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Bill Analysis

Legislative Service Commission

H.B. 489

125th General Assembly
(As Introduced)

Rep. T. Patton

BILL SUMMARY

- Requires the board of education of a school district, when undertaking a school facilities acquisition project (with or without state assistance), to award the contract for that project to the lowest responsible Ohio-based bidder or the lowest responsive and responsible Ohio-based bidder, unless no Ohio-based bidder submits a bid.
- Requires the board of education of a school district, when hiring a professional person or firm to prepare working drawings, specifications, and estimates for a state-assisted school facilities project, to hire an Ohio-based professional person or firm, unless no Ohio-based professional person or firm is available.
- Requires the Ohio School Facilities Commission to contract with Ohio-based persons when contracting for professional services in support of a school district's construction project, unless no qualified Ohio-based person is available.

CONTENT AND OPERATION

Award of competitively bid contracts for school facilities acquisition projects to Ohio-based bidders

(R.C. 9.312(C), 3313.46(A)(6), and 3318.10)

Generally, when the board of education of a school district wishes to contract for the construction or repair and renovation of school facilities, the estimated cost of which exceeds \$25,000, the board is required to award the

contract only through a competitive bidding process.¹ The board must seek sealed bids to be submitted for the project by advertising for at least two consecutive weeks in a newspaper of general circulation. Bidders must submit with their bids a guarantee of their financial ability to hire the necessary goods and services to complete the project. That guarantee may be in the form of a performance bond for the full amount of the bid or a certified check, cashier's check, or letter of credit in an amount of at least 10% of the bid. Currently, a school district must award the contract to the "lowest responsible bidder" or, by district board option, to the "lowest responsive and responsible bidder."² The board also may reject all the bids or may accept any bid for both labor and material that is the lowest in the aggregate. These competitive bidding requirements apply whether or not the district is acquiring the facilities with state assistance.

The bill requires school districts to award school construction, repair, and renovation projects that are subject to competitive bidding to the lowest responsible *Ohio-based* bidder or, by district board option, to the lowest responsive and responsible *Ohio-based* bidder, unless no Ohio-based bidder submits a bid for the project.

Under the bill, a "qualified Ohio-based bidder" is one that meets all of the following conditions:

- (1) The bidder has its primary place of operation in Ohio;
- (2) The bidder has been in business for at least three consecutive years prior to submitting its bid for the district's project; and
- (3) 75% of the bidder's employees *either*:
 - (a) Have been residents of Ohio for at least one year prior to the submission of the bid; or

¹ A school district board may acquire without competitive bidding "educational materials used in teaching," items available only from a single-source, certain energy conservation measures, computer hardware and software for instructional purposes, facilities to meet an "urgent necessity, or for the security and protection of school property," and certain cooperative purchases.

² By continuing law, a "responsive" bid is one that responds to the board's specifications in all material respects and contains no irregularities or deviations that affect the amount of the bid or that give the bidder an advantage (R.C. 9.312(A)).

(b) Are returning to or settling in Ohio either after completing active duty as a member of the National Guard or Reserve or after honorable separation from the armed forces of the United States.³

Engagement of Ohio-based design professionals for school facilities acquisition projects

(R.C. 3318.091)

When a school district undertakes a school facilities project with state assistance, once the district has entered into an agreement with the Ohio School Facilities Commission for that project, the district board must hire a "professional person or firm" to prepare working drawings, specifications, and estimates for the project.⁴ Engagement of the person or firm is subject to approval by the School Facilities Commission.

The bill specifies that the person or firm hired must be an *Ohio-based* person or firm unless no Ohio-based person or firm is available. Similar to the provision regarding competitive bidding for labor and materials, as described above, the bill defines an "Ohio-based professional person or firm" as a person or firm qualified to prepare plans, working drawings, specifications, estimates of cost, and other data necessary for the project that satisfies the following additional conditions:

(1) The person or firm has a primary place of operation in Ohio.

(2) In the case of a person who is an *individual who does not employ other individuals*, the person *either*:

(a) Both has been in business for at least three consecutive years *and* has been a resident of Ohio for at least one year prior to engagement under the project; or

(b) Is returning to or settling in Ohio either after completing active duty as a member of the National Guard or Reserve or after honorable separation from the armed forces of the United States.

³ *The bill defines "active duty" in the National Guard or Reserve to include duty under an executive order of the President of the United States, an act of Congress, or an order of the Governor.*

⁴ *The district board and the Commission may enter into that agreement only after the district voters have approved any necessary tax levies and bond issues, or the board has earmarked other district resources, sufficient to pay the district's share of the cost of the project and to generate an amount for maintenance of the facilities.*

(3) In the case of *a person who employs individuals or of a firm*, the person or firm:

(a) Has been in business for at least three consecutive years prior to engagement under the project; and

(b) 75% of the employees *either* have been residents of Ohio for at least one year prior to engagement under the project *or* are returning to or settling in Ohio either after completing active duty as a member of the National Guard or Reserve or after honorable separation from the armed forces of the United States.

Contracting of Ohio-based persons for school facilities project support services

(R.C. 3318.312)

The Ohio School Facilities Commission is authorized to contract for services from "agents, accountants, consultants, advisers, and other independent contractors" to assist the Commission in managing state-assistance programs.⁵ For example, the Commission contracts with architects to assess the facilities needs of individual school districts in preparation of the districts' projects and with construction managers to oversee the completion of those projects.

The bill requires the Commission, when contracting for the services of one of these agents, accountants, consultants, advisers, and other independent contractors to contract with an *Ohio-based* person, unless no Ohio-based person is available. For purposes of this provision, the bill defines an "Ohio-based person" in the same manner as it defines an "Ohio-based professional person or firm" hired directly by school districts for design services (see above).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	05-06-04	p. 1867

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⁵ R.C. 3318.31(A)(2), *not in the bill*.