IN THE SUPREME COURT OF OHIO

State ex rel. Associated Builders & Contractors of Central Ohio, et al.,	:	Case No. 08-1478
Appellants,	:	On Appeal from the Franklin County Court of Appeals, Tenth Appellate District
v.	:	Court of Appeals Case No. 08AP-301
Franklin County Board of Commissioners, et al.,	:	
Appellees.	:	

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STATEMENT OF THE FACTS AND CASE

This case arises from a competitive bidding dispute between Appellants, The Painting Company, Inc. ("The Painting Company") and the Associated Builders & Contractors of Central Ohio ("Associated Builders"), and Appellees, the Franklin County Board of Commissioners ("the Board"). In this appeal, Appellants challenge the Board's utilization of a particular bid selection criteria in its rejection of The Painting Company's bid for the painting contract for the Huntington Park construction project.

I. The Franklin County Board of Commissioners establish qualitative criteria and bid selection procedures that apply to the Huntington Park construction project.

In 2002, the Franklin County Board of Commissioners ("the Board") adopted qualitative criteria that would be added to the Invitation to Bid for construction projects undertaken by the Board and subject to prevailing wage regulations. (Resolution No. 421-02, Appendix to Appellants' Merit Brief, 0038.) The qualitative criteria were established to "further ensure that the County's contractors are compliant with the law, financially stable, and capable of executing construction contracts in a competent and professional manner." (*Id.*) Of the fifteen criteria included in the resolution, one criterion specified the following qualification: "Bidder certifies that Bidder has not been debarred from public contracts or found by the state (after all appeals) to have violated prevailing wage laws more than three times in a two year period in the last ten years." (Attachment to Resolution No. 421-02, ¶ 5, Appellants' Appx. 0040.)

In 2006, the Board reaffirmed the qualitative criteria set forth in Resolution 421-02 and announced its intention to apply the criteria to the Huntington Park project. (Resolution No. 476-06, Appellants' Appx. 0042.) Huntington Park is owned by

Franklin County and is the new downtown ballpark for the Columbus Clippers, a professional minor league baseball team. (*Id.*) In reaffirming the use of the qualitative criteria, the Board noted its goal of providing for "the cost effective, safe, quality and timely completion of Huntington Park . . . in a manner designed to afford the lowest costs to [Franklin County] and the Public it represents." (*Id.*)

The qualitative criteria are incorporated in the Project Manual for Bids to Perform ("Project Manual"; also referred to as an Invitation to Bidders) for Huntington Park. (See Project Manual, Supplement to Appellants' Merit Brief, 0109-12.) Section 8.2 of the Project Manual sets forth the bid evaluation procedure and begins by noting that, "The Contract will be awarded to the lowest and best Bidder as determined in the discretion of the County or all bids will be rejected in accordance with the following procedures." (Appellants' Supp. 0110.) Section 8.2.3 outlines ten non-exclusive general factors for determining whether a bidder is best, one of which states, "The conduct and performance of the Bidder on previous contracts which shall include without limitation compliance with prevailing wage laws and equal opportunity requirements." (*Id.*)

The following section under bid evaluation procedure is 8.2.4 and it requires the construction manager to "obtain from the lowest responsive Bidder any information the Project Representative deems appropriate to the consideration of factors showing that such Bidder's bid is best . . . ." (Appellants' Supp. 0111.) One of the enumerated criteria is section 8.2.4.15, which seeks "[i]nformation that the Bidder has not been debarred from public contracts or found by the state (after all appeals) to have violated prevailing wage laws more than three times in a two-year period in the last ten years." (Appellants' Supp. 0112.)

According to the bid selection procedure in the Project Manual, if the lowest bidder is not best, and all bids received by the Board are not otherwise rejected, the bid selection procedures shall be followed and applied to the next lowest bidder. (Section 8.2.5 of the Project Manual, Appellants' Supp. 0112.) The Project Manual also specifies that if the lowest bidder is not best, the Board will reject the bid. (Section 8.3.1 of the Project Manual, Appellants' Supp. 0012.)

II. The Painting Company's bid for the painting contract is rejected by the Board as not being the lowest and best bid when The Painting Company fails to satisfy the bid selection criterion relating to compliance with prevailing wage laws.

Part of the Huntington Park construction project included soliciting bids for the painting portion of the project, which was found in bid package 3a. (Resolution No. 180-08, Appellants' App. 0044.) One of the bids for the painting contract was submitted by The Painting Company. (*Id.*) However, the Board received information from the Ohio Department of Commerce that indicated that The Painting Company had violated state prevailing wage laws more than three times in a two-year period within the last ten years. (*Id.*; see also Letter from Richard E. Myers to The Painting Company, Appellants' Supp. 0118-0162.) On this information, the Board, through Franklin County Public Facilities Management Assistant Director Richard E. Myers, the County's Project Manager for the Huntington Park Project, notified The Painting Company that its bid had been rejected for The Painting Company's failure to satisfy section 8.2.4.15 of the Project Manual. (Appellants' Supp. 0118.) On March 4, 2008, the Board rejected The Painting Company's subsequent bid protest. (Supp. 0044.)

III. The Painting Company and Associated Builders & Contractors challenge the Board's exercise of discretion in rejecting The Painting Company's bid.

On March 5, 2008, The Painting Company, as well as Associated Builders & Contractors, brought an action seeking declaratory and injunctive relief based upon violations of the competitive bidding laws, mandamus relief for the award of the contract, and declaratory relief to find that Franklin County's quality contracting standards were preempted by Ohio's prevailing laws.[1] (Verified Complaint, Appellants' Supp. 0003-30.)

On March 31, 2008, the trial court denied the declaratory, injunctive, and extraordinary relief sought by ABC and The Painting Company. Specifically, the court held that ABC and The Painting Company failed to prove by clear and convincing evidence that the Board abused its discretion in rejecting The Painting Company's bid and that the Board was not preempted by state law in utilizing bid selection criterion section 8.2.4.15. *State ex rel. Assoc. Builders & Contractors of Central Ohio v. Franklin Cty. Bd. of Commrs.* (March 31, 2008), Franklin Co. Comm. Pl. No. 2008-CVH-03-3328, pp. 22-23 (Appellants' Appx. 0015-37). The court of appeals affirmed the judgment of the trial court. *State ex rel. Assoc. Builders & Contrs. Of Cent. Ohio v. Franklin Cty. Bd. of Commrs.* (June 13, 2008), 2008-Ohio-2870 (Appx. 0005-14).

Appellants appealed the judgment of the Tenth District Court of Appeals to this Court and asked this Court to exercise jurisdiction. In their memorandum in support of jurisdiction, Appellants offered five separate propositions of law. The Court only accepted the third proposition of law.

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[1] Counts three and five of Plaintiffs' Complaint sought injunctive relief for alleged violations of Ohio's Open Meetings Act and mandamus relief for violations of the Public Records Act, respectively. Both counts were dismissed by the Plaintiffs at trial.

ARGUMENT

Response to Appellants' Proposition of Law:

Revised Code Chapter 4115 does not prohibit public authorities from considering a contractor's history of compliance with prevailing wage laws when determining which bid is lowest and best for a public construction project.[2]

To employ a contractor for a public construction project, a county board of commissioners is required to engage a competitive bidding process and award the contract to the lowest and best bidder. R.C. 307.86 and 307.90. County boards of commissioners are afforded broad discretion in determining which contractor is the lowest and best bidder. *State ex rel. Assn. Builders and Contr's. v. Jefferson Cty. Bd. of Comm'rs.* (1995), 106 Ohio App.3d 176, 181, 665 N.E. 2d 723; see also, R.C. 307.90. As part of this broad grant of discretion, public agencies may consider various factors in their evaluation of a contractor in determining which bid is lowest and best. *Rein Constr. Co. v. Trumbull Cty. Bd. of Comm'rs.* (2000), 138 Ohio App.3d 622, 629, 741 N.E.2d 979. A court, therefore, will not interfere in a public agency's exercise of discretion unless the agency has clearly abused the discretion afforded to it. *Altschul v. Springfield* (1933), 48 Ohio App. 356, 362, 193 N.E. 788, 1 O.O. 522.

In addition to competitive bidding requirements, public construction projects are subject to state prevailing wage laws. R.C. 4115.032. Contractors employed in public construction projects must pay their workers according to the prevailing wage rates established by the director of commerce. *Id*; see also R.C. 4115.04. Contractors that fail

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[2] Appellees recognize that Appellants have changed their proposition of law as accepted by the Court.

to comply with the prevailing wage law are subject to enforcement proceedings instituted by the director of commerce. R.C. 4115.10.

Ohio's prevailing wage laws, however, do not preclude, or in any way limit the discretion of, a county board of commissioners from considering a bidder's violations of state prevailing wage laws in determining the lowest and best bid for a public construction project. A board's consideration of such a criterion in evaluating bids is a factor in its determination. The criterion, properly enunciated in an invitation to bid, is not akin to a municipal ordinance that establishes a broad rule or decree that creates new obligations or duties; rather it is merely a selection criterion used in determining which bidder is lowest and best. Thus, the preemption argument advanced by Appellants is not applicable to the bid selection criterion at issue. But even under the preemption paradigm, the bid selection criterion does not conflict with the state's prevailing wage laws, and is therefore, a permissible consideration by the Franklin County Board of Commissioners.

I. A criterion utilized by a county board of commissioners in its discretion in determining the lowest and best bidder for a public construction project is not a law, regulation, or municipal ordinance and is therefore not subject to preemption analysis.

In determining whether a bidder is lowest and best for award of a public construction project, county boards of commissioners are not precluded from considering various factors. *Rein Constr. Co.*, 138 Ohio App.3d 622, 629. These factors are properly characterized as bid selection criteria – not rules, regulations, or laws. The preemption analysis advanced by Appellants under the Home Rule Amendment, Section 3, Article XVIII, Ohio Constitution, applies to municipal ordinances that are enacted as exercises of local police power. However, a bid selection criterion, such as section 8.2.4.15 in this

case, is not a rule or an exercise of local police power that is subject to a preemption analysis. The preemption argument advanced by Appellants is therefore inapplicable to a bid selection criterion that is utilized by a board of county commissioners in determining the lowest and best bid.

A. A county board of commissioners has the discretion to establish bid selection criteria for the limited purpose of determining whether a bidder is the lowest and best bidder for a public construction project.

Where a public contract must be awarded through a competitive bidding process, the county board of commissioners must award the contract to the "lowest and best bidder." R.C. 307.90. The purpose of such a competitive bidding statute is to "enable the public contracting authority to obtain the best work at the lowest price while guarding against favoritism and fraud." *Assn. Builders Contr's.*, 106 Ohio App.3d 176, 181, citing *Cedar Bay Constr., Inc. v. Freemont* (1990), 50 Ohio St.3d 19, 21, 552 N.E.2d 202.

Under the lowest and best bid standard, a public authority is "not limited to an acceptance of merely the lowest dollar bid." *Altschul*, 48 Ohio App. at 362. Rather, the awarding authority is vested with "the discretion of determining who under all circumstances is the lowest and best bidder for the work in question." *Id.* The public agency is therefore authorized to engage in a qualitative analysis of the bids and is afforded considerable latitude in making its determination. *Rein Constr.*, 138 Ohio App.3d at 629.

As part of a public authority's qualitative analysis of which bid is lowest and best, the public authority is within its discretion to adopt and utilize certain factors. These factors, or bid selection criteria, provide structure and guidance to the awarding authority, as the criteria relate to a bidder's ability and quality to perform the work. Further, the

adoption, announcement, and utilization of bid selection criteria, like section 8.2.4.15 in this case, furthers the purpose of the competitive bidding statute. The criteria provide notice to prospective bidders of the factors that the public authority will consider, ensures an even-playing field for all bidders, and provides the public authority with the assurance that the best work will be selected at the lowest price.

1. In its qualitative analysis of determining the lowest and best bidder for a public project, a county board of commissioners may establish bid selection criteria to ensure that the best work will be obtained at the lowest possible price.

In evaluating bids for a public contract under the "lowest and best" standard, a public agency is obligated to utilize factors or criteria. The use of factors or criteria is necessary because under the "lowest and best" standard a public authority is not limited to accepting merely the lowest bid. See *Cedar Bay Constr.*, 50 Ohio St.3d 19. Rather, the public authority must also analyze the quality of the bidder in determining whether the bidder is best for the project. Thus, there is a dual analysis under the "lowest and best" standard, with the ultimate goal being to obtain the best work for the project at the lowest price.

Under the "lowest and best" standard, the decision as to which factors will be utilized in evaluating whether a bidder is best for the project is within the discretion of the public agency. See *Cedar Bay Constr.*, 50 Ohio St.3d at 21-22. And in exercising its discretion a public agency "can consider all relevant factors in determining which contractor is 'best' for its project and not accept merely the low dollar bid." *State ex rel. Navratil v. Medina Cty. Comm'rs.* (Oct. 10, 1995), Medina App. No. 2424-M, 1995 WL 598549, *3 (holding that a board of county commissioners did not abuse its discretion in

considering prevailing wage citations along with other factors in rejecting a bidder for a public construction project), citing *Cedar Bay Constr.*, 50 Ohio St.3d 19.

The use of factors in evaluating bidders for a public project is recognized in Ohio competitive bidding laws. Under the "lowest responsive and responsible" standard – a standard that affords less discretion to the awarding public agency – a public authority must use certain factors in evaluating bids. See R.C. 9.312. Revised Code Section 9.312 requires that a public agency use certain factors, which are expressly stated in that statute, to determine whether a bidder on the contract is responsible. The factors include "the experience of the bidder, the bidder's financial condition, conduct and performance on previous contracts, facilities, management skills, and ability to execute the contract properly." R.C. 9.312(A). Thus, a public agency that awards contracts under the "lowest responsive and responsible bidder" is expressly required to use certain factors in its determination process. As such, it follows that a public agency that is charged with more discretion under the "lowest and best" bid is authorized to utilize relevant factors in its evaluation of bidders.

Moreover, because of the necessary qualitative analysis of bidders under the "lowest and best" standard, a public agency has the discretion to not only utilize factors, but also to establish relevant selection criteria. In fact, the establishment of relevant selection criteria should be encouraged, as it promotes the underlying principles of competitive bidding statutes. See *State ex rel. Assn. Builders and Contractors v. Jefferson Cty. Bd. of Comm'rs.* (1995), 106 Ohio App.3d 176, 181, 665 N.E.2d 723. In addressing selection criteria in a competitive bidding dispute, the *Assn. Builders and Contractors* court held that "adhering to previously announced selection criteria is not an

abuse of discretion." *Id.* The court held further that "adhering to such criteria promotes the noteworthy purposes underlying the competitive bidding statutes and ensures an even playing field for all prospective bidders." *Id.*

Indeed, the establishment and announcement of bid selection criteria is beneficial in many ways. First, it provides notice to potential bidders of the qualifications that the public agency will consider in its evaluations of bids. In addition, the public is better served by such bid selection criteria because of the transparency of the bid evaluation process, such that the public can view every factor that the public authority is utilizing in its decision-making process. Third, previously announced bid selection criteria provide for equal evaluations for bidders, as each bidder is subject to the same factors for review.

There is one other important reason supporting the establishment of bid selection criteria: the failure of a public agency to establish and adhere to previously announced bid selection criteria can constitute an abuse of discretion. See *Dayton ex rel. Scandrick v. McGee* (1981), 67 Ohio St.2d 356, 21 O.O.3d 225, 423 N.E.2d 1095. The *Scandrick* court held that a public authority abuses its discretion where it uses an unannounced bid selection criterion in its determination of which bid was lowest and best. *Id.*, 67 Ohio St.2d at 359-60. The court found that the city commission's action of rejecting a bidder on the basis of an unannounced residency criterion, which was purported to prefer builders that were city residents, was arbitrary because of the failure to announce the standard before the opening of the bids. *Id.* at 361. The court held that the failure of the commission to announce or disclose the selection criterion until after the bids had opened "undermine[d] the integrity of the competitive bidding process." *Id.* at 359. The holding

of the *Scandrick* court illustrates the prudence in establishing and announcing bid selection criteria, for the failure to do so could be held to be an abuse of discretion.

Ultimately, adhering to previously announced bid selection criteria benefits all interested parties involved in the competitive bidding process: the bidders, the public authority, and the public. Therefore, a public authority's establishment and utilization of bid selection criteria should not only be upheld but encouraged.

2. Section 8.2.4.15 is a bid selection criterion established by the Franklin County Board of Commissioners for the evaluation of bids for the Huntington Park project and seeks information about a bidder's compliance with state prevailing wage laws on prior public projects.

The criterion at issue in this case, section 8.2.4.15 of the Project Manual, is a valid bid selection criterion that is utilized by the Board in its determination of which bidder is the lowest and best for the project. The criterion, along with fourteen other factors, was established by the Board in 2002 as part of a set of "qualitative criteria" that would be utilized on county construction projects where prevailing wage laws applied. (Resolution No. 421-02, Appx. 0038.) These qualitative criteria were created to "ensure that the County's contractors are compliant with the law, financially stable, and capable of executing construction contracts in a competent and professional manner." (*Id.*) The criteria thus were factors that the Board considered relevant in its determinations as to which bidder would be best for construction projects.

The bid selection criteria that were established in 2002 were expressly adopted and incorporated for the Huntington Park project. In doing so, the Board reinforced its desire to utilize and rely upon the bid selection criteria. Specifically, the Board noted in Resolution 476-06 that the bid selection criteria would advance the goal of providing a

cost effective and quality ballpark by "expediting the construction process, providing enhancement of fair and quality employment practices for all Project participants, and creating a safer construction site, including providing a mechanism for responding to the unique construction needs associated with the [Huntington Park] Project." (Resolution 476-06, Appx. 0042.) The reinforcement of the these criteria in the resolution demonstrated the Board's commitment to its bid selection criteria and its desire to continue to utilize the criteria in its determination of which bidders would be lowest and best for construction contracts for the Huntington Park project.

But not only did the Board establish its bid selection criteria, it also announced the criteria by publishing them in its Project Manual. Under section 8.2, designated as "BID EVALUATION PROCEDURE", the Board announced the bid selection criteria. Section 8.2.3 sets forth the factors that the Board will use to determine whether a bidder is best. (Project Manual, Supp. 0110.) Relevant to this discussion, one factor in the Board's determination of which bidder is best is, "The conduct and performance of the Bidder on previous contracts which shall include without limitation compliance with prevailing wage laws and equal opportunity requirements." (*Id.*)

In relation to the factors expressed in 8.2.3, section 8.2.4 sets forth specific information that the construction manager is required to obtain. (Supp. 0111.) Section 8.2.4.15, is one of 24 criteria that relate to the factors in 8.2.3 (conduct and performance on prior contracts), and seeks information regarding the bidder's prevailing wage violations. (*Id.*) This criterion clearly relates to the factor in 8.2.3 as to which factors the Board is considering in its evaluation of bidders. As such, section 8.2.4.15, as well as the other established criteria announced in the Project Manual, provides the Board with a

guiding principle and basis for its determination of which bidder is lowest and best for a particular construction contract.

3. Due process concerns regarding the Board's bid selection criterion are not at issue in this appeal.

To the extent that Appellants argue that the Board has deprived The Painting Company of its due process rights by utilizing the bid selection criterion at issue (Appellants' Brief, pp. 15-18), Appellants' argument should be rejected without consideration. Appellants' Memorandum in Support of Jurisdiction included five separate propositions of law. Proposition of Law No. 1 related to due process:

> Prevailing wage determinations based on investigations without a hearing cannot legally be considered as finding violations of law, because such findings would contradict both statute and precedent and deprive contractors of a liberty interest protected by the United State and Ohio constitutions without procedural due process.

(Appellants' Memorandum in Support of Jurisdiction, p. 6.)

Appellants' third proposition of law did not relate to due process, but to preemption:

> Appellees' *de facto* debarment rule is preempted by R.C. Chapter 4115, a comprehensive scheme balancing the competing public interests in prevailing wage compliance and completion for public contracts.

(*Id.*, p. 10.)

This Court accepted the third proposition of law in Appellants' Memorandum in Support of Jurisdiction; it declined to exercise jurisdiction over Appellants' proposition of law regarding due process. Any argument regarding due process is beyond the scope of this appeal and is, therefore, irrelevant and improper.

B. Preemption analysis applies only to ordinances that are enacted as exercises of local police power.

In this appeal, Appellants have challenged the Board's use of section 8.2.4.15 of the bid selection criteria as being preempted by state law pursuant to the Home Rule Amendment, Section 3, Article XVIII, Ohio Constitution. Under this doctrine, "a state statute takes precedence over a local ordinance when (1) the ordinance is in conflict with the statute, (2) the ordinance is an exercise of the police power, rather than of local government, and (3) the statute is a general law." *Canton v. State* (2002), 95 Ohio St.3d 149, 151, 2002-Ohio-2005, 766 N.E.2d 963.

However, preemption analysis applies only to ordinances that are enacted as exercises of local police powers. *Marich v. Bob Bob Bennett Constr. Co.* (2008), 116 Ohio St.3d 553, 2008-Ohio-92, 880 N.E.2d 906, citing *Am. Financial Serv's. Assn. v. Cleveland* (2006), 112 Ohio St.3d 170, 2006-Ohio-6043, 858 N.E.2d 776. And "the police power allows municipalities to enact regulations only to protect the public health, safety, or morals, or the general welfare of the public." *Marich*, 116 Ohio St.3d at 556.

Courts have consistently applied preemption analysis under the Home Rule Amendment to municipal ordinances. See, e.g., *Struthers v. Sokol* (1923), 108 Ohio St. 263, 140 N.E. 519 (municipal ordinance prohibiting the manufacture and sale of liquor); *Auxter v. Toledo* (1962), 173 Ohio St. 444, 20 O.O.2d 71, 183 N.E.2d 920 (municipal code provision requiring a city license to sell beer and wine in the city); *Lorain v. Tomasic* (1979), 59 Ohio St.2d 1, 13 O.O.3d 1, 391 N.E.2d 726 (municipal ordinance that mandated a reduced payout for bingo games); *State ex rel. Evans v. Moore* (1982), 69 Ohio St.2d 88, 23 O.O.3d 145, 431 N.E.2d 311 (ordinance attempting to exempt the city from state prevailing wage laws); *Ohio Assn. of Private Detective Agencies, Inc. v. North*

Olmsted (1992), 65 Ohio St.3d 242, 602 N.E.2d 1147 (ordinance instating a fee for registration or licensure of private investigators and security guard providers and employees); *Am. Financial Serv's. Assn. v. Cleveland* (2006), 112 Ohio St.3d 170, 2006-Ohio-6043, 858 N.E.2d 776 (ordinance prohibiting predatory loans); *Cincinnati v. Baskin* (2006), 112 Ohio St.3d 279, 2006-Ohio-6422, 859 N.E.2d 514 (ordinance prohibiting the possession of a semi-automatic rifle with a particular capacity of rounds); *Marich v. Bob Bennett Constr. Co.* (2008), 116 Ohio St.3d 553, 2008-Ohio-92, 880 N.E.2d 906 (ordinance prohibiting vehicles exceeding state load limits from traveling on city streets and highways).

But, this line of cases does not seem to indicate that the preemption analysis recognizes any action other than municipal police-power ordinances. The preemption cases address municipal authority to regulate and the extent to which municipalities can regulate. The cases do not address or concern non-municipal action where the public authority has the statutory authority to act.

C. A bid selection criterion utilized by a county board of commissioners is not a rule or a police-power ordinance that is subject to the limitations of the Home Rule Amendment.

Because the preemption analysis only encompasses municipal police-power ordinances, it cannot be used to review a board of commissioners' establishment and utilization of bid selection criteria in its determination of which bidder is lowest and best for a public construction project. The Home Rule Amendment, upon which the preemption doctrine is based, has no application to county board of commissioners' bid selection criteria. That particular constitutional provision was designed to provide for municipal home rule in Ohio, and to set forth the parameters under which municipal

power could be exercised. *Canton*, 95 Ohio St.3d at 151. As such, the Home Rule Amendment does not operate to empower or limit the operations of county governments. *Geauga Cty. Bd. of Comm'rs. v. Munn Road Sand & Gravel* (1993), 67 Ohio St.3d 579, 583, 621 N.E.2d 696.

Rather, a county government only has the authority to take action where a statute affirmatively authorizes the action. *Id.* In the instant mater, a county board of commissioners is clearly authorized by the Ohio General Assembly to award a contract to the lowest and best bidder. R.C. 307.86, *et seq.* Furthermore, it is granted significant discretion in making its determination. Thus, the limitations of the Home Rule Amendment upon a municipality's police power and the preemption analysis is not applicable.

But even if Art. XVIII, Sec. 3 were applicable to county government, the bid selection criteria adopted by the Board are not laws, ordinances, or regulations that would fall within the purview of preemption analysis. As discussed above, the line of preemption cases addressed municipal police-power ordinances. But here, the Court is not reviewing a municipal police-power ordinance. Rather, the Court is reviewing one of many bid selection criteria that are used by the Board in determining whether a bidder is lowest and best for a public construction project.

Here, the resolution that created the bid selection criterion at issue characterizes the factors as "qualitative criteria." (Appx. 0038.) The 2006 resolution that reaffirmed the use of the bid selection criteria used the same terminology to describe the factors. (Appx. 0042.) Above its placement in the Project Manual, section 8.2.4.15 is noted as being one of 24 expressed criteria that are "appropriate to the consideration of factors

showing that such Bidder's bid is best." (Supp. 0111.) By the Board's expressed designations, section 8.2.4.15 is merely a bid selection criterion.

In addition, any characterization of section 8.2.4.15 as being a rule is inaccurate. Section 8.2.4.15 does not establish any rule for contractors. The Project Manual only requires that the Construction Manager obtain certain information from the lowest responsive bidder. (See 8.2.4 of Project Manual, Supp. 0111.) The information sought in section 8.2.4.15 relates to a bidder's history of compliance with state prevailing wage laws. (Supp. 0112.) That criterion does not establish any further duty on a bidder, as an ordinance might. Instead, it announces that the Board considers certain information necessary to its determination of which bidder is lowest and best for the project, and requires the Construction Manager to obtain that information from the lowest responsive bidder.

By its express designations and in its operation, section 8.2.4.15 is merely a bid selection criterion, not an ordinance. As such, the preemption analysis advanced by Appellants does not apply in this case and cannot be used to review the Board's exercise of discretion in establishing and utilizing this bid selection criterion in determining the lowest and best bid for the Huntington Park project.

II. A bid selection criterion that is based upon a bidder's failure to pay prevailing wages on public construction projects does not conflict with the state's prevailing wage laws.

Even though a preemption analysis does not apply to this case, it is clear that the bid selection criterion at issue does not conflict with state prevailing wage laws. Under the preemption analysis, a general state law will take precedence over a local ordinance that conflicts with the general state law. *Canton*, 95 Ohio St.3d at 151. A conflict does

not exist unless "the ordinance declares something to be right which the state law declares to be wrong, or vice versa." *Struthers*, 108 Ohio St. at 268. Thus, there is no conflict "unless one authority grants a permit or license to do an act which is forbidden or prohibited by the other." *Id.*

In this case there is no conflict between Ohio prevailing wage statutes and a county board of commissioners' utilization of announced bid selection criteria. At the outset it should be noted that there is no provision in R.C. Chapter 4115 that precludes a public authority from considering, as part of its process of determining the lowest and best bid for a public construction project, a bidder's violations of state prevailing wage laws. Moreover, there is no conflict between the bid selection criterion and state prevailing wage laws. The bid selection criterion utilized by the Board in this case does not permit what is prohibited under state prevailing wage laws. And, the bid selection criterion does not prohibit what is permitted under state prevailing wage laws.

A. The bid selection criterion, section 8.2.4.15, does not permit an award of a contract to a contractor that has been debarred under state prevailing wage laws.

Chapter 4115 of the Revised Code provides the statutory structure for prevailing wage law compliance and enforcement. R.C. 4115.03-4115.21. Under the enforcement provisions of the prevailing wage laws, the director of commerce is charged with investigating allegations of a contractor's failure to pay its employees the established prevailing wage rates. R.C. 4115.13. If the director finds that the allegation has merit, the director may order that the contractor make restitution to the employee for the underpayment of wages. R.C. 4115.13(C). If the director determines that not only is there merit in the allegation, but also that the violation was intentional, then the

contractor is "prohibited from contracting directly or indirectly with any public authority for the construction of a public improvement or from performing any work on the same as provided in section 4115.133 of the Revised Code." R.C. 4115.13(D).

The director must also file with the secretary of state a list of contractors that have been found to have intentionally violated state prevailing wage laws. R.C. 4115.133(A). A public authority is prohibited under from awarding a public construction contract to a contractor that is on the list of debarred contractors. R.C. 4115.133(C).

In their brief, Appellants rely upon *Wisconsin Dep't of Indus., Labor & Human Relations v. Gould, Inc.* (1986) 475 U.S. 282, 106 S.Ct. 1057, 89 L.Ed.2d 223, in support of their contention that Ohio's prevailing wage laws preempt a county's ability to adopt certain bid selection criteria, arguing that the *Gould* decision presents "a strikingly similar issue . . . ." Their reliance is misplaced in that *Gould* analyzed a state statute which presented a true conflict with the Federal Government's regulation of labor relations. Applying federal preemption principles, the Supreme Court determined that the state statute impermissibly infringed upon matters where Congress had displaced state regulation. In the instant matter, there is nothing in the state's prevailing wage laws which would indicate any intent on the part of the General Assembly to preempt the utilization of a contractor's history of violations as a bid selection criterion.

In comparing the enforcement provisions of state prevailing wage laws with the bid selection criterion, it is evident that there is no conflict such that section 8.2.4.15 permits what state prevailing wage laws prohibit. As discussed above, the state prevailing wage statutes expressly prohibit the Board from awarding a construction contract to a contractor that is debarred under state law. See R.C. 4115.133(C). But here,

section 8.2.4.15 does not seek to override R.C. 4115.133 by awarding the contract to a debarred contractor. To the contrary, it seeks information relating to a contractor's history of compliance with state prevailing wage laws in order to determine whether a contractor will be best for the project. Therefore, there is no conflict in this sense.

B. Section 8.2.4.15 does not expand the conditions under which a contractor can be debarred from bidding on public projects and therefore does not prohibit what state prevailing wage laws permit.

Likewise, the bid selection criterion does not prohibit what the state prevailing wage laws permit. The state statutes permit the director of commerce to enforce prevailing wage violations. R.C. 4115.13. It is the director's determination of an intentional violation that can debar a contractor. R.C. 4115.13.

However, section 8.2.4.15 does not establish a debarment procedure. It does not operate to usurp the authority of the director of commerce to enforce state prevailing wage violations. Instead, section 8.2.4.15, and the information it requires, provides guidance to the Board about a bidder's compliance with state prevailing wage laws. It does not set forth a separate procedure to debar contractors from being awarded public construction contracts in Franklin County. Thus, to the extent that Appellants attempt to cast section 8.2.4.15 as a "de facto debarment rule", Appellants mischaracterize the Board's bid selection criterion. Section 8.2.4.15 is not a rule; it is a bid selection criterion.

At least one Ohio court has addressed a similar argument regarding a county board of commissioners' utilization of a bid selection factor based upon a bidder's violations of state prevailing wage laws. See *State ex rel. Navratil v. Medina Cty. Comm'rs.*, 1995 WL 598549. Similar to the case at bar, the appellants in *Navratil* argued

that because a board of commissioners had rejected the appellant contractor's bid because of prevailing wage allegations, the bidder was effectively debarred from performing public construction projects in the county. The court rejected this argument, holding that the board of commissioners "was not prohibiting [the bidder] from contracting with the county; it merely decided not to award the plumbing contract to [the bidder] at this time." *Id.*, 1995 WL 598549 at *4. The court concluded its analysis on the argument, holding that "the board has broad discretion to consider all relevant factors, including alleged prevailing wage violations, when determining which contractor is the 'lowest and best.'" *Id.*

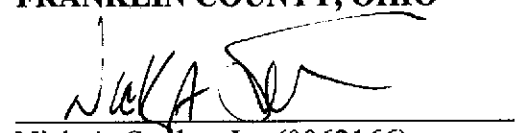
Such an analysis is appropriate in this case. The Board is not prohibiting The Painting Company from contracting with public authorities in Franklin County. The Board simply determined, in the exercise of its discretion, that The Painting Company was not the lowest and best bidder for the project. Thus, there is no conflict and no preemption.

CONCLUSION

For the foregoing reasons, Appellees, Franklin County Board of Commissioners, respectfully submit that this Court affirm the judgment of the Tenth District Court of Appeals.

Respectfully submitted,

RON O'BRIEN
PROSECTING ATTORNEY
FRANKLIN COUNTY, OHIO



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IN THE SUPREME COURT OF OHIO

State ex rel. Associated Builders & Contractors of Central Ohio, et al.,	:	Case No. 08-1478
Appellants,	:	On Appeal from the Franklin County Court of Appeals, Tenth Appellate District
v.	:	Court of Appeals Case No. 08AP-301
Franklin County Board of Commissioners, et al.,	:	
Appellees.	:	

MERIT BRIEF OF APPELLEES
FRANKLIN COUNTY BOARD OF COMMISSIONERS
APPENDIX

Exhibit A: R.C. 9.312

Exhibit B1: R.C. 307.86 (2007)

Exhibit B2: R.C. 307.86 (eff. Sept. 12, 2008)

Exhibit C: R.C. 307.90

C
Baldwin's Ohio Revised Code Annotated Currentness
General Provisions
Chapter 9. Miscellaneous
Additional Miscellaneous
9.312 State agency and political subdivision contracts to lowest responsive and responsible bidder; protest when contract not awarded to lowest bidder

(A) If a state agency or political subdivision is required by law or by an ordinance or resolution adopted under division (C) of this section to award a contract to the lowest responsive and responsible bidder, a bidder on the contract shall be considered responsive if the bidder's proposal responds to bid specifications in all material respects and contains no irregularities or deviations from the specifications which would affect the amount of the bid or otherwise give the bidder a competitive advantage. The factors that the state agency or political subdivision shall consider in determining whether a bidder on the contract is responsible include the experience of the bidder, the bidder's financial condition, conduct and performance on previous contracts, facilities, management skills, and ability to execute the contract properly.

For purposes of this division, the provision of a bid guaranty in accordance with divisions (A)(1) and (B) of section 153.54 of the Revised Code issued by a surety licensed to do business in this state is evidence of financial responsibility, but a state agency or political subdivision may request additional financial information for review from an apparent low bidder after it opens all submitted bids. A state agency or political subdivision shall keep additional financial information it receives pursuant to a request under this division confidential, except under proper order of a court. The additional financial information is not a public record under section 149.43 of the Revised Code.

An apparent low bidder found not to be responsive and responsible shall be notified by the state agency or political subdivision of that finding and the reasons for it. Except for contracts awarded by the department of administrative services pursuant to section 125.11 of the Revised Code, the notification shall be given in writing and by certified mail. When awarding contracts pursuant to section 125.11 of the Revised Code, the department may send such notice in writing by first class mail.

(B) Where a state agency or a political subdivision that has adopted an ordinance or resolution under division (C) of this section determines to award a contract to a bidder other than the apparent low bidder or bidders for the construction, reconstruction, improvement, enlargement, alteration, repair, painting, or decoration of a public improvement, it shall meet with the apparent low bidder or bidders upon a filing of a timely written protest. The protest must be received within five days of the notification required in division (A) of this section. No final award shall be made until the state agency or political subdivision either affirms or reverses its earlier determination. Notwithstanding any other provisions of the Revised Code, the procedure described in this division is not subject to Chapter 119. of the Revised Code.

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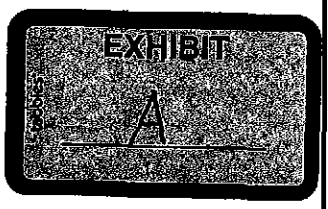

(C) A municipal corporation, township, school district, board of county commissioners, any other county board or commission, or any other political subdivision required by law to award contracts by competitive bidding may by ordinance or resolution adopt a policy of requiring each competitively bid contract it awards to be awarded to the lowest responsive and responsible bidder in accordance with this section.

CREDIT(S)

(2002 H 458, eff. 9-20-02; 1995 S 99, eff. 10-25-95; 1990 H 304, eff. 6-13-90; 1987 H 88)

Current through the end of the 127th General Assembly. As of 3/17/09 no legislation from the 128th General Assembly has been approved or filed with the Secretary of State.

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R.C. § 307.86

BALDWIN'S OHIO REVISED CODE ANNOTATED
TITLE III. COUNTIES
CHAPTER 307. BOARD OF COUNTY COMMISSIONERS--POWERS
COMPETITIVE BIDDING ON COUNTY PURCHASES; OHIO PREFERENCE

→307.86 Competitive bidding required; exceptions

Anything to be purchased, leased, leased with an option or agreement to purchase, or constructed, including, but not limited to, any product, structure, construction, reconstruction, improvement, maintenance, repair, or service, except the services of an accountant, architect, attorney at law, physician, professional engineer, construction project manager, consultant, surveyor, or appraiser, by or on behalf of the county or contracting authority, as defined in section 307.92 of the Revised Code, at a cost in excess of twenty-five thousand dollars, except as otherwise provided in division (D) of section 713.23 and in sections 125.04, 125.60 to 125.6012, 307.022, 307.041, 307.861, 339.05, 340.03, 340.033, 4115.31 to 4115.35, 5119.16, 5513.01, 5543.19, 5713.01, and 6137.05 of the Revised Code, shall be obtained through competitive bidding. However, competitive bidding is not required when any of the following applies:

(A) The board of county commissioners, by a unanimous vote of its members, makes a determination that a real and present emergency exists, and that determination and the reasons for it are entered in the minutes of the proceedings of the board, when either of the following applies:

(1) The estimated cost is less than fifty thousand dollars.

(2) There is actual physical disaster to structures, radio communications equipment, or computers.

For purposes of this division, "unanimous vote" means all three members of a board of county commissioners when all three members are present, or two members of the board if only two members, constituting a quorum, are present.

Whenever a contract of purchase, lease, or construction is exempted from competitive bidding under division (A)(1) of this section because the estimated cost is less than fifty thousand dollars, but the estimated cost is twenty-five thousand dollars or more, the county or contracting authority shall solicit informal estimates from no fewer than three persons who could perform the contract, before awarding the contract. With regard to each such contract, the county or contracting authority shall maintain a record of such estimates, including the name of each person from whom an estimate is solicited. The county or contracting authority shall maintain the record for the longer of at least one year after the contract is awarded or the amount of time the federal government requires.

(B)(1) The purchase consists of supplies or a replacement or supplemental part or

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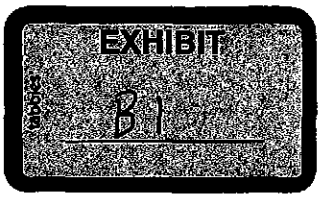

parts for a product or equipment owned or leased by the county, and the only source of supply for the supplies, part, or parts is limited to a single supplier.

(2) The purchase consists of services related to information technology, such as programming services, that are proprietary or limited to a single source.

(C) The purchase is from the federal government, the state, another county or contracting authority of another county, or a board of education, township, or municipal corporation.

(D) The purchase is made by a county department of job and family services under section 329.04 of the Revised Code and consists of family services duties or workforce development activities or is made by a county board of mental retardation and developmental disabilities under section 5126.05 of the Revised Code and consists of program services, such as direct and ancillary client services, child care, case management services, residential services, and family resource services.

(E) The purchase consists of criminal justice services, social services programs, family services, or workforce development activities by the board of county commissioners from nonprofit corporations or associations under programs funded by the federal government or by state grants.

(F) The purchase consists of any form of an insurance policy or contract authorized to be issued under Title XXXIX of the Revised Code or any form of health care plan authorized to be issued under Chapter 1751. of the Revised Code, or any combination of such policies, contracts, or plans that the contracting authority is authorized to purchase, and the contracting authority does all of the following:

(1) Determines that compliance with the requirements of this section would increase, rather than decrease, the cost of the purchase;

(2) Employs a competent consultant to assist the contracting authority in procuring appropriate coverages at the best and lowest prices;

(3) Requests issuers of the policies, contracts, or plans to submit proposals to the contracting authority, in a form prescribed by the contracting authority, setting forth the coverage and cost of the policies, contracts, or plans as the contracting authority desires to purchase;

(4) Negotiates with the issuers for the purpose of purchasing the policies, contracts, or plans at the best and lowest price reasonably possible.

(G) The purchase consists of computer hardware, software, or consulting services that are necessary to implement a computerized case management automation project administered by the Ohio prosecuting attorneys association and funded by a grant from the federal government.

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(H) Child care services are purchased for provision to county employees.

(I)(1) Property, including land, buildings, and other real property, is leased for offices, storage, parking, or other purposes, and all of the following apply:

(a) The contracting authority is authorized by the Revised Code to lease the property.

(b) The contracting authority develops requests for proposals for leasing the property, specifying the criteria that will be considered prior to leasing the property, including the desired size and geographic location of the property.

(c) The contracting authority receives responses from prospective lessors with property meeting the criteria specified in the requests for proposals by giving notice in a manner substantially similar to the procedures established for giving notice under section 307.87 of the Revised Code.

(d) The contracting authority negotiates with the prospective lessors to obtain a lease at the best and lowest price reasonably possible considering the fair market value of the property and any relocation and operational costs that may be incurred during the period the lease is in effect.

(2) The contracting authority may use the services of a real estate appraiser to obtain advice, consultations, or other recommendations regarding the lease of property under this division.

(J) The purchase is made pursuant to section 5139.34 or sections 5139.41 to 5139.46 of the Revised Code and is of programs or services that provide case management, treatment, or prevention services to any felony or misdemeanant delinquent, unruly youth, or status offender under the supervision of the juvenile court, including, but not limited to, community residential care, day treatment, services to children in their home, or electronic monitoring.

(K) The purchase is made by a public children services agency pursuant to section 307.92 or 5153.16 of the Revised Code and consists of family services, programs, or ancillary services that provide case management, prevention, or treatment services for children at risk of being or alleged to be abused, neglected, or dependent children.

(L) The purchase is to obtain the services of emergency medical service organizations under a contract made by the board of county commissioners pursuant to section 307.05 of the Revised Code with a joint emergency medical services district.

Any issuer of policies, contracts, or plans listed in division (F) of this section and any prospective lessor under division (I) of this section may have the issuer's or prospective lessor's name and address, or the name and address of an agent, placed on a special notification list to be kept by the contracting author-

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ity, by sending the contracting authority that name and address. The contracting authority shall send notice to all persons listed on the special notification list. Notices shall state the deadline and place for submitting proposals. The contracting authority shall mail the notices at least six weeks prior to the deadline set by the contracting authority for submitting proposals. Every five years the contracting authority may review this list and remove any person from the list after mailing the person notification of that action.

Any contracting authority that negotiates a contract under division (F) of this section shall request proposals and renegotiate with issuers in accordance with that division at least every three years from the date of the signing of such a contract.

Any consultant employed pursuant to division (F) of this section and any real estate appraiser employed pursuant to division (I) of this section shall disclose any fees or compensation received from any source in connection with that employment.

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C
Baldwin's Ohio Revised Code Annotated Currentness
Title III. Counties
Chapter 307. Board of County Commissioners--Powers (Refs & Annos)
Competitive Bidding on County Purchases; Ohio Preference
307.86 Competitive bidding and competitive sealed proposals

Anything to be purchased, leased, leased with an option or agreement to purchase, or constructed, including, but not limited to, any product, structure, construction, reconstruction, improvement, maintenance, repair, or service, except the services of an accountant, architect, attorney at law, physician, professional engineer, construction project manager, consultant, surveyor, or appraiser, by or on behalf of the county or contracting authority, as defined in section 307.92 of the Revised Code, at a cost in excess of twenty-five thousand dollars, except as otherwise provided in division (D) of section 713.23 and in sections 9.48, 125.04, 125.60 to 125.6012, 307.022, 307.041, 307.861, 339.05, 340.03, 340.033, 4115. 31 to 4115.35, 5119.16, 5513.01, 5543.19, 5713.01, and 6137.05 of the Revised Code, shall be obtained through competitive bidding. However, competitive bidding is not required when any of the following applies:

(A) The board of county commissioners, by a unanimous vote of its members, makes a determination that a real and present emergency exists, and that determination and the reasons for it are entered in the minutes of the proceedings of the board, when either of the following applies:

(1) The estimated cost is less than fifty thousand dollars.

(2) There is actual physical disaster to structures, radio communications equipment, or computers.

For purposes of this division, "unanimous vote" means all three members of a board of county commissioners when all three members are present, or two members of the board if only two members, constituting a quorum, are present.

Whenever a contract of purchase, lease, or construction is exempted from competitive bidding under division (A)(1) of this section because the estimated cost is less than fifty thousand dollars, but the estimated cost is twenty-five thousand dollars or more, the county or contracting authority shall solicit informal estimates from no fewer than three persons who could perform the contract, before awarding the contract. With regard to each such contract, the county or contracting authority shall maintain a record of such estimates, including the name of each person from whom an estimate is solicited. The county or contracting authority shall maintain the record for the longer of at least one year after the contract is awarded or the amount of time the federal government requires.

(B)(1) The purchase consists of supplies or a replacement or supplemental part or parts for a product or equip-

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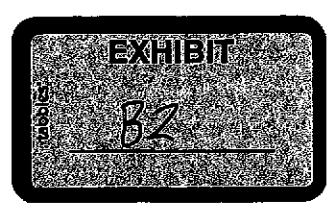

ment owned or leased by the county, and the only source of supply for the supplies, part, or parts is limited to a single supplier.

(2) The purchase consists of services related to information technology, such as programming services, that are proprietary or limited to a single source.

(C) The purchase is from the federal government, the state, another county or contracting authority of another county, or a board of education, township, or municipal corporation.

(D) The purchase is made by a county department of job and family services under section 329.04 of the Revised Code and consists of family services duties or workforce development activities or is made by a county board of mental retardation and developmental disabilities under section 5126.05 of the Revised Code and consists of program services, such as direct and ancillary client services, child care, case management services, residential services, and family resource services.

(E) The purchase consists of criminal justice services, social services programs, family services, or workforce development activities by the board of county commissioners from nonprofit corporations or associations under programs funded by the federal government or by state grants.

(F) The purchase consists of any form of an insurance policy or contract authorized to be issued under Title XXXIX of the Revised Code or any form of health care plan authorized to be issued under Chapter 1751. of the Revised Code, or any combination of such policies, contracts, plans, or services that the contracting authority is authorized to purchase, and the contracting authority does all of the following:

(1) Determines that compliance with the requirements of this section would increase, rather than decrease, the cost of the purchase;

(2) Requests issuers of the policies, contracts, plans, or services to submit proposals to the contracting authority, in a form prescribed by the contracting authority, setting forth the coverage and cost of the policies, contracts, plans, or services as the contracting authority desires to purchase;

(3) Negotiates with the issuers for the purpose of purchasing the policies, contracts, plans, or services at the best and lowest price reasonably possible.

(G) The purchase consists of computer hardware, software, or consulting services that are necessary to implement a computerized case management automation project administered by the Ohio prosecuting attorneys association and funded by a grant from the federal government.

(H) Child care services are purchased for provision to county employees.

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(I)(1) Property, including land, buildings, and other real property, is leased for offices, storage, parking, or other purposes, and all of the following apply:

(a) The contracting authority is authorized by the Revised Code to lease the property.

(b) The contracting authority develops requests for proposals for leasing the property, specifying the criteria that will be considered prior to leasing the property, including the desired size and geographic location of the prop- erty.

(c) The contracting authority receives responses from prospective lessors with property meeting the criteria specified in the requests for proposals by giving notice in a manner substantially similar to the procedures established for giving notice under section 307.87 of the Revised Code.

(d) The contracting authority negotiates with the prospective lessors to obtain a lease at the best and lowest price reasonably possible considering the fair market value of the property and any relocation and operational costs that may be incurred during the period the lease is in effect.

(2) The contracting authority may use the services of a real estate appraiser to obtain advice, consultations, or other recommendations regarding the lease of property under this division.

(J) The purchase is made pursuant to section 5139.34 or sections 5139.41 to 5139.46 of the Revised Code and is of programs or services that provide case management, treatment, or prevention services to any felony or misdemeanant delinquent, unruly youth, or status offender under the supervision of the juvenile court, including, but not limited to, community residential care, day treatment, services to children in their home, or electronic monitoring.

(K) The purchase is made by a public children services agency pursuant to section 307.92 or 5153.16 of the Revised Code and consists of family services, programs, or ancillary services that provide case management, prevention, or treatment services for children at risk of being or alleged to be abused, neglected, or dependent children.

(L) The purchase is to obtain the services of emergency medical service organizations under a contract made by the board of county commissioners pursuant to section 307.05 of the Revised Code with a joint emergency medical services district.

(M) The county contracting authority determines that the use of competitive sealed proposals would be advantageous to the county and the contracting authority complies with section 307.862 of the Revised Code.

Any issuer of policies, contracts, plans, or services listed in division (F) of this section and any prospective lessor under division (I) of this section may have the issuer's or prospective lessor's name and address, or the

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name and address of an agent, placed on a special notification list to be kept by the contracting authority, by sending the contracting authority that name and address. The contracting authority shall send notice to all persons listed on the special notification list. Notices shall state the deadline and place for submitting proposals. The contracting authority shall mail the notices at least six weeks prior to the deadline set by the contracting authority for submitting proposals. Every five years the contracting authority may review this list and remove any person from the list after mailing the person notification of that action.

Any contracting authority that negotiates a contract under division (F) of this section shall request proposals and negotiate with issuers in accordance with that division at least every three years from the date of the signing of such a contract, unless the parties agree upon terms for extensions or renewals of the contract. Such extension or renewal periods shall not exceed six years from the date the initial contract is signed.

Any real estate appraiser employed pursuant to division (I) of this section shall disclose any fees or compensation received from any source in connection with that employment.

CREDIT(S)

(2008 S 268, eff. 9-12-08; 2005 H 66, eff. 6-30-05; 2004 H 11, eff. 5-18-05; 2004 H 230, eff. 9-16-04; 2003 H 95, eff. 9-26-03; 2001 H 94, eff. 9-5-01; 1999 H 470, eff. 7-1-00; 1999 H 283, eff. 9-29-99; 1999 S 31, eff. 9-29-99; 1997 H 215, eff. 6-30-97; 1997 S 67, eff. 6-4-97; 1994 H 300, eff. 7-1-94; 1993 S 21, eff. 10-29-93; 1991 H 155; 1990 S 374, S 254, § 1, 3; 1989 H 317, § 1, 6; 1988 S 155, § 1, 3, S 156, § 1, 4; 1987 H 13, § 1, 3; 1986 H 428, § 1, 7; 1985 H 100, § 1, 3, H 47; 1984 S 96, H 224; 1983 H 373; 1982 H 598; 1981 S 114; 1980 H 752, H 271; 1977 S 295, H 1; 1976 S 396, S 430; 1975 H 1; 1971 S 104; 132 v H 428, H 1008)

Current through the end of the 127th General Assembly. As of 3/17/09 no legislation from the 128th General Assembly has been approved or filed with the Secretary of State.

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C

Baldwin's Ohio Revised Code Annotated Currentness
Title III. Counties
Chapter 307. Board of County Commissioners--Powers (Refs & Annos)
Competitive Bidding on County Purchases; Ohio Preference
307.90 Awarding of contracts; preference system for Ohio and American products and contractors

(A) The award of all contracts subject to sections 307.86 to 307.92 of the Revised Code shall be made to the lowest and best bidder. The bond or bid guaranty of all unsuccessful bidders shall be returned to them by the contracting authority immediately upon awarding the contract or rejection of all bids. The contracting authority may reject all bids.

(B) With respect to any contract for the purchase of equipment, materials, supplies, insurance, services, or a public improvement into which a county or its officers may enter, a board of county commissioners, by resolution, may adopt the model system of preferences for products mined or produced in Ohio and the United States and for Ohio-based contractors promulgated pursuant to division (E) of section 125.11 of the Revised Code. The resolution shall specify the class or classes of contracts to which the system of preferences apply, and once adopted, operates to modify the awarding of such contracts accordingly. While the system of preferences is in effect, no county officer or employee with the responsibility for doing so shall award a contract to which the system applies in violation of the preference system.

CREDIT(S)

(1988 H 708, eff. 4-19-88; 1986 H 237; 1980 S 157; 132 v H 428)

Current through the end of the 127th General Assembly. As of 3/17/09 no legislation from the 128th General Assembly has been approved or filed with the Secretary of State.

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EXHIBIT C