



# Ohio Legislative Service Commission

## Bill Analysis

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### H.B. 37

128th General Assembly  
(As Introduced)

**Reps.** Dyer, Hagan, Boyd, Harris, Luckie

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## BILL SUMMARY

- Requires public entities to conduct investigations when apparent low bidders are suspected of failing or fail to meet the "responsible" prong of the "responsive and responsible" competitive bidding standard.
- Requires the Department of Administrative Services to maintain on its web site a database including apparent low bidders who failed to be awarded a contract because they were found not to be "responsible."

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## CONTENT AND OPERATION

### Investigation of lowest but not responsible bidders

#### Current law

Under current law, if a state law requires a state agency, or if a state law or ordinance or resolution of a political subdivision requires a political subdivision, to award a contract to the lowest responsive and responsible bidder, a bidder on a contract is considered responsive if the bidder's proposal responds to bid specifications in all material respects and contain no irregularities or deviations from the specifications that would affect the amount of the bid or otherwise give the bidder a competitive advantage. The factors that must be considered in determining whether a bidder is "responsible" include the bidder's experience, financial condition, conduct and performance on previous contracts, facilities, management skills, and ability to execute the contract properly.

A state agency or political subdivision must notify in writing by certified mail an apparent low bidder found not to be responsive and responsible of that finding and the

reasons for it, except that the Department of Administrative Services (DAS) need only send such a notice by first class mail when the bidding relates to the award of a contract for supplies, services, or equipment. (R.C. 9.312(A).)

A state agency or political subdivision that 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 must meet with the apparent low bidder or bidders upon the filing of a timely written protest. The state agency or political subdivision then cannot make a final award of the contract until it has either affirmed or reversed its earlier determination. (R.C. 9.312(B).)

### **The bill**

The bill requires a state agency or political subdivision to conduct and complete an investigation before, or within 30 days after, finding an apparent low bidder not to be a responsible bidder in the case of contracts opened for bidding on or after the bill's effective date. The investigation's purpose must be to substantiate the reasons for which the apparent low bidder is suspected of not being a responsible bidder, or to determine the reasons for which the apparent low bidder was found not to be a responsible bidder. (The state agency or political subdivision is prohibited from conducting more than one investigation of an apparent low bidder.) The state agency or political subdivision must send the results of the investigation to the Director of Administrative Services for entry on a web site that the bill requires DAS to create (see below). (R.C. 9.312(D) and Section 3(A).)

### **DAS database identifying lowest but not responsible bidders**

The bill requires the Director of DAS, not later than two months after the bill's effective date, to create and thereafter maintain on the DAS web site a database (pertaining to contracts opened for bidding on or after the bill's effective date) that (1) identifies each apparent low bidder who has been found not to be a responsible bidder and (2) reports the results of the investigation the state agency or political subdivision conducted as described above (R.C. 125.112(A)(1) and Section 3(A)).

For contracts awarded on or after January 1, 2000, but before the bill's effective date, in the case of a school district, or on or after July 1, 1999, but before the bill's effective date, in the case of a state agency or a political subdivision other than a school district, the Director of DAS, not later than six months after the bill's effective date, must add to the database the information described in items (1) and (2) above. A state agency or political subdivision must provide this additional information not later than the date that is four months after the bill's effective date. (R.C. 125.112(A)(2) and Section 3(B).)

DAS must maintain an entry in the database on its web site for a period of ten years after the date the entry was made, and the information contained in the entry is a public record for purposes of the state Public Records Act (R.C. 125.112(B)).

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	02-19-09

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