
RESOLUTION 11-16

THE OHIO SCHOOL FACILITIES COMMISSION

February 24, 2011

RESCINDING RESOLUTIONS 07-98 AND 07-16

WHEREAS, the 122nd Ohio General Assembly established the Ohio School Facilities Commission (Commission) under Chapter 3318 of the Ohio Revised Code (ORC); and

WHEREAS, in accordance with ORC Chapter 3318, the Commission is granted authority to administer the Classroom Facilities Assistance Program and any other program created by legislative enactment, and to distribute funds appropriated by the General Assembly for construction of new school buildings, reconstruction and renovation of existing school buildings; and

WHEREAS, the Commission is committed to ensuring efficient procurement of contractors for Commission projects to build the school buildings funded by the Commission; and

WHEREAS, the Commission believes open contracting for publicly funded construction projects aids in lowering the costs of such projects; and

WHEREAS, ORC Section 3313.46 of the Ohio Revised Code requires School Districts to award contracts to contractors submitting the lowest responsible bid after competitive bidding; and

WHEREAS, the Commission previously adopted Resolution 07-98, which included Attachment A entitled Model Responsible Bidder Workforce Standards, and which amended Resolution 07-16, which included Attachment A entitled Model Responsible Bidder Requirements, to provide preapproval for certain responsible bidder criteria for potential adoption by local Board's of Education ("School District") participating in Commission programs; and

WHEREAS, the Commission now believes that many of the Model Responsible Bidder Workforce Standards contained in Exhibit A to Resolution 07-98 are redundant with current law, serve to restrict efficient procurement by increasing project costs or restricting competition by otherwise qualified contractors, or are not reasonably related to responsible bidder criteria; and

WHEREAS, Section 4115.04(B)(3) of the Ohio Revised Code states that prevailing wage requirements "do not apply to . . .Public Improvements undertaken by, or under contract for, the board of education of any school district," and

WHEREAS, the Commission has determined it is prudent to rescind Resolution 07-98 and Attachment A adopted on July 26, 2007 and Resolution 07-16 and Attachment A adopted on February 15, 2007.

NOW, THEREFORE BE IT RESOLVED THAT:

1. The Commission hereby rescinds: (1) Resolution 07-98 and Attachment A to that resolution entitled the Ohio School Facilities Commission Model Responsible Bidder Workforce Standards, and (2) Resolution 07-16 and Attachment A thereto.
2. The Commission will not approve any contracts that require the adoption of any agreements or specifications that attempt to impose any of the following requirements as a condition of submitting a bid or entering into a construction contract for or relating to a Commission project: (a) identifies and requires any single source of employee referrals; (b) stipulates a specific source of insurance and benefits including health, life and disability insurance and retirement pensions; (c) controls or puts limits on staffing; (d) requires proprietary training programs or standards; (e) designates assignment of work; or (f) mandates wage levels, except in those instances of federal Davis-Bacon wage requirements. None of the above requirements should be construed to limit consideration of local inclusion goals, or otherwise be used to contravene Ohio's Encouraging Diversity Growth and Equity ("EDGE") Program or other programs required by law.
3. This Resolution shall apply to all contracts that require Commission approval that have not been advertised for bid as of February 24, 2011. However, for those School Districts where the Commission previously approved an agreement authorized under Resolution 07-98 ("07-98 Agreements"), the Commission retains discretion to review the terms of the 07-98 Agreements and determine the applicability of this Resolution. Such a review shall only be conducted at the discretion of the Commission or at the request of a School District.
4. The Commission will continue to consider the request of School Districts participating in a Commission program to include additional terms, conditions, or specifications to the Commission's standard conditions of contract ("Special Conditions") so long as those Special Conditions do not conflict with this Resolution. Those Special Conditions adopted by School Districts are subject to Commission approval.
5. The Commission authorizes its Executive Director to continue to approve or disapprove those Special Conditions submitted by School Districts to the Commission for approval or to determine the applicability of this Resolution to those School Districts with 07-98 Agreements.

6. Following the adoption of a Resolution of a School District to establish Special Conditions and following approval of those Special Conditions by the Commission, the Commission authorizes the Executive Director to permit a School District to include the Special Conditions in the contract documents.
7. The Executive Director is authorized to waive or amend provisions of a School District's Project Agreement to facilitate the implementation of this Resolution.
8. Nothing in this Resolution precludes the Commission from making further determinations concerning the Commission's general and specific conditions of Contract.

In witness thereof, the undersigned certifies the foregoing Resolution was duly adopted at an open meeting held on February 24, 2011 by the members of the Ohio School Facilities Commission.

Timothy S. Keen, Chairman