or a related construction project.

b. A term that otherwise discriminates against a bidder, offeror, contractor, or subcontractor for becoming or remaining or refusing to become or remain a signatory to, or for adhering to refusing to adhere to, an agreement with one or more labor organizations in regard to that project or a related construction project.

SECTION 3:

Any local municipality or organization seeking or receiving funds, bond or loan guarantees, public purpose endorsements, in-kind services or any other form of financial assistance, present or contingent, from the County related to or in connection with a construction project shall neither prohibit nor require in bid specifications, project agreements or other controlling documents that contractors for the construction project shall execute or otherwise become a party to an agreement with one or more labor organizations as a condition of bidding, negotiating, awarding or performing a contract, except as required by State or Federal law as a contracting or procurement obligation for the construction project, or as a condition of the receipt of State or Federal funds for the construction project.

SECTION 4:

Nothing in this ordinance shall prohibit the County from awarding a contract, grant, tax abatement, or tax credit to a private owner, bidder, contractor, or subcontractor who enters into or who is party to an agreement with a labor organization, if being or becoming a party or adhering to an agreement with a labor organization is not a condition for award of the contract, grant, tax abatement, or tax credit, and if the county 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.

SECTION 5:

The County may by unanimous vote exempt a particular project, contract, subcontract, grant, tax abatement, or tax credit from the requirements of any or all of the provisions of this ordinance if the County finds, after public notice and a hearing, that special circumstances require an exemption to avert an imminent threat to public health or safety. A finding of special circumstances under this ordinance shall not be based on the possibility or presence of a labor dispute concerning the use of contractors or subcontractors who are nonsignatories to, or otherwise do not adhere to, agreements with one or more labor organizations, or concerning employees on the project who are not members of or affiliated with a labor organization.

ENACTED and ORDAINED this 19th day of June 2014 by the Board of Commissioners of Berks County, Pennsylvania in lawful session duly assembled.

COUNTY OF BERKS

Christian Y. Leinbach, Chair

VOTED NO

Kevin S. Barnhardt, Commissioner

Attest:

Maryjo Gibson, Chief Clerk

Mark C. Scott, Esq., Commissioner