



**Am. Sub. H.B. 120**

124th General Assembly  
(As Passed by the House)

**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**

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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.
- Requires the Department to report to the committees of the General Assembly that handle state purchasing legislation, not later than one year after the bill'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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**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" 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)). Current law (as technically amended by the bill) defines "supplies" as 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" as 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 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 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 authorizes the Director to do so (sec. 125.072(C)).

The bill 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 bill includes reverse auctions under the definition of "competitive selection," a term defined in the current State Purchasing Law to include 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 existing 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 bill).

The bill 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 existing law when a purchase of supplies is made by competitive sealed bids or competitive sealed proposals.

### **Report**

The bill 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 bill's effective date. (Section 3.)

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

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 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).)

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 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)).

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

Under current law, the Department of Administrative Services must "send" notice by mail or electronic means to competing persons when purchasing services or supplies by competitive selection. That notice must 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 determines preceding the scheduled opening date for "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 for the sealed bids or proposals. (Secs. 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 (including reverse auctions), and (2) requires the posting, whether by mail, electronic means, or bulletin board, to be completed by, or to be for at least, the number of days the Director determines preceding the scheduled opening or acceptance date of the bids or proposals involved (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

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