



**SENATE LOCAL GOVERNMENT & ELECTIONS COMMITTEE  
OPPONENT TESTIMONY ON S.B. 260**

**Provided on March 22, 2022 by  
Andrea Ashley, Vice President of Government Relations  
Associated General Contractors (AGC) of Ohio**

Chair Gavarone, Vice Chair O'Brien, Ranking Member Maharath and senators on the Local Government and Elections Committee:

AGC of Ohio is a construction association that represents large and small, union and open shop (non-union), commercial building and industrial contractors from across the state. Our members build and renovate hospitals, offices, schools, wastewater treatment plants, warehouses and manufacturing facilities, mixed-use developments, and a host of other vertical structures. Most of them compete for public construction projects (generally the type of projects contained in the capital bill).

AGC strongly supports open, competitive and transparent public procurement laws and processes for construction services. **As such, we strongly oppose Senate Bill 260. Cooperative purchasing for construction services will lessen opportunities for Ohio contractors to work on public projects and undermines Ohio's current open and competitive procurement laws for public construction.**

Please note that our testimony solely addresses construction services, not goods or materials.

**HOW CONSTRUCTION CONTRACTS ARE AWARDED UNDER CURRENT LAW; LACK OF COMPETITION UNDER S.B. 260**

Most of the testimony last week stated that cooperative contracts are competitively awarded. This is only partially true. It is absolutely false when you consider how public construction contracts are awarded under current law and the contractual relationships on projects.

There are multiple sections in the Ohio Revised Code that address this for state and political subdivisions, but in a nutshell: Above a certain dollar threshold, all construction contracts awarded by a public entity to the prime contractor (General Contractor, Design Builder, Specialty Contractor, Construction Manager, etc.) must undergo a competitive bid or competitive selection process.

Here's the general structure of the contractual relationships for a typical public project in Ohio:



Owner (school district)

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Prime Contractor (GC/CM/DB/Specialty Contractor) – direct privity of contract with owner

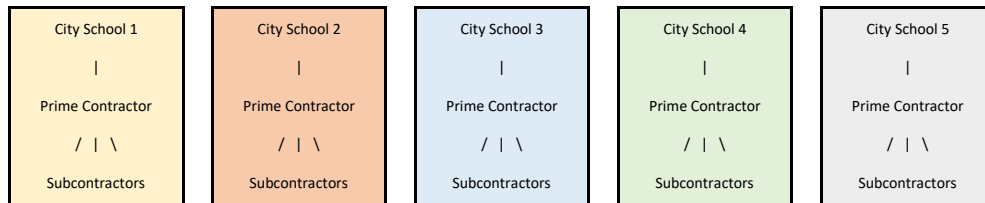
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Subcontractors, Specialty Contractors – privity of contract with prime contractor

For example, let’s say Ashtabula City Schools and Whitehall City Schools are both building a new elementary school. Under current law, both school systems would put their project out to bid, and award it under a competitive selection or bid process – most likely to two different prime contractors given the school’s different geographical locations. And those two prime contractors provide bid opportunities to sub and specialty contractors in their local areas.

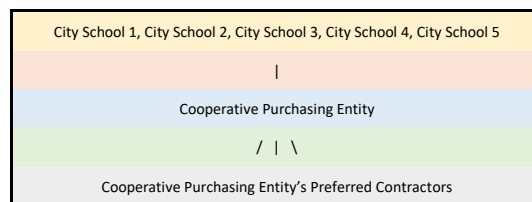
For cooperative purchasing agreements, while the initial cooperative purchasing contract for a single political subdivision must be competitively awarded, other political subdivisions can simply sign onto that contract. Therefore, under SB 260, if those two school systems were part of the same cooperative purchasing program and opt to use the cooperative purchasing process, the entity with the cooperative purchasing agreement would be given both elementary school projects without any competition for the award of those contracts.

Extrapolate that to multiple school districts, then you are essentially cutting out a large number of Ohio companies who might have the opportunity to bid or be awarded the contracts with the schools. And instead, you are giving all those projects to one entity under the cooperative purchasing agreement, and that entity allows only its preferred vendors/contractors to bid on the work. **Essentially, those political subdivisions would be sole sourcing their construction projects to one entity, and that entity to a much smaller, limited number of contractors.**

Projects Under Current Law:



Projects Under SB 260:





## **SB 260 IS NOT BUSINESS FRIENDLY; IT ONLY BENEFITS THOSE ENTITIES AWARDED COOPERATIVE PURCHASING CONTRACTS**

By passing SB 260, the proponents that testified last week could gain access to public construction projects without having to competitively compete for them individually the way our members (and other contractors) have to under current law.

Sourcewell, who testified last week, describes itself in its promotional materials as a governmental entity; its website is [www.sourcewell-mn.gov](http://www.sourcewell-mn.gov). Sourcewell partners with Gordian, Bluescope, and NuCor, all of whom have been pushing cooperative purchasing programs in our state. Through their partnership, those companies encourage construction companies to sign contracts with Sourcewell, called ezIQC Construction Procurement Contracts. Currently, seventeen contractors are listed as Ohio ezIQC Construction Contractors; it's all public record on Sourcewell's website.

Those ezIQC contractors pay a 7% fee to Sourcewell and its partners for any work the contractor does under Sourcewell and its partners' cooperative purchasing agreements. While that 7% may not be paid directly by the local government, those contractors are including it into their project costs. (For comparison, our members' construction management fees on public projects are usually less than half of what is being charged under their ezIQC contracts.)

**In short, under these circumstances, SB 260 will be a financial boon to an out-of-state government entity and its national partners.** While seventeen Ohio contractors may benefit, the bill has the potential to **cut out thousands of Ohio contractors and their tradespeople from working on public projects in this state.**

## **CLARIFYING THE ATTORNEY GENERAL'S OPINION ABOUT CONSTRUCTION SERVICES**

It is our understanding that the sponsor is offering an amendment that excludes some construction services, specifically those of an architect, landscape architect, professional engineer or surveyor. AGC would argue that cooperative purchasing should not be used for any construction services, not just certain ones. The legislature should not pick winners and losers for construction public procurement.

In conclusion, AGC of Ohio strongly opposes SB 260 and supports the Attorney General's Opinion related to cooperative purchasing for construction services. In fact, should this body feel the need to "clarify" the AG's opinion, a more appropriate route would be to **expressly prohibit the use of ALL construction services under cooperative purchasing agreements.**