

# OHIO REVISED CODE

## **Am Sub HB 66 (Calvert) 2006-07 State Budget Bill; Changes to State Use Program—As Passed by the Senate**

**Sec. 125.11.** (A) Subject to division (B) of this section, contracts awarded pursuant to a reverse auction under section 125.072 of the Revised Code or pursuant to competitive sealed bidding, including contracts awarded under section 125.081 of the Revised Code, shall be awarded to the lowest responsive and responsible bidder on each item in accordance with section 9.312 of the Revised Code. When the contract is for meat products as defined in section 918.01 of the Revised Code or poultry products as defined in section 918.21 of the Revised Code, only those bids received from vendors offering products from establishments on the current list of meat and poultry vendors established and maintained by the director of administrative services under section 125.17 of the Revised Code shall be eligible for acceptance. The department of administrative services may accept or reject any or all bids in whole or by items, except that when the contract is for services or products available from a qualified nonprofit agency pursuant to sections 125.60 to 125.6012 or 4115.31 to 4115.35 of the Revised Code, the contract shall be awarded to that agency.

**Sec. 125.60.** As used in sections 125.60 to 125.6012 of the Revised Code:

(A) "Community rehabilitation program" means an agency that:

(1) Is organized under the laws of the United States or this state such that no part of its net income inures to the benefit of any shareholder or other individual;

(2) Is certified as a sheltered workshop, if applicable, by the wage and hour division of the United States department of labor;

(3) Is registered and in good standing with the secretary of state as a domestic nonprofit or not-for-profit corporation;

(4) Complies with applicable occupational health and safety standards required by the laws of the United States or of this state;

(5) Operates in the interest of persons with work-limiting disabilities, provides vocational or other employment-related training to persons with work-limiting disabilities, and employs persons with work-limiting disabilities in the manufacture of products or the provision of services;

(6) Is a nonprofit corporation for federal tax purposes.

(B) "Government ordering office" means any of the following:

(1) Any state agency, including the general assembly, the supreme court, and the office of a state elected official, or any state authority, board, bureau, commission, institution, or instrumentality that is funded in total or in part by state money;

(2) A county, township, or village.

(C) "Person with a work-limiting disability" means an individual who has a disability as defined in the "Americans with Disabilities Act of 1990," 104 Stat. 327, 42 U.S.C. 12101, and who:

(1) Because of that disability is substantially limited in the type or quantity of work the individual can perform or is prevented from working regularly;

(2) Meets criteria established by the office of procurement from community rehabilitation programs.

**Sec. 125.601.** (A) Not later than July 1, 2007, the director of administrative services shall establish the office of procurement from community rehabilitation programs within the department of administrative services. The director shall designate an employee of the department to serve as administrator of the office.

(B) Not later than July 1, 2007, the director shall abolish the state committee for the purchase of products and services provided by persons with severe disabilities in accordance with section 4115.36 of the Revised Code.

**Sec. 125.602.** (A) The department of mental retardation and developmental disabilities, the department of mental health, the department of job and family services, the rehabilitation services commission, and any other state or governmental agency or community rehabilitation program responsible for the provision of rehabilitation and vocational educational services to persons with work-limiting disabilities may, through written agreement, cooperate in providing resources to the department of administrative services for the operation of the office of procurement from community rehabilitation programs. These resources may include, but are not limited to, leadership and assistance in dealing with the societal aspects of meeting the needs of persons with work-limiting disabilities.

(B) The office and all governmental entities that administer socioeconomic programs may enter into contractual agreements, cooperative working relationships, or other arrangements that are necessary for effective coordination and realization of the objectives of these entities.

**Sec. 125.603.** (A) The office of procurement from community rehabilitation programs shall do the following in addition to other duties specified in sections 125.60 to 125.6012 of the Revised Code:

(1) Establish, maintain, and periodically update a procurement list of approved supplies and services available from qualified nonprofit agencies;

(2) Monitor the procurement practices of government ordering offices to ensure compliance with sections 125.60 to 125.6012 of the Revised Code;

(3) In cooperation with qualified nonprofit agencies, government ordering offices, the department of mental retardation and developmental disabilities, the department of mental health, the department of job and family services, and the rehabilitation services commission, develop and recommend to the director of administrative services rules the director shall adopt in accordance with Chapter 119. of the Revised Code for the effective and efficient administration of sections 125.60 to 125.6012 of the Revised Code;

(4) Prepare a report of its activities by the last day of December of each year. The report shall be posted electronically on the office's web site.

(B) The office of procurement from community rehabilitation programs may enter into contractual agreements and establish pilot programs to further the objectives of sections 125.60 to 125.6012 of the Revised Code.

**Sec. 125.604.** A community rehabilitation program may apply to the office of procurement from community rehabilitation programs to be certified as qualified to provide its supplies and services for procurement by government ordering offices. The office shall prescribe the form of the application. If the office is satisfied the program is qualified, it shall certify the program as a qualified nonprofit agency for the purposes of sections 125.60 to 125.6012 of the Revised Code.

**Sec. 125.605.** The office of procurement from community rehabilitation programs may certify any entity to serve as an approved agent of a qualified nonprofit agency for the purposes of sections 125.60 to 125.6012 of the Revised Code. The office shall prescribe procedures under which an entity can apply and be considered for such certification. An approved agent may do any of the following:

(A) Contract with the office of procurement from community rehabilitation programs to provide centralized business facilitation or other assistance to qualified nonprofit agencies. The office shall consult with qualified nonprofit agencies before agreeing to such a contract.

(B) Act as a distributor of supplies and services registered on the procurement list maintained by the office under section 125.603 of the Revised Code;

(C) Provide marketing, administrative, and other services related to sales.

**Sec. 125.606.** Prior to purchases by government ordering offices, the office of procurement from community rehabilitation programs shall attempt to establish for each item on the procurement list a fair market price that is representative of the range of prices that a government ordering office would expect to pay to purchase the item in the marketplace. When establishing a fair market price for an item, the office of procurement from community rehabilitation programs shall consider the costs of doing business with respect to that item, including sales, marketing, and research and development costs and agent fees. If the office of procurement from community rehabilitation programs cannot establish a fair market price for a particular supply or service, the government ordering office shall attempt to establish the fair market price pursuant to division (B) of section 125.607 of the Revised Code for each purchase of such supply or service.

**Sec. 125.607.** (A) Before purchasing any supply or service, a governmental ordering office shall determine whether the supply or service is on the procurement list maintained by the office of procurement from community rehabilitation programs. If the supply or service is on the list at an established fair market price, the government ordering office shall purchase it from the qualified nonprofit agency or approved agent at that price.

(B) If the supply or service is on the procurement list but a fair market price has not been established, the government ordering office shall attempt to negotiate an agreement with one or more of the listed qualified nonprofit agencies or approved agents. The office of procurement from community rehabilitation programs may accept as fair market price an agreement negotiated between the government ordering office and a qualified nonprofit agency or approved agent.

(C) If an agreement is not successfully negotiated, the office may establish a fair market price, or it may release a government ordering office from the requirements of this section.

(D) A purchase under divisions (A) to (C) of this section is not subject to any competitive selection or competitive bidding requirements, notwithstanding any other provision of law.

(E) The department of administrative services has the authority to structure or regulate competition among qualified nonprofit agencies for the overall benefit of the program.

**Sec. 125.608.** All government ordering offices purchasing supplies and services from qualified nonprofit agencies or their approved agents shall reimburse the department of administrative services a reasonable sum to cover the department's costs of administering sections 125.60 to 125.6012 of the Revised Code. The department may bill administrative costs to government ordering offices directly, or allow qualified non-profit agencies or approved agents to collect and remit department administrative fees, at the department's discretion. Any department administrative fees collected and remitted by qualified nonprofit agencies or their approved agents shall be considered allowable expenses in addition to the fair market price approved under section 125.606 or 125.607 of the Revised Code. The money so paid shall be deposited in the state treasury to the credit of the general services fund created under section 125.15 of the Revised Code.

**Sec. 125.609.** The office of procurement from community rehabilitation programs, on its own or pursuant to a request from a government ordering office, may release a government ordering office from compliance with sections 125.60 to 125.6012 of the Revised Code. If the office determines that compliance is not possible or not advantageous, or if conditions prescribed in rules as may be adopted under section 125.603 of the Revised Code for granting a release are met, the office may grant a release. The release shall be in writing, and shall specify the supplies or services to which it applies, the period of time during which it is effective, and the reason for which it is granted.

**Sec. 125.6010.** Section 125.607 of the Revised Code does not apply to the purchase of a product or service available from a state agency, state instrumentality, or political subdivision under any law in effect on July 1, 2005.

**Sec. 125.6011.** (A) Nothing in sections 125.60 to 125.6012 of the Revised Code shall be construed to prohibit the purchase of a supply or service from a qualified nonprofit agency by a political subdivision that is not a government ordering office.

(B) Purchases made under this section by a political subdivision, as defined in section 125.04 of the Revised Code, are exempt from any competitive selection procedures otherwise required by law. Purchases under this section shall be made from qualified nonprofit agencies or their approved agents.

(C) A political subdivision, as defined in section 125.04 of the Revised Code, may not purchase under division (C) of that section a supply or service on the procurement list established under section 125.603 of the Revised Code.

**Sec. 125.6012.** A government ordering office and qualified nonprofit agency shall provide the necessary information and documentation requested by the office of procurement from community rehabilitation programs to enable the office to effectively administer sections 125.60 to 125.6012 of the Revised Code.

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**Sec. 4115.32.** (A) ~~There~~ Subject to section 4115.36 of the Revised Code, there is hereby created the state committee for the purchase of products and services provided by persons with severe disabilities. The committee shall be composed ex officio of the following persons, or their designees:

(1) The directors of administrative services, mental health, mental retardation and developmental disabilities, transportation, natural resources, and commerce;

(2) The administrators of the rehabilitation services commission and the bureau of workers' compensation;

(3) The secretary of state;

(4) One representative of a purchasing department of a political subdivision who is designated by the governor.

The governor shall appoint two representatives of a qualified nonprofit agency for persons with severe disabilities, and a person with a severe disability to the committee.

(B) Within thirty days after September 29, 1995, the governor shall appoint the representatives of a qualified nonprofit agency for persons with severe disabilities to the committee for a term ending August 31, 1996. Thereafter, terms for such representatives are for three years, each term ending on the same day of the same month of the year as did the term that it succeeds. Each committee member shall serve from the date of the member's appointment until the end of the term for which the member was appointed. Vacancies shall be filled in the same manner provided for original appointments. Any member appointed to fill a vacancy occurring prior to the expiration date of the term for which the member's predecessor was appointed shall serve as a member for the remainder of that term. A member shall serve subsequent to the expiration of the member's term and shall continue to serve until the member's successor takes office.

(C) Members of the committee shall serve without compensation. Except as otherwise provided in divisions (C)(1) and (2) of this section, members shall be reimbursed for actual and necessary expenses, including travel expenses, incurred while away from their homes or regular places of business and incurred while performing services for the committee.

(1) The members listed in divisions (A)(1) to (3) of this section, or their designees, shall not be reimbursed for any expenses.

(2) No member of the committee who is entitled to receive reimbursement for the performance of services for the committee from another agency or entity shall receive reimbursement from the committee.

(D) The committee shall elect from among its members a chairperson. The committee may request from any agency of the state, political subdivision, or instrumentality of the state any information necessary to enable it to carry out the intent of sections 4115.31 to 4115.35 of the Revised Code. Upon request of the committee, the agency, subdivision, or instrumentality shall furnish the information to the chairperson of the committee.

(E) The committee shall not later than one hundred eighty days following the close of each fiscal year transmit to the governor, the general assembly, and each qualified nonprofit agency for persons with severe disabilities a report that includes the names of the committee members serving during the preceding fiscal year, the dates of committee meetings in that year, and any recommendations for changes in sections 4115.31 to 4115.35 of the Revised Code that the committee determines are necessary.

(F) The director of ~~mental retardation and developmental disabilities~~ administrative services shall designate a subordinate to act as executive director of the committee and shall furnish other staff and clerical assistance, office space, and supplies required by the committee.

**Sec. 4115.34.** (A) ~~Except as provided in section 4115.36 of the Revised Code,~~ if any state agency, political subdivision, or instrumentality of the state intends to procure any product or service, it shall determine whether the product or service is on the procurement list published pursuant to section 4115.33 of the Revised Code; and it shall, in accordance with rules of the state committee for the purchase of products and services provided by persons with severe disabilities, procure such product or service at the fair market price established by the committee from a qualified nonprofit agency for persons with severe disabilities, if the product or service is on the procurement list and is available within the period required by that agency, subdivision, or instrumentality, notwithstanding any law requiring the purchase of products and services on a competitive bid basis. Sections 4115.31 to 4115.35 of the Revised Code do not apply if the products or services are available for procurement from any state agency, political subdivision, or instrumentality of the state and procurement from such agency, subdivision, or instrumentality is required under any law in effect on August 13, 1976.

(B) The committee and any state agency, political subdivision, or instrumentality of the state may enter into contractual agreements, cooperative working relationships, or other arrangements determined necessary for effective coordination and efficient realization of the objectives of sections 4115.31 to 4115.35 of the Revised Code and any other law requiring procurement of products or services from any state agency, political subdivision, or instrumentality of the state.

(C) Notwithstanding any other section of the Revised Code, or any appropriations act, that may require a state agency, political subdivision, or instrumentality of the state to purchase supplies, services, or materials by means of a competitive bid procedure, state agencies, political subdivisions, or instrumentalities of the state need not utilize the required bidding procedures if the supplies, services, or materials are to be purchased from a qualified nonprofit agency pursuant to sections 4115.31 to 4115.35 of the Revised Code.

**Sec. 4115.36.** Sections 4115.31 to 4115.35 of the Revised Code have no effect after the director of administrative services abolishes the state committee for the purchase of products and services provided by persons with severe disabilities. Upon abolishment of the committee, sections 125.60 to 125.6012 of the Revised Code shall govern the procurement of products and services provided by persons with work-limiting disabilities from qualified nonprofit agencies.