



**SENATE GOVERNMENT OVERSIGHT COMMITTEE  
OPPONENT TESTIMONY ON S.B. 23**

**Provided on March 8 by  
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Associated General Contractors (AGC) of Ohio**

Chair Roegner, Vice Chair Antani, Ranking Member Hicks-Hudson and Senators on the Government Oversight 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).

As you consider the testimony today, please keep in mind who Ohio's construction employers are. With few exceptions, they are small, closely held businesses that mostly work in specific geographic regions of the state. They pay their taxes and invest locally – employing local workers, contracting with local subcontractors, sponsoring local sports teams, donating to local charities, etc. They contribute to the economic engine locally and statewide.

AGC strongly supports open, competitive, and transparent public procurement laws and processes for construction services. While Senator Lang has good intentions, cooperative purchasing arrangements for construction services actually undermines those principles. **As such, AGC of Ohio strongly opposes Senate Bill 23.** Simply put, cooperative purchasing for construction services is:

- Anti-competition / Anti-free market / Monopolistic
- Anti-local jobs
- Anti-small business
- Abuse of taxpayer dollars

Some of the previous testimony heard by this committee appeared to intersperse cooperative purchasing for commodities with construction services. Construction services and general purchasing for supplies are completely different processes and should not be comingled. Please note that our testimony solely addresses construction services.

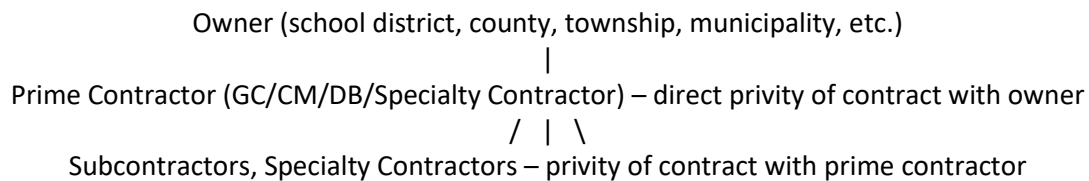


## HOW CONSTRUCTION CONTRACTS ARE AWARDED UNDER CURRENT LAW; LACK OF COMPETITION UNDER S.B. 23

Much of the testimony last week stated that cooperative contracts are competitively awarded. When it comes to construction services, that statement is blatantly misleading 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.), and each 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:



For example, let's say Hudson City Schools and Dayton 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 bid or competitive selection 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, most of which operate in those local areas, utilizing local workforces.

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 S.B. 23, if those two school systems were part of the same cooperative purchasing program and opt to use that process, the entity with the cooperative purchasing agreement would be given both elementary school projects without any competition for the award of those individual contracts.

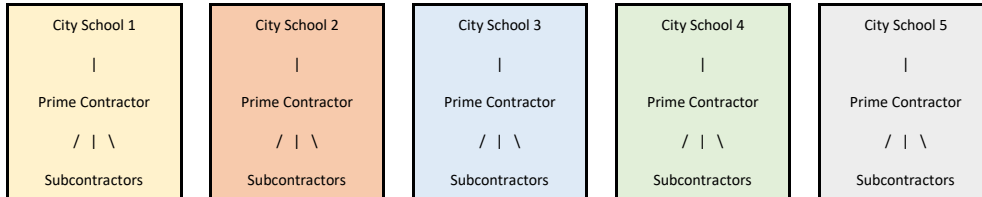
Extrapolate that to multiple school districts or multiple county detention centers or multiple city parks and recreation facilities... when utilizing cooperative purchasing, all those projects would be given to one entity, and that entity allows only its preferred vendors/contractors to bid on the work. You are essentially cutting out a large number of Ohio companies who would, under current law, have the



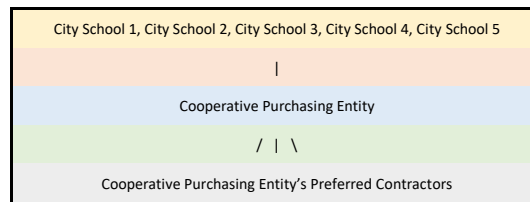
opportunity to bid and be awarded the contracts; plus your cutting out those companies' local subcontractors and local tradespeople.

**Simply put, cooperative purchasing allows political subdivisions to sole source their construction projects to one entity, and that entity to a much smaller, limited number of contractors. It cuts out most local, small contractors from even having the opportunity to compete for those local projects.**

Projects Under Current Law:



Scenario Under SB 23:



**SB 23 IS NOT BUSINESS FRIENDLY; IT ONLY BENEFITS THOSE ENTITIES AWARDED COOPERATIVE PURCHASING CONTRACTS AND THEIR LIMITED POOL OF BIDDERS**

By passing S.B. 23, the proponents that testified last week could gain access to public construction projects without having to 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; these contracts are called eziQC Construction Procurement Contracts. Currently, seventeen contractors are listed as Ohio eziQC Construction Contractors; it is 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 their 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 the eIQC contracts.) And, local governments utilizing cooperative purchasing often pay a percentage of the project amount to the cooperative purchasing entity.

**In short, under these circumstances, SB 23 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 other Ohio contractors and their tradespeople from working on public projects in this state.**

While cooperative purchasing may be an easy button for local governments and political subdivisions, one has to question whether the initial cost savings outweighs the overall negative economic impact of cutting out local employers and workers.

#### **EXCLUSION OF SOME CONSTRUCTION SERVICES; CLARIFYING THE ATTORNEY GENERAL'S OPINION**

We noticed that an engineering association (ACEC) testified in support of the bill since it excludes their members' work. AGC would argue that cooperative purchasing should not be used for any construction services, not just ones with qualified-based selection. If qualification-based selection is being used as a reason to exclude certain construction services, then all design build and construction management at risk contracts should be excluded because – like design contracts – qualifications play a key role in those awards. They are competitively selected based on qualifications and price, not just low bid. Regardless, the legislature should not be in the business of picking winners and losers for public procurement. Cooperative purchasing is bad for all construction services – construction, engineering and design.

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

In conclusion, AGC of Ohio urges you to oppose S.B. 23. **Cooperative purchasing for construction services will lessen opportunities for local contractors and tradespeople to work on public projects, and undermines Ohio's current open, transparent and competitive procurement laws for public construction.**