



**S.B. 268\***

127th General Assembly

(As Reported by S. State and Local Government and Veterans Affairs)

**Sens. Seitz, Niehaus, Gardner, Schuler, Schuring**

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**BILL SUMMARY**

- Authorizes a county contracting authority to use competitive sealed proposals for purchases and leases of products and services instead of competitive sealed bidding when the contracting authority determines the use of competitive sealed proposals would be advantageous to the county.
- Extends to all political subdivisions the same joint purchasing authority as counties and townships currently have.
- Eliminates the second week's notice of advertisement of bids by newspaper publication if a school board posts the notice on its internet web site in lieu of newspaper publication.

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**CONTENT AND OPERATION**

**Background**

Under existing law, a county contracting authority must use competitive sealed bidding for any purchase, lease, or construction project<sup>1</sup> that costs more than \$25,000 unless the purchase, lease, or construction project falls into one of

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\* This analysis was prepared before the report of the Senate State and Local Government and Veterans Affairs Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

<sup>1</sup> The types of purchases, leases, or construction projects to which this requirement applies includes, but is not limited to, any product, structure, construction, reconstruction, improvement, maintenance, repair, or service, except for the services of an accountant, architect, attorney, physician, professional engineer, construction project manager, consultant, surveyor, or appraiser.

several exceptions. Examples of exceptions are when the Board of County Commissioners determines, by unanimous vote, that an emergency exists; there is only one supplier from which to purchase supplies or replacement parts; or the purchase is from the federal government, the state, another county, a board of education, a township, or a municipality. (R.C. 307.86.)

The bill creates a new exception to the requirement that a county contracting authority use competitive bidding. Under the bill, a county contracting authority may use competitive sealed proposals instead of competitive sealed bidding when the contracting authority determines that the use of competitive sealed proposals would be advantageous to the county. (R.C. 307.86(M).)

A county contracting authority, however, may not use competitive sealed proposals for contracts for construction, design, demolition, alteration, repair, or reconstruction of a building, highway, drainage system, water system, road, street, alley, sewer, ditch, sewage disposal plant, waterworks, and all other structures or works of any nature by a county contracting authority<sup>2</sup> (R.C. 307.862(G)).

#### **Requirements for sealed proposal process**

(R.C. 307.862(A))

A county contracting authority that chooses to use the competitive sealed proposal process must meet several requirements. First, the authority must develop factors and criteria to evaluate each proposal, specify in writing the relative importance of each factor or criterion, and describe the evaluation procedures that will be used when awarding a contract to an offeror (R.C. 307.862(A)(1)). The authority must solicit competitive sealed proposals through a request for proposals, which, at a minimum, must include the following information:

- The name and address of the county contracting authority that is requesting to purchase supplies or services;
- Instructions for offerors to follow when submitting proposals;

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<sup>2</sup> Because this provision appears to preclude the bill's application to any public improvement or construction project, it appears that the competitive sealed proposal method may be used only for purchases of non-construction related products and supplies and to the acquisition of services other than those services already exempted from the current competitive sealed bidding procedure. For example, it might be used to acquire janitorial services or to purchase office supplies and equipment. See also footnote 1.

- Instructions governing communications between an offeror and the contracting authority, including, but not limited to, the name, title, and telephone number of the person to whom questions concerning the request for proposals should be directed;
- A description of the scope of work that the contracting authority is requesting an offeror to perform or supplies the contracting authority plans to purchase;
- To the extent possible, a description of performance criteria the contracting authority will require an offeror to satisfy, including, but not limited to, the quantity of the supplies or services to be purchased, the requirements the contracting authority will follow in inspecting and accepting the supplies or services, and the delivery schedule for each supply or service;
- The factors and criteria the contracting authority will consider in evaluating proposals;
- Any terms and conditions that the contracting authority is required by law to include in the contract, including any requirement for a bond and the amount required for any such bond;
- 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 for it to be considered for the contract;
- A list of any documents that the contracting authority incorporates by reference in the request for proposals, so long as 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 the documents;
- A statement:

(1) 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 available funds.

(2) That the contracting authority reserves the right to reject, in whole or in part, any proposal that the contracting authority

determines, using the factors and criteria developed for evaluating the proposal, would not be in the best interest of the county.

(3) That the contracting authority may conduct discussions with an offeror who submits a proposal for the purpose of obtaining clarifications or corrections regarding the proposal, in order to ensure full understanding of, and responsiveness to, the requirements specified in the request for proposals.

- Information concerning any potential partial or multiple party awards that the contracting party may include in the contract, and a description of the supplies or services that may be subject to a partial award or multiple awards; and
- Any additional information the contracting authority considers necessary for its purposes in determining to whom to award the contract.

The contracting authority must give notice of the request for proposals in the same manner as current law requires for competitive bidding<sup>3</sup> (R.C. 307.862(A)(4)). The proposals must be opened in a manner that prevents the disclosure of contents of competing offers to competing offerors (R.C. 307.862(A)(5)), and must be ranked using the factors and criteria that have been developed by the authority (R.C. 307.862(A)(6)). If it is necessary to conduct discussions with offerors for the purpose of ensuring full understanding of, and responsiveness to, the requirements specified in the request for proposals, the authority must accord fair and equal treatment with respect to any opportunity for discussion with offerors to provide clarification, correction, or revision of proposals. In any such discussion, the contracting authority must avoid disclosing any information derived from proposals submitted by competing offerors (R.C. 307.862(A)(7) and (A)(8)).

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<sup>3</sup> Applying these requirements to the bill, a county contracting authority must publish notice of the request for proposals in a newspaper of general circulation in the county once a week for not less than two consecutive weeks before the proposals must be delivered. If the county contracting authority posts the notice on its internet web site, the second newspaper notice is not required if the first newspaper notice was published at least two weeks before the proposals must be delivered and includes a statement that the notice is posted on the contracting authority's web site, a statement of the internet address of the web site, and an explanation of how to access the notice on the web site. The county contracting authority also can publish the notice in trade papers or other publications. (R.C. 307.87(A)--not in the bill.)

Finally, the contracting authority must 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, including any adjustment to those rankings based on discussions with offerors (R.C. 307.862(A)(9)). The contracting authority must conduct negotiations with only one offeror at a time (R.C. 307.862(A)(10)).

### **Right to withdraw; termination of negotiations**

(R.C. 307.862(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 then must negotiate with the offeror whose proposal is ranked the next most advantageous to the county according to the factors and criteria developed for evaluating proposals.

### **Contract award**

(R.C. 307.862(E) and (F))

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 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 must include a written statement in the contract file stating the basis on which the award is made, must send a written notice to the offeror to whom it wishes to award the contract, and must make that notice available to the public. Within a reasonable time period after the award is made, the contracting authority must notify all other offerors that the contract has been awarded to another offeror (R.C. 307.862(E)).

### **Cancellation or reissuance of a request for proposals**

A contracting authority may cancel or reissue a request for proposals if any of the following apply:

- The supplies or services offered through all of the proposals submitted to the contracting authority are not in compliance with the requirements,

specifications, and terms and conditions set forth in the request for proposals.

- The prices submitted by the offerors are excessive compared to existing market conditions or exceed available funds.
- The contracting authority determines that award of a contract would not be in the best interest of the county. (R.C. 307.862(F).)

### **Public Records Law**

(R.C. 307.862(C))

Proposals and any documents or other records related to a subsequent negotiation for a final contract that would otherwise be available for public inspection and copying under the Ohio Public Records Law will not be available until after the award of the contract. The bill states that the purpose of these confidentiality requirements is to ensure fair and impartial evaluation of proposals.

### **Joint purchasing authority for all political subdivisions**

Under current law, counties and townships have general authority to enter into purchasing programs with other political subdivisions or to participate in a joint purchasing program operated by or through a national or state association of political subdivisions of which it is eligible for membership. Under one of these arrangements, the acquisition of equipment, material, supplies, or services is exempt from any competitive selection requirements otherwise required by law if the contract in which it is participating was awarded under a publicly solicited request for a proposal or a competitive selection procedure of another political subdivision within Ohio or another state. Current law also allows counties and townships to participate in contract offerings from the federal government, including the General Services Administration. Acquisitions under this authority are exempt from any competitive selection requirements otherwise required by law.

A county or township that is eligible to participate in a joint purchasing program operated by or through a national or state association of political subdivisions in which it is eligible for membership may purchase supplies or services from another party, including another political subdivision, instead of through the association if the county or township can purchase the supplies or services from the other party upon equivalent terms, conditions, and specifications but at a lower price than it can through the joint purchasing program. These purchases are exempt from any competitive selection procedures otherwise required by law. A county or township that makes any purchase under this law

must maintain sufficient information regarding the purchase to verify that it satisfied the conditions for making such a purchase. (R.C. 9.48.)

The bill extends the same joint purchasing authority to all political subdivisions currently included within the definition of a political subdivision under the Political Subdivision Sovereign Immunity Law (R.C. Chapter 2744.). (See **COMMENT.**) The bill states that the authorization granted by the bill to a municipal corporation is in addition to, and not in derogation of, the powers and authority granted by state law, the Ohio Constitution, and the provisions of a municipal charter, ordinance, or resolution.

### **Notice of advertisement for bids by school districts**

Current law generally requires the board of education of a school district to engage in competitive bidding when it determines to build, repair, enlarge, improve, or demolish any school building, the cost of which will exceed \$25,000. (R.C. 3313.46.) The board must advertise for bids once each week for a period of at least two consecutive weeks in a newspaper of general circulation in the district before the date specified by the board for receiving bids. (R.C. 3313.46(A)(2).)

The bill provides that a board of education must advertise for bids once each week for a period of not less than two consecutive weeks in a newspaper of general circulation in the district before the date specified by the board for receiving bids. The bill also authorizes a board to place the notice in trade papers or other publications designated by it or to be distributed by electronic means, including posting the notice on the board's internet web site. If the board posts the notice on its web site, it may eliminate the second notice (i.e., notice by newspaper in the second week) otherwise required if the first notice published in the newspaper meets all of the following: (1) it is published at least two weeks before the opening of bids, (2) it includes a statement that the notice is posted on the board of education's internet web site, (3) it includes the internet address of the board's internet web site, and (4) it includes instructions describing how the notice may be accessed on the board's web site.

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### **COMMENT**

A "political subdivision," under the bill and under the Political Subdivision Sovereign Immunity Law means a municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state. "Political subdivision" includes, but is not limited to, a county hospital commission appointed under section 339.14 of the Revised Code, board of hospital commissioners appointed for a municipal hospital under section 749.04 of the

Revised Code, board of hospital trustees appointed for a municipal hospital under section 749.22 of the Revised Code, regional planning commission created pursuant to section 713.21 of the Revised Code, county planning commission created pursuant to section 713.22 of the Revised Code, joint planning council created pursuant to section 713.231 of the Revised Code, interstate regional planning commission created pursuant to section 713.30 of the Revised Code, port authority created pursuant to section 4582.02 or 4582.26 of the Revised Code or in existence on December 16, 1964, regional council established by political subdivisions pursuant to Chapter 167. of the Revised Code, emergency planning district and joint emergency planning district designated under section 3750.03 of the Revised Code, joint emergency medical services district created pursuant to section 307.052 of the Revised Code, fire and ambulance district created pursuant to section 505.375 of the Revised Code, joint interstate emergency planning district established by an agreement entered into under that section, county solid waste management district and joint solid waste management district established under section 343.01 or 343.012 of the Revised Code, community school established under Chapter 3314. of the Revised Code, the county or counties served by a community-based correctional facility and program or district community-based correctional facility and program established and operated under sections 2301.51 to 2301.58 of the Revised Code, a community-based correctional facility and program or district community-based correctional facility and program that is so established and operated, and the facility governing board of a community-based correctional facility and program or district community-based correctional facility and program that is so established and operated.

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## HISTORY

ACTION	DATE
Introduced	01-02-08
Reported, S. State & Local Gov't & Veterans Affairs	---

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