



Kristin Moore

*Final Analysis*  
*Legislative Service Commission*

**Am. Sub. H.B. 120**  
124th General Assembly  
(As Passed by the General Assembly)

**Reps. Raga, DeWine, Husted, Seitz, Willamowski, Calvert, Damschroder, Core, Lendrum, Hollister, Roman, Webster, D. Miller, Jolivette, Brinkman, Britton, Boccieri, Buehrer, Faber, Hagan, Carey, Evans, Grendell, Hoops, Wilson, Collier, Peterson, Schaffer, Cates, Niehaus, Schneider, White, Flannery, Redfern, Schmidt, Coates, Widowfield, Manning, Wolpert, Fessler, Kearns, Reidelbach, Carmichael, Young, Driehaus, Barnes, Woodard, Salerno, Gilb**

**Sens. Spada, Harris, Amstutz, Nein, Mead, Wachtmann, Blessing**

**Effective date: \***

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**ACT SUMMARY**

- Permits the Department of Administrative Services and political subdivisions to purchase services or supplies through a reverse auction process via the Internet.
- Requires the Department to report to the committees of the General Assembly that handle state purchasing legislation, not later than one year after the act's effective date, relative to the effect of reverse auctions on purchases from Ohio businesses.
- Makes changes in the notice required when the Department purchases services or supplies by competitive selection.

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\* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

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## CONTENT AND OPERATION

### *Purchase of services or supplies by reverse auction by the Department of Administrative Services*

#### *Reverse auction process*

The act authorizes the Director of Administrative Services, in accordance with rules the Director must adopt, to purchase services or supplies by reverse auction whenever the Director determines that the use of a reverse auction is advantageous to the state (sec. 125.072(B)). It defines a "reverse auction" as a purchasing process in which offerors submit bids in competing to sell services or supplies in an open environment via the Internet; "Internet" is defined as 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)). "Supplies" means 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)). "Services" means the furnishing of labor, time, or effort by a person, not involving the delivery of a specific end product other than a report which, if provided, is merely incidental to the required performance; "services" does not include services furnished under employment agreements or collective bargaining agreements (sec. 125.01(G)).

Continuing law allows state agencies to purchase some services and supplies directly, rather than being required by law to obtain them through purchases made by the Department of Administrative Services; some purchases also may be made directly with the Department's prior approval (secs. 125.05(A), (B), and (E) and 125.06, not in the act). The act allows the Director, by rule, to authorize a state agency that is authorized to purchase services or supplies *directly* to purchase them by reverse auction in the same manner as the act authorizes the Director to do so (sec. 125.072(C)).

The act applies the Buy Ohio Law to purchases of services or supplies made by the Director or an authorized state agency by reverse auction via the Internet. The Buy Ohio Law is the system of preferences that generally directs state agency purchasing and public improvement contracting to favor Ohio mined, excavated, produced, manufactured, raised, or grown products, Ohio-based contractors, and vendors with a significant Ohio economic presence. (Secs. 125.01(C), (D), (E), and (F) and 125.11(A) and (B).)

### **Conforming changes**

The act includes reverse auctions under the definition of "competitive selection," a term formerly defined in the State Purchasing Law to include only competitive sealed bidding and competitive sealed proposals, so that reverse auctions will be a third way of making a purchase by "competitive selection" (sec. 125.01(I)(3)). Under continuing law, the Department of Administrative Services, and those state agencies allowed to make direct purchases, generally must make purchases above specified amounts through competitive selection (secs. 125.05 and 125.06, not in the act).

The act also amends the State Purchasing Law to authorize the Department to require that all bids received in a reverse auction be accompanied by a performance bond or other cash surety that is acceptable to the Director of Administrative Services, in the sum and with the sureties the Department 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 Department may impose the same bond or surety requirement under continuing law when a purchase of supplies is made by competitive sealed bids or competitive sealed proposals.

### **Report**

The act requires the Department of Administrative Services to report to the committees of the House of Representatives and the Senate with jurisdiction over state purchasing legislation. The report is to be about the effect of reverse auctions on purchases (of services and supplies) from Ohio businesses, including minority and female business enterprises. The report must be made to the committees not later than 12 months after the act's effective date. (Section 3.)

### **Purchase of services or supplies by reverse auction by political subdivisions**

Under the act, whenever any political subdivision that is required by law to purchase services or supplies by competitive sealed bidding or competitive sealed proposals determines that the use of a reverse auction is advantageous to the political subdivision, the political subdivision, in accordance with the act and rules the political subdivision must adopt, may purchase services or supplies by reverse auction (sec. 9.314(B)). "Political subdivision" means a municipal corporation, township, county (including a county contracting authority), school district, or other body corporate and politic responsible for governmental activities only in geographic areas smaller than that of the state (sec. 9.314(A)(1) and (3)). The act defines "Internet," "reverse auction," "services," and "supplies" for these purposes generally in the same way as it defines them for the Department of Administrative

Services' proposed authority to purchase services and supplies by reverse auction (sec. 9.314(A)(2), (4), (5), and (6)).

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

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

A political subdivision may award a contract to the offeror whose proposal the 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 proposals. The contract file must contain the basis on which the award is made. (Sec. 9.314(E).)

The rules a political subdivision adopts under the act may require the provision of a performance bond, or another similar form of financial security, in the amount and in the form specified in the rules (sec. 9.314(F)).

**Notice required when the Department of Administrative Services makes purchases by competitive selection**

Under former law, the Department of Administrative Services was required to "send" notice by mail or electronic means to competing persons when purchasing services or supplies by competitive selection. That notice had to be completed at least 15 days before the scheduled opening date for sealed bids or proposals or, in the case of printing contracts, a number of days the Director of Administrative Services determined preceding the scheduled opening date for "sealed bids." Former law also required the Department to maintain in a public place in its office a bulletin board upon which it was required to post and maintain a copy of the notice for at least the applicable number of days mentioned above before the scheduled opening date for the sealed bids or proposals. (Secs. 125.07(A), (C), and (D) and 125.08(A).)

The act instead requires (1) the *posting* of the notice by mail or electronic means and by bulletin board for all types of competitive selection purchases

(including reverse auctions) and (2) that posting to be completed by, or to be for at least, the number of days the Director determines before the scheduled opening or acceptance date of the bids or proposals (secs. 125.07(A), (B), (C), and (D) and 125.08(A)).

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## HISTORY

| ACTION   | DATE     | JOURNAL ENTRY |
|--|----------|---------------|
| Introduced   | 02-22-01 | p. 176        |
| Reported, H. State Government                          | 03-28-01 | p. 274        |
| Passed House (98-0)                                    | 04-03-01 | pp. 283-284   |
| Reported, S. State & Local Gov't<br>& Veterans Affairs | 05-31-01 | p. 607        |
| Passed Senate (33-0)                                   | 06-05-01 | pp. 612-613   |

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