



S.B. 139

127th General Assembly
(As Introduced)

Sens. Mumper, Niehaus, Jacobson

BILL SUMMARY

- Permits state institutions of higher education to use either single or multiple prime bidding for public improvement projects.
- Exempts from the Prevailing Wage Law projects constructed by state institutions of higher education and projects constructed by private, non-profit organizations that receive public money to construct those projects.
- Prohibits the Ohio School Facilities Commission from entering into any agreement with a school district that requires the payment of prevailing wages on the district's project.

CONTENT AND OPERATION

Contracts under the Public Improvements Law (R.C. Chapter 153.)

(R.C. 153.53, 3354.16, 3355.12, and 3357.16; R.C. 153.50 to 153.52, not in the bill)

Single and multiple prime contracts

Background. Under current law, an officer, board, or other authority of the state, a county, township, municipal corporation, or school district, or of any public institution belonging to any of the above (hereafter "public authority") that is authorized to contract for the building, repair, or alteration of a public building, structure, or improvement and is required by law to advertise and receive bids for the furnishing of materials and doing the necessary work, is generally required to solicit *separate and distinct bids* for each separate and distinct class of work. This requirement does not apply, however, if the estimated cost for the particular class of work is less than \$5,000.

A public authority may not award a single, aggregate contract for an entire project, or for a greater portion of the project than is embraced in one class of work, unless (1) the separate bids do not cover all the work or materials required or (2) the bids for the whole or two or more kinds of work or materials are lower than the separate bids combined.

The bill. Under the bill, an institution of higher education,¹ or its board of trustees or managing authority, may solicit any one of the following:

(1) Separate and distinct bids for each class of work and the materials necessary for the improvement;

(2) Single, aggregate bids to cover all the classes of work and materials necessary;

(3) Single, aggregate bids for at least two but less than all of the classes of work and materials necessary *and* separate and distinct bids for the remaining classes of work and materials that are not included in the single, aggregate bids.

Lowest responsive and responsible bidder

Background. Currently, school districts, along with counties, townships, municipal corporations, and any public institution belonging to those entities, must award contracts for the separate classes of work described above to the "lowest and best" separate bidder. Any public authority of the state or public institution belonging to the state must award contracts to the "lowest responsive and responsible" separate bidder. The law sets forth criteria for determining the lowest responsive and responsible bidder.²

The bill. An institution of higher education that solicits bids is required by the bill to award contracts in one of the following manners:

(1) Separate and distinct contracts to the lowest responsive and responsible bidders for each class of work and materials necessary;

(2) A single aggregate contract to the lowest responsive and responsible bidder for all of the classes of work and materials necessary; or

¹ "Institution of higher education" means a state university or college or a community college district, technical college district, university branch district, or state community college, and includes the applicable board of trustees or, in the case of a university branch district, any other managing authority (R.C. 3345.12, not in the bill).

² See R.C. 9.312, not in the bill.

(3) Single, aggregate contracts to the lowest responsive and responsible bidders for at least two but less than all of the classes of work and materials necessary *and* separate and distinct contracts to the lowest responsive and responsible bidders for the remaining classes of work and materials necessary that are not included in the single, aggregate contracts.

If an institution of higher education awards one or more single, aggregate contracts as described above, the bidder or bidders to whom such a contract is awarded is required to award any necessary subcontracts for the improvement to the lowest responsive and responsible bidder using the same criteria.

Exemption from the prevailing wage requirement

(R.C. 3318.101 and 4115.04)

Background

State agencies and political subdivisions, when undertaking public improvement projects, generally are required to pay the prevailing wage rate for the locality of the project. The prevailing wage rate is the sum of the basic hourly rate of pay and fringe benefits in the same trade and locality under collective bargaining agreements.³ Some types of projects are exempted from this law, however. One of those exemptions, enacted in 1997, applies to school districts and educational service centers. That exemption states that the provisions of the Prevailing Wage Law (R.C. 4115.03 to 4115.16) "do not apply to . . . public improvements undertaken by, or under contract for, the board of education of any school district or the governing board of any educational service center."⁴ In other words, school districts and service centers are not required to pay prevailing rates for construction labor.

The bill creates two additional exemptions from the Prevailing Wage Law. One exemption is for public improvements constructed by an institution of higher education (see definition above), and the other exemption is for improvements constructed by private, non-profit organizations exempt from federal income taxation pursuant to section 501(a) and (c)(3) of the Internal Revenue Code that receive public money to construct those improvements.

³ R.C. 4115.05, not in the bill. If there is no collective bargaining agreement in that locality for that trade, the required prevailing wage is the wage in effect for that trade in the nearest locality where there is such a collective bargaining agreement in force.

⁴ R.C. 4115.04(B)(3).

The bill also prohibits the Ohio School Facilities Commission from entering into any agreement with a school district for a school construction project or a segment of a project that requires mechanics and laborers engaged for that project be paid the prevailing rate of wages. It also prohibits the Commission from approving any contract for labor under a school district's project or segment that requires the payment of the prevailing rate to mechanics and laborers.

HISTORY

ACTION	DATE
Introduced	04-05-07

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