

December 20, 2010

Superintendent Jim Witt
Lake Local School District
28030 Lemoyne Road
Millbury, OH 43477

RE: Lake High School Project Construction Project (the "Project")
Payment Bond for Protection of Project Subcontractors and Suppliers

Dear Superintendent Witt:

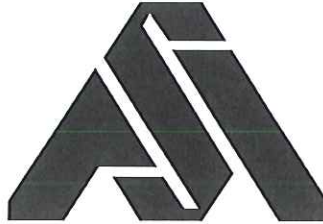
I am writing on behalf of the American Subcontractors Association of Ohio, Inc. ("ASA of Ohio"), a trade association representing construction subcontractors and suppliers in Ohio. ASA of Ohio is a chartered chapter of the American Subcontractors Association, Inc., a national trade association that represents 5,000 members.

I am writing to express the deep concern of ASA of Ohio's members regarding recent credible reports that the School District is considering unilaterally waiving its legal and ethical obligations to require the contractor for the Project to post a payment bond that would protect the legitimate interests of your Project subcontractors and suppliers. Construction subcontractors and suppliers on public projects rely on payment bonds as a necessary financial security in case they are not paid for their work. This security is especially important when construction subcontractors and suppliers lack mechanic's lien rights, which is the case on public projects.

If the reports about the School District's intentions are accurate, the School District's decision is contrary to Ohio law (see, Revised Code § 153.54). Such decision, moreover, would unnecessarily place at risk the financial stability of the local construction subcontractors and suppliers (and the jobs of their employees) who will be providing the School District with the labor and materials it needs to make the Project a success.

The decision would be contrary to Ohio law because the Ohio Revised Code requires contractors on state and local public projects to provide payment bonds in an amount equal to the sum of the Prime Contract. See R.C. Sec. 153.54. If the School District has concluded that Ohio Revised Code Sec. 153.54 does not apply to its Project, we would ask that you promptly provide your reasoning. Simply put, we fail to see any logical reason why a payment bond would not be required for the Project.

AMERICAN SUBCONTRACTORS ASSOCIATION OF OHIO, INC.
P.O. Box 2026, Dublin OH 43017
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Just as important, *even if* it were legally permissible, a decision by the School District not to require a payment bond is morally unjustified and an unprovoked slap in the face to the construction subcontractors and suppliers in your community, who would be forced to absorb the risk of non-payment by the School District's design-builder. Such a decision would thus not only be poor public policy and reflect badly on the School District, but it also would be short-sighted. In exchange for the 'benefit' of avoiding a comparatively slight bond premium, the School District would increase the potential costs of the project. Failing to require bonds will do this by simultaneously restricting the pool of subcontractors and suppliers willing to bid on the job, while encouraging higher bids from the unnecessarily shallow pool of willing bidders, who be forced to build the risk of non-payment into their bids.

I sincerely hope that the reports we have heard regarding the School District's intentions are incorrect. Please get in touch with me as soon as possible to verify that the School District will honor its legal and ethical obligations. I look forward to receiving your confirmation that the School District will look out for and be a good neighbor to the local construction subcontractors and suppliers who will put the financial health of their companies on the line as they provide the School District and community with a high school of which it can be proud. I can be reached directly at Telephone: (214) 447-9500 and E-mail: rorourke@orourke-law.com.

Sincerely,

R. Russell O'Rourke
President, 2010-11

cc: Members, Lake Board of Education
Members, Ohio State Facilities Commission
Kohls Cares

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