



Ohio Revised Code

Section 1707.041 Control bids made pursuant to tender offer or request or invitation for tenders.

Effective: October 12, 2006

Legislation: House Bill 301 - 126th General Assembly

(A)(1) No control bid for any securities of a subject company shall be made pursuant to a tender offer or request or invitation for tenders until the offeror files with the division of securities the information prescribed in division (A)(2) of this section. The offeror shall deliver a copy of the information specified in division (A)(2) of this section, by personal service, to the subject company at its principal office not later than the time of the filing with the division. The offeror shall send or deliver to all offerees in this state, as soon as practicable after the filing, the material terms of the proposed offer and the information specified in division (A)(2) of this section.

(2) The information to be filed with the division, with the subject company, and with any other offeror, pursuant to division (A)(1) of this section, shall include:

(a) Copies of all prospectuses, brochures, advertisements, circulars, letters, or other matter by means of which the offeror proposes to disclose to offerees all information material to a decision to accept or reject the offer;

(b) The identity and background of all persons on whose behalf the acquisition of any equity security of the subject company has been or is to be effected;

(c) The source and amount of funds or other consideration used or to be used in acquiring any equity security, including a statement describing any securities, other than the existing capital stock or long term debt of the offeror, which are being offered in exchange for the equity securities of the subject company;

(d) A statement of any plans or proposals that the offeror, upon gaining control, may have to liquidate the subject company, sell its assets, effect a merger or consolidation of it, establish, terminate, convert, or amend employee benefit plans, close any plant or facility of the subject company or of any of its subsidiaries or affiliates, change or reduce the work force of the subject



company or any of its subsidiaries or affiliates, or make any other major change in its business, corporate structure, management personnel, or policies of employment;

(e) The number of shares of any equity security of the subject company of which each offeror is beneficial or record owner or has a right to acquire, directly or indirectly, together with the name and address of each person defined in this section as an offeror;

(f) Particulars as to any contracts, arrangements, or understandings to which an offeror is party with respect to any equity security of the subject company, including transfers of any equity security, joint ventures, loan or option arrangements, puts and calls, guarantees of loan, guarantees against loss, guarantees of profits, division of losses or profits, or the giving or withholding of proxies, naming the persons with whom such contracts, arrangements, or understandings have been entered into;

(g) Complete information on the organization and operations of the offeror, including the year of organization; the form of organization; the jurisdiction in which it is organized; a description of each class of the offeror's capital stock and of its long term debt; financial statements for the current period and for the three most recent annual accounting periods, unless the division by rule determines that the financial statements are not material or permits the filing of financial statements for less than the three most recent annual accounting periods; a brief description of the location and general character of the principal physical properties of the offeror and its subsidiaries; a description of pending legal proceedings other than routine litigation to which the offeror or any of its subsidiaries is a party or of which any of their property is the subject; a brief description of the business done and projected by the offeror and its subsidiaries and the general development of such business over the past three years; the names of all directors and executive officers together with biographical summaries of each for the preceding three years to date; and the approximate amount of any material interest, direct or indirect, of any of the directors or officers in any material transaction during the past three years, or in any proposed material transactions, to which the offeror or any of its subsidiaries was or is to be a party;

(h) Such other and further documents, exhibits, data, and information as required by regulations of the division, or as necessary to make fair, full, and effective disclosure to offerees of all information material to a decision to accept or reject the offer.



(3) Within five calendar days of the date of filing by an offeror of information specified in division (A)(2) of this section, the division may by order summarily suspend the continuation of the control bid if the division determines that all of the information specified has not been provided by the offeror or that the control bid materials provided to offerees do not provide full disclosure to offerees of all material information concerning the control bid. Such a suspension shall remain in effect only until the determination following a hearing held pursuant to division (A)(4) of this section.

(4) A hearing shall be scheduled and held by the division with respect to each suspension imposed under division (A)(3) of this section. The hearing shall be held within ten calendar days of the date on which the suspension is imposed. Chapter 119. of the Revised Code does not apply to a hearing held under division (A)(4) of this section. The division may allow any interested party to appear at and participate in the hearing in a manner considered appropriate by the division. The determination of the division made following the hearing shall be made within three calendar days after the hearing has been completed, and no later than fourteen calendar days after the date on which the suspension is imposed. The division, by rule or order, may prescribe time limits for conducting the hearing and for the making of the determination that are shorter than those specified in this division. If, based upon the hearing, the division determines that all of the information required to be provided by division (A)(2) of this section has not been provided by the offeror, that the control bid materials provided to offerees do not provide full disclosure to offerees of all material information concerning the control bid, or that the control bid is in material violation of any provision of this chapter, the division shall maintain the suspension of the continuation of the control bid, subject to the right of the offeror to correct disclosure and other deficiencies identified by the division and to reinstitute the control bid by filing new or amended information pursuant to this section.

(5)(a) If an offeror increases or decreases the percentage of the class of securities being sought, the consideration offered, or the dealer's soliciting fee in connection with a control bid for any securities of a subject company pursuant to a tender offer or request or invitation for tenders, or makes any other change in the terms or conditions of the tender offer or request or invitation for tenders that requires the offeror to hold the tender offer or request or invitation for tenders open for at least ten business days from the date that notice of the change is first published or sent to security holders in this state, the offeror shall file with the division both of the following:

(i) All material information, including all information sent or otherwise provided to offerees in this



state, pertaining to the increase, decrease, or other change;

(ii) All material information required to update the information filed with the division pursuant to division (A)(2) of this section.

(b) The offeror shall file the information described in division (A)(5)(a) with the division not later than the date on which the information regarding the increase, decrease, or other change first is published or sent to offerees in this state. The offeror shall deliver a copy of the information, by personal services, to the subject company at its principal office not later than the time of the filing with the division.

(6) Within three calendar days of the date of filing by an offeror of the information specified in division (A)(5) of this section, the division, by order, may summarily suspend the continuation of the control bid if the division determines that all of the information specified has not been provided by the offeror or that the information provided to offerees does not provide full disclosure to offerees of all material information concerning the increase, decrease, or other change. The suspension shall remain in effect only until the determination following a hearing held pursuant to division (A)(7) of this section.

(7) The division shall schedule and hold, within three calendar days of the date on which the suspension is imposed, a hearing with respect to each suspension imposed under division (A)(6) of this section. Chapter 119. of the Revised Code does not apply to a hearing held under division (A)(7) of this section. The division may allow any interested party to appear at and participate in the hearing in a manner considered appropriate by the division. The division shall make a determination following the hearing within three calendar days after the hearing has been completed, and not later than nine calendar days after the date on which the information regarding the increase, decrease, or other change first is published or sent to offerees in this state. The division, by rule or order, may prescribe time limits for conducting the hearing and for the making of the determination that are shorter than those specified in this division. If, based upon the hearing, the division determines that all of the information required to be provided by division (A)(5) of this section has not been provided by the offeror; that the information provided to offerees does not provide full disclosure to offerees of all material information concerning the increase, decrease, or other change; or that the control bid is in material violation of any provision of this chapter, the division shall maintain the suspension of



the continuation of the control bid, subject to the right of the offeror to correct disclosure and other deficiencies identified by the division and to reinstate the control bid by filing new or amended information pursuant to this section.

(B)(1) No control bid shall be made pursuant to a tender offer or request or invitation for tenders unless division (A) of section 1707.14 of the Revised Code has been complied with, and no offeror shall make a control bid that is not made to all holders residing in this state of the equity security that is the subject of the control bid, or that is not made to holders on the same terms as the control bid is made to holders of such equity security not residing in this state.

(2) No offeror may make a control bid pursuant to a tender offer or request or invitation for tenders or acquire any equity security in this state pursuant to a control bid at any time during which any proceeding by the division alleging a violation of any provision of this chapter is pending against the offeror.

(3) No offeror may acquire from any resident of this state, in any manner, any equity security of any class of a subject company at any time within two years following the last acquisition of any security of the same class pursuant to a control bid pursuant to a tender offer or request or invitation for tenders by that offeror, whether the acquisition was made by purchase, exchange, merger, consolidation, partial or complete liquidation, redemption, reverse stock split, recapitalization, reorganization, or any other similar transaction, unless the resident is afforded, at the time of the later acquisition, a reasonable opportunity to dispose of the security to the offeror upon substantially the same terms as those provided in the earlier control bid.

(4) If an offeror makes a tender offer or request or invitation for tenders not subject to Rule 14D-1 or Rule 14D-4 of the securities and exchange commission under the "Securities Exchange Act of 1934," for less than all the outstanding equity securities of a class, and if a greater number of securities is deposited pursuant thereto within ten days after copies of the offer or request or invitation for tenders are first published or sent or given to security holders than the offeror is bound or willing to take up and pay for, the securities shall be taken up as nearly as may be pro rata, disregarding fractions, according to the number of securities deposited by each offeree. The preceding sentence applies to securities deposited within ten days after notice of an increase in the consideration offered to security holders, as described in the next sentence, is first published or sent or given to security holders. If the



terms of a control bid are changed before its expiration by increasing the consideration offered to offerees, the offeror shall pay the increased consideration for all equity securities taken up, whether the same are deposited or taken up before or after the change in the terms of the control bid.

(C) If the offeror or the subject company is a banking corporation or savings and loan association subject to regulation by the division of financial institutions, or is a public utility corporation subject to regulation by the public utilities commission, the division of securities shall immediately, upon receipt of the filing required under division (A) of this section, furnish a copy of the filing to the regulatory body having jurisdiction over the offeror or subject company.

(D) An offeror is subject to the liabilities and penalties applicable to a seller, and an offeree is entitled to the remedies applicable to a purchaser, as set forth in sections 1707.041 to 1707.44 of the Revised Code.

(E) The division of securities may, pursuant to Chapter 119. of the Revised Code, prescribe reasonable rules:

(1) Defining fraudulent, evasive, deceptive, or grossly unfair practices in connection with control bids and defining the terms used in this section;

(2) Exempting from this section control bids not made for the purpose of, and not having the effect of, changing or influencing the control of a subject company;

(3) Covering other matters as necessary to give effect to this section.

(F) If the offeror or a subject company is an insurance company subject to regulation under Title XXXIX of the Revised Code, the superintendent of insurance shall for all purposes of this section be substituted for the division of securities. This section shall not be construed to limit or modify in any way any responsibility, authority, power, or jurisdiction of the division of securities or the superintendent of insurance pursuant to any other section of the Revised Code.

(G) This section does not apply when:



- (1) The offeror or the subject company is a public utility or a public utility holding company as defined in section 2 of the "Public Utility Holding Company Act of 1935," 49 Stat. 803, 15 U.S.C. 79, as amended, and the control bid is subject to approval by the appropriate federal agency as provided in such act;
 - (2) The offeror or the subject company is a bank or a bank holding company as subject to the "Bank Holding Company Act of 1956," 70 Stat. 133, 12 U.S.C. 1841, and subsequent amendments thereto, and the control bid is subject to approval by the appropriate federal agency as provided in such act;
 - (3) The offeror or the subject company is a savings and loan holding company as defined in section 2 of the "Savings and Loan Holding Company Amendments of 1967," 82 Stat. 5, 12 U.S.C. 1730a, as amended, and the control bid is subject to approval by the appropriate federal agency as provided in such act;
 - (4) The offeror and the subject company are banks and the offer is part of a merger transaction subject to approval by appropriate federal supervisory authorities.
- (H) If any application of any provision of this section is for any reason held to be illegal or invalid, the illegality or invalidity shall not affect any legal and valid provision or application of this section, and the parts and application of this section are severable.