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LETTING OF CONTRACTS—THE AUTHORITY MAY LET A SEPARATE CONTRACT FOR EACH SEPARATE SITE INVOLVED IN THE PROJECT, OR A SINGLE CONTRACT FOR THE ENTIRE PROJECT—§3735.36.

SYLLABUS:

In the letting of contracts for the construction of a metropolitan housing authority project, the housing authority is governed strictly by the provisions of Section 3735.36, Revised Code; and the authority may let a separate contract for each separate site involved in the project, or a single contract for the entire project, and is not required to let a separate contract for each trade involved.

Columbus, Ohio, March 13, 1961

Hon. Thomas A. Beil, Prosecuting Attorney
Mahoning County, Youngstown, Ohio

Dear Sir:

Your request for my opinion concerns a question raised by the Youngstown Metropolitan Housing Authority and reading:

“Youngstown Metropolitan Housing Authority, with the approval and assistance of the Public Housing Administration, an agency of the Federal Government, proposes to construct, in the City of Youngstown, an Ohio Project known as Ohio 2-5, consisting of dwelling units of low-rent housing to be erected on five different sites within the City of Youngstown.

“Public Housing Administration has suggested that our local Authority consider two methods of bidding. First, that three of the sites should be included in one bid. The Housing Authority is interested in the possibility of undertaking a bid on contract for all five sites in one over-all bid.

“The Youngstown Metropolitan Housing Authority is interested in learning whether or not there is any prohibition against its breaking down the construction of Ohio Project 2-5 into separate contracts for the five separate sites or awarding the same in one contract for all five sites or in subdividing the sites in some other way.

“We are interested in knowing whether or not Ohio Law would permit us to make a general contract, which would include all trades (electrical, plumbing, etc.) and which has been the case in previous construction built by the Youngstown Metropolitan Housing Authority.”

Sections 3735.27 to 3735.50, inclusive, Revised Code, pertain to metropolitan housing authorities. Such an authority is created under Section 3735.27, Revised Code, by the state board of housing declaring that such an authority shall be established and setting the territorial limits thereof. As to powers of the authority, Section 3735.31, Revised Code, provides:

“A metropolitan housing authority created under sections 3735.27 to 3735.50, inclusive, of the Revised Code, *constitutes a body corporate and politic*. To clear, plan, and rebuild slum areas within the district wherein the authority is created, or *to provide safe and sanitary housing accommodations* to families of low income within such district, or to accomplish any combination of the foregoing purposes, such authority may:

“(A) Sue and be sued; have a seal; have corporate succession; receive grants from state, federal or other governments, or from private sources; conduct investigations into housing and living conditions; enter any buildings or property in order to conduct its investigations; conduct examinations, subpoena, and require the attendance of witnesses and the production of books and papers; issue commissions for the examination of witnesses who are out of the state or unable to attend before the authority or excused from attendance; and in connection with these powers,

any member of the authority may administer oaths, take affidavits, and issue subpoenas;

“(B) Determine what areas constitute slum areas, and prepare plans for housing projects in such areas; purchase, lease, sell, exchange, transfer, assign, or mortgage any property, real or personal, or any interest therein, or acquire the same by gift, bequest, or eminent domain; own, hold, clear, and *improve property*; *provide and set aside housing projects, or dwelling units comprising portions of housing projects*, designed especially for the use of families, the head of which or the spouse is 65 years of age or older; *engage in, or contract for, the construction, reconstruction, alteration, or repair, or both, of any housing project or part thereof*; *include in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum wages and maximum hours of labor*, and comply with any conditions which the federal government has attached to its financial aid of the project; lease or operate, or both, any project, and establish or revise schedules of rents for any projects or part thereof; arrange with the county or municipal corporations, or both, for the planning and replanning of streets, alleys, and other public places or facilities in connection with any area or project; borrow money upon its notes, debentures, or other evidences, of indebtedness, and secure the same by mortgages upon property held or to be held by it, or by pledge of its revenues, or in any other manner; invest any funds held in reserves or sinking funds or not required for immediate disbursements; execute contracts and all other instruments necessary or convenient to the exercise of the powers granted in this section; make, amend, and repeal bylaws, rules, and regulations to carry into effect its powers and purposes;

“(C) Borrow money or accept grants or other financial assistance from the federal government for or in aid of any housing project within its territorial limits; take over or lease or manage any housing project or undertaking constructed or owned by the federal government; comply with such conditions and enter into such mortgages, trust indentures, leases, or agreements as are necessary, convenient, or desirable.”

(Emphasis added)

It appears, therefore, that a metropolitan housing authority is authorized to engage, in or contract for, the construction of a housing project. Section 3735.31, *supra*, contains no provision as to the letting of contracts other than the requirement that federal conditions be complied with. Pertaining to such contracts, however, Section 3735.36, Revised Code, reads:

One section of law which requires separate contracts for (1) plumbing and gas fitting, (2) steam and hot-water heating, ventilating apparatus, and steam power plant, and (3) electrical equipment, where the cost will exceed \$1,000.00, is Section 153.03, Revised Code. That section, however, applies strictly to erection, construction, etc., of a building for the use of the state (Prout Boiler, Heating & C. v. Dickson, 10 O.O. 2nd, 244), and I do not believe that it should be construed to apply to a metropolitan housing authority.

Also to be considered in this question are Sections 153.50, 153.51, and 153.52, Revised Code, reading :

Section 153.50 :

“An officer, board, or other authority of the state, a county, township, municipal corporation, or school district, or of any public institution belonging thereto, authorized to contract for the erection, repair, alteration, or rebuilding of a public building, institution, bridge, culvert, or improvement and required by law to advertise and receive proposals for furnishing of materials and doing the work necessary for the erection thereof, shall require separate and distinct proposals to be made for furnishing such materials or doing such work, or both, in their discretion, for each separate and distinct trade or kind of mechanical labor, employment or business entering into the improvement.”

Section 153.51 :

“When more than one trade or kind of mechanical labor, employment, or business is required, no contract for the entire job, or for a greater portion thereof than is embraced in one such trade or kind of mechanical labor shall be awarded, unless the separate bids do not cover all the work and materials required or the bids for the whole or for two or more kinds of work or materials are lower than the separate bids in the aggregate.”

Section 153.52 :

“The contract for doing the work belonging to each separate trade or kind of mechanical labor, employment, or business, or for the furnishing of materials therefor, or both, shall be awarded by the officer, board, or other authority referred to in section 153.50 of the Revised Code, in its discretion, to the lowest and best separate bidder therefor, and shall be made directly with him or them in the manner and upon the terms, conditions, and limitations as to giving bond with security and otherwise as prescribed by law, unless it is let as a whole, or to bidders for more than one kind of work or materials. Sections 153.50 to

153.52, inclusive, of the Revised Code do not apply to the erection of buildings and other structures which cost less than ten thousand dollars, except as provided in sections 153.02 and 153.03 of the Revised Code.”

As separate contracts, by trade, are required under the above sections, the question to determine is whether a metropolitan housing authority comes within the purview of “officer, board, or other authority of the state, a county, township, municipal corporation, or school district, or of any public institution belonging thereto” as used in Section 153.50, *supra*.

As noted earlier, a metropolitan housing authority is established by the state board of housing; it consists of territory within a county, but not the entire county; and the five members are appointed by (1) the probate court, (2) the court of common pleas, (3) the board of county commissioners, and (4) the mayor of the most populous city in the territory (two members). (Section 3735.27, Revised Code.) Under Section 3735.31, *supra*, a metropolitan housing authority constitutes a body corporate and politic, may sue and be sued, has a seal, and may receive grants “from state, federal or other governments.” (Emphasis added.) Also, Section 3735.56, Revised Code, provides:

“Metropolitan housing authorities are hereby constituted bodies corporate and politic with all the powers, rights, and duties set forth in sections 3735.27 to 3735.50, inclusive, of the Revised Code.”

In view of the characteristics of a metropolitan housing authority, it appears obvious that such is not an authority of a county, township, municipal corporation, or school district. Further, I do not believe that such could be construed to be an authority of the state even though the state board of housing initiates the creation of an authority. The fact that the authority is a body corporate and politic, may sue and be sued, etc., clearly shows that it is a body separate and apart from the state. Also, the provision of Section 3735.31, *supra*, that an authority may receive grants from the “state,” indicates that the legislature considered an authority not to be a part of the state government. Accordingly, I conclude that Sections 153.50, 153.51, and 153.52, *supra*, do not apply to metropolitan housing authorities, and that the letting of contracts as proposed in the instant question would be within the authority of the metropolitan housing authority.

In conclusion, therefore, it is my opinion and you are advised that in the letting of contracts for the construction of a metropolitan housing authority project, the housing authority is governed strictly by the provisions of Section 3735.36, Revised Code; and the authority may let a separate contract for each separate site involved in the project, or a single contract for the entire project, and is not required to let a separate contract for each trade involved.

Respectfully,
MARK McELROY
Attorney General