

RESOLUTION NO. 1993- 80

AMENDING THE AUTHORITY'S PROCUREMENT POLICIES & PROCEDURES MANUAL AND DIRECTING THE GENERAL MANAGER TO REVIEW THE PROCUREMENT POLICIES & PROCEDURES MANUAL FOR COMPLIANCE WITH THE AMENDED SECTION 306.43 OHIO REVISED CODE.

WHEREAS, Revised Code 306.43 which governs the procurement activities of regional transit authorities in the state of Ohio has been amended, effective March 19, 1993; and

WHEREAS, the Board of Trustees desires to take full and immediate advantage of the changes to said statute; and

WHEREAS, the Board of Trustees desires a review of its Procurement Policies & Procedures Manual for conformity with Revised Code 306.43 as amended.

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees of the Greater Cleveland Regional Transit Authority, Cuyahoga County, Ohio:

Section 1. The Procurement Policies & Procedures Manual adopted by the Board of Trustees by Resolution No. 1988-60 as amended by Resolution No. 1990-129 be and it is hereby amended by changing the phrases "fifteen thousand dollars" and "\$15,000.00" wherever each may appear in said manual to read "twenty-five thousand dollars" and "\$25,000.00" respectively.

Section 2. The Procurement Policies & Procedures Manual be and it is hereby deemed to authorize contracting procedures permitted by Revised Code 306.43, as attached hereto and fully incorporated as if written herein.

Section 3. The General Manager is directed to review the Procurement Policies & Procedures Manual for conformity with Section 306.43 of the Ohio Revised Code, as amended, and to recommend to the Board such changes and revisions as he may deem appropriate.

Section 4. That this resolution shall become effective immediately upon its adoption.

ATTACHMENTS: A. Section 306.43, Ohio Revised Code, effective March 19, 1993.

Adopted: \_\_\_\_\_ April 20 \_\_\_\_\_, 1993

Attest: Ronald J. Lee  
General Manager/Secretary-Treasurer

[Signature]  
President

(119th General Assembly)  
(Substitute Senate Bill Number 164)

## AN ACT

To amend sections 125.04 and 306.35 and to enact new section 306.43 and to repeal section 306.43 of the Revised Code to establish new procedures for regional transit authorities to follow for the procurement and disposal of regional transit authority property.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That sections 125.04 and 306.35 be amended and new section 306.43 of the Revised Code be enacted to read as follows:

Sec. 125.04. (A) Whenever it is considered necessary and except as provided in division (C) of this section, the department of administrative services shall determine what supplies, equipment, and services, required for the use and maintenance of the departments and offices of all elective and appointive state officers, boards, and commissions, shall be purchased and furnished, and what contracts of insurance authorized by law shall be purchased and furnished for such officers, boards, and commissions. Supplies, equipment, services, and contracts of insurance, for boards of elections, courts of appeals, courts of common pleas, the supreme court, the general assembly, maintenance of the Ohio national guard, and agricultural experimental stations of the state, shall not be included in such lists of supplies, equipment, services, and contracts of insurance to be purchased and furnished by the department. Except for the requirements of division (B) of section 125.11 of the Revised Code, sections 125.04 to 125.08 and 125.09 to 125.15 of the Revised Code do not apply to or affect the educational institutions of the state.

(B) The department of administrative services may permit a county, township, municipal corporation, REGIONAL TRANSIT AUTHORITY, or school district to participate in contracts into which the department has entered for the purchase of supplies, services, materials other than printing materials, and equipment. Any county, township, municipal corporation, REGIONAL TRANSIT AUTHORITY, or school district desiring to participate in such purchase contracts shall file with the department a certified copy of an ordinance or resolution of the board of county commis-

sioners or other county legislative authority, board of township trustees, municipal legislative authority, BOARD OF TRUSTEES OF THE REGIONAL TRANSIT AUTHORITY, or board of education of the school district. The resolution or ordinance shall request that the county, township, municipal corporation, REGIONAL TRANSIT AUTHORITY, or school district be authorized to participate in such contracts and shall agree that the county, township, municipal corporation, REGIONAL TRANSIT AUTHORITY, or school district will be bound by such terms and conditions as the department prescribes and that it will directly pay the vendor under each purchase contract. The department may charge a county, township, municipal corporation, REGIONAL TRANSIT AUTHORITY, or school district a reasonable fee to cover the administrative costs the department incurs as a result of the subdivision's participation in the purchase contract. Purchases made by a county, township, municipal corporation, REGIONAL TRANSIT AUTHORITY, or school district under this division are exempt from any competitive bidding required by law for the purchase of supplies, services, materials, and equipment. No county, township, municipal corporation, REGIONAL TRANSIT AUTHORITY, or school district shall make any purchase under this division when bids have been received for such purchase by the county, township, municipal corporation, REGIONAL TRANSIT AUTHORITY, or school district, unless such purchase can be made upon the same terms, conditions, and specifications at a lower price under this division.

The department shall include in its annual report an estimate of the cost it incurs by permitting counties, townships, municipal corporations, REGIONAL TRANSIT AUTHORITIES, and school districts to participate in contracts pursuant to this division. The department may require counties, townships, municipal corporations, REGIONAL TRANSIT AUTHORITIES, and school districts participating in contracts pursuant to this division to file a report with the department, as often as it finds necessary, stating how many such contracts the counties, townships, municipal corporations, REGIONAL TRANSIT AUTHORITIES, and school districts participate in within a specified period of time, and any other information the department requires.

(C) Purchases of supplies, equipment, services, and contracts of insurance for the department of rehabilitation and correction in its operation of the program for the employment of prisoners established under section 5145.16 of the Revised Code shall be made pursuant to rules adopted by the director of administrative services and the director of rehabilitation and correction in accordance with Chapter 119. of the Revised Code. The rules may provide for the exemption of the program for the employment of prisoners from the requirements of division (A) of this section.

Sec. 306.35. Upon the creation of a regional transit authority as provided by section 306.32 of the Revised Code, and upon the qualifying of its board of trustees and the election of a president and a vice-president, the authority shall exercise in its own name all the rights, powers, and duties vested in and conferred upon it by sections 306.30 to 306.53 of the

Revised Code. Subject to such reservations, limitations, and qualifications as are set forth therein, the regional transit authority:

(A) May sue or be sued in its corporate name:

(B) May make contracts in the exercise of the rights, powers, and duties conferred upon it:

(C) May adopt and at will alter a seal and use such seal by causing it to be impressed, affixed, reproduced, or otherwise used, but failure to affix the seal shall not affect the validity of any instrument:

(D) May adopt, amend, and repeal bylaws for the administration of its affairs and rules for the control of the administration and operation of transit facilities under its jurisdiction, and for the exercise of all of its rights of ownership therein:

(E) May fix, alter, and collect fares, rates, and rentals and other charges for the use of transit facilities under its jurisdiction to be determined exclusively by it for the purpose of providing for the payment of the expenses of the regional transit authority, the acquisition, construction, improvement, extension, repair, maintenance, and operation of transit facilities under its jurisdiction, the payment of principal and interest on its obligations, and to fulfill the terms of any agreements made with purchasers or holders of any such obligations, or with any person or political subdivision:

(F) Shall have jurisdiction, control, possession, and supervision of all property, rights, easements, licenses, moneys, contracts, accounts, liens, books, records, maps, or other property rights and interests conveyed, delivered, transferred, or assigned to it;

(G) May acquire, construct, improve, extend, repair, lease, operate, maintain, or manage transit facilities within or without its territorial boundaries, considered necessary to accomplish the purposes of its organization and make charges for the use of transit facilities;

(H) May levy and collect taxes as provided in sections 306.40 and 306.49 of the Revised Code:

(I) May issue bonds secured by its general credit as provided in section 306.40 of the Revised Code:

(J) May hold, encumber, control, acquire by donation, BY purchase FOR CASH OR BY INSTALLMENT PAYMENTS, BY LEASE-PURCHASE AGREEMENT, BY LEASE WITH OPTION TO PURCHASE, or BY condemnation, AND MAY construct, own, lease as lessee or lessor, use, and sell, real and personal property, or any interest or right therein, within or without its territorial boundaries, for the location or protection of transit facilities and improvements and access thereto, the relocation of buildings, structures, and improvements situated on lands acquired by the regional transit authority, or for any other necessary purpose, or for obtaining or storing materials to be used in constructing, maintaining, and improving transit facilities under its jurisdiction;

(K) May exercise the power of eminent domain to acquire property or any interest therein, within or without its territorial boundaries, which is necessary or proper for the construction or efficient operation of any transit facility or access thereto under its jurisdiction in accordance with section 306.36 of the Revised Code;

(L) May provide by agreement with any county, including the counties within its territorial boundaries, or any municipal corporation or any combination thereof for the making of necessary surveys, appraisals, and examinations preliminary to the acquisition or construction of any transit facility and the amount of the expense thereof to be paid by each such county or municipal corporation:

(M) May provide by agreement with any county, including the counties within its territorial boundaries, or any municipal corporation or any combination thereof for the acquisition, construction, improvement, extension, maintenance, or operation of any transit facility owned or to be owned and operated by it or owned or to be owned and operated by any such county or municipal corporation and the terms on which it shall be acquired, leased, constructed, maintained, or operated, and the amount of the cost and expense thereof to be paid by each such county or municipal corporation:

(N) May issue revenue bonds for the purpose of acquiring, replacing, improving, extending, enlarging, or constructing any facility or permanent improvement which it is authorized to acquire, replace, improve, extend, enlarge, or construct, including all costs in connection with and incidental to such acquisition, replacement, improvement, extension, enlargement, or construction, and the financing thereof, as provided by section 306.37 of the Revised Code;

(O) May enter into and supervise franchise agreements for the operation of a transit system:

(P) May accept the assignment of and then supervise an existing franchise agreement for the operation of a transit system:

(Q) May exercise a right to purchase a transit system in accordance with the acquisition terms of an existing franchise agreement; and in connection with such purchase the regional transit authority may issue revenue bonds as provided by section 306.37 of the Revised Code or issue bonds secured by its general credit as provided in section 306.40 of the Revised Code:

(R) May apply for and accept grants or loans from the United States, the state, or other public body for the purpose of providing for the development or improvement of transit facilities, mass transportation facilities, equipment, techniques, methods, or services, and grants or loans needed to exercise a right to purchase a transit system pursuant to agreement with the owner of such transit facilities, or for providing lawful financial assistance to existing transit systems; and may provide any consideration which may be required in order to obtain such grants or loans from the United States, the state, or other public body, either of which grants or loans may be evidenced by the issuance of revenue bonds as provided by section 306.37 of the Revised Code or general obligation bonds as provided by section 306.40 of the Revised Code:

(S) May employ and fix the compensation of consulting engineers, superintendents, managers, and such other engineering, construction, accounting and financial experts, attorneys, and other employees and agents necessary for the accomplishment of its purposes;

(T) May procure insurance against loss to it by reason of damages to its properties resulting from fire, theft, accident, or other casualties or by reason of its liability for any damages to persons or property occurring in the construction or operation of transit facilities under its jurisdiction or the conduct of its activities:

(U) May maintain such funds as it considers necessary for the efficient performance of its duties:

(V) May direct its agents or employees, when properly identified in writing, after at least five days' written notice, to enter upon lands within or without its territorial boundaries in order to make surveys and examinations preliminary to the location and construction of transit facilities, without liability to it or its agents or employees except for actual damage done;

(W) May, on its own motion, request the appropriate zoning board, as defined in section 4563.03 of the Revised Code, to establish and enforce zoning regulations pertaining to any transit facility under its jurisdiction in the manner prescribed by sections 4563.01 to 4563.21 of the Revised Code;

(X) Shall, if it acquires any existing transit system, assume all the employer's obligations under any existing labor contract between the employees and management of the system. The board shall, if it acquires, constructs, controls, or operates any such facilities, negotiate arrangements to protect the interests of employees affected by such acquisition, construction, control, or operation. Such arrangements shall include, but are not limited to:

(1) The preservation of rights, privileges, and benefits under existing collective bargaining agreements or otherwise, the preservation of rights and benefits under any existing pension plans covering prior service, and continued participation in social security in addition to participation in the public employees retirement system as required in Chapter 145. of the Revised Code:

(2) The continuation of collective bargaining rights;

(3) The protection of individual employees against a worsening of their positions with respect to their employment;

(4) Assurances of employment to employees of such transit systems and priority reemployment of employees terminated or laid off;

(5) Paid training or retraining programs;

(6) Signed written labor agreements.

Such arrangements may include provisions for the submission of labor disputes to final and binding arbitration.

(Y) May provide for and maintain such security operations as are necessary for the protection of persons and property under its jurisdiction and control. Such employees as the board of trustees of a regional transit authority employs for that purpose are vested with the same powers of arrest as police officers under section 2935.03 of the Revised Code in protecting the property of the regional transit authority and the person and property of passengers. Before exercising such powers, each employee shall take an oath and give bond to the state in such sum that the board prescribes for the proper performance of his duties.

Such employees shall be required to complete training for the position to which they have been appointed as required by the Ohio peace officer training council as authorized in section 109.78 of the Revised Code, or be otherwise qualified. The cost of such training shall be provided by the regional transit authority.

(Z) May procure a policy or policies insuring members of its board of trustees against liability on account of damages or injury to persons and property resulting from any act or omission of a member in his official capacity as a member of the board or resulting solely out of his membership thereon.

(AA) May enter into any agreement for the sale and leaseback of qualified mass commuting vehicles for federal income tax purposes under section 168(F)(8) of the Internal Revenue Code of 1954, as amended, which agreement may contain all necessary covenants for the security and protection of any lessor or the regional transit authority including, but not limited to, indemnification of the lessor against the loss of anticipated tax benefits arising from acts, omissions, or misrepresentations of the regional transit authority. In connection with any such transaction, the regional transit authority may contract for insurance and letters of credit and pay any premiums or other charges therefor. The fiscal officer shall not be required to furnish any certificate under section 5705.41 of the Revised Code in connection with the execution of any such agreement.

(BB) MAY, IN REGARD TO ANY CONTRACT ENTERED INTO ON OR AFTER THE EFFECTIVE DATE OF THIS AMENDMENT FOR THE RENDERING OF SERVICES OR THE SUPPLYING OF MATERIALS OR FOR THE CONSTRUCTION, DEMOLITION, ALTERATION, REPAIR, OR RECONSTRUCTION OF TRANSIT FACILITIES IN WHICH A BOND IS REQUIRED FOR THE FAITHFUL PERFORMANCE OF THE CONTRACT, PERMIT THE PERSON AWARDED THE CONTRACT TO UTILIZE A LETTER OF CREDIT ISSUED BY A BANK OR OTHER FINANCIAL INSTITUTION IN LIEU OF THE BOND.

Sec. 306.43. (A) THE BOARD OF TRUSTEES OF A REGIONAL TRANSIT AUTHORITY OR ANY OFFICER OR EMPLOYEE DESIGNATED BY SUCH BOARD MAY MAKE ANY CONTRACT FOR THE PURCHASE OF GOODS OR SERVICES, THE COST OF WHICH DOES NOT EXCEED TWENTY-FIVE THOUSAND DOLLARS, WHEN AN EXPENDITURE, OTHER THAN FOR THE ACQUISITION OF REAL ESTATE, THE DISCHARGE OF CLAIMS, OR THE ACQUISITION OF GOODS OR SERVICES UNDER THE CIRCUMSTANCES DESCRIBED IN DIVISION (H) OF THIS SECTION, IS EXPECTED TO EXCEED TWENTY-FIVE THOUSAND DOLLARS, SUCH EXPENDITURE SHALL BE MADE THROUGH FULL AND OPEN COMPETITION BY THE USE OF COMPETITIVE PROCEDURES. THE REGIONAL TRANSIT AUTHORITY SHALL USE THE COMPETITIVE PROCEDURE, AS SET FORTH IN DIVISIONS (B), (C), (D), AND (E) OF THIS SECTION, THAT IS MOST APPRO-

APRIATE UNDER THE CIRCUMSTANCES OF THE PROCUREMENT.

(B) COMPETITIVE SEALED BIDDING IS THE PREFERRED METHOD OF PROCUREMENT AND A REGIONAL TRANSIT AUTHORITY SHALL USE THAT METHOD IF ALL OF THE FOLLOWING CONDITIONS EXIST:

(1) A CLEAR, COMPLETE AND ADEQUATE DESCRIPTION OF THE GOODS, SERVICES, OR WORK IS AVAILABLE;

(2) TIME PERMITS THE SOLICITATION, SUBMISSION, AND EVALUATION OF SEALED BIDS;

(3) THE AWARD WILL BE MADE ON THE BASIS OF PRICE AND OTHER PRICE-RELATED FACTORS;

(4) IT IS NOT NECESSARY TO CONDUCT DISCUSSIONS WITH RESPONDING OFFERORS ABOUT THEIR BIDS;

(5) THERE IS A REASONABLE EXPECTATION OF RECEIVING MORE THAN ONE SEALED BID.

A REGIONAL TRANSIT AUTHORITY SHALL PUBLISH A NOTICE CALLING FOR BIDS ONCE A WEEK FOR NO LESS THAN TWO CONSECUTIVE WEEKS IN AT LEAST ONE NEWSPAPER OF GENERAL CIRCULATION WITHIN THE TERRITORIAL BOUNDARIES OF THE REGIONAL TRANSIT AUTHORITY. A REGIONAL TRANSIT AUTHORITY MAY REQUIRE THAT A BIDDER FOR ANY CONTRACT OTHER THAN A CONSTRUCTION CONTRACT PROVIDE A BID GUARANTY IN THE FORM, QUALITY, AND AMOUNT CONSIDERED APPROPRIATE BY THE REGIONAL TRANSIT AUTHORITY. THE BOARD MAY LET THE CONTRACT TO THE LOWEST RESPONSIVE AND RESPONSIBLE BIDDER. WHERE FEWER THAN TWO RESPONSIVE BIDS ARE RECEIVED, A REGIONAL TRANSIT AUTHORITY MAY NEGOTIATE PRICE WITH THE SOLE RESPONSIVE BIDDER OR MAY RESCIND THE SOLICITATION AND PROCURE UNDER DIVISION (H)(2) OF THIS SECTION.

(C) A REGIONAL TRANSIT AUTHORITY MAY USE TWO-STEP COMPETITIVE BIDDING, CONSISTING OF A TECHNICAL PROPOSAL AND A SEPARATE, SUBSEQUENT SEALED PRICE BID FROM THOSE SUBMITTING ACCEPTABLE TECHNICAL PROPOSALS, IF BOTH OF THE FOLLOWING CONDITIONS EXIST:

(1) A CLEAR, COMPLETE, AND ADEQUATE DESCRIPTION OF THE GOODS, SERVICES, OR WORK IS NOT AVAILABLE, BUT DEFINITE CRITERIA EXIST FOR THE EVALUATION OF TECHNICAL PROPOSALS;

(2) IT IS NECESSARY TO CONDUCT DISCUSSIONS WITH RESPONDING OFFERORS.

A REGIONAL TRANSIT AUTHORITY SHALL PUBLISH A NOTICE CALLING FOR TECHNICAL PROPOSALS ONCE A WEEK FOR NO LESS THAN TWO CONSECUTIVE WEEKS IN AT LEAST ONE NEWSPAPER OF GENERAL CIRCULATION WITHIN THE TERRITORIAL BOUNDARIES OF THE REGIONAL TRANSIT AU-



THORITY. A REGIONAL TRANSIT AUTHORITY MAY REQUIRE A BID GUARANTY IN THE FORM, QUALITY, AND AMOUNT THE REGIONAL TRANSIT AUTHORITY CONSIDERS APPROPRIATE. THE BOARD MAY LET THE CONTRACT TO THE LOWEST RESPONSIVE AND RESPONSIBLE BIDDER. WHERE FEWER THAN TWO RESPONSIVE AND RESPONSIBLE BIDS ARE RECEIVED, A REGIONAL TRANSIT AUTHORITY MAY NEGOTIATE PRICE WITH THE SOLE RESPONSIVE AND RESPONSIBLE BIDDER OR MAY RESCIND THE SOLICITATION AND PROCURE UNDER DIVISION (H)(2) OF THIS SECTION.

(D) A REGIONAL TRANSIT AUTHORITY SHALL MAKE A PROCUREMENT BY COMPETITIVE PROPOSALS IF COMPETITIVE SEALED BIDDING OR TWO-STEP COMPETITIVE BIDDING IS NOT APPROPRIATE.

A REGIONAL TRANSIT AUTHORITY SHALL PUBLISH A NOTICE CALLING FOR PROPOSALS ONCE A WEEK FOR NO LESS THAN TWO CONSECUTIVE WEEKS IN AT LEAST ONE NEWSPAPER OF GENERAL CIRCULATION WITHIN THE TERRITORIAL BOUNDARIES OF THE REGIONAL TRANSIT AUTHORITY. A REGIONAL TRANSIT AUTHORITY MAY REQUIRE A PROPOSAL GUARANTY IN THE FORM, QUALITY, AND AMOUNT CONSIDERED APPROPRIATE BY THE REGIONAL TRANSIT AUTHORITY. THE BOARD MAY LET THE CONTRACT TO THE PROPOSER MAKING THE OFFER CONSIDERED MOST ADVANTAGEOUS TO THE AUTHORITY. WHERE FEWER THAN TWO COMPETENT PROPOSALS ARE RECEIVED, A REGIONAL TRANSIT AUTHORITY MAY NEGOTIATE PRICE AND TERMS WITH THE SOLE PROPOSER OR MAY RESCIND THE SOLICITATION AND PROCURE UNDER DIVISION (H)(2) OF THIS SECTION.

(E)(1) A REGIONAL TRANSIT AUTHORITY SHALL PROCURE THE SERVICES OF AN ARCHITECT OR ENGINEER IN THE MANNER PRESCRIBED BY THE "FEDERAL MASS TRANSPORTATION ACT OF 1987," PUBLIC LAW 100-17, SECTION 316, 101 STAT. 227, 232-234, 49 U.S.C.A. app. 1608 AND THE SERVICES OF A CONSTRUCTION MANAGER IN THE MANNER PRESCRIBED BY SECTIONS 9.33 TO 9.332 OF THE REVISED CODE.

(2) A REGIONAL TRANSIT AUTHORITY MAY PROCURE REVENUE ROLLING STOCK IN THE MANNER PRESCRIBED BY DIVISION (B), (C), OR (D) OF THIS SECTION.

(3) ALL CONTRACTS FOR CONSTRUCTION IN EXCESS OF TWENTY-FIVE THOUSAND DOLLARS SHALL BE MADE ONLY AFTER THE REGIONAL TRANSIT AUTHORITY HAS PUBLISHED A NOTICE CALLING FOR BIDS ONCE A WEEK FOR TWO CONSECUTIVE WEEKS IN AT LEAST ONE NEWSPAPER OF GENERAL CIRCULATION WITHIN THE TERRITORIAL BOUNDARIES OF THE REGIONAL TRANSIT AUTHORITY. THE BOARD MAY AWARD A CONTRACT TO THE LOWEST RESPONSIVE AND RESPONSIBLE BIDDER. WHERE ONLY ONE RESPONSIVE AND RESPONSIBLE BID IS RECEIVED, THE REGIONAL TRANSIT

AUTHORITY MAY NEGOTIATE PRICE WITH THE SOLE RESPONSIVE BIDDER OR MAY RESCIND THE SOLICITATION. THE REGIONAL TRANSIT AUTHORITY SHALL AWARD CONSTRUCTION CONTRACTS IN ACCORDANCE WITH SECTIONS 153.12 TO 153.14 AND 153.54 OF THE REVISED CODE. DIVISIONS (B) AND (C) OF THIS SECTION SHALL NOT APPLY TO THE AWARD OF CONTRACTS FOR CONSTRUCTION.

(F) ALL CONTRACTS INVOLVING EXPENDITURES IN EXCESS OF TWENTY-FIVE THOUSAND DOLLARS SHALL BE IN WRITING AND SHALL BE ACCOMPANIED BY OR SHALL REFER TO PLANS AND SPECIFICATIONS FOR THE WORK TO BE DONE. THE PLANS AND SPECIFICATIONS SHALL AT ALL TIMES BE MADE AND CONSIDERED PART OF THE CONTRACT. FOR ALL CONTRACTS OTHER THAN CONSTRUCTION CONTRACTS, A REGIONAL TRANSIT AUTHORITY MAY REQUIRE PERFORMANCE, PAYMENT, OR MAINTENANCE GUARANTIES OR ANY COMBINATION OF SUCH GUARANTIES IN THE FORM, QUALITY, AND AMOUNT IT CONSIDERS APPROPRIATE. THE CONTRACT SHALL BE APPROVED BY THE BOARD AND SIGNED ON BEHALF OF THE REGIONAL TRANSIT AUTHORITY AND BY THE CONTRACTOR.

(G) IN MAKING A CONTRACT, A REGIONAL TRANSIT AUTHORITY MAY GIVE PREFERENCE TO GOODS PRODUCED IN THE UNITED STATES IN ACCORDANCE WITH THE BUY AMERICA REQUIREMENTS IN THE "SURFACE TRANSPORTATION ASSISTANCE ACT OF 1982," PUBLIC LAW 97-424, SECTION 165. 96 STAT. 2097, 23 U.S.C.A. 101 NOTE, AS AMENDED, AND THE RULES ADOPTED THEREUNDER. THE REGIONAL TRANSIT AUTHORITY ALSO MAY GIVE PREFERENCE TO PROVIDERS OF GOODS PRODUCED IN AND SERVICES PROVIDED IN LABOR SURPLUS AREAS AS DEFINED BY THE UNITED STATES DEPARTMENT OF LABOR IN 41 U.S.C.A. 401 NOTE, EXECUTIVE ORDER NO. 12073, AUGUST 16, 1978, 43 FED. REG. 36873, AS AMENDED.

(H) COMPETITIVE PROCEDURES UNDER THIS SECTION ARE NOT REQUIRED IN ANY OF THE FOLLOWING CIRCUMSTANCES:

(1) THE BOARD OF TRUSTEES OF A REGIONAL TRANSIT AUTHORITY, BY A TWO-THIRDS AFFIRMATIVE VOTE OF ITS MEMBERS, DETERMINES THAT A REAL AND PRESENT EMERGENCY EXISTS UNDER ANY OF THE FOLLOWING CONDITIONS, AND THE BOARD ENTERS ITS DETERMINATION AND THE REASONS FOR IT IN ITS PROCEEDINGS:

(a) AFFECTING SAFETY, WELFARE, OR THE ABILITY TO DELIVER TRANSPORTATION SERVICES;

(b) ARISING OUT OF AN INTERRUPTION OF CONTRACTS ESSENTIAL TO THE PROVISION OF DAILY TRANSIT SERVICES;

- (c) INVOLVING ACTUAL PHYSICAL DAMAGE TO STRUCTURES, SUPPLIES, EQUIPMENT, OR PROPERTY.
- (2) THE PURCHASE CONSISTS OF GOODS OR SERVICES, OR ANY COMBINATION THEREOF, AND AFTER REASONABLE INQUIRY THE BOARD OR ANY OFFICER OR EMPLOYEE THE BOARD DESIGNATES FINDS THAT ONLY ONE SOURCE OF SUPPLY IS REASONABLY AVAILABLE.
- (3) THE EXPENDITURE IS FOR A RENEWAL OR RENEGOTIATION OF A LEASE OR LICENSE FOR TELECOMMUNICATIONS OR ELECTRONIC DATA PROCESSING EQUIPMENT, SERVICES, OR SYSTEMS, OR FOR THE UPGRADE OF SUCH EQUIPMENT, SERVICES, OR SYSTEMS, OR FOR THE MAINTENANCE THEREOF AS SUPPLIED BY THE ORIGINAL SOURCE OR ITS SUCCESSORS OR ASSIGNS.
- (4) THE PURCHASE OF GOODS OR SERVICES IS MADE FROM ANOTHER POLITICAL SUBDIVISION, PUBLIC AGENCY, PUBLIC TRANSIT SYSTEM, REGIONAL TRANSIT AUTHORITY, THE STATE, OR THE FEDERAL GOVERNMENT, OR AS A THIRD-PARTY BENEFICIARY UNDER A STATE OR FEDERAL PROCUREMENT CONTRACT, OR AS A PARTICIPANT IN A DEPARTMENT OF ADMINISTRATIVE SERVICES CONTRACT UNDER DIVISION (B) OF SECTION 125.04 OF THE REVISED CODE.
- (5) THE SALE AND LEASEBACK OF QUALIFIED MASS COMMUTING VEHICLES IS MADE AS PROVIDED IN DIVISION (AA) OF SECTION 306.35 OF THE REVISED CODE.
- (6) THE PURCHASE SUBSTANTIALLY INVOLVES SERVICES OF A PERSONAL, PROFESSIONAL, HIGHLY TECHNICAL, OR SCIENTIFIC NATURE, INCLUDING BUT NOT LIMITED TO THE SERVICES OF AN ATTORNEY, PHYSICIAN, SURVEYOR, APPRAISER, INVESTIGATOR, COURT REPORTER, ADJUSTER, ADVERTISING CONSULTANT, OR LICENSED BROKER, OR INVOLVES THE SPECIAL SKILLS OR PROPRIETARY KNOWLEDGE REQUIRED FOR THE SERVICING OF SPECIALIZED EQUIPMENT OWNED BY THE REGIONAL TRANSIT AUTHORITY.
- (7) SERVICES OR SUPPLIES ARE AVAILABLE FROM A QUALIFIED NONPROFIT AGENCY PURSUANT TO SECTIONS 4115.31 TO 4115.35 OF THE REVISED CODE.
- (8) THE PURCHASE CONSISTS OF THE PRODUCT OR SERVICES OF A PUBLIC UTILITY.
- (I) A REGIONAL TRANSIT AUTHORITY MAY ENTER INTO BLANKET PURCHASE AGREEMENTS FOR PURCHASES OF MAINTENANCE, OPERATING, OR REPAIR GOODS OR SERVICES WHERE THE ITEM COST DOES NOT EXCEED FIVE HUNDRED DOLLARS AND THE ANNUAL EXPENDITURE DOES NOT EXCEED TWENTY-FIVE THOUSAND DOLLARS.
- (J) NOTHING CONTAINED IN THIS SECTION PROHIBITS A REGIONAL TRANSIT AUTHORITY FROM PARTICIPATING IN

INTERGOVERNMENTAL COOPERATIVE PURCHASING ARRANGEMENTS.

(K) EXCEPT AS OTHERWISE PROVIDED IN THIS CHAPTER, A REGIONAL TRANSIT AUTHORITY SHALL MAKE A SALE OR OTHER DISPOSITION OF PROPERTY THROUGH FULL AND OPEN COMPETITION. EXCEPT AS PROVIDED IN DIVISION (L) OF THIS SECTION, ALL DISPOSITIONS OF PERSONAL PROPERTY AND ALL GRANTS OF REAL PROPERTY FOR TERMS EXCEEDING FIVE YEARS SHALL BE MADE BY PUBLIC AUCTION OR COMPETITIVE PROCEDURE.

(L) THE COMPETITIVE PROCEDURES REQUIRED BY DIVISION (K) OF THIS SECTION ARE NOT REQUIRED IN ANY OF THE FOLLOWING CIRCUMSTANCES:

(1) THE GRANT IS A COMPONENT OF A JOINT DEVELOPMENT BETWEEN PUBLIC AND PRIVATE ENTITIES AND IS INTENDED TO ENHANCE OR BENEFIT PUBLIC TRANSIT.

(2) THE GRANT OF A LIMITED USE OR OF A LICENSE AFFECTING LAND IS MADE TO AN OWNER OF ABUTTING REAL PROPERTY.

(3) THE GRANT OF A LIMITED USE IS MADE TO A PUBLIC UTILITY.

(4) THE GRANT OR DISPOSITION IS TO A DEPARTMENT OF THE FEDERAL OR STATE GOVERNMENT, TO A POLITICAL SUBDIVISION OF THE STATE, OR TO ANY OTHER GOVERNMENTAL ENTITY.

(5) USED EQUIPMENT IS TRADED ON THE PURCHASE OF EQUIPMENT AND THE VALUE OF THE USED EQUIPMENT IS A PRICE-RELATED FACTOR IN THE BASIS FOR AWARD FOR THE PURCHASE.

(6) THE VALUE OF THE PERSONAL PROPERTY IS SUCH THAT COMPETITIVE PROCEDURES ARE NOT APPROPRIATE AND THE PROPERTY EITHER IS SOLD AT ITS FAIR MARKET VALUE OR IS DISPOSED OF BY GIFT TO A NONPROFIT ENTITY HAVING THE GENERAL WELFARE OR EDUCATION OF THE PUBLIC AS ONE OF ITS PRINCIPAL OBJECTS.

(M) THE BOARD OF TRUSTEES OF A REGIONAL TRANSIT AUTHORITY, WHEN MAKING A CONTRACT FUNDED EXCLUSIVELY BY STATE OR LOCAL MONEYS OR ANY COMBINATION THEREOF, SHALL MAKE A GOOD FAITH EFFORT TO USE DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION TO THE SAME EXTENT REQUIRED UNDER SECTION 105(f) OF THE "SURFACE TRANSPORTATION ASSISTANCE ACT OF 1982," PUBLIC LAW 97-424, 96 STAT. 2100, AND SECTION 106(c) OF THE "SURFACE TRANSPORTATION AND UNIFORM RELOCATION ASSISTANCE ACT OF 1987," PUBLIC LAW 100-17, 101 STAT. 145, AND THE RULES ADOPTED THEREUNDER.

(N) AS USED IN THIS SECTION:

(1) "GOODS" MEANS ALL THINGS, INCLUDING SPECIALLY MANUFACTURED GOODS, THAT ARE MOVABLE AT THE TIME

OF IDENTIFICATION TO THE CONTRACT FOR SALE OTHER THAN THE MONEY IN WHICH THE PRICE IS TO BE PAID. INVESTMENT SECURITIES, AND THINGS IN ACTION. "GOODS" ALSO INCLUDES OTHER IDENTIFIED THINGS ATTACHED TO REALTY AS DESCRIBED IN SECTION 1302.03 OF THE REVISED CODE.

(2) "SERVICES" MEANS THE FURNISHING OF LABOR, TIME, OR EFFORT BY A CONTRACTOR, NOT INVOLVING THE DELIVERY OF GOODS OR REPORTS OTHER THAN GOODS OR REPORTS THAT ARE MERELY INCIDENTAL TO THE REQUIRED PERFORMANCE, INCLUDING BUT NOT LIMITED TO INSURANCE, BONDING, OR ROUTINE OPERATION, ROUTINE REPAIR, OR ROUTINE MAINTENANCE OF EXISTING STRUCTURES, BUILDINGS, REAL PROPERTY OR EQUIPMENT, BUT DOES NOT INCLUDE EMPLOYMENT AGREEMENTS, COLLECTIVE BARGAINING AGREEMENTS, OR PERSONAL SERVICES.

(3) "CONSTRUCTION" MEANS THE PROCESS OF BUILDING, ALTERING, REPAIRING, IMPROVING, PAINTING, DECORATING, OR DEMOLISHING ANY STRUCTURE OR BUILDING, OR OTHER IMPROVEMENTS OF ANY KIND TO ANY REAL PROPERTY OWNED OR LEASED BY A REGIONAL TRANSIT AUTHORITY.

(4) "FULL AND OPEN COMPETITION" HAS THE SAME MEANING AS IN THE "OFFICE OF FEDERAL PROCUREMENT POLICY ACT," PUBLIC LAW 98-369, SECTION 2731, 98 STAT. 1195 (1984), 41 U.S.C.A. 403.

(5) A BIDDER IS "RESPONSIVE" IF, APPLYING THE CRITERIA OF DIVISION (A) OF SECTION 9.312 OF THE REVISED CODE, THE BIDDER IS "RESPONSIVE" AS DESCRIBED IN THAT SECTION.

(6) A BIDDER IS "RESPONSIBLE" IF, APPLYING THE CRITERIA OF DIVISION (A) OF SECTION 9.312 OF THE REVISED CODE AND OF THE "OFFICE OF FEDERAL PROCUREMENT POLICY ACT," PUBLIC LAW 98-369, SECTION 2731, 98 STAT. 1195 (1984), 41 U.S.C.A. 403, THE BIDDER IS "RESPONSIBLE" AS DESCRIBED IN THOSE SECTIONS.

Sub. S. B. No. 164

13

SECTION 2. That existing sections 125.04 and 306.35 and section 306.43 of the Revised Code are hereby repealed.

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*Speaker \_\_\_\_\_ of the House of Representatives.*

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*President \_\_\_\_\_ of the Senate.*

Passed \_\_\_\_\_, 19\_\_\_\_

Approved \_\_\_\_\_, 19\_\_\_\_

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*Governor.*