

As Introduced

**128th General Assembly
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H. B. No. 37

Representative Dyer

Cosponsors: Representatives Hagan, Boyd, Harris, Luckie

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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 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, the bidder's financial condition, conduct and performance on previous contracts, facilities, management skills, and ability to execute the contract properly.

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 the 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 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