

AN ACT

To amend sections 125.01, 125.07, 125.08, 125.10, and 125.11 and to enact sections 9.314 and 125.072 of the Revised Code to permit the Department of Administrative Services and political subdivisions to purchase supplies or services through a competitive reverse auction process via the Internet and to make changes in the notice required when the Department purchases supplies or services by competitive selection.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 125.01, 125.07, 125.08, 125.10, and 125.11 be amended and sections 9.314 and 125.072 of the Revised Code be enacted to read as follows:

Sec. 9.314. (A) As used in this section:

(1) "Contracting authority" has the same meaning as in section 307.92 of the Revised Code.

(2) "Internet" means the international computer network of both federal and nonfederal interoperable packet switched data networks, including the graphical subnetwork called the world wide web.

(3) "Political subdivision" means a municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities only in geographic areas smaller than that of the state and also includes a contracting authority.

(4) "Reverse auction" means a purchasing process in which offerors submit proposals in competing to sell services or supplies in an open environment via the internet.

(5) "Services" means the furnishing of labor, time, or effort by a person, not involving the delivery of a specific end product other than a report which, if provided, is merely incidental to the required performance. "Services" does not include services furnished pursuant to employment agreements or collective bargaining agreements.

(6) "Supplies" means all property, including, but not limited to,

equipment, materials, other tangible assets, and insurance, but excluding real property or interests in real property.

(B) Whenever any political subdivision that is required by law to purchase services or supplies by competitive sealed bidding or competitive sealed proposals determines that the use of a reverse auction is advantageous to the political subdivision, the political subdivision, in accordance with this section and rules the political subdivision shall adopt, may purchase services or supplies by reverse auction.

(C) A political subdivision shall solicit proposals through a request for proposals. The request for proposals shall state the relative importance of price and other evaluation factors. The political subdivision shall give notice of the request for proposals in accordance with the rules it adopts.

(D) As provided in the request for proposals and in the rules a political subdivision adopts, and to ensure full understanding of and responsiveness to solicitation requirements, the political subdivision may conduct discussions with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award. The political subdivision shall accord offerors fair and equal treatment with respect to any opportunity for discussion regarding any clarification, correction, or revision of their proposals.

(E) A political subdivision may award a contract to the offeror whose proposal the political subdivision determines to be the most advantageous to the political subdivision, taking into consideration factors such as price and the evaluation criteria set forth in the request for proposals. The contract file shall contain the basis on which the award is made.

(F) The rules that a political subdivision adopts under this section may require the provision of a performance bond, or another similar form of financial security, in the amount and in the form specified in the rules.

Sec. 125.01. As used in this chapter:

(A) "Order" means a copy of a contract or a statement of the nature of a contemplated expenditure, a description of the property or supplies to be purchased or service to be performed, other than a service performed by officers and regular employees of the state, and per diem of the national guard, and the total sum of the expenditure to be made therefor, if the sum is fixed and ascertained, otherwise the estimated sum thereof, and an authorization to pay for the contemplated expenditure, signed by the person instructed and authorized to pay upon receipt of a proper invoice.

(B) "Invoice" means an itemized listing showing delivery of the supplies or performance of the service described in the order, and the date of the purchase or rendering of the service, or an itemization of the things done,

material supplied, or labor furnished, and the sum due pursuant to the contract or obligation.

(C) "Products" means materials, manufacturer's supplies, merchandise, goods, wares, and foodstuffs.

(D) "Produced" means the manufacturing, processing, mining, developing, and making of a thing into a new article with a distinct character in use through the application of input, within the state, of Ohio products, labor, skill, or other services. "Produced" does not include the mere assembling or putting together of non-Ohio products or materials.

(E) "Ohio products" means products ~~which~~ that are mined, excavated, produced, manufactured, raised, or grown in the state by a person where the input of Ohio products, labor, skill, or other services constitutes no less than twenty-five per cent of the manufactured cost. With respect to mined products, such products shall be mined or excavated in ~~Ohio~~ this state.

(F) "Purchase" means to buy, rent, lease, lease purchase, or otherwise acquire supplies or services. "Purchase" also includes all functions that pertain to the obtaining of supplies or services, including description of requirements, selection and solicitation of sources, preparation and award of contracts, all phases of contract administration, and receipt and acceptance of the supplies and services and payment ~~therefor~~ for them.

(G) "Services" means the furnishing of labor, time, or effort by a person, not involving the delivery of a specific end product other than a report which, if provided, is merely incidental to the required performance. "Services" does not include services furnished pursuant to employment agreements or collective bargaining agreements.

(H) "Supplies" means all property, including, but not limited to, equipment, materials, ~~insurance, and~~ other tangible assets, and insurance, but excluding ~~land real property or a permanent an interest in land real property~~.

(I) "Competitive selection" means ~~either~~ any of the following procedures for making purchases:

(1) Competitive sealed bidding under section 125.07 of the Revised Code;

(2) Competitive sealed proposals under section 125.071 of the Revised Code;

(3) Reverse auctions under section 125.072 of the Revised Code.

Sec. 125.07. The department of administrative services, in making a purchase by competitive selection pursuant to division (B) of section 125.05 of the Revised Code, shall give notice in the following manner:

(A) The department shall advertise ~~such~~ the intended purchases by

notice ~~sent~~ that is posted by mail or electronic means ~~to~~ and that is for the benefit of competing persons producing or dealing in the supplies or services to be purchased, including, but not limited to, the persons whose names appear on the appropriate list provided for in section 125.08 of the Revised Code. The notice may be in the form of the bid or proposal document or of a listing in a periodic bulletin, or in any other form the director of administrative services considers appropriate to sufficiently notify qualified competing persons of the intended ~~purchase~~ purchases.

(B) ~~Such~~ The notice required under division (A) of this section shall include the time and place where bids or proposals will be accepted and opened, or, when bids are made in a reverse auction, the time when bids will be accepted; the conditions under which bids or proposals will be received; the terms of the proposed ~~purchase,~~ purchases; and an itemized list of the supplies or services to be purchased and the estimated quantities or amounts ~~thereof of them.~~

(C) ~~The mailing posting of such notices~~ the notice required under division (A) of this section shall be completed as follows:

(1) ~~At least fifteen calendar days prior to the scheduled opening date, for competitive sealed proposals and competitive sealed bids;~~

(2) ~~For printing contracts, a by the number of days determined by the director; determines~~ preceding the day when such the bids or proposals will be opened or accepted.

(D) The department ~~shall~~ shall also shall maintain, in a public place in its office, a bulletin board upon which it shall post and maintain a copy of ~~such the notice required under division (A) of this section~~ for at least the number of days ~~listed in the director determines under~~ division (C) of this section; ~~or, for printing contracts, a number of days determined by the director,~~ preceding the day of the opening or acceptance of such the bids or proposals. The failure to so additionally post such notices the notice shall invalidate all proceedings had and any contract entered into pursuant to ~~such the proceedings.~~

Sec. 125.072. (A) As used in this section:

(1) "Internet" means the international computer network of both federal and nonfederal interoperable packet switched data networks, including the graphical subnetwork called the world wide web.

(2) "Reverse auction" means a purchasing process in which offerors submit bids in competing to sell services or supplies in an open environment via the internet.

(B) Whenever the director of administrative services determines that the use of a reverse auction is advantageous to the state, the director, in

accordance with rules the director shall adopt, may purchase services or supplies by reverse auction.

(C) The director, by rule, may authorize a state agency that is authorized to purchase services or supplies directly to purchase them by reverse auction in the same manner as this section and the rules adopted under this section authorize the director to do so.

Sec. 125.08. (A) The department of administrative services may divide the state into purchasing districts wherein supplies or services are to be delivered and shall describe ~~such~~ those districts on all applications for the notification list provided for in this section.

Any person may have that person's name and address, or the name and address of an agent, placed on the competitive selection notification list of the department of administrative services by sending to the department the person's name and address, together with a list of the supplies or services described in the manner prescribed by the department produced or dealt in by the person with a request for such listing, a list of the districts in which the person desires to participate, and ~~such~~ all other information ~~as~~ the director of administrative services may prescribe. Whenever ~~such~~ any name and address together with a list of the supplies or services produced or dealt in is so listed, the department shall ~~send~~ post notice, as provided in division (A) of section 125.07 of the Revised Code, to those for the benefit of the persons listed on the notification list that are qualified Ohio business enterprises, which shall include Ohio penal industries as defined by rule of the director of administrative services, or have a significant Ohio presence in this state's economy, except that, in those circumstances in which the director considers it in the best interest of this state, the director shall post notice shall be sent to, as provided in division (A) of section 125.07 of the Revised Code, for the benefit of all persons listed on the notification list. The department need only provide competitive selection documents for a proposed contract to persons who specifically request ~~such~~ the documents. ~~The~~

The director may remove a person from the notification list and place the person on an inactive list if the person fails to respond to any notices of proposed purchases that appear in four consecutive bulletins or other forms of notification that list ~~such~~ those notices. Upon written request to the director by the person so removed, the director may return the person to the notification list if the person provides sufficient evidence regarding intent to offer bids or proposals to the state. The director shall not remove any person from the list without notice to ~~such~~ the person. The notice may be a part of the notices of proposed purchase.

(B) Any person who is certified by the equal employment opportunity coordinator of the department of administrative services in accordance with the rules adopted under division (B)(1) of section 123.151 of the Revised Code as a minority business enterprise may have that person's name placed on a special minority business enterprise notification list to be used in connection with contracts awarded under section 125.081 of the Revised Code. The minority business enterprise notification list shall be used for bidding on contracts set aside for minority business enterprises only. In all other respects, the list shall be maintained and used in the same manner and according to the same procedures as the notification list provided for under division (A) of this section, except that a firm shall not be removed from the list unless the coordinator determines that the firm is no longer a minority business enterprise. A minority business enterprise may have its name placed on both the notification lists provided for in this section.

(C) The director of administrative services may require an annual registration fee for the listings provided for in division (A) or (B) of this section. This fee shall not be more than ten dollars. The department may charge a fee for any compilation of descriptions of supplies or services. This fee shall be reasonable and shall not exceed the cost required to maintain the notification lists and provide for the distribution of the proposed purchase to the persons whose names appear on the lists.

Sec. 125.10. (A) The department of administrative services may require that all competitive sealed bids ~~and~~, competitive sealed proposals, and bids received in a reverse auction be accompanied by a performance bond or other cash surety acceptable to the director of administrative services, in ~~such~~ the sum and with ~~such~~ the sureties as it prescribes, payable to the state, and conditioned that the person submitting the bid or proposal, if that person's bid or proposal is accepted, will faithfully execute the terms of the contract and promptly make deliveries of the supplies ~~or equipment, or contracts of insurance,~~ purchased. ~~A~~

(B) ~~A~~ sealed copy of each competitive sealed bid or competitive sealed proposal shall be filed with the department prior to the time specified in the notice for opening of the bids or proposals. All competitive sealed bids and competitive sealed proposals shall be publicly opened in the office of the department at the time specified in the notice. A representative of the auditor of state shall be present at the opening of all competitive sealed bids and competitive sealed proposals, and shall certify the opening of each competitive sealed bid and competitive sealed proposal, ~~and no~~. No competitive sealed bid or competitive sealed proposal shall be considered valid unless it is so certified.

Sec. 125.11. (A) Subject to division (B) of this section, contracts ~~required to be awarded pursuant to a reverse auction under section 125.072 of the Revised Code or pursuant to~~ competitive sealed bidding, including ~~such~~ contracts awarded under section 125.081 of the Revised Code, shall be awarded to the lowest responsive and responsible bidder on each item in accordance with section 9.312 of the Revised Code. When the contract is for meat products as defined in section 918.01 of the Revised Code or poultry products as defined in section 918.21 of the Revised Code, only those bids received from vendors offering products from establishments on the current list of meat and poultry vendors established and maintained by the director of administrative services under section 125.17 of the Revised Code shall be eligible for acceptance. The department of administrative services may accept or reject any or all bids in whole or by items, except that when the contract is for services or ~~supplies~~ products available from a qualified nonprofit agency pursuant to sections 4115.31 to 4115.35 of the Revised Code, the contract shall be awarded to that agency.

(B) Prior to awarding a contract under division (A) of this section, the department of administrative services or the state agency responsible for evaluating a contract for the purchase of ~~goods~~ products shall evaluate the bids received according to the criteria and procedures established pursuant to divisions (C)(1) and (2) of section 125.09 of the Revised Code for determining if a product is produced or mined in the United States and if a product is produced or mined in ~~Ohio~~ this state. The department or other state agency shall first remove bids that offer ~~supplies~~ products that have not been or that will not be produced or mined in the United States. From among the remaining bids, the department ~~or other state agency~~ shall select the lowest responsive and responsible bid, in accordance with section 9.312 of the Revised Code, from among the bids that offer ~~goods~~ products that have been produced or mined in ~~Ohio~~ this state where sufficient competition can be generated within ~~Ohio~~ this state to ensure that compliance with these requirements will not result in an excessive price for the product or acquiring a disproportionately inferior product. If there are two or more qualified bids that offer ~~goods which~~ products that have been produced or mined in ~~Ohio~~ this state, it shall be deemed that there is sufficient competition to prevent an excessive price for the product or the acquiring of a disproportionately inferior product.

(C) Division (B) of this section applies to contracts for which competitive bidding is waived by the controlling board.

(D) Division (B) of this section does not apply to the purchase by the division of liquor control of spirituous liquor.

(E) The director of administrative services shall publish in the form of a model act for use by counties, townships, ~~and~~ municipal corporations, or any other political subdivision described in division (B) of section 125.04 of the Revised Code, a system of preferences for products mined and produced in ~~Ohio~~ this state and in the United States and for Ohio-based contractors. The model act shall reflect substantial equivalence to the system of preferences in purchasing and public improvement contracting procedures under which the state operates pursuant to this chapter and section 153.012 of the Revised Code. To the maximum extent possible, consistent with the Ohio system of preferences in purchasing and public improvement contracting procedures, the model act shall incorporate all of the requirements of the federal "Buy America Act," 47 Stat. 1520 (1933), 41 U.S.C. 10a to 10d, as amended, and the rules adopted ~~thereunder~~ under that act.

~~Prior to~~ Before and during the development and promulgation of the model act, the director shall consult with appropriate statewide organizations representing counties, townships, and municipal corporations so as to identify the special requirements and concerns these political subdivisions have in their purchasing and public improvement contracting procedures. The director shall promulgate the model act by rule adopted pursuant to Chapter 119. of the Revised Code and shall revise the act as necessary to reflect changes in this chapter or section 153.012 of the Revised Code.

The director shall make available copies of the model act, supporting information, and technical assistance to any township, county, or municipal corporation wishing to incorporate the provisions of the act into its purchasing or public improvement contracting procedure.

SECTION 2. That existing sections 125.01, 125.07, 125.08, 125.10, and 125.11 of the Revised Code are hereby repealed.

SECTION 3. Not later than twelve months after the effective date of this act, the Department of Administrative Services shall report to the committees of the House of Representatives and Senate with jurisdiction over legislation dealing with state purchasing regarding the effect of reverse auctions on purchases from Ohio businesses, including minority and female business enterprises.

SECTION 4. Section 125.11 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. S.B. 99 and Am. Sub. S.B. 162 of the 121st General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____