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*Bill Analysis*  
*Legislative Service Commission*

## **H.B. 120**

124th General Assembly  
(As Introduced)

**Reps. Raga, DeWine, Husted, Seitz, Willamowski, Calvert, Damschroder, Core, Lendrum, Hollister, Roman, Webster, D. Miller, Jolivette, Brinkman, Britton, Bocchieri, Buehrer**

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### **BILL SUMMARY**

- Permits the Department of Administrative Services and political subdivisions to purchase services or supplies through a reverse auction process via the Internet.
- Makes changes in the notice required when the Department purchases services or supplies by competitive selection.

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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 bill 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)). The bill defines a "reverse auction" to mean a purchasing process in which offerors submit bids or proposals in competing to sell services or 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)). Current law also defines "services" (not changed by the bill) to mean 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)).

Current law allows state agencies to purchase all or some services and supplies directly, rather than being required by law to obtain them through purchases made by the Department of Administrative Services or to purchase them directly only with the Department's prior approval (secs. 125.05(B) and 125.06, not in the bill). The bill 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 bill and the rules the Director adopts authorize the Director to do so (sec. 125.072(C)).

The bill specifies that the Buy Ohio Law does not apply to purchases of services or supplies made by the Director or an authorized state agency (see above) 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(B) and (D)(2).)

### **Conforming changes**

The bill includes 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 to authorize the Department to require that all bids or proposals 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 Director prescribes, payable to the state, and conditioned that the person submitting the bid or proposal, 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 existing law when a purchase of supplies is made by competitive sealed bids or competitive sealed proposals.

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

### Reverse auction process

Under the bill, 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 bill 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 any 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)). "Internet," "reverse auction," "services," and "supplies" generally 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 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).)

As provided in the request for proposals and in the rules a political subdivision adopts, and to ensure full understanding of and responsiveness to solicitation requirements, a political subdivision may conduct *discussions* with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award. 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(F).)

The rules that a political subdivision adopts under the bill 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).)

**Preferences**

Current law authorizes a board of county commissioners, board of township trustees, or municipal legislative authority to specify one or more classes of contracts to which a system of purchasing preferences or public improvement contracting preferences that favor Ohio mined, excavated, produced, manufactured, raised, or grown products or Ohio-based contractors will apply. These preferences must be based on a system of preferences that the Director of Administrative Services must publish in the form of a model act. (Secs. 125.11(E), 307.90(B), 505.103, and 717.21.)

The bill provides that the above-described authority *does not apply to or affect* purchases of services or supplies made by a county, township, or municipal corporation by reverse auction via the Internet (secs. 307.90(B)(2), 505.103(B), and 717.21(B)).

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

Under current law, the notice that the Department of Administrative Services must "send" *by mail or electronic means* to competing persons when purchasing services or supplies by competitive selection must be completed at least 15 days prior to the scheduled opening date of the sealed bids or proposals or, in the case of printing contracts, a number of days the Director of Administrative Services determines preceding the scheduled opening date of the "sealed bids." Current law further requires the Department to maintain in a public place in its office *a bulletin board* upon which it must *post and maintain* a copy of the notice for at least the applicable number of days mentioned above preceding the scheduled opening date of the sealed bids or proposals. (Sec. 125.07(C) and (D) and 125.08(A).)

The bill instead (1) requires the *posting* of the notice for all types of competitive selection purchases (thus, also including reverse auctions), and (2) requires the posting, *whether by mail, electronic means, or bulletin board*, to be completed within, or to be for at least, the number of days the Director determines preceding the scheduled opening date of the bids or proposals involved (secs. 125.07(C) and (D) and 125.08(A)).

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**HISTORY**

ACTION	DATE	JOURNAL ENTRY
Introduced h0120-i.124/kl	02-22-01	p. 173

