



Am. H.B. 40

123rd General Assembly
(As Passed by the House)

Reps. Jolivette, Brading, Hood, Taylor, Young, Haines, Peterson, Grendell

BILL SUMMARY

- Establishes a preference, for bid comparison purposes only, on certain public improvement contracts whenever a bidding contractor's "principal place of business" political subdivision provides a preference to contractors whose principal place of business is located in that political subdivision for similar contracts that, in effect, penalizes that contractor when bidding outside the political subdivision where it receives a preference.

CONTENT AND OPERATION

The bill requires that a preference be given to certain contractors when a political subdivision takes bids for certain contracts for the construction, reconstruction, improvement, enlargement, alteration, repair, painting, or decorating of a building or structure, including highway improvements (that is, contracts for "public improvements"). The preference must be given to contractors having their principal place of business in a political subdivision that does not provide a preference to contractors whose principal place of business is located in that political subdivision, over contractors having their principal place of business in a political subdivision that does provide a preference to contractors whose principal place of business is located in that political subdivision, for the same or similar type of work. The preference is not required to be given, however, if the contract to be awarded for a "public improvement" is financed in whole or in part by contributions or loans from any state agency or the federal government. The preference is for bid comparison purposes only, and, when making these comparisons, an awarding authority only must determine if the *same unit of government* where the contractor's principal place of business is located provides or does not provide a preference. Thus, if a county is awarding a contract for a public improvement, it only must determine whether or not the county in which a

contractor has its principal place of business grants a preference. (Sec. 153.53(A) and (B)(3).)

When the bill requires a preference to be given under the circumstances described above, an "awarding authority" (that is, any political subdivision or instrumentality of a political subdivision that does not provide a preference in awarding contracts to contractors having their principal place of business in that political subdivision) must give a preference to contractors whose principal place of business is likewise in a political subdivision that does not provide a preference to contractors whose principal place of business is located within its boundaries. The result is that those bidding contractors whose principal place of business is in a political subdivision that *does provide* a preference to such contractors will not receive the bill's mandated preference and, thus, when bidding outside that political subdivision, will be disadvantaged in the bid comparison process. Finally, the bill's mandated preference is to be given "in the same manner, on the same basis, and to the same extent as the political subdivision that provides contractors whose principal place of business is located within its boundaries a preference for the same or similar type of work as set forth in its ordinances, resolutions, regulations, orders, or contract documents." (Sec. 153.53(A) and (B)(2).)

For the purposes of the bill, "contractor" is defined as a person who contracts with an awarding authority to perform a public improvement and includes any firm, corporation, limited liability company, partnership, or association in which the contractor has a substantial interest, and a corporation, parent, brother-sister, or subsidiary corporation, partnership, proprietorship, limited liability company, or joint venture in which the contractor, or the contractor's officers, directors, managers, partners, owners, or stockholders, directly or indirectly exercise any significant degree of ownership, management, or control (sec. 153.53(B)(1)).

COMMENT

It is unlikely that a municipal corporation with charter provisions contrary to the bill's requirements would be subject to those requirements. A municipal corporation, under its constitutionally granted "home rule" powers, may adopt a charter and provide for varying public improvement contract preferences or may clearly preclude the operation of Revised Code provisions like those in the bill (these seemingly are matters of *local self-government*--see Sections 3 and 7 of Article XVIII of the Ohio Constitution).

HISTORY



ACTION	DATE	JOURNAL ENTRY
Introduced	01-20-99	p. 91
Reported, H. Local Gov't & Townships	03-22-99	p. 327
Passed House (74-20)	03-24-99	pp. 351-352

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