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A B I L L

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 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 199
on the notification list that are qualified Ohio business 200
enterprises, which shall include Ohio penal industries as defined 201
by rule of the director of administrative services, or have a 202
significant Ohio presence in this state's economy, except that, in 203
those circumstances in which the director considers it in the best 204
interest of this state, the director shall post notice ~~shall be~~ 205
~~sent to,~~ as provided in division (A) of section 125.07 of the 206
Revised Code, for the benefit of all persons listed on the 207
notification list. The department need only provide competitive 208
selection documents for a proposed contract to persons who 209
specifically request ~~such~~ the documents. ~~The~~ 210

The director may remove a person from the notification list 211
and place the person on an inactive list if the person fails to 212
respond to any notices of proposed purchases that appear in four 213
consecutive bulletins or other forms of notification that list 214
~~such~~ those notices. Upon written request to the director by the 215
person so removed, the director may return the person to the 216
notification list if the person provides sufficient evidence 217
regarding intent to offer bids or proposals to the state. The 218
director shall not remove any person from the list without notice 219
to ~~such~~ the person. The notice may be a part of the notices of 220
proposed purchase. 221

(B) Any person who is certified by the equal employment 222
opportunity coordinator of the department of administrative 223
services in accordance with the rules adopted under division 224
(B)(1) of section 123.151 of the Revised Code as a minority 225
business enterprise may have that person's name placed on a 226
special minority business enterprise notification list to be used 227
in connection with contracts awarded under section 125.081 of the 228
Revised Code. The minority business enterprise notification list 229
shall be used for bidding on contracts set aside for minority 230

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 262
auditor of state shall be present at the opening of all 263
competitive sealed bids and competitive sealed proposals, and 264
shall certify the opening of each competitive sealed bid and 265
competitive sealed proposal, ~~and no.~~ No competitive sealed bid or 266
competitive sealed proposal shall be considered valid unless it is 267
so certified. 268

Sec. 125.11. (A) Subject to division (B) of this section, 269
contracts ~~required to be~~ awarded pursuant to a reverse auction 270
under section 125.072 of the Revised Code or pursuant to 271
competitive sealed bidding, including ~~such~~ contracts awarded under 272
section 125.081 of the Revised Code, shall be awarded to the 273
lowest responsive and responsible bidder on each item in 274
accordance with section 9.312 of the Revised Code. When the 275
contract is for meat products as defined in section 918.01 of the 276
Revised Code or poultry products as defined in section 918.21 of 277
the Revised Code, only those bids received from vendors offering 278
products from establishments on the current list of meat and 279
poultry vendors established and maintained by the director of 280
administrative services under section 125.17 of the Revised Code 281
shall be eligible for acceptance. The department of administrative 282
services may accept or reject any or all bids in whole or by 283
items, except that when the contract is for services or ~~supplies~~ 284
products available from a qualified nonprofit agency pursuant to 285
sections 4115.31 to 4115.35 of the Revised Code, the contract 286
shall be awarded to that agency. 287

(B) Prior to awarding a contract under division (A) of this 288
section, the department of administrative services or the state 289
agency responsible for evaluating a contract for the purchase of 290
~~goods~~ products shall evaluate the bids received according to the 291
criteria and procedures established pursuant to divisions (C)(1) 292
and (2) of section 125.09 of the Revised Code for determining if a 293

product is produced or mined in the United States and if a product 294
is produced or mined in ~~Ohio~~ this state. The department or other 295
state agency shall first remove bids that offer ~~supplies~~ products 296
that have not been or that will not be produced or mined in the 297
United States. From among the remaining bids, the department or 298
other state agency shall select the lowest responsive and 299
responsible bid, in accordance with section 9.312 of the Revised 300
Code, from among the bids that offer ~~goods~~ products that have been 301
produced or mined in ~~Ohio~~ this state where sufficient competition 302
can be generated within ~~Ohio~~ this state to ensure that compliance 303
with these requirements will not result in an excessive price for 304
the product or acquiring a disproportionately inferior product. If 305
there are two or more qualified bids that offer ~~goods which~~ 306
products that have been produced or mined in ~~Ohio~~ this state, it 307
shall be deemed that there is sufficient competition to prevent an 308
excessive price for the product or the acquiring of a 309
disproportionately inferior product. 310

(C) Division (B) of this section applies to contracts for 311
which competitive bidding is waived by the controlling board. 312

(D) Division (B) of this section does not apply to the 313
purchase by the division of liquor control of spirituous liquor. 314

(E) The director of administrative services shall publish in 315
the form of a model act for use by counties, townships, ~~and~~ 316
municipal corporations, or any other political subdivision 317
described in division (B) of section 125.04 of the Revised Code, a 318
system of preferences for products mined and produced in ~~Ohio~~ this 319
state and in the United States and for Ohio-based contractors. The 320
model act shall reflect substantial equivalence to the system of 321
preferences in purchasing and public improvement contracting 322
procedures under which the state operates pursuant to this chapter 323
and section 153.012 of the Revised Code. To the maximum extent 324
possible, consistent with the Ohio system of preferences in 325

purchasing and public improvement contracting procedures, the 326
model act shall incorporate all of the requirements of the federal 327
"Buy America Act," 47 Stat. 1520 (1933), 41 U.S.C. 10a to 10d, as 328
amended, and the rules adopted ~~thereunder~~ under that act. 329

~~Prior to~~ Before and during the development and promulgation 330
of the model act, the director shall consult with appropriate 331
statewide organizations representing counties, townships, and 332
municipal corporations so as to identify the special requirements 333
and concerns these political subdivisions have in their purchasing 334
and public improvement contracting procedures. The director shall 335
promulgate the model act by rule adopted pursuant to Chapter 119. 336
of the Revised Code and shall revise the act as necessary to 337
reflect changes in this chapter or section 153.012 of the Revised 338
Code. 339

The director shall make available copies of the model act, 340
supporting information, and technical assistance to any township, 341
county, or municipal corporation wishing to incorporate the 342
provisions of the act into its purchasing or public improvement 343
contracting procedure. 344

Section 2. That existing sections 125.01, 125.07, 125.08, 345
125.10, and 125.11 of the Revised Code are hereby repealed. 346

Section 3. Not later than twelve months after the effective 348
date of this act, the Department of Administrative Services shall 349
report to the committees of the House of Representatives and 350
Senate with jurisdiction over legislation dealing with state 351
purchasing regarding the effect of reverse auctions on purchases 352
from Ohio businesses, including minority and female business 353
enterprises. 354

Section 4. Section 125.11 of the Revised Code is presented in 355

this act as a composite of the section as amended by both Am. Sub. 356
S.B. 99 and Am. Sub. S.B. 162 of the 121st General Assembly. The 357
General Assembly, applying the principle stated in division (B) of 358
section 1.52 of the Revised Code that amendments are to be 359
harmonized if reasonably capable of simultaneous operation, finds 360
that the composite is the resulting version of the section in 361
effect prior to the effective date of the section as presented in 362
this act. 363