

(124th General Assembly)  
(House Bill Number 458)

# AN ACT

To amend section 9.312 of the Revised Code to modify standards for determining financial responsibility in the awarding of construction contracts to the lowest and most responsible bidder, and to make certain financial information confidential.

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

SECTION 1. That section 9.312 of the Revised Code be amended to read as follows:

Sec. 9.312. (A) If a state agency or political subdivision is required by law or by an ordinance or resolution adopted under division (C) of this section to award a contract to the lowest responsive and responsible bidder, a bidder on the contract shall be considered responsive if his the bidder's proposal responds to bid specifications in all material respects and contains no irregularities or deviations from the specifications which would affect the amount of the bid or otherwise give him the bidder a competitive advantage. The factors that the state agency or political subdivision shall consider in determining whether a bidder on the contract is responsible include the experience of the bidder, his the bidder's financial condition, his conduct and performance on previous contracts, his facilities, his management skills, and his ability to execute the contract properly. An

For purposes of this division, the provision of a bid guaranty in accordance with divisions (A)(1) and (B) of section 153.54 of the Revised Code issued by a surety licensed to do business in this state is evidence of financial responsibility, but a state agency or political subdivision may request additional financial information for review from an apparent low bidder after it opens all submitted bids. A state agency or political subdivision shall keep additional financial information it receives pursuant to a request under this division confidential, except under proper order of a court. The additional financial information is not a public record under section 149.43 of the Revised Code.

An apparent low bidder found not to be responsive and responsible shall be notified by the state agency or political subdivision of that finding and

e reasons for it. Except for contracts awarded by the department of administrative services pursuant to section 125.11 of the Revised Code, the notification shall be given in writing and by certified mail. When awarding contracts pursuant to section 125.11 of the Revised Code, the department may send such notice in writing by first class mail.

(B) Where a state agency or a political subdivision that has adopted an ordinance or resolution under division (C) of this section determines to award a contract to a bidder other than the apparent low bidder or bidders for the construction, reconstruction, improvement, enlargement, alteration, repair, painting, or decoration of a public improvement, it shall meet with the apparent low bidder or bidders upon a filing of a timely written protest. The protest must be received within five days of the notification required in division (A) of this section. No final award shall be made until the state agency or political subdivision either affirms or reverses its earlier determination. Notwithstanding any other provisions of the Revised Code, the procedure described in this division is not subject to Chapter 119. of the Revised Code.

(C) A municipal corporation, township, school district, board of county commissioners, any other county board or commission, or any other political subdivision required by law to award contracts by competitive bidding may by ordinance or resolution adopt a policy of requiring each competitively bid contract it awards to be awarded to the lowest responsive and responsible bidder in accordance with this section.

SECTION 2. That existing section 9.312 of the Revised Code is hereby repealed.

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*Speaker \_\_\_\_\_ of the House of Representatives.*

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*President \_\_\_\_\_ of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

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

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*Director, Legislative Service Commission.*

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

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_