



Ohio Revised Code

Section 125.09 Bid conditions or terms - preferences.

Effective: September 30, 2021

Legislation: House Bill 110

(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, supplies, or services listed in such notice. Those bidders and offerors claiming the preference outlined in this chapter shall designate in their bid or offer either that the product or supply is produced or mined in the United States and is either an Ohio product or that the product, supply, or service is provided by a bidder or offeror that qualifies as having a significant Ohio economic presence under the rules established by the director of administrative services.

(B) The department may require that each bidder or offeror provide sufficient information about the energy efficiency or energy usage of the bidder's or offeror's product, supply, or service.

(C) 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 produced or mined in the United States rather than in another country or territory;

(2) Criteria for determining that a product is produced or mined in Ohio;

(3) Information to be submitted by bidders or offerors as to the nature of a product and the location where it is produced or mined;

(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 result in the state agency paying an excessive price for the product or acquiring a disproportionately inferior product;

(7) 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 America Act," 47 Stat. 1520, (1933), 41 U.S.C.A. 10a-10d, as amended, and to the regulations adopted thereunder.