

As Introduced

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**REPRESENTATIVES Raga, DeWine, Husted, Seitz, Willamowski, Calvert,
Damschroder, Core, Lendrum, Hollister, Roman, Webster, D. Miller, Jolivette,
Brinkman, Britton, Bocchieri, Buehrer**

A B I L L

To amend sections 125.01, 125.07, 125.08, 125.10, 1
125.11, 307.90, 505.103, and 717.21 and to enact 2
sections 9.314 and 125.072 of the Revised Code to 3
permit the Department of Administrative Services 4
and political subdivisions to purchase supplies or 5
services through a competitive reverse auction 6
process via the Internet and to make changes in the 7
notice required when the Department purchases 8
supplies or services by competitive selection. 9

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 125.01, 125.07, 125.08, 125.10, 10
125.11, 307.90, 505.103, and 717.21 be amended and sections 9.314 11
and 125.072 of the Revised Code be enacted to read as follows: 12

Sec. 9.314. (A) As used in this section: 13

(1) "Contracting authority" has the same meaning as in 14
section 307.92 of the Revised Code. 15

(2) "Internet" means the international computer network of 16
both federal and nonfederal interoperable packet switched data 17
networks, including the graphical subnetwork called the world wide 18

web.

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(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.

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

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(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.

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(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.

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(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.

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(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.

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(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. 50
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(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. 59
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(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. 65
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Sec. 125.01. As used in this chapter: 69

(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. 70
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(B) "Invoice" means an itemized listing showing delivery of 80

the supplies or performance of the service described in the order, 81
and the date of the purchase or rendering of the service, or an 82
itemization of the things done, material supplied, or labor 83
furnished, and the sum due pursuant to the contract or obligation. 84

(C) "Products" means materials, manufacturer's supplies, 85
merchandise, goods, wares, and foodstuffs. 86

(D) "Produced" means the manufacturing, processing, mining, 87
developing, and making of a thing into a new article with a 88
distinct character in use through the application of input, within 89
the state, of Ohio products, labor, skill, or other services. 90
"Produced" does not include the mere assembling or putting 91
together of non-Ohio products or materials. 92

(E) "Ohio products" means products ~~which~~ that are mined, 93
excavated, produced, manufactured, raised, or grown in the state 94
by a person where the input of Ohio products, labor, skill, or 95
other services constitutes no less than twenty-five per cent of 96
the manufactured cost. With respect to mined products, such 97
products shall be mined or excavated in ~~Ohio~~ this state. 98

(F) "Purchase" means to buy, rent, lease, lease purchase, or 99
otherwise acquire supplies or services. "Purchase" also includes 100
all functions that pertain to the obtaining of supplies or 101
services, including description of requirements, selection and 102
solicitation of sources, preparation and award of contracts, all 103
phases of contract administration, and receipt and acceptance of 104
the supplies and services and payment ~~therefor~~ for them. 105

(G) "Services" means the furnishing of labor, time, or effort 106
by a person, not involving the delivery of a specific end product 107
other than a report which, if provided, is merely incidental to 108
the required performance. "Services" does not include services 109
furnished pursuant to employment agreements or collective 110
bargaining agreements. 111

(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, the conditions under which bids or

proposals will be received, the terms of the proposed purchase 142
~~purchases~~, and an itemized list of the supplies or services to be 143
purchased and the estimated quantities or amounts ~~thereof of them~~. 144

(C) The ~~mailing posting of such notices~~ the notice required 145
under division (A) of this section shall be completed ~~as follows~~: 146

~~(1) At least fifteen calendar days prior to the scheduled~~ 147
~~opening date, for competitive sealed proposals and competitive~~ 148
~~sealed bids~~; 149

~~(2) For printing contracts, a~~ within the number of days 150
~~determined by the director,~~ determines preceding the day when ~~such~~ 151
the bids or proposals will be opened. 152

(D) The department ~~shall~~ also shall maintain, in a public 153
place in its office, a bulletin board upon which it shall post and 154
maintain a copy of ~~such~~ the notice required under division (A) of 155
this section for at least the number of days ~~listed in the~~ 156
director determines under division (C) of this section, ~~or, for~~ 157
~~printing contracts, a number of days determined by the director,~~ 158
preceding the day of the opening of ~~such~~ the bids or proposals. 159
The failure to so additionally post such notices the notice shall 160
invalidate all proceedings had and any contract entered into 161
pursuant to ~~such~~ the proceedings. 162

Sec. 125.072. (A) As used in this section: 163

(1) "Internet" means the international computer network of 164
both federal and nonfederal interoperable packet switched data 165
networks, including the graphical subnetwork called the world wide 166
web. 167

(2) "Reverse auction" means a purchasing process in which 168
offerors submit bids or proposals in competing to sell services or 169
supplies in an open environment via the internet. 170

(B) Whenever the director of administrative services 171

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.

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(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.

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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.

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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

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interest of this state, the director shall post notice ~~shall be~~ 203
~~sent to, as provided in division (A) of section 125.07 of the~~ 204
Revised Code, for the benefit of all persons listed on the 205
notification list. The department need only provide competitive 206
selection documents for a proposed contract to persons who 207
specifically request ~~such~~ the documents. ~~The~~ 208

The director may remove a person from the notification list 209
and place the person on an inactive list if the person fails to 210
respond to any notices of proposed purchases that appear in four 211
consecutive bulletins or other forms of notification that list 212
~~such~~ those notices. Upon written request to the director by the 213
person so removed, the director may return the person to the 214
notification list if the person provides sufficient evidence 215
regarding intent to offer bids or proposals to the state. The 216
director shall not remove any person from the list without notice 217
to ~~such~~ the person. The notice may be a part of the notices of 218
proposed purchase. 219

(B) Any person who is certified by the equal employment 220
opportunity coordinator of the department of administrative 221
services in accordance with the rules adopted under division 222
(B)(1) of section 123.151 of the Revised Code as a minority 223
business enterprise may have that person's name placed on a 224
special minority business enterprise notification list to be used 225
in connection with contracts awarded under section 125.081 of the 226
Revised Code. The minority business enterprise notification list 227
shall be used for bidding on contracts set aside for minority 228
business enterprises only. In all other respects, the list shall 229
be maintained and used in the same manner and according to the 230
same procedures as the notification list provided for under 231
division (A) of this section, except that a firm shall not be 232
removed from the list unless the coordinator determines that the 233
firm is no longer a minority business enterprise. A minority 234

business enterprise may have its name placed on both the 235
notification lists provided for in this section. 236

(C) The director of administrative services may require an 237
annual registration fee for the listings provided for in division 238
(A) or (B) of this section. This fee shall not be more than ten 239
dollars. The department may charge a fee for any compilation of 240
descriptions of supplies or services. This fee shall be reasonable 241
and shall not exceed the cost required to maintain the 242
notification lists and provide for the distribution of the 243
proposed purchase to the persons whose names appear on the lists. 244

Sec. 125.10. (A) The department of administrative services 245
may require that all competitive sealed bids ~~and~~, competitive 246
sealed proposals, and bids or proposals received in a reverse 247
auction be accompanied by a performance bond or other cash surety 248
acceptable to the director of administrative services, in ~~such the~~ 249
sum and with ~~such the~~ sureties ~~as~~ it prescribes, payable to the 250
state, and conditioned that the person submitting the bid or 251
proposal, if that person's bid or proposal is accepted, will 252
faithfully execute the terms of the contract and promptly make 253
deliveries of the supplies ~~or equipment, or contracts of~~ 254
~~insurance~~, purchased. A 255

(B) A sealed copy of each competitive sealed bid or 256
competitive sealed proposal shall be filed with the department 257
prior to the time specified in the notice for opening of the bids 258
or proposals. All competitive sealed bids and competitive sealed 259
proposals shall be publicly opened in the office of the department 260
at the time specified in the notice. A representative of the 261
auditor of state shall be present at the opening of all 262
competitive sealed bids and competitive sealed proposals, shall 263
certify the opening of each competitive sealed bid and competitive 264
sealed proposal, and no competitive sealed bid or competitive 265

sealed proposal shall be considered valid unless it is so certified. 266
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Sec. 125.11. (A) Subject to division (B) of this section, 268
contracts required to be awarded pursuant to competitive sealed 269
bidding, including ~~such~~ contracts awarded under section 125.081 of 270
the Revised Code, shall be awarded to the lowest responsive and 271
responsible bidder on each item in accordance with section 9.312 272
of the Revised Code. When the contract is for meat products as 273
defined in section 918.01 of the Revised Code or poultry products 274
as defined in section 918.21 of the Revised Code, only those bids 275
received from vendors offering products from establishments on the 276
current list of meat and poultry vendors established and 277
maintained by the director of administrative services under 278
section 125.17 of the Revised Code shall be eligible for 279
acceptance. The department of administrative services may accept 280
or reject any or all bids in whole or by items, except that when 281
the contract is for services or ~~supplies~~ products available from a 282
qualified nonprofit agency pursuant to sections 4115.31 to 4115.35 283
of the Revised Code, the contract shall be awarded to that agency. 284

(B) Prior to awarding a contract under division (A) of this 285
section, the department of administrative services or the state 286
agency responsible for evaluating a contract for the purchase of 287
~~goods~~ products shall evaluate the bids received according to the 288
criteria and procedures established pursuant to divisions (C)(1) 289
and (2) of section 125.09 of the Revised Code for determining if a 290
product is produced or mined in the United States and if a product 291
is ~~produced or mined in an~~ Ohio product. The department or other 292
state agency shall first remove bids that offer ~~supplies~~ products 293
that have not been or that will not be produced or mined in the 294
United States. From among the remaining bids, the department or 295
other state agency shall select the lowest responsive and 296
responsible bid, in accordance with section 9.312 of the Revised 297

Code, from among the bids that offer ~~goods~~ products that ~~have been~~ 298
~~produced or mined in~~ are Ohio products where sufficient 299
competition can be generated within ~~Ohio~~ this state to ensure that 300
compliance with these requirements will not result in an excessive 301
price for the product or acquiring a disproportionately inferior 302
product. If there are two or more qualified bids that offer ~~goods~~ 303
~~which have been produced or mined in~~ products that are Ohio 304
products, it shall be deemed that there is sufficient competition 305
to prevent an excessive price for the product or the acquiring of 306
a disproportionately inferior product. 307

(C) Division (B) of this section applies to contracts for 308
which competitive bidding is waived by the controlling board. 309

(D) Division (B) of this section does not apply to either of 310
the following: 311

(1) The purchase by the division of liquor control of 312
spirituous liquor; 313

(2) Purchases made under section 125.072 of the Revised Code. 314
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(E) The director of administrative services shall publish in 316
the form of a model act for use by counties, townships, ~~and~~ 317
municipal corporations, or any other political subdivision 318
described in division (B) of section 125.04 of the Revised Code, a 319
system of preferences for Ohio products, for products mined and 320
produced in ~~Ohio and in~~ the United States, and for Ohio-based 321
contractors. The model act shall reflect substantial equivalence 322
to the system of preferences in purchasing and public improvement 323
contracting procedures under which the state operates pursuant to 324
this chapter and section 153.012 of the Revised Code. To the 325
maximum extent possible, consistent with the Ohio system of 326
preferences in purchasing and public improvement contracting 327
procedures, the model act shall incorporate all of the 328
requirements of the federal "Buy America Act," 47 Stat. 1520 329

(1933), 41 U.S.C. 10a to 10d, as amended, and the rules adopted 330
~~thereunder~~ under that act. 331

~~Prior to~~ Before and during the development and promulgation 332
of the model act, the director shall consult with appropriate 333
statewide organizations representing counties, townships, and 334
municipal corporations so as to identify the special requirements 335
and concerns these political subdivisions have in their purchasing 336
and public improvement contracting procedures. The director shall 337
promulgate the model act by rule adopted pursuant to Chapter 119. 338
of the Revised Code and shall revise the act as necessary to 339
reflect changes in this chapter or section 153.012 of the Revised 340
Code. 341

The director shall make available copies of the model act, 342
supporting information, and technical assistance to any township, 343
county, or municipal corporation wishing to incorporate the 344
provisions of the act into its purchasing or public improvement 345
contracting procedure. 346

Sec. 307.90. (A) The award of all contracts subject to 347
sections 307.86 to 307.92 of the Revised Code shall be made to the 348
lowest and best bidder. The bond or bid guaranty of all 349
unsuccessful bidders shall be returned to them by the contracting 350
authority immediately upon awarding the contract or rejection of 351
all bids. The contracting authority may reject all bids. 352

(B) ~~With~~ (1) Except as otherwise provided in division (B)(2) 353
of this section, with respect to any contract for the purchase of 354
equipment, materials, supplies, insurance, services, or a public 355
improvement into which a county or its officers may enter, a board 356
of county commissioners, by resolution, may adopt the model system 357
of preferences for Ohio products, for products mined or produced 358
in ~~Ohio and~~ the United States, and for Ohio-based contractors 359
promulgated ~~pursuant to~~ under division (E) of section 125.11 of 360

the Revised Code. The resolution shall specify the class or 361
classes of contracts to which the system of preferences apply, 362
and, once the resolution is adopted, that system of preferences 363
operates to modify the awarding of ~~such~~ those contracts 364
accordingly. While the system of preferences is in effect, no 365
county officer or employee with the responsibility for doing so 366
shall award a contract to which the system applies in violation of 367
the ~~preference~~ system. 368

(2) Division (B)(1) of this section does not apply to or 369
affect purchases made under section 9.314 of the Revised Code. 370

Sec. 505.103. With (A) Except as otherwise provided in 371
division (B) of this section, with respect to any contract for the 372
purchase of equipment, materials, supplies, insurance, services, 373
or a public improvement into which a township or its officers may 374
enter, a board of township trustees by resolution, may adopt the 375
model system of preferences for Ohio products, for products mined 376
or produced in ~~Ohio and~~ the United States, and for Ohio-based 377
contractors promulgated ~~pursuant to~~ under division (E) of section 378
125.11 of the Revised Code. The resolution shall specify the class 379
or classes of contracts to which the system of preferences apply, 380
and, once the resolution is adopted, that system of preferences 381
operates to modify the awarding of ~~such~~ those contracts 382
accordingly. While the system of preferences is in effect, no 383
township officer or employee with the responsibility for doing so 384
shall award a contract to which the system applies in violation of 385
the ~~preference~~ system. 386

(B) Division (A) of this section does not apply to or affect 387
purchases made under section 9.314 of the Revised Code. 388

Sec. 717.21. With (A) Except as otherwise provided in 389
division (B) of this section, with respect to any contract for the 390
purchase of equipment, materials, supplies, insurance, services, 391

or a public improvement into which a ~~municipality~~ municipal 392
corporation or its officers may enter, the legislative authority 393
of the ~~municipality~~ municipal corporation, by ordinance, may adopt 394
the model system of preferences for Ohio products, for products 395
mined or produced in ~~Ohio and~~ the United States, and for 396
Ohio-based contractors promulgated ~~pursuant to~~ under division (E) 397
of section 125.11 of the Revised Code. The ordinance shall specify 398
the class or classes of contracts to which the system of 399
preferences apply, and, once the ordinance is adopted, that system 400
of preferences operates to modify the awarding of ~~such those~~ 401
contracts accordingly. While the system of preferences is in 402
effect, no municipal officer or employee with the responsibility 403
for doing so shall award a contract to which the system applies in 404
violation of the ~~preference~~ system. 405

(B) Division (A) of this section does not apply to or affect 406
purchases made under section 9.314 of the Revised Code. 407

Section 2. That existing sections 125.01, 125.07, 125.08, 408
125.10, 125.11, 307.90, 505.103, and 717.21 of the Revised Code 409
are hereby repealed. 410

Section 3. Section 125.11 of the Revised Code is presented in 412
this act as a composite of the section as amended by both Am. Sub. 413
S.B. 99 and Am. Sub. S.B. 162 of the 121st General Assembly. The 414
General Assembly, applying the principle stated in division (B) of 415
section 1.52 of the Revised Code that amendments are to be 416
harmonized if reasonably capable of simultaneous operation, finds 417
that the composite is the resulting version of the section in 418
effect prior to the effective date of the section as presented in 419
this act. 420