



S.B. 65

123rd General Assembly
(As Introduced)

Sen. Wachtmann

BILL SUMMARY

- Establishes a preference for bid comparison purposes only on certain public improvement contracts whenever a bidding contractor's principal place of business is located within a political subdivision provides a preference for contractors in that area for similar contracts that, in effect, penalizes that contractor when bidding outside the area 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.¹ 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. (See

¹ *It is not clear whether the "political subdivision" highlighted in the second clause must be the same type of "political subdivision" as the one that must give the bill's mandated preference. In other words, if a county is receiving bids, must it only look to see if the county where a bidding contractor has its principal place of business gives a preference, or must it look to see if all political subdivisions where the bidding contractor has its principal place of business (city, school district, special district, etc.) give a preference?*

COMMENT.) The preference is for bid comparisons only. (Sec. 153.53(A) and (B)(3).)

When the bill requires a preference 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

Under its constitutionally granted "Home Rule" powers, a municipal corporation that adopts a charter and provides in its charter for preferences for public improvement contracts that clearly differ from or excludes the provisions in this bill may not have to follow the provisions of this bill when awarding public improvement contracts. (Sections 3 and 7 of Article XVIII of the Ohio Constitution.) It is not clear what effect the provisions of the bill would have on a county that has adopted a charter under the Ohio Constitution if that charter provides for preferences for public improvement contracts that clearly differ from or excludes those provisions.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-16-99	p. 128

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