



Ohio Revised Code

Section 125.09 Bid conditions or terms - preferences.

Effective: October 3, 2023

Legislation: House Bill 33

(A) Pursuant to sections 125.07, 125.071, and 125.072 of the Revised Code, the department of administrative services may prescribe such conditions under which competitive sealed bids, competitive sealed proposals, and bids in reverse auctions will be received and terms of the proposed purchase as it considers necessary; provided, that all such conditions and terms shall be reasonable and shall not unreasonably restrict competition, and bidders may bid and offerors may propose upon all or any item of the products or services listed in such notice. Those bidders and offerors claiming the preference outlined in this chapter shall designate in their bid or offer whether the product is mined, excavated, produced, manufactured, raised, or grown in the United States and is either a Buy Ohio product or that the product or service is provided by a bidder or offeror that qualifies as having a significant economic presence in the state or a state bordering Ohio, under the rules established by the director of administrative services, and whether the bidder or offeror is a certified veteran-friendly business enterprise under section 122.925 of the Revised Code.

(B) The director of administrative services shall, by rule adopted pursuant to Chapter 119. of the Revised Code, prescribe criteria and procedures for use by all state agencies in giving preference under this section as required by division (B) of section 125.11 of the Revised Code. The rules shall extend to:

- (1) Criteria for determining that a product is mined, excavated, produced, manufactured, raised, or grown in the United States rather than in another country or territory;
- (2) Criteria for determining that a product is a Buy Ohio product;
- (3) Information to be submitted by bidders or offerors as to the nature of a product and the location where it is mined, excavated, produced, manufactured, raised, or grown;
- (4) Criteria and procedures to be used by the director to qualify bidders or offerors located in states bordering Ohio who might otherwise be excluded from being awarded a contract by operation of this



section and section 125.11 of the Revised Code. The criteria and procedures shall recognize the level and regularity of interstate commerce between Ohio and the border states and provide that the non-Ohio businesses may qualify for award of a contract as long as they are located in a state that imposes no greater restrictions than are contained in this section and section 125.11 of the Revised Code upon persons located in Ohio selling products or services to agencies of that state. The criteria and procedures shall also provide that a non-Ohio business shall not bid on a contract for state printing in this state if the business is located in a state that excludes Ohio businesses from bidding on state printing contracts in that state.

(5) Criteria and procedures to be used to qualify bidders and offerors whose manufactured products, except for mined products, are produced in other states or in North America, but the bidders or offerors have a significant Ohio economic presence in terms of the number of employees or capital investment a bidder or offeror has in this state. Bidders and offerors with a significant Ohio economic presence shall qualify for award of a contract on the same basis as if their products were produced in this state or as if the bidder or offeror was domiciled in this state.

(6) Criteria and procedures for the director to grant waivers of the requirements of division (B) of section 125.11 of the Revised Code on a contract-by-contract basis where compliance with those requirements would not be in the best interest of the state or is otherwise prohibited;

(7) Criteria for applying a preference to bids and offers received from a certified veteran-friendly business enterprise;

(8) Such other requirements or procedures reasonably necessary to implement the system of preferences established pursuant to division (B) of section 125.11 of the Revised Code.

In adopting the rules required under this division, the director shall, to the maximum extent possible, conform to the requirements of the federal "Buy American Act," 41 U.S.C. 8301-8305, as amended, and to the regulations adopted thereunder.