



**Sub. H.B. 776**

123rd General Assembly  
(As Reported by H. State Government)

**Reps. Terwilleger, Damschroder, Peterson, Willamowski, Calvert, Goodman, Grendell, Van Vyven, Roman, Jolivette, Buehrer, Trakas, Mottley, Barnes, Schuler, Bender, Sullivan, Allen, DePiero, Redfern, Hollister, Barrett**

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**BILL SUMMARY**

- Permits the Department of Administrative Services, certain other state agencies, and political subdivisions to purchase supplies through a competitive reverse auction process via the Internet.

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**CONTENT AND OPERATION**

**Purchase of supplies by competitive reverse auction by the Department of Administrative Services**

**Reverse auction process**

The bill authorizes the Director of Administrative Services, in accordance with rules the Director must adopt, to purchase *supplies* by reverse auction whenever the Director determines that the use of competitive sealed bidding and competitive sealed proposals is not possible or advantageous to the state (sec. 125.072(B)). The bill defines a "reverse auction" to mean a purchasing process in which bidders submit bids in competing to sell supplies in an open environment via the Internet and the "Internet" to mean the international computer network of both federal and nonfederal interoperable packet switched data networks, including the graphical subnetwork called the World Wide Web (sec. 125.072(A)). Current law (as technically amended by the bill) defines "supplies" to mean all property, including, but not limited to, equipment, materials, other tangible assets, and insurance, but excluding real property or interests in real property (sec. 125.01(H)).

Under the bill, the Director must solicit bids through a *request for bids*, which must state the relative importance of price and other evaluation factors. The Director must give notice of the request for bids in accordance with the rules the Director adopts. (Sec. 125.072(C).)

As provided in the request for bids and in the rules the Director adopts, the Director may conduct *discussions* with responsible bidders who submit bids determined to be reasonably susceptible for being selected for award, in order to ensure full understanding of and responsiveness to solicitation requirements. The Director must accord bidders fair and equal treatment with respect to any opportunity for discussion regarding any clarification, correction, or revision of bids. (Sec. 125.072(D).)

Under the bill, the Director may award a contract to the bidder whose bid the Director determines to be the most advantageous to the state, taking into consideration factors such as price and the evaluation criteria set forth in the request for bids. The contract file must contain the basis on which the award is made. (Sec. 125.072(E).)

### **Conforming changes**

The bill includes the competitive reverse auctions under "competitive selection," a term defined in the current State Purchasing Law to include competitive sealed bidding and competitive sealed proposals (sec. 125.01(I)(3)). The Department of Administrative Services, and those state agencies that the Department allows to make purchases directly, generally must make purchases above specified amounts through competitive selection (secs. 125.05 and 125.06, not in the bill).

The bill further amends the State Purchasing Law (1) to provide that the *mailing of a notice* of a request for bids in a competitive reverse auction must be completed at least 15 calendar days prior to the scheduled opening date for bids received in the auction (sec. 125.07(C)(1)) and (2) to authorize the Director of Administrative Services to require that all bids received in a competitive reverse auction be accompanied by a *performance bond or other cash surety* that is acceptable to the Director, in the sum and with the sureties the Director prescribes, payable to the state, and conditioned that the person submitting the bid, if it is accepted, will faithfully execute the terms of the contract and promptly deliver the supplies involved (sec. 125.10(A)). The Director may impose the same bond or surety requirement under existing law when a purchase of supplies is made by competitive sealed bids or competitive sealed proposals.

### **Purchase of supplies by competitive reverse auction by state agencies other than the Department of Administrative Services and by political subdivisions**

Under the bill, whenever any state agency or political subdivision that is required by law to purchase supplies by competitive bidding or competitive sealed proposals determines that the use of competitive bidding or competitive sealed proposals is not possible or advantageous to the state agency or political

subdivision, the state agency or political subdivision, in accordance with the bill and rules the state agency or political subdivision must adopt, may purchase supplies by reverse auction (sec. 9.314(B)). "State agency" means every organized body, office, or agency that is established by Ohio law for the exercise of any function of state government and that is authorized to purchase supplies directly; but it does not include the Department of Administrative Services (sec. 9.314(A)(4)). "Political subdivision" means a municipal corporation, township, county, school district, or any other body corporate and politic responsible for governmental activities only in geographic areas smaller than that of the state (sec. 9.314(A)(2)). "Internet," "reverse auction," and "supplies" are defined for these purposes in the same way as the bill defines them in relation to the Department of Administrative Services' proposed authority to purchase supplies by competitive reverse auction (sec. 9.314(A)(1), (3), and (5)).

A state agency or political subdivision must solicit bids through a *request for bids*. The request for bids must state the relative importance of price and other evaluation factors. The state agency or political subdivision must give notice of the request for bids in accordance with the rules it adopts. (Sec. 9.314(C).)

As provided in the request for bids and in the rules the state agency or political subdivision adopts, and to ensure full understanding of and responsiveness to solicitation requirements, a state agency or political subdivision may conduct *discussions* with responsible bidders who submit bids determined to be reasonably susceptible of being selected for award. The state agency or political subdivision must accord bidders fair and equal treatment with respect to any opportunity for discussion regarding any clarification, correction, or revision of bids. (Sec. 9.314(D).)

A state agency or political subdivision may award a contract to the bidder whose bid the state agency or political subdivision determines to be the most advantageous to it, taking into consideration factors such as price and the evaluation criteria set forth in the request for bids. The contract file must contain the basis on which the award is made. (Sec. 9.314(E).)

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	09-12-00	p. 2237
Reported, H. State Gov't.	11-16-00	p. 2389

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