

As Introduced

**127th General Assembly
Regular Session
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S. B. No. 268

Senator Seitz

Cosponsors: Senators Niehaus, Gardner, Schuler, Schuring

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A B I L L

To amend section 307.86 and to enact section 307.862 1
of the Revised Code to allow a county contracting 2
authority to use competitive sealed proposals 3
instead of competitive sealed bidding when doing 4
so would be advantageous to the county. 5

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

Section 1. That section 307.86 be amended and section 307.862 6
of the Revised Code be enacted to read as follows: 7

Sec. 307.86. Anything to be purchased, leased, leased with an 8
option or agreement to purchase, or constructed, including, but 9
not limited to, any product, structure, construction, 10
reconstruction, improvement, maintenance, repair, or service, 11
except the services of an accountant, architect, attorney at law, 12
physician, professional engineer, construction project manager, 13
consultant, surveyor, or appraiser, by or on behalf of the county 14
or contracting authority, as defined in section 307.92 of the 15
Revised Code, at a cost in excess of twenty-five thousand dollars, 16
except as otherwise provided in division (D) of section 713.23 and 17
in sections 125.04, 125.60 to 125.6012, 307.022, 307.041, 307.861, 18
339.05, 340.03, 340.033, 4115.31 to 4115.35, 5119.16, 5513.01, 19

5543.19, 5713.01, and 6137.05 of the Revised Code, shall be 20
obtained through competitive bidding. However, competitive bidding 21
is not required when any of the following applies: 22

(A) The board of county commissioners, by a unanimous vote of 23
its members, makes a determination that a real and present 24
emergency exists, and that determination and the reasons for it 25
are entered in the minutes of the proceedings of the board, when 26
either of the following applies: 27

(1) The estimated cost is less than fifty thousand dollars. 28

(2) There is actual physical disaster to structures, radio 29
communications equipment, or computers. 30

For purposes of this division, "unanimous vote" means all 31
three members of a board of county commissioners when all three 32
members are present, or two members of the board if only two 33
members, constituting a quorum, are present. 34

Whenever a contract of purchase, lease, or construction is 35
exempted from competitive bidding under division (A)(1) of this 36
section because the estimated cost is less than fifty thousand 37
dollars, but the estimated cost is twenty-five thousand dollars or 38
more, the county or contracting authority shall solicit informal 39
estimates from no fewer than three persons who could perform the 40
contract, before awarding the contract. With regard to each such 41
contract, the county or contracting authority shall maintain a 42
record of such estimates, including the name of each person from 43
whom an estimate is solicited. The county or contracting authority 44
shall maintain the record for the longer of at least one year 45
after the contract is awarded or the amount of time the federal 46
government requires. 47

(B)(1) The purchase consists of supplies or a replacement or 48
supplemental part or parts for a product or equipment owned or 49
leased by the county, and the only source of supply for the 50

supplies, part, or parts is limited to a single supplier. 51

(2) The purchase consists of services related to information 52
technology, such as programming services, that are proprietary or 53
limited to a single source. 54

(C) The purchase is from the federal government, the state, 55
another county or contracting authority of another county, or a 56
board of education, township, or municipal corporation. 57

(D) The purchase is made by a county department of job and 58
family services under section 329.04 of the Revised Code and 59
consists of family services duties or workforce development 60
activities or is made by a county board of mental retardation and 61
developmental disabilities under section 5126.05 of the Revised 62
Code and consists of program services, such as direct and 63
ancillary client services, child care, case management services, 64
residential services, and family resource services. 65

(E) The purchase consists of criminal justice services, 66
social services programs, family services, or workforce 67
development activities by the board of county commissioners from 68
nonprofit corporations or associations under programs funded by 69
the federal government or by state grants. 70

(F) The purchase consists of any form of an insurance policy 71
or contract authorized to be issued under Title XXXIX of the 72
Revised Code or any form of health care plan authorized to be 73
issued under Chapter 1751. of the Revised Code, or any combination 74
of such policies, contracts, or plans that the contracting 75
authority is authorized to purchase, and the contracting authority 76
does all of the following: 77

(1) Determines that compliance with the requirements of this 78
section would increase, rather than decrease, the cost of the 79
purchase; 80

(2) Employs a competent consultant to assist the contracting 81

authority in procuring appropriate coverages at the best and	82
lowest prices;	83
(3) Requests issuers of the policies, contracts, or plans to	84
submit proposals to the contracting authority, in a form	85
prescribed by the contracting authority, setting forth the	86
coverage and cost of the policies, contracts, or plans as the	87
contracting authority desires to purchase;	88
(4) Negotiates with the issuers for the purpose of purchasing	89
the policies, contracts, or plans at the best and lowest price	90
reasonably possible.	91
(G) The purchase consists of computer hardware, software, or	92
consulting services that are necessary to implement a computerized	93
case management automation project administered by the Ohio	94
prosecuting attorneys association and funded by a grant from the	95
federal government.	96
(H) Child care services are purchased for provision to county	97
employees.	98
(I)(1) Property, including land, buildings, and other real	99
property, is leased for offices, storage, parking, or other	100
purposes, and all of the following apply:	101
(a) The contracting authority is authorized by the Revised	102
Code to lease the property.	103
(b) The contracting authority develops requests for proposals	104
for leasing the property, specifying the criteria that will be	105
considered prior to leasing the property, including the desired	106
size and geographic location of the property.	107
(c) The contracting authority receives responses from	108
prospective lessors with property meeting the criteria specified	109
in the requests for proposals by giving notice in a manner	110
substantially similar to the procedures established for giving	111

notice under section 307.87 of the Revised Code. 112

(d) The contracting authority negotiates with the prospective 113
lessors to obtain a lease at the best and lowest price reasonably 114
possible considering the fair market value of the property and any 115
relocation and operational costs that may be incurred during the 116
period the lease is in effect. 117

(2) The contracting authority may use the services of a real 118
estate appraiser to obtain advice, consultations, or other 119
recommendations regarding the lease of property under this 120
division. 121

(J) The purchase is made pursuant to section 5139.34 or 122
sections 5139.41 to 5139.46 of the Revised Code and is of programs 123
or services that provide case management, treatment, or prevention 124
services to any felony or misdemeanor delinquent, unruly youth, 125
or status offender under the supervision of the juvenile court, 126
including, but not limited to, community residential care, day 127
treatment, services to children in their home, or electronic 128
monitoring. 129

(K) The purchase is made by a public children services agency 130
pursuant to section 307.92 or 5153.16 of the Revised Code and 131
consists of family services, programs, or ancillary services that 132
provide case management, prevention, or treatment services for 133
children at risk of being or alleged to be abused, neglected, or 134
dependent children. 135

(L) The purchase is to obtain the services of emergency 136
medical service organizations under a contract made by the board 137
of county commissioners pursuant to section 307.05 of the Revised 138
Code with a joint emergency medical services district. 139

(M) The county contracting authority determines that the use 140
of competitive sealed proposals would be advantageous to the 141
county and the contracting authority complies with section 307.862 142

of the Revised Code. 143

Any issuer of policies, contracts, or plans listed in 144
division (F) of this section and any prospective lessor under 145
division (I) of this section may have the issuer's or prospective 146
lessor's name and address, or the name and address of an agent, 147
placed on a special notification list to be kept by the 148
contracting authority, by sending the contracting authority that 149
name and address. The contracting authority shall send notice to 150
all persons listed on the special notification list. Notices shall 151
state the deadline and place for submitting proposals. The 152
contracting authority shall mail the notices at least six weeks 153
prior to the deadline set by the contracting authority for 154
submitting proposals. Every five years the contracting authority 155
may review this list and remove any person from the list after 156
mailing the person notification of that action. 157

Any contracting authority that negotiates a contract under 158
division (F) of this section shall request proposals and 159
renegotiate with issuers in accordance with that division at least 160
every three years from the date of the signing of such a contract. 161

Any consultant employed pursuant to division (F) of this 162
section and any real estate appraiser employed pursuant to 163
division (I) of this section shall disclose any fees or 164
compensation received from any source in connection with that 165
employment. 166

Sec. 307.862. (A) When a county contracting authority uses 167
competitive sealed proposals pursuant to section 307.86 of the 168
Revised Code, the county contracting authority shall do all of the 169
following: 170

(1) Develop factors and criteria to evaluate each proposal, 171
specify the relative importance of each factor or criterion in 172
writing, and describe the evaluation procedures the contracting 173

<u>authority shall follow when awarding a contract to an offeror.</u>	174
<u>(2) Solicit competitive sealed proposals through a request for proposals;</u>	175 176
<u>(3) Include, at a minimum, all of the information described in division (B) of this section in the request for proposals;</u>	177 178
<u>(4) Give notice of the request for proposals in the same manner that notice must be given for competitive bidding pursuant to section 307.87 of the Revised Code;</u>	179 180 181
<u>(5) Open proposals that the contracting authority receives in a manner that prevents the disclosure of contents of competing offers to competing offerors;</u>	182 183 184
<u>(6) Rank each proposal using the factors and criteria the contracting authority develops pursuant to division (A)(1) of this section;</u>	185 186 187
<u>(7) If necessary, conduct discussions with offerors for the purpose of ensuring full understanding of, and responsiveness to, the requirements specified in the request for proposals, and accord fair and equal treatment with respect to any opportunity for discussion with offerors to provide any clarification, correction, or revision of proposals;</u>	188 189 190 191 192 193
<u>(8) If the contracting authority determines that discussions described in division (A)(7) of this section are necessary, avoid disclosing any information derived from proposals submitted by competing offerors during those discussions;</u>	194 195 196 197
<u>(9) Negotiate with the offeror who submits the proposal that the contracting authority determines is the most advantageous to the county based on the rankings performed by the contracting authority pursuant to division (A)(6) of this section and including any adjustment to those rankings based on discussions conducted pursuant to division (A)(7) of this section;</u>	198 199 200 201 202 203

<u>(10) Conduct negotiations with only one offeror at a time;</u>	204
<u>(11) Except as provided in division (F) of this section,</u>	205
<u>award a contract in accordance with division (E) of this section.</u>	206
<u>(B) A contracting authority shall include, at a minimum, all</u>	207
<u>of the following information in the contracting authority's</u>	208
<u>request for proposals:</u>	209
<u>(1) The name and address of the department, office,</u>	210
<u>institution, board, or commission that is requesting to purchase</u>	211
<u>supplies, services, or both;</u>	212
<u>(2) Instructions for offerors to follow when submitting</u>	213
<u>proposals;</u>	214
<u>(3) Instructions governing communications between an offeror</u>	215
<u>and the contracting authority, including, but not limited to, the</u>	216
<u>name, title, and telephone number of the person to whom questions</u>	217
<u>concerning the request for proposals should be directed;</u>	218
<u>(4) A description of the scope of work that the contracting</u>	219
<u>authority requests an offeror to perform or supplies the</u>	220
<u>contracting authority plans to purchase;</u>	221
<u>(5) To the extent possible, a description of the performance</u>	222
<u>criteria the contracting authority shall require an offeror to</u>	223
<u>satisfy, including but not limited to, the quantity of the</u>	224
<u>supplies, services, or both, to be purchased; the requirements the</u>	225
<u>contracting authority shall follow for inspection and acceptance</u>	226
<u>of the supplies, services, or both; and the delivery schedule for</u>	227
<u>each such supply or service;</u>	228
<u>(6) The factors and criteria the contracting authority shall</u>	229
<u>consider in evaluating proposals received;</u>	230
<u>(7) Any terms and conditions that the contracting authority</u>	231
<u>is required by law to include in the contract the contracting</u>	232
<u>authority awards, including any requirement for a bond and the</u>	233

amount required for that bond; 234

(8) The date and time by which, and the place to which an offeror must deliver the offeror's proposal to the contracting authority in order to be considered for the contract; 235
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(9) A list of any documents that the contracting authority incorporates by reference in the request for proposals, provided that the contracting authority specifies in the request for proposals that the documents are readily available to all offerors and the location where an offeror may obtain those documents; 238
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(10) A statement that includes all of the following information: 243
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(a) That the contracting authority reserves the right to reject any proposal in which the offeror takes exception to the terms and conditions of the request for proposals; fails to meet the terms and conditions of the request for proposals, including but not limited to, the standards, specifications, and requirements specified in the request for proposals; or submits prices that the contracting authority considers to be excessive, compared to existing market conditions, or determines exceed the available funds of the contracting authority; 245
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(b) That the contracting authority reserves the right to reject, in whole or in part, any proposal that the county contracting authority has determined, using the factors and criteria the contracting authority develops pursuant to division (A)(1) of this section, would not be in the best interest of the county; 254
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(c) That the contracting authority may conduct discussions with offerors who submit proposals for the purpose of clarifications or corrections regarding a proposal to ensure full understanding of, and responsiveness to, the requirements specified in the request for proposals. 260
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(11) Information concerning any potential partial or multiple party awards that the contracting authority may include in the contract, and a description of the supplies, services, or both that may be subject to a partial award or multiple awards; 265
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(12) Any additional information the contracting authority considers necessary for its purposes in determining to whom to award the contract. 269
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(C) In order to ensure fair and impartial evaluation, proposals and any documents or other records related to a subsequent negotiation for a final contract are not available for public inspection and copying under section 149.43 of the Revised Code until after the award of the contract, except that any information included in a proposal or such negotiation that is considered confidential by, proprietary to, or a trade secret of an offeror shall remain confidential indefinitely. 272
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(D) An offeror may withdraw the offeror's proposal at any time prior to the award of a contract. A contracting authority may terminate negotiations with an offeror at any time during the negotiation process if the offeror fails to provide the necessary information for negotiations in a timely manner or fails to negotiate in good faith. If the contracting authority terminates negotiations with an offeror, the contracting authority shall negotiate with the offeror whose proposal is ranked the next most advantageous to the county according to the factors and criteria developed pursuant to division (A)(1) of this section. 280
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(E) A county contracting authority may award a contract to the offeror whose proposal is determined to be the most advantageous to the county, taking into consideration the evaluation factors and criteria developed pursuant to division (A)(1) of this section and set forth in the request for proposals. A contracting authority may award a contract in whole or in part to one or more offerors. The contracting authority shall include a 290
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written statement in the contract file stating the basis on which 297
the award is made. 298

The contracting authority shall send a written notice to the 299
offeror to whom it wishes to award the contract and shall make 300
that notice available to the public. Within a reasonable time 301
period after the award is made, the contracting authority shall 302
notify all other offerors that the contract has been awarded to 303
another offeror. 304

(F) A contracting authority may cancel or reissue a request 305
for proposals if any of the following apply: 306

(1) The supplies or services offered through all of the 307
proposals submitted to the contracting authority are not in 308
compliance with the requirements, specifications, and terms and 309
conditions set forth in the request for proposals; 310

(2) The prices submitted by the offerors are excessive 311
compared to existing market conditions or exceed the available 312
funds of the contracting authority; 313

(3) The contracting authority determines that award of a 314
contract would not be in the best interest of the county. 315

(G) A county contracting authority shall not use competitive 316
sealed proposals for contracts for construction, demolition, 317
alteration, repair, or reconstruction of a building, highway, 318
drainage system, water system, road, street, alley, sewer, ditch, 319
sewage disposal plant, waterworks, and all other structures or 320
works of any nature by a county contracting authority. 321

Section 2. That existing section 307.86 of the Revised Code 322
is hereby repealed. 323