



Phil Mullin

Bill Analysis

Legislative Service Commission

H.B. 277

124th General Assembly
(As Introduced)

Reps. R. Miller, Hartnett, Barrett, Distel, Sykes, Cirelli, Carano, Metelsky, Allen, Woodard, Krupinski, Rhine, Ford, D. Miller, Strahorn, Beatty, Flannery

BILL SUMMARY

- Includes services within the scope of the Buy Ohio Law.
- Requires state agencies, in addition to the Department of Administrative Services, to comply with the Buy Ohio Law's requirements when purchasing products or services, insofar as is practicable.

CONTENT AND OPERATION

Current law

Buy Ohio requirements

Current law requires that, prior to awarding a contract for the purchase of "goods" that must be awarded by competitive sealed bidding, the Department of Administrative Services or a state agency responsible for evaluating the contract must evaluate the bids according to the criteria and procedures established under existing law and rules of the Director of Administrative Services, for determining if a "product" is produced or mined in the United States and in Ohio. The Department or state agency first must remove bids that offer "supplies" that have not been, or that will not be, produced or mined in the United States. (Secs. 125.09(C)(1) and (2) and 125.11(B).)¹

From among the remaining bids, the Department or state agency must select the lowest responsive and responsible bid from among the bids that offer

¹ *The Buy Ohio Law uses inconsistent terms, such as "goods," "products," and "supplies," to refer to the same items being purchased. The appropriate terms are the defined terms "products" and "Ohio products" (sec. 125.01(C) and (E)).*

"goods" that have been produced or mined in Ohio, where sufficient competition can be generated within Ohio to ensure that compliance with these requirements will not result in an excessive price for the "product" or in acquiring a disproportionately inferior product. If two or more qualified bids offer goods that have been produced or mined in Ohio, current law deems that there is sufficient competition to prevent an excessive price for the product or the acquiring of a disproportionately inferior product. (Sec. 125.11(B).)

The Director must adopt by rule criteria and procedures to govern Buy Ohio that include (1) qualifications for bidders located in border states who otherwise might be excluded by the Buy Ohio Law's operation, but whose state has a regularity of commerce with Ohio and imposes no greater restrictions on the purchase of out-of-state products than does the Buy Ohio Law, (2) qualifications for bidders whose manufactured products are produced in other states or in North America but who have a significant Ohio economic presence in terms of the number of their employees or capital investments, and (3) waivers from the Buy Ohio Law on a contract-by-contract basis where compliance with its requirements would result in a state agency paying an excessive price for a product or acquiring a disproportionately inferior product (sec. 125.09(C)(4), (5), and (6)).

Model code of purchasing preferences for political subdivisions

Current law also requires the Director to publish in the form of a model act for use by counties, municipal corporations, townships, or other political subdivisions a system of preferences for products produced or mined in the United States and in Ohio. Counties, municipal corporations, and townships are specifically authorized to adopt the model system of preferences to govern some or all of their purchase contracts. (Secs. 125.11(E), 307.90(B), 505.103, and 717.21.)

Changes proposed by the bill

Buy Ohio requirements for the purchase of services

The bill includes services that will be provided from within the United States and from within Ohio within (1) the scope of the Buy Ohio requirements that apply to the Department and other state agencies when purchasing products and (2) the model code that the Director publishes and that counties, municipal corporations, and townships may adopt to govern some or all of their purchase contracts (secs. 125.09(A) and (C), 125.11(B) and (E), 307.90(B), 505.103, and 717.21).

Thus, the bill requires that, prior to awarding a contract for the purchase of services that must be awarded by competitive sealed bidding, the Department or state agency responsible for evaluating the contract must evaluate the bids

according to the criteria and procedures established under the Buy Ohio Law and the Director's rules, for determining if a service is provided from within the United States and from within Ohio. The Department or state agency first must remove bids that offer services that will not be provided from within the United States. (Secs. 125.09(C)(1) and (2) and 125.11(B)(1).)

From among the remaining bids, the Department or state agency must select the lowest responsive and responsible bid from among the bids that offer services that will be provided from within Ohio, where sufficient competition can be generated within Ohio to ensure that compliance with these requirements will not result in an excessive price for the service or in acquiring a disproportionately inferior service. If two or more qualified bids offer services that will be provided from within Ohio, the bill deems that there is sufficient competition to prevent an excessive price for the service or the acquiring of a disproportionately inferior service. (Sec. 125.11(B)(1).)

Under the bill, the Director's criteria and procedures governing Buy Ohio that are adopted by rule must (1) qualify bidders located in border states who otherwise might be excluded by the Buy Ohio Law's operation, but whose state has a regularity of commerce with Ohio and imposes no greater restrictions on the purchase of out-of-state services than does the Buy Ohio Law, (2) qualify bidders whose services are provided from within other states or in North America but who have a significant Ohio economic presence in terms of the number of their employees or capital investments, and (3) grant waivers from the Buy Ohio Law on a contract-by-contract basis where compliance with its requirements would result in a state agency paying an excessive price for a service or acquiring a disproportionately inferior service (sec. 125.09(C)(4), (5), and (6)).

Definition of "services"

"Services," as used in the bill, is defined in current law as the furnishing of labor, time, or effort by a person, not involving the delivery of a specific end product other than a report that, if provided, is merely incidental to the required performance. "Services" does not include services furnished pursuant to employment agreements or collective bargaining agreements. (Sec. 125.01(G), not in the bill.)

Application of Buy Ohio requirements to all state agency purchases

Under the bill, any state agency, to the extent that it purchases products or services *other than under* the State Purchasing Law's Buy Ohio requirements, must purchase those products or services insofar as is practicable in accordance with those requirements. This applies to judicial and legislative agencies, state institutions of higher education, and other state agencies and whether a state

agency's purchase is by competitive sealed bidding, competitive sealed proposals, or any other means. (Sec. 125.11(B)(2).)

Standardizing references

The bill standardizes references in the Buy Ohio Law by replacing "goods" and "supplies" with "product" and "Ohio product." The two latter terms are currently defined for purposes of the State Purchasing Law and its Buy Ohio requirements and used in some, but not all, of the Buy Ohio statutory provisions. (Secs. 125.09(A) and (C), 125.11(A), (B), and (E), 307.90(B), 505.103, and 717.21.)

COMMENT

The State Purchasing Law defines the following terms that relate to the "Standardizing references" portion of the analysis (sec. 125.01(C), (D), and (E)):

(1) "Products" means materials, manufacturer's supplies, merchandise, goods, wares, and foodstuffs.

(2) "Ohio products" means products that are mined, excavated, produced, manufactured, raised, or grown in the state by a person where the input of Ohio products, labor, skill, or other services constitutes no less than 25% of the manufactured cost. With respect to mined products, Ohio products must be mined or excavated in Ohio.

(3) "Produced" means the manufacturing, processing, mining, developing, and making of a thing into a new article with a distinct character in use through the application of input, within the state, of Ohio products, labor, skill, or other services. "Produced" does not include the mere assembling or putting together of non-Ohio products or materials.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	05-29-01	pp. 484-485

H0277-I.124/jc

