

# As Reported by the House State Government Committee

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REPRESENTATIVES Raga, DeWine, Husted, Seitz, Willamowski, Calvert,  
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## A B I L L

To amend sections 125.01, 125.07, 125.08, 125.10, and 1  
125.11 and to enact sections 9.314 and 125.072 of 2  
the Revised Code to permit the Department of 3  
Administrative Services and political subdivisions 4  
to purchase supplies or services through a 5  
competitive reverse auction process via the 6  
Internet and to make changes in the notice required 7  
when the Department purchases supplies or services 8  
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, and 10  
125.11 be amended and sections 9.314 and 125.072 of the Revised 11  
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 services or supplies 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 50  
a political subdivision adopts, and to ensure full understanding 51  
of and responsiveness to solicitation requirements, the political 52  
subdivision may conduct discussions with responsible offerors who 53  
submit proposals determined to be reasonably susceptible of being 54  
selected for award. The political subdivision shall accord 55  
offerors fair and equal treatment with respect to any opportunity 56  
for discussion regarding any clarification, correction, or 57  
revision of their proposals. 58

(E) A political subdivision may award a contract to the 59  
offeror whose proposal the political subdivision determines to be 60  
the most advantageous to the political subdivision, taking into 61  
consideration factors such as price and the evaluation criteria 62  
set forth in the request for proposals. The contract file shall 63  
contain the basis on which the award is made. 64

(F) The rules that a political subdivision adopts under this 65  
section may require the provision of a performance bond, or 66  
another similar form of financial security, in the amount and in 67  
the form specified in the rules. 68

**Sec. 125.01.** As used in this chapter: 69

(A) "Order" means a copy of a contract or a statement of the 70  
nature of a contemplated expenditure, a description of the 71  
property or supplies to be purchased or service to be performed, 72  
other than a service performed by officers and regular employees 73  
of the state, and per diem of the national guard, and the total 74  
sum of the expenditure to be made therefor, if the sum is fixed 75  
and ascertained, otherwise the estimated sum thereof, and an 76  
authorization to pay for the contemplated expenditure, signed by 77  
the person instructed and authorized to pay upon receipt of a 78  
proper invoice. 79

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

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.

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(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 142  
which bids or proposals will be received; 143  
the terms of the 144  
proposed purchase, purchases; and an itemized list of the supplies 144  
or services to be purchased and the estimated quantities or 145  
amounts thereof of them. 146

(C) ~~The mailing posting of such notices~~ the notice required 147  
under division (A) of this section shall be completed ~~as follows:~~ 148

~~(1) At least fifteen calendar days prior to the scheduled~~ 149  
~~opening date, for competitive sealed proposals and competitive~~ 150  
~~sealed bids;~~ 151

~~(2) For printing contracts, a~~ by the number of days 152  
~~determined by the director,~~ determines preceding the day when ~~such~~ 153  
the bids or proposals will be opened or accepted. 154

(D) The department ~~shall~~ also shall maintain, in a public 155  
place in its office, a bulletin board upon which it shall post and 156  
maintain a copy of ~~such~~ the notice required under division (A) of 157  
this section for at least the number of days ~~listed in the~~ 158  
director determines under division (C) of this section, ~~or, for~~ 159  
~~printing contracts, a number of days determined by the director,~~ 160  
preceding the day of the opening or acceptance of ~~such the bids or~~ 161  
proposals. The failure to so additionally post such notices the 162  
notice shall invalidate all proceedings had and any contract 163  
entered into pursuant to ~~such the~~ the proceedings. 164

**Sec. 125.072.** (A) As used in this section: 165

(1) "Internet" means the international computer network of 166  
both federal and nonfederal interoperable packet switched data 167  
networks, including the graphical subnetwork called the world wide 168  
web. 169

(2) "Reverse auction" means a purchasing process in which 170  
offerors submit bids in competing to sell services or supplies in 171

an open environment via the internet. 172

(B) Whenever the director of administrative services 173  
determines that the use of a reverse auction is advantageous to 174  
the state, the director, in accordance with rules the director 175  
shall adopt, may purchase services or supplies by reverse auction. 176

(C) The director, by rule, may authorize a state agency that 177  
is authorized to purchase services or supplies directly to 178  
purchase them by reverse auction in the same manner as this 179  
section and the rules adopted under this section authorize the 180  
director to do so. 181

**Sec. 125.08.** (A) The department of administrative services 182  
may divide the state into purchasing districts wherein supplies or 183  
services are to be delivered and shall describe ~~such~~ those 184  
districts on all applications for the notification list provided 185  
for in this section. 186

Any person may have that person's name and address, or the 187  
name and address of an agent, placed on the competitive selection 188  
notification list of the department of administrative services by 189  
sending to the department the person's name and address, together 190  
with a list of the supplies or services described in the manner 191  
prescribed by the department produced or dealt in by the person 192  
with a request for such listing, a list of the districts in which 193  
the person desires to participate, and ~~such~~ all other information 194  
~~as~~ the director of administrative services may prescribe. Whenever 195  
~~such~~ any name and address together with a list of the supplies or 196  
services produced or dealt in is so listed, the department shall 197  
~~send~~ post notice, as provided in division (A) of section 125.07 of 198  
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 231  
be maintained and used in the same manner and according to the 232  
same procedures as the notification list provided for under 233  
division (A) of this section, except that a firm shall not be 234



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 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. 353

**Section 4.** Section 125.11 of the Revised Code is presented in 354  
this act as a composite of the section as amended by both Am. Sub. 355  
S.B. 99 and Am. Sub. S.B. 162 of the 121st General Assembly. The 356  
General Assembly, applying the principle stated in division (B) of 357  
section 1.52 of the Revised Code that amendments are to be 358  
harmonized if reasonably capable of simultaneous operation, finds 359

that the composite is the resulting version of the section in 360  
effect prior to the effective date of the section as presented in 361  
this act. 362