September 26, 2025

The Honorable Michael T. Gmoser
Butler County Prosecuting Attorney
315 High Street, 11th Floor
Hamilton, OH 45012

SYLLABUS: 2025-021

1. County contracting authorities and their designated selection committees are subject to R.C. 121.22 of the Open Meetings Law when evaluating, ranking, discussing, and negotiating proposals submitted pursuant to R.C. 307.862.

2. Such evaluations, rankings, discussions, negotiations and award decisions may be lawfully conducted in a properly called executive session pursuant to R.C. 121.22(G)(2) and (5).

3. Documents and information generated as a result of an executive session or other meeting to evaluate, rank, discuss, or negotiate the proposals submitted under R.C. 307.862 and the eventual contract award are public records. However, the sealed proposals and records related to a subsequent negotiation for a final contract, including ranking sheets or documents, are not subject to public inspection and copying under R.C. 149.43 until after the contract is awarded.

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OPINION NO. 2025-021

The Honorable Michael T. Gmoser
Butler County Prosecuting Attorney
315 High Street, 11th Floor
Hamilton, OH 45012

Dear Prosecutor Gmoser:

You have requested an opinion regarding the confidentiality of sealed proposals for contracts. I have framed your questions as follows:

1. Are contracting authorities and appointed selection committees subject to R.C. 121.22 when evaluating, ranking, discussing, and negotiating proposals submitted pursuant to R.C. 307.862?

2. If question one is answered in the affirmative, is it lawful to conduct evaluations, rankings, discussions, negotiations, and awards in executive session pursuant to R.C. 121.22(G)?

3. When, if ever, would any records generated as a result of an executive session or otherwise non-

> public meeting to evaluate, rank, discuss, and negotiate, aside from the submitted proposals themselves, become public record?

For the reasons that follow, I find that county contracting authorities and their designated selection committees, if any, are subject to R.C. 121.22 when evaluating, ranking, discussing, and negotiating proposals submitted pursuant to R.C. 307.862. However, such evaluations, rankings, discussions, negotiations, and award decisions may be lawfully conducted in a properly convened executive session pursuant to R.C. 121.22(G)(2) and (5). Documents and information generated as a result of an executive session or other meeting to evaluate, rank, discuss, or negotiate the proposals submitted under R.C. 307.862 and the eventual contract award are public records. However, the sealed proposals and records related to a subsequent negotiation for a final contract, including ranking sheets or documents, are not subject to public inspection and copying under R.C. 149.43 until after the contract is awarded.

I

The purpose of competitive bidding is "to provide for open and honest competition in bidding for public contracts and to save the public harmless, as well as bidders themselves, from any kind of favoritism or fraud in its varied forms." *Cedar Bay Constr. Inc. v. Fremont*, 50 Ohio St.3d 19, 21 (1990), quoting *Chillicothe Bd. of*

Edn. v. Sever-Williams Co., 22 Ohio St.2d 107, 115 (1970). The competitive bidding process is used "to provide a fair and honest process for the awarding of public contracts." *Rien Constr. Co. v. Trumbull Cty. Bd. of Commrs.,* 138 Ohio App.3d 622, 630 (11th Dist. 2000). Likewise, the alternative process of requests for sealed proposals in R.C. 307.862 is designed to provide a similarly fair and honest process for selecting and awarding public contracts.

R.C. 307.86 to 307.92 establishes procedures that a contracting authority must follow when purchasing goods and services. *See generally* 2005 Ohio Atty.Gen.Ops. No. 2005-029, at 2-300 to 2-301. To purchase goods and services above a certain value, a county contracting authority generally must follow either the traditional, competitive bidding procedures in R.C. 307.86 –.92 or the alternative, sealed-proposal process in R.C. 307.862. The county contracting authority may undertake the competitive sealed proposal process if it determines such proposals "would be advantageous to the county." R.C. 307.86(M). However, this process may not be used for construction projects or roadway maintenance-related contracts. *See* R.C. 307.862(G).

When a contracting authority is a public body, or when a selection committee is designated to evaluate and recommend the proposal most advantageous to the contracting authority, meetings and record keeping

are inherent in, and essential to, the process. Therefore, the requirements of the Open Meetings Act, R.C. 121.22, and the Public Records Act, R.C. 149.43, govern these meetings and the public availability of records created in the process.

A

First, you have asked: "Are contracting authorities and appointed selection committees subject to R.C. 121.22 when evaluating, ranking, discussing and negotiating proposals submitted pursuant to R.C. 307.862?"

The answer depends on whether a contracting authority or its selection committee qualifies as a "public body." In relevant part, R.C. 121.22(B)(1) defines a "public body" as:

> (a) Any board, commission, committee, council, or similar decision-making body of a state agency, institution, or authority, and any legislative authority or board, commission, committee, council, agency, authority, or similar decision-making body of any county, township, municipal corporation, school district, or other political subdivision or local public institution;

> (b) Any committee or subcommittee of a body described in division (B)(1)(a) of this section.

This definition of a public body is broad and partially overlaps with the definition of a "contracting authority" contained in R.C. 307.92. For instance, a contracting authority includes "any board, department, commission, [or] authority . . . which has authority to contract for or on behalf of the county or any agency, department, authority, commission, office, or board thereof." R.C. 307.92. However, a contracting authority may also be a "trustee, official, administrator, agent, or individual" with such authority. *Id.* Clearly, a single official or agent of the county would not qualify as a public body. Thus, if a single officer or employee of a county agency were responsible for soliciting, reviewing, and deciding between sealed proposals under R.C. 307.862, that individual would not be subject to the Open Meetings Law.

On the other hand, a group of individuals acting as a selection committee for a contracting authority would be a committee or subcommittee of the "legislative authority [of a county] or board, commission, committee, council, agency, authority, or similar decision-making body" of a county. R.C. 121.22(B)(1)(a). The selection committee need not have ultimate decision-making authority; it is sufficient for the committee to make recommendations to the contracting authority in selecting

a proposal. *See Wheeling Corp. v. Columbus & Ohio River R.R. Co.*, 2001-Ohio-8751, ¶58-62 (10th Dist.); *see also Thomas v. White*, 85 Ohio App.3d 410, 412 (9th Dist. 1992). Thus, a contracting authority's selection committee qualifies as a public body subject to the Open Meetings Law. *See State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54, 58-59 (2001) (committee meetings are meetings for purposes of R.C. 121.22 because they are prearranged discussions of the public business of a public body by a majority of the public body's members); *State ex rel. Maynard v. Medina Cty. Facilities Taskforce Subcommittee,* 2020-Ohio-5561 (9th Dist.) (finding that a subcommittee can be sued for Open Meetings Act violation even though it is not a "decision-making body" and does not have "decision-making authority").

Another example may help: A few years ago, the Eighth District Court of Appeals examined whether Ohio's Sunshine Laws applied to the work of an appointed municipal task force in *Kanter v. City of Cleveland Heights,* 2021-Ohio-4318 (8th Dist.). The court concluded that the Cleveland Heights "Racial Justice Task Force" was a public body subject to R.C. 121.22. This task force was assigned the duty of "making recommendations to the city of Cleveland Heights relative to 'processes, policies and action steps to create an inclusive community,' and preparing a report detailing its efforts and recommendations, including whether the city should establish a commission" to further the

task force's efforts. *Id.* at ¶22. The court of appeals relied on 1994 Ohio Atty.Gen.Ops. No. 1994-096, noting that "the attorney general concluded that a committee of private citizens and various public officers or employees that was established by a board of health of a general health district for the purpose of advising the board on matters pertaining to the administration of a state or federal grant program was a public body subject to the mandates of R.C. 121.22." *Id.* at ¶23.

Thus, I conclude that a contracting authority's selection committee is a public body that would be subject to the Open Meetings Law during the competitive sealed proposal process. Likewise, the contracting authority, itself, would be a public body subject to the Open Meetings Law if it is "any board, commission, committee, council, or similar decision-making body." *See* R.C. 121.22(B)(1)(a).

B

Having determined that the Open Meetings Law applies to contracting authorities and selection committees, I now address your second question regarding the use of executive session. Numerous provisions in R.C. 307.862 require confidentiality during the competitive sealed proposal process. For example, division (C) of that statute provides:

> In order to ensure fair and impartial evaluation, 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 section 149.43 of the Revised Code shall not be available until after the award of the contract.

Moreover, R.C. 307.862(A) provides for *sealed* proposals and directs that the county contracting authority: "[o]pen proposals that the contracting authority receives in a manner that *prevents the disclosure* of contents of competing offers to competing offerors." R.C. 307.862(A)(5) (emphasis added). Once that is completed, then "[i]f the contracting authority determines that discussions [with offerors] . . . are necessary," the contracting authority must "*avoid disclosing* any information derived from proposals submitted by competing offerors during those discussions." R.C. 307.862(A)(8) (emphasis added). In addition, the contracting authority must "[c]onduct negotiations with only one offeror at a time." R.C. 307.862(A)(10).

At first glance these provisions—that require confidentiality during competitive sealed proposal processes—appear to contradict the contracting authority's obligations under R.C. 121.22. How, then, can the contracting authority comply with both?

The statute provides the answer: entering executive session as set out under R.C. 121.22(G). An executive session is limited to the members of the public body and persons specifically invited by that body to attend the meeting. *See Thomas v. Bd. of Trustees*, 5 Ohio App.2d 265, 268 (11th Dist. 1966). Pursuant to R.C. 121.22(G), an executive session of a public meeting may only be held following a roll call vote by a majority of a quorum after a proper motion, as well as a specification, on the record, as to which of the subjects in R.C. 121.22(G) are to be considered. *See, e.g., State ex rel. Fenley v. Kyger*, 72 Ohio St.3d 164, 166, fn. 1 (1995); *Vermilion Teachers' Assn. v. Vermilion Local School Dist. Bd. of Edn.*, 98 Ohio App.3d 524 (1994).

More specifically, among the authorized purposes to hold an executive session, the following provisions in R.C. 121.22(G) are directly relevant here:

> (2) To consider the purchase of property for public purposes, the sale of property at competitive bidding, or the sale or other disposition of unneeded, obsolete, or unfit-for-use property in accordance with section 505.10 of the Revised Code, if premature disclosure of information would give an unfair competitive or bargaining advantage to a person whose personal, private interest is adverse to the general public interest.

> . . .
>
> (5) Matters required to be kept confidential by federal law or regulations or state statutes.

When a county contracting authority uses the sealed proposal process to consider purchasing or selling property, R.C. 121.22(G)(2) applies. The Ohio Supreme Court recently clarified that the premature-disclosure clause in R.C. 121.22(G)(2) applies to both the sale and purchase of property. *See Look Ahead Am. v. Stark Cty. Bd. of Elections*, 2024-Ohio-2691, ¶23. A principal reason for using the sealed proposal process is to avoid "premature disclosure of information [that] would give an unfair competitive or bargaining advantage" to another interested person. R.C. 121.22(G)(2). Second, R.C. 121.22(G)(5) applies because multiple provisions in R.C. 307.862, noted above, require confidentiality during that process. The upshot: an executive session convened for the purpose set forth in R.C. 121.22(G)(2) will allow the contracting authority to both comply with the Open Meetings Law, and also with the confidentiality required for assessing competitive proposals.

In your request for an opinion, you raised concerns about the propriety of executive session due to *Wheeling Corp.,* 2001-Ohio-8751 (10th Dist.). *Wheeling* involved a selection committee established by the Ohio

Rail Development Commission to evaluate and score proposals to operate a state-owned rail line. In that case, the Tenth District Court of Appeals found a violation of the Open Meetings Act because the selection committee had several closed meetings without public notice. In that case, however, the committee did not enter a motion for executive session on the record, hold a roll call vote, or specify a purpose for executive session. *Id*. at ¶64. Therefore, the selection committee did not follow the procedures required by statute to hold a valid executive session. The case therefore did not involve, and so did not say anything about, the sealed proposal process in R.C. 307.862. Thus, the court's ruling in that case does not foreclose a county contracting authority from utilizing executive sessions to review sealed proposals.

In sum, I conclude that a contracting authority or its selection committee, strictly following the procedural requirements of R.C. 121.22(G), may enter into executive session to conduct evaluations, rankings, discussions, negotiations, and awards under R.C. 307.862.

C

This brings us to your final question: "When, if ever, would any records generated as a result of an executive session or otherwise non-public meeting to evaluate, rank, discuss, negotiate, aside from the submitted proposals themselves, become public record?"

The Public Records Act must be liberally construed "in favor of broad access" to public records, and any doubts must be resolved "in favor of disclosure of public records." *State ex rel. Pietrangelo v. Avon Lake*, 2016-Ohio-2974, ¶8. An executive session is not a mechanism to make private all public records considered. If a document is a "public record" and not specifically exempted, an executive session will not protect it from public disclosure. *See, e.g., State ex rel. Findlay Publishing Co. v. Hancock Cty. Bd. Of Commrs.*, 80 Ohio St.3d 134, 138 (1997).

A "public record" is defined, in relevant part, as "records kept by any public office, including, but not limited to, state, county, city, village, township, and school district units," with limited exceptions listed for categories of records exempt from disclosure. R.C. 149.43(A)(1). A "record" is more broadly defined as "any document, device, or item, regardless of physical form or characteristic, including an electronic record as defined in section 1306.01 of the Revised Code, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office." R.C. 149.011(G).

In 2012, the Attorney General opined that "[a] bid or proposal submitted to a county contracting authority under R.C. 307.86–.92 serves to document the

procedure by which the contracting authority awards the public contract, and so the bid or proposal is a 'record,' as defined in R.C. 149.011(G), [and] constitutes a public record." 2012 Ohio Atty.Gen.Ops. No. 2012-036, at 2-321 to 2-322. The Opinion also examined the elements of a competitive sealed proposal under R.C. 307.862 and concluded:

> Pursuant to R.C. 307.862(C), information in a competitive sealed proposal submitted to a county contracting authority pursuant to R.C. 307.862 becomes a public record that must be made available for public inspection and copying under R.C. 149.43 after the contract is awarded, unless the information falls within one of the exceptions to the definition of the term "public record" set forth in R.C. 149.43(A)(1) and is redacted from the proposal by the contracting authority.

Id. at paragraph three of the syllabus.

Records may be created during the evaluation and ranking of submitted proposals, the contracting authority's discussions, and negotiation of the proposals. R.C. 307.862 includes multiple provisions requiring the contracting authority to avoid premature disclosure of competing offers. *See* R.C. 307.862(A)(5) and

(8). Division (C) of the statute expressly carves out an exception to R.C. 149.43:

> In order to ensure fair and impartial evaluation, 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 section 149.43 of the Revised Code shall not be available until after the award of the contract.

R.C. 307.862(C) also shields "any documents or other records related to a subsequent negotiation" from disclosure until the contract is awarded. This would not necessarily cover all records generated in the process of awarding the contract, but the plain language of R.C. 307.862(C) is not limited to documents produced by the bidder.

Documents produced by the contracting authority or its selection committee in the course of negotiations, such as those containing ranking evaluations and considerations, would fall within the scope of this provision. The information contained in a ranking of proposals may take different forms and levels of detail, depending on the complexity of the contract request, the submitted proposals, and the number of bidders, among other considerations. R.C. 307.862(A)(6)

requires the contracting authority, or any subcommittee thereof, to evaluate and rank each of the proposals against the criteria the contracting authority has developed in conformity with R.C. 307.862(A)(1).

The statute allows for discussions with the various offerors to "accord fair and equal treatment" and to "provide any clarification, correction, or revision of the proposals." R.C. 307.862(A)(7). The contracting authority determines which offerors to negotiate with based on the rankings and any "adjustments to those rankings" resulting from discussions with offerors.

If any documented ranking evaluation would disclose information derived from the sealed proposals submitted by competing offerors during the discussions contemplated in R.C. 307.862(A)(7), then in "order to ensure a fair and impartial evaluation" related to a subsequent negotiation, any such document containing such information "shall not be available until after the award of the contract." R.C. 307.862(C).

Ultimately, local officials must determine how the exemption applies to particular records that may be requested prior to the award of the contract under consideration. The form that the rankings take, the information contained in any ranking sheet or document, and whether the ranking information will be used for discussions with the offerors is a question of fact which

cannot be answered by an opinion of the attorney general.

These statutes, read together, prevent the premature disclosure of information in the opening, evaluation, and negotiation of competitive sealed proposals. Once the contract is awarded, however, the competitive sealed proposal, accompanying documents, and records related to subsequent negotiations, including any ranking sheets or documents, must be made available to the public upon proper request, subject to any necessary or permissible redactions.

Conclusion

Accordingly, it is my opinion, and you are hereby advised that:

1. County contracting authorities and their designated selection committees are subject to R.C. 121.22 of the Open Meetings Law when evaluating, ranking, discussing, and negotiating proposals submitted pursuant to R.C. 307.862.

2. Such evaluations, rankings, discussions, negotiations and award decisions may be lawfully conducted in a properly called executive session pursuant to R.C. 121.22(G)(2) and (5).

3. Documents and information generated as a result of an executive session or other meeting to evaluate, rank, discuss, or negotiate the proposals submitted under R.C. 307.862 and the eventual contract award are public records. However, the sealed proposals and records related to a subsequent negotiation for a final contract, including ranking sheets or documents, are not subject to public inspection and copying under R.C. 149.43 until after the contract is awarded.

Respectfully,

DAVE YOST
Ohio Attorney General