

**As Introduced**

**127th General Assembly  
Regular Session  
2007-2008**

**H. B. No. 126**

**Representatives Dyer, McGregor, J.**

**Cosponsors: Representatives Miller, Letson, Garrison, Brady, Szollosi,  
Luckie, Strahorn, Ujvagi, Dodd, Brown, Fende, Bolon**

—

**A B I L L**

To amend section 9.312 and to enact section 125.112 1  
of the Revised Code to require the Department of 2  
Administrative Services to maintain a web site 3  
database including apparent low bidders who failed 4  
to be awarded a contract because they were found 5  
not to be "responsible," and to require public 6  
entities to conduct investigations when apparent 7  
low bidders are suspected of failing or fail to 8  
meet the "responsible" prong of the "responsive 9  
and responsible" competitive bidding threshold. 10

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

**Section 1.** That section 9.312 be amended and section 125.112 11  
of the Revised Code be enacted to read as follows: 12

**Sec. 9.312.** (A) If a state agency or political subdivision is 13  
required by law or by an ordinance or resolution adopted under 14  
division (C) of this section to award a contract to the lowest 15  
responsive and responsible bidder, a bidder on the contract shall 16  
be considered responsive if the bidder's proposal responds to bid 17  
specifications in all material respects and contains no 18

irregularities or deviations from the specifications which would 19  
affect the amount of the bid or otherwise give the bidder a 20  
competitive advantage. The factors that the state agency or 21  
political subdivision shall consider in determining whether a 22  
bidder on the contract is responsible include the experience of 23  
the bidder, the bidder's financial condition, conduct and 24  
performance on previous contracts, facilities, management skills, 25  
and ability to execute the contract properly. 26

For purposes of this division, the provision of a bid 27  
guaranty in accordance with divisions (A)(1) and (B) of section 28  
153.54 of the Revised Code issued by a surety licensed to do 29  
business in this state is evidence of financial responsibility, 30  
but a state agency or political subdivision may request additional 31  
financial information for review from an apparent low bidder after 32  
it opens all submitted bids. A state agency or political 33  
subdivision shall keep additional financial information it 34  
receives pursuant to a request under this division confidential, 35  
except under proper order of a court. The additional financial 36  
information is not a public record under section 149.43 of the 37  
Revised Code. 38

An apparent low bidder found not to be responsive and 39  
responsible shall be notified by the state agency or political 40  
subdivision of that finding and the reasons for it. Except for 41  
contracts awarded by the department of administrative services 42  
pursuant to section 125.11 of the Revised Code, the notification 43  
shall be given in writing and by certified mail. When awarding 44  
contracts pursuant to section 125.11 of the Revised Code, the 45  
department may send such notice in writing by first class mail. 46

(B) Where a state agency or a political subdivision that has 47  
adopted an ordinance or resolution under division (C) of this 48  
section determines to award a contract to a bidder other than the 49  
apparent low bidder or bidders for the construction, 50

reconstruction, improvement, enlargement, alteration, repair, 51  
painting, or decoration of a public improvement, it shall meet 52  
with the apparent low bidder or bidders upon a filing of a timely 53  
written protest. The protest must be received within five days of 54  
the notification required in division (A) of this section. No 55  
final award shall be made until the state agency or political 56  
subdivision either affirms or reverses its earlier determination. 57  
Notwithstanding any other provisions of the Revised Code, the 58  
procedure described in this division is not subject to Chapter 59  
119. of the Revised Code. 60

(C) A municipal corporation, township, school district, board 61  
of county commissioners, any other county board or commission, or 62  
any other political subdivision required by law to award contracts 63  
by competitive bidding may by ordinance or resolution adopt a 64  
policy of requiring each competitively bid contract it awards to 65  
be awarded to the lowest responsive and responsible bidder in 66  
accordance with this section. 67

(D) The state agency or political subdivision shall conduct 68  
and complete an investigation before, or within thirty days after, 69  
finding an apparent low bidder not to be a responsible bidder. The 70  
purpose of the investigation shall be to substantiate the reasons 71  
for which the apparent low bidder is suspected of not being a 72  
responsible bidder, or to determine the reasons for which the 73  
apparent low bidder was found not to be a responsible bidder. The 74  
state agency or political subdivision shall send the results of 75  
the investigation to the director of administrative services for 76  
entry on the department's web site under section 125.112 of the 77  
Revised Code. The state agency or political subdivision may not 78  
conduct more than one investigation of an apparent low bidder. 79

Sec. 125.112. (A)(1) The director of administrative services, 80  
not later than the date that is two months after the effective 81

date of this section, shall create and thereafter maintain on the 82  
department of administrative services web site a database that 83  
identifies each apparent low bidder who has been found not to be a 84  
responsible bidder and reports the results of the investigation 85  
under section 9.312 of the Revised Code. 86

(2) For contracts awarded on or after January 1, 2000, and 87  
before the effective date of this section, in the case of a school 88  
district, or on or after July 1, 1999, and before the effective 89  
date of this section, in the case of a state agency or a political 90  
subdivision other than a school district, the director of 91  
administrative services, not later than the date that is six 92  
months after the effective date of this section, shall create and 93  
thereafter maintain on the department of administrative services 94  
web site a database that identifies each apparent low bidder who 95  
was found not to be a responsible bidder and reports the reasons 96  
for which the bidder was found not to be a responsible bidder 97  
under section 9.312 of the Revised Code. 98

(B) An entry in a database under divisions (A)(1) and (2) of 99  
this section shall be maintained on the department of 100  
administrative services web site for a period of ten years after 101  
the date the entry was made. The information contained in an entry 102  
is a public record for purposes of section 149.43 of the Revised 103  
Code. 104

**Section 2.** That existing section 9.312 of the Revised Code is 105  
hereby repealed. 106

**Section 3.** (A) The amendment by this act of section 9.312 and 107  
division (A)(1) of section 125.112 of the Revised Code apply to 108  
contracts that are opened for bidding on or after the effective 109  
date of this section. 110

(B) A state agency or political subdivision that, as 111

contemplated by division (A)(2) of section 125.112 of the Revised 112  
Code, found an apparent low bidder on a contract not to be a 113  
responsible bidder shall provide the director of administrative 114  
services with the information required by that division not later 115  
than the date that is four months after the effective date of this 116  
section. 117