Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: H.B. 579 of the 129th G.A. **Date**: September 17, 2012

Status: As Introduced **Sponsor**: Rep. Winburn

Local Impact Statement Procedure Required: No

Contents: Provides for a bid preference to Ohio vendors that can meet job creation or retention criteria

State Fiscal Highlights

- The bill expands the price preference afforded to an Ohio vendor under the state's Buy Ohio policy if the vendor can demonstrate that a contract award will enable the vendor to create or retain jobs in Ohio. Modifying the price preference could affect procurement prices paid by the state, although the magnitude of any effect is unknown.
- The bill makes vendors who have been awarded a contract under the expanded Buy Ohio preference liable to the state for the difference between the vendor's bid and the lowest priced bid received if they fail to create or retain jobs in Ohio after a reasonable time. In this circumstance, the fiscal effect of the bill is no different than under current law.
- In FY 2012, state agencies spent approximately $1.60 billion on goods and services according to the Think Ohio First scorecard maintained by the Department of Administrative Services. Overall, it is unclear how or if the larger bid preference in the bill might change vendors' bidding behavior, and thus the prices state agencies pay for goods and services.

Local Fiscal Highlights

- No direct fiscal effect on political subdivisions.

Detailed Fiscal Analysis

The bill makes changes to the state's Buy Ohio procurement policy that gives a preference to Ohio businesses or businesses from qualifying border states (Indiana, Kentucky, Michigan, New York, and Pennsylvania) when awarding contracts for goods and services, except construction. This preference applies unless purchasing from an Ohio or border state business results in the state paying an excessive price. Under current procurement guidelines, the Department of Administrative Services (DAS), the state agency responsible for establishing procurement standards that apply to state agencies, considers excessive price to mean 5% greater than the lowest responsive and responsible bid received. The bill increases the excessive price threshold to greater than 5% but not greater than 10% if the vendor who is awarded a state contract is able to retain or create jobs in Ohio as a direct result of the contract award. The bill also holds vendors that have been awarded contracts under the program but have not met their job creation or retention commitments liable to the state for the difference between the vendor's bid price and the lowest qualified bid from among other vendors seeking the contract. Although the expanded incentive could alter bidding behavior, it would be difficult to determine what effect this might have on overall state procurement costs.

Overview of state procurement spending

In FY 2012, state agencies spent approximately $1.60 billion on goods and services according to the Think Ohio First Procurement Scorecard maintained by DAS. Of this total, approximately $1.13 billion (70.3%) was with Ohio businesses, $98.7 million (6.1%) with businesses from qualifying border states, and $378.3 million (23.6%) with businesses from other states. Approximately 56.8% ($912.72 million) of procurement spending occurred in the five agencies shown in the table below.

State Procurement Spending in FY 2012 (in millions)

Agency	Ohio Vendors	Border State Vendors	Other State Vendors	Total
Department of Rehabilitation and Correction	$270.89	$9.51	$47.88	$328.28
Department of Transportation	$133.49	$15.38	$32.25	$181.13
Department Job and Family Services	$94.97	$12.29	$59.56	$166.82
Department of Education	$39.10	$3.95	$79.23	$122.27
Department of Mental Health	$77.75	$17.61	$18.86	$114.21
All Other Agencies, Boards, and Commissions	$514.74	$40.03	$140.48	$695.24
Total	**$1,130.94**	**$98.77**	**$ 378.26**	**$1,607.97**

Source: DAS Think Ohio First Procurement Scorecard.

DAS's Office of Procurement Services oversees statewide procurement for most goods and services. It maintains the Think Ohio Scorecard in order to measure state spending on products that are produced or mined in Ohio or with businesses that have a significant economic presence in Ohio. Although the Scorecard provides us with overall procurement spending based on the vendor's location, it does not quantify the effect of the 5% preference under the Buy Ohio Policy. Some portion of the purchases from Ohio companies, perhaps a substantial portion, resulted either from the Ohio company being the low bidder or having some other strong advantage in seeking the state's business. Even if we knew what portion of the purchases from Ohio companies resulted from the 5% preference, we would not know the impact of raising the preference to 10% under the bill. Some portion of the out-of-state business would remain with companies from other states. This would be the case, for example, for companies offering unique or highly desirable supplies and services. For more competitive goods and services, it is difficult to predict how Ohio companies may alter their bidding behavior in consideration of the additional price preference.

Potential effects on contract prices

Because the bill increases the price preference thresholds given to some Ohio vendors, there is the potential that prices the state pays for goods and services will be affected. However, increasing the price preference does not necessarily mean that the state will pay more for goods and services. The actual effect on procurement prices will depend on bidder behavior and the nature of the good or service being purchased. For example, an Ohio company who believes that it can demonstrate that, as a result of a state contract, it will create or retain jobs in Ohio might submit a bid that is higher than it otherwise would have been absent the 10% price preference. If this elevated bid is ultimately selected because of the Buy Ohio preference, then procurement prices will be higher than they otherwise would have been.

An alternative outcome might be that the 10% Buy Ohio pricing preference under the bill has little effect on statewide procurement costs. This is because Ohio companies would presumably attempt to remain competitive with other Ohio companies when submitting bids, thus dissuading them from bidding at increased prices. It is also plausible that the 10% preference might cause out-of-state companies who would not qualify for any Buy Ohio preference to lower their bids in an effort to remain competitive with Ohio companies. If out-of-state vendors lower their bid prices enough to negate any Buy Ohio preferences, procurement prices could actually decrease. Finally, many of the goods and services purchased by the state are unique and only offered by a single vendor or may be of some nature that makes it practical for only bids from Ohio businesses to be considered. In cases where unique goods and services are being purchased, or where only Ohio businesses are considered, changes to the Buy Ohio preference would have no effect on procurement prices.

Liability for not meeting job creation or retention commitments

The bill holds vendors liable for their commitment to create or retain jobs in Ohio. Specifically, the bill requires DAS to determine whether or not a vendor that has been awarded a contract under the Buy Ohio price preference has created or retained jobs in Ohio within a reasonable time following completion of the contract. If not, that vendor is liable to the state for the difference between its bid price and the lowest qualified bid price from among other vendors that had been seeking the contract. Under this circumstance, the state's procurement costs would be the same as under current law.

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