



Am. Sub. S.B. 268

127th General Assembly
(As Passed by the General Assembly)

Sens. Seitz, Niehaus, Gardner, Schuler, Schuring, Cates, Fedor, Roberts, Buehrer, Harris, Kearney, Mumper, Spada, Wilson

Reps. Mallory, Newcomb, Chandler, Uecker, Adams, Bolon, Brinkman, Budish, Coley, Combs, Domenick, Driehaus, Flowers, Gibbs, Goyal, J. Hagan, Lundy, Mecklenborg, Schneider, Zehringer

Effective date: *

ACT SUMMARY

- Authorizes a county contracting authority to use competitive sealed proposals for purchases and leases of products and services instead of competitive sealed bidding when the contracting authority determines the use of competitive sealed proposals would be advantageous to the county and the county contracting authority complies with the act's provisions regulating the use of competitive sealed proposals.
- Specifies that a county contracting authority and a party that contract for insurance or health care related services can agree to extend or renew the contract for a period not to exceed six years from the date the initial contract is signed.
- Establishes specified regulations for a county contracting authority's use of competitive sealed proposals, including requirements for requesting proposals and for the information that must be included in the request for proposals, when proposals and related documents are available for public inspection, when an offeror's proposal may be withdrawn, and the procedure for awarding a contract to an offeror whose proposal is determined to be most advantageous.

* The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.

- Extends to all political subdivisions and county hospitals the same joint purchasing authority as counties and townships have under continuing law and clarifies that participating political subdivisions are exempt from competitive bidding.
- Eliminates the second week's notice of advertisement of bids by newspaper publication if a school board posts the notice on its internet web site in lieu of newspaper publication and the first notice complies with certain specified requirements.
- Eliminates the second week's notice of advertisement by boards of township trustees, boards of trustees of a fire and ambulance district, and legislative authorities of villages for the sale, donation, or auction of property or for competitive bids if the board or authority posts notice on its internet web site in lieu of newspaper publication and the first notice complies with certain specified requirements.

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CONTENT AND OPERATION

Competitive sealed proposals

Under continuing law, a county contracting authority must use competitive bidding for any purchase, lease, or construction project¹ that costs more than

¹ The types of purchases, leases, or construction projects to which this requirement applies include, but are not limited to, any product, structure, construction,

\$25,000 unless the purchase, lease, or construction project falls into one of several exceptions. Examples of exceptions are when the Board of County Commissioners determines, by unanimous vote, that an emergency exists; there is only one supplier from which to purchase supplies or replacement parts; or the purchase is from the federal government, the state, another county, a board of education, a township, or a municipality. The act specifies that a political subdivision or county hospital that participates in a joint purchasing contract (see "*Joint purchasing authority for all political subdivisions*," below) is exempt from using competitive bidding (R.C. 307.86).

The act also creates a new exception to the requirement that a county contracting authority use competitive bidding. Under the act, a county contracting authority may use competitive sealed proposals instead of competitive bidding when the contracting authority determines that the use of competitive sealed proposals would be advantageous to the county and the county contracting authority complies with the act's provisions described below in "*Competitive sealed proposal process*." (R.C. 307.86(M) (1st paragraph).) A county contracting authority, however, may not use competitive sealed proposals for contracts for construction, design, demolition, alteration, repair, or reconstruction of a building, highway, drainage system, water system, road, street, alley, sewer, ditch, sewage disposal plant, waterworks, and all other structures or works of any nature by a county contracting authority² (R.C. 307.862(G)).

Competitive sealed proposal process

Under the act, a county contracting authority that chooses to use the competitive sealed proposal process must meet several requirements. First, the authority must develop factors and criteria to evaluate each proposal, specify in writing the relative importance of each factor or criterion, and describe the evaluation procedures that will be used when awarding a contract to an offeror (R.C. 307.862(A)(1)). The authority must solicit competitive sealed proposals through a request for proposals, which, at a minimum, must include the following information (R.C. 307.862(A)(2) and (3) and (B)):

reconstruction, improvement, maintenance, repair, or service, except for the services of an accountant, architect, attorney, physician, professional engineer, construction project manager, consultant, surveyor, or appraiser.

² Because this provision appears to preclude the act's application to any public improvement or construction project, it appears that the competitive sealed proposal method may be used only for purchases of non-construction related products and supplies and to the acquisition of services other than those services already exempted from the continuing competitive bidding procedure. For example, it might be used to acquire janitorial services or to purchase office supplies and equipment. See also footnote 1.

- The name and address of the county contracting authority (the department, office, institution, board, or commission) that is requesting to purchase supplies, services, or both;
- Instructions for offerors to follow when submitting proposals;
- Instructions governing communications between an offeror and the contracting authority, including, but not limited to, the name, title, and telephone number of the person to whom questions concerning the request for proposals should be directed;
- A description of the scope of work that the contracting authority is requesting an offeror to perform or supplies the contracting authority plans to purchase;
- To the extent possible, a description of performance criteria the contracting authority will require an offeror to satisfy, including, but not limited to, the quantity of the supplies, services, or both to be purchased, the requirements the contracting authority will follow in inspecting and accepting the supplies, services, or both, and the delivery schedule for each supply or service;
- The factors and criteria the contracting authority will consider in evaluating proposals;
- Any terms and conditions that the contracting authority is required by law to include in the contract, including any requirement for a bond and the amount required for any such bond;
- The date and time by which, and the place to which, an offeror must deliver the offeror's proposal to the contracting authority in order for it to be considered for the contract;
- A list of any documents that the contracting authority incorporates by reference in the request for proposals, so long as the contracting authority specifies in the request for proposals that the documents are readily available to all offerors and the location where an offeror may obtain the documents;
- A statement:
 - (1) That the contracting authority reserves the right to reject any proposal in which the offeror takes exception to the terms and conditions of the request for proposals, fails to meet the terms and conditions of the request for proposals (including, but not limited to, the standards, specifications, and requirements

specified in the request for proposals), or submits prices that the contracting authority considers to be excessive compared to existing market conditions or determines exceed available funds.

(2) That the contracting authority reserves the right to reject, in whole or in part, any proposal that the contracting authority determines, using the factors and criteria developed for evaluating the proposal, would not be in the best interest of the county.

(3) That the contracting authority may conduct discussions with an offeror who submits a proposal for the purpose of obtaining clarifications or corrections regarding the proposal, in order to ensure full understanding of, and responsiveness to, the requirements specified in the request for proposals.

- Information concerning any potential partial or multiple party awards that the contracting party may include in the contract, and a description of the supplies or services that may be subject to a partial award or multiple awards; and
- Any additional information the contracting authority considers necessary for its purposes in determining to whom to award the contract.

The contracting authority must give notice of the request for proposals in the same manner as continuing law requires for competitive bidding³ (R.C. 307.862(A)(4)). The proposals must be opened in a manner that prevents the disclosure of contents of competing offers to competing offerors (R.C. 307.862(A)(5)), and must be ranked using the factors and criteria that have been developed by the authority (R.C. 307.862(A)(6)). If it is necessary to conduct discussions with offerors for the purpose of ensuring full understanding of, and responsiveness to, the requirements specified in the request for proposals, the authority must accord fair and equal treatment with respect to any opportunity for discussion with offerors to provide clarification, correction, or revision of

³ Applying these requirements to the act, a county contracting authority must publish notice of the request for proposals in a newspaper of general circulation in the county once a week for not less than two consecutive weeks before the proposals must be delivered. If the county contracting authority posts the notice on its internet web site, the second newspaper notice is not required if the first newspaper notice was published at least two weeks before the proposals must be delivered and includes a statement that the notice is posted on the contracting authority's web site, a statement of the internet address of the web site, and an explanation of how to access the notice on the web site. The county contracting authority also can publish the notice in trade papers or other publications. (R.C. 307.87(A)--not in the act.)

proposals. In any such discussion, the contracting authority must avoid disclosing any information derived from proposals submitted by competing offerors (R.C. 307.862(A)(7) and (A)(8)).

Finally, the contracting authority must negotiate with the offeror who submits the proposal that the contracting authority determines is the most advantageous to the county based on the rankings performed by the contracting authority, including any adjustment to those rankings based on discussions with offerors (R.C. 307.862(A)(9)). The contracting authority must conduct negotiations with only one offeror at a time (R.C. 307.862(A)(10)).

Right to withdraw; termination of negotiations

An offeror may withdraw the offeror's proposal at any time prior to the award of a contract.

A contracting authority may terminate negotiations with an offeror at any time during the negotiation process if the offeror fails to provide the necessary information for negotiations in a timely manner or fails to negotiate in good faith. If the contracting authority terminates negotiations with an offeror, the contracting authority then must negotiate with the offeror whose proposal is ranked the next most advantageous to the county according to the factors and criteria developed for evaluating proposals. (R.C. 307.862(D).)

Contract award

A county contracting authority may award a contract to the offeror whose proposal is determined to be the most advantageous to the county, taking into consideration the evaluation factors and criteria developed and set forth in the request for proposals. A contracting authority may award a contract in whole or in part to one or more offerors. The contracting authority must include a written statement in the contract file stating the basis on which the award is made, must send a written notice to the offeror to whom it wishes to award the contract, and must make that notice available to the public. Within a reasonable time period after the award is made, the contracting authority must notify all other offerors that the contract has been awarded to another offeror (R.C. 307.862(E)).

Cancellation or reissuance of a request for proposals

A contracting authority may cancel or reissue a request for proposals if any of the following apply (R.C. 307.862(F)):

- The supplies or services offered through all of the proposals submitted to the contracting authority are not in compliance with the requirements, specifications, and terms and conditions set forth in the request for proposals.

- The prices submitted by the offerors are excessive compared to existing market conditions or exceed available funds.
- The contracting authority determines that award of a contract would not be in the best interest of the county.

Public Records Law

Proposals and any documents or other records related to a subsequent negotiation for a final contract that would otherwise be available for public inspection and copying under the Ohio Public Records Act are not available for public inspection and copying until after the award of the contract. The act states that the purpose of this confidentiality requirements is to ensure fair and impartial evaluation of proposals. (R.C. 307.862(C).)

Joint purchasing authority for all political subdivisions

Under continuing law, counties and townships have general authority to enter into purchasing programs with other counties or townships or to participate in a joint purchasing program operated by or through a national or state association of political subdivisions of which the county or township is eligible for membership. Under these arrangements, the acquisition of equipment, material, supplies, or services is exempt from any competitive selection requirements otherwise required by law if the contract in which the county or township is participating was awarded under a publicly solicited request for a proposal or a competitive selection procedure of another political subdivision within Ohio or another state. Continuing law also allows counties and townships to participate in contract offerings from the federal government, including the General Services Administration. Acquisitions of equipment, material, supplies, or services under this authority are exempt from any competitive selection requirements otherwise required by law.

A county or township that is eligible to participate in a joint purchasing program operated by or through a national or state association of political subdivisions in which it is eligible for membership may purchase supplies or services from another party, including another political subdivision, instead of through the association if the county or township can purchase the supplies or services from the other party upon equivalent terms, conditions, and specifications but at a lower price than it can through the joint purchasing program. These purchases are exempt from any competitive selection procedures otherwise required by law. A county or township that makes any purchase under this law must maintain sufficient information regarding the purchase to verify that it satisfied the conditions for making such a purchase. (R.C. 9.48.)

The act extends the same joint purchasing authority to all political subdivisions included within the definition of a "political subdivision" in the Political Subdivision Sovereign Immunity Act (R.C. Chapter 2744.)⁴ and to county hospitals (R.C. 9.48).⁵ The act states that the authorization granted by the act to a municipal corporation is in addition to, and not in derogation of, the powers and authority granted by state law, the Ohio Constitution, and the provisions of a municipal charter, ordinance, or resolution (R.C. 9.48(E)).

Insurance policies, contracts, plans, or services

Exemption from county competitive bid requirement

Law amended in part by the act creates an exemption from competitive bidding for a county contracting authority's purchases of any form of insurance policy or contract or any form of health care plan, or any combination of these policies, contracts, or plans, that the contracting authority is authorized to purchase, so long as the contracting authority does all of the following:

- (1) Determines that compliance with the competitive bidding requirements would increase, rather than decrease, the cost of the purchase;
- (2) Employs a competent consultant to assist the contracting authority in procuring appropriate coverages at the best and lowest prices;⁶
- (3) Requests issuers of the policies, contracts, or plans to submit proposals to the contracting authority, in a form prescribed by the contracting authority, setting forth the coverage and cost of the policies, contracts, or plans as the contracting authority desires to purchase; and
- (4) Negotiates with the issuers for the purpose of purchasing the policies, contracts, or plans at the best and lowest price reasonably possible.

The act adds health care services to the exemption, and removes the requirement that the county employ a consultant to assist in procuring appropriate coverages at the best and lowest prices. (R.C. 307.86(F).)

⁴ A "political subdivision," under the Political Subdivision Sovereign Immunity Act and therefore under the act, generally means a municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state. (R.C. 2744.01.)

⁵ "County hospital" includes all of a county hospital's branches and hospital facilities, wherever located (R.C. 339.01--not in the act).

⁶ Any consultant must disclose any fees or compensation received from any source in connection with this employment (R.C. 307.86(M) (4th paragraph)).

Special notification list

Continuing law allows the issuer of insurance or health care policies, contracts, or plans to have the issuer's name and address placed on a special notification list to be kept by the county contracting authority by sending its name and address to the contracting authority. The contracting authority must send notice stating the deadlines and places for submitting proposals to all persons on the list at least six weeks before the deadline for submitting proposals. The act allows issuers of health care services to join the list. (R.C. 307.86(M) (2nd paragraph).)

Negotiation of insurance or health care contract

Continuing law requires any county contracting authority that negotiates any insurance or health care contract to request proposals and renegotiate with issuers at least every three years from the date of the signing of such a contract. The act authorizes the contracting parties to agree upon terms for extensions or renewals of such a contract, but specifies that an extension or renewal period is not to exceed six years from the date the initial contract is signed. (R.C. 307.86(M) (3rd paragraph).)

Notice of advertisement for bids by school districts

Continuing law generally requires the board of education of a school district to engage in competitive bidding when it determines to build, repair, enlarge, improve, or demolish any school building, the cost of which will exceed \$25,000. (R.C. 3313.46.) Former law required and only permitted the board to advertise for bids once each week for a period of at least two consecutive weeks in a newspaper of general circulation in the district before the date specified by the board for receiving bids. (R.C. 3313.46(A)(2).)

The act provides that a board of education must advertise for bids once each week for a period of not less than two consecutive weeks in a newspaper of general circulation in the district before the date specified by the board for receiving bids. The act also authorizes a board to place the notice in trade papers or other publications designated by it or to be distributed by electronic means, including posting the notice on the board's internet web site. If the board posts the notice on its web site, it may eliminate the second notice (i.e., notice by newspaper in the second week) otherwise required if the first notice published in the newspaper meets all of the following requirements: (1) it is published at least two weeks before the opening of bids, (2) it includes a statement that the notice is posted on the board of education's internet web site, (3) it includes the internet address of the board's internet web site, and (4) it includes instructions describing how the notice may be accessed on the board's internet web site. (R.C. 3313.46(A)(2).)

Notice of advertisement by townships and villages for sale, donation, or auction of property or for competitive bids

Continuing law contains several provisions that require boards of township trustees, boards of trustees of fire and ambulance districts, and legislative authorities of villages to provide notice before the sale, donation, or auction of certain property or advertising for competitive bids. Generally, such a board or legislative authority is required to provide notice more than once in a newspaper that is published, or of general circulation, in the township or village before the sale, donation, auction, or competitive bid. The act changes the notice requirements for these boards for: the sale of property with a fair market value in excess of \$2,500; the donation of property with a fair market value of less than \$2,500 to eligible nonprofit organizations, the sale of personal property, regardless of value, by internet auction; the purchase by competitive bidding of fire apparatus, mechanical resuscitators, other equipment, appliances, materials, fire hydrants, buildings, or fire-alarm communications equipment or services exceeding \$50,000; for any expenditure by competitive bidding of a fire and ambulance district, other than for the compensation of district employees, exceeding \$50,000; for a contract by competitive bidding for the construction and erection of a memorial building, monument, statue, or memorial, for an amount exceeding \$25,000, to commemorate the services of the soldiers, sailors, and marines of a township; for a contract by competitive bidding exceeding \$25,000 for artificial lights for any road, highway, public place, or building under a board of township trustee's supervision or control; and for a contract by competitive bidding for the building of a fence not built by the person required to do so. The act also makes changes to the notice requirements for a contract made by competitive bidding by the legislative authority of a village for certain expenditures exceeding \$25,000.

In these cases, the act permits the board of township trustees, board of trustees of a fire and ambulance district, and legislative authority of a village to also cause notice to be inserted in trade papers or other publications it has designated or to be distributed by electronic means, including posting the notice on the board's or legislative authority's internet web site. If the notice is posted on such a web site, the board or legislative authority can eliminate the second notice that would otherwise have to be published in a newspaper of general circulation in the township, district, or village, so long as the first newspaper notice meets all of the following requirements: (1) it is published at least two weeks before the sale of the property, the donation of the property, the internet auction, or the opening of bids, (2) it includes a statement that the notice is posted on the board's or legislative authority's internet web site, (3) it includes the internet address of the board's or legislative authority's internet web site, and (4) it notice includes instructions describing how the notice may be accessed on the board's or

legislative authority's internet web site. (R.C. 505.10, 505.37, 505.376, 511.12, 515.01, 731.14, and 971.07.)

HISTORY

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