

# As Reported by the House Commerce and Labor Committee

124th General Assembly

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H. B. No. 458

REPRESENTATIVES Williams, Fessler, Husted, Britton, Willamowski, Seitz,  
Hollister, Lendrum, Collier, Distel, D. Miller, Rhine, Young

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## A BILL

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 20  
skills, and his ability to execute the contract properly. An 21

For purposes of this division, the provision of a bid 22  
guaranty in accordance with divisions (A)(1) and (B) of section 23  
153.54 of the Revised Code issued by a surety licensed to do 24  
business in this state is evidence of financial responsibility, 25  
but a state agency or political subdivision may request additional 26  
financial information for review from an apparent low bidder after 27  
it opens all submitted bids. A state agency or political 28  
subdivision shall keep additional financial information it 29  
receives pursuant to a request under this division confidential, 30  
except under proper order of a court. The additional financial 31  
information is not a public record under section 149.43 of the 32  
Revised Code. 33

An apparent low bidder found not to be responsive and 34  
responsible shall be notified by the state agency or political 35  
subdivision of that finding and the reasons for it. Except for 36  
contracts awarded by the department of administrative services 37  
pursuant to section 125.11 of the Revised Code, the notification 38  
shall be given in writing and by certified mail. When awarding 39  
contracts pursuant to section 125.11 of the Revised Code, the 40  
department may send such notice in writing by first class mail. 41

(B) Where a state agency or a political subdivision that has 42  
adopted an ordinance or resolution under division (C) of this 43  
section determines to award a contract to a bidder other than the 44  
apparent low bidder or bidders for the construction, 45  
reconstruction, improvement, enlargement, alteration, repair, 46  
painting, or decoration of a public improvement, it shall meet 47  
with the apparent low bidder or bidders upon a filing of a timely 48  
written protest. The protest must be received within five days of 49  
the notification required in division (A) of this section. No 50  
final award shall be made until the state agency or political 51

subdivision either affirms or reverses its earlier determination. 52  
Notwithstanding any other provisions of the Revised Code, the 53  
procedure described in this division is not subject to Chapter 54  
119. of the Revised Code. 55

(C) A municipal corporation, township, school district, board 56  
of county commissioners, any other county board or commission, or 57  
any other political subdivision required by law to award contracts 58  
by competitive bidding may by ordinance or resolution adopt a 59  
policy of requiring each competitively bid contract it awards to 60  
be awarded to the lowest responsive and responsible bidder in 61  
accordance with this section. 62

**Section 2.** That existing section 9.312 of the Revised Code is 63  
hereby repealed. 64