



Commissioners Handbook

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CHAPTER 6

REAL PROPERTY, BUILDINGS AND PUBLIC IMPROVEMENTS

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6.01 INTRODUCTION

This Chapter of the *Handbook* will focus on county real property, buildings and facilities, and various types of county public improvements. It will include the primary responsibilities of county commissioners when acquiring, constructing, rebuilding, enlarging, improving, equipping and furnishing county buildings and other public improvements, and the acquisition and sale of land. It will also discuss required procedures for the procurement and acquisition of real property and optional methods for constructing new or improving existing buildings and other public improvements, such as infrastructure improvements. This Chapter is designed to be used in conjunction with other Chapters of the *Handbook*. This is particularly true as it relates to the competitive bidding requirements of ORC Sections 307.86-307.92 and other provisions of law relating generally to purchasing and procurement, which are detailed in Chapter 24, *Purchasing*.

This Chapter also will discuss the basic powers and responsibilities of commissioners to provide, control, manage, and safeguard needed facilities; options for providing such facilities; procedures for hiring design professionals and construction managers; bidding, advertising, and the award and payment of construction contracts; prevailing wage law requirements; obligations relating to underground utilities; bid guaranty requirements; and, the county building commission.

Ohio law includes a wide range of statutes relating to county buildings and real and personal property. Table 6-2 at the end of this Chapter summarizes some of these authorities and responsibilities, includes Ohio Revised Codes references, and includes references to *Handbook* sections that discuss it in greater detail. Table 6-1 summarizes the important financial thresholds related to competitive bidding, bid guarantees, and prevailing wage requirements.

The chapter is organized into six parts. Part 1 provides a general overview of county responsibilities with respect to property and buildings. Part 2 covers basic procedures for the sale, lease, and purchase of real property. Part 3 explains the requirements for the planning phase of construction and the option to establish a county building commission. Part 4 explains the traditional approach to purchasing construction services using multiple prime contracting and competitive bidding, and how to handle partial payments as a project moves toward completion. Part 5 discusses alternative construction project delivery methods that allow for more flexibility in the procurement of professional design and construction services. Part 6 reviews prevailing wage requirements that apply to most public improvement projects.

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PART I: GENERAL MATERIAL ON COUNTY PROPERTY, BUILDINGS AND PUBLIC IMPROVEMENTS

6.02 OHIO'S PUBLIC IMPROVEMENT LAW, ORC CHAPTER 153

This Chapter will include detailed information on Ohio's Public Improvement Law, ORC Chapter 153. Great care should be taken when reading this Chapter of the Ohio Revised Code because certain provisions of this Chapter specifically apply to counties, others apply only to the state, and yet others apply to all political subdivisions, including counties.

ORC Sections 153.21-153.30 include provisions authorizing the appointment of a county building commission for county building projects which are rarely used today. ORC Sections 153.31-153.49 deal specifically with county buildings and other structures, including bridges and other infrastructure projects. Advice from the county prosecutor as it relates to the specific application of these sections is encouraged as some of these statutes appear to duplicate some of the specific provisions of construction law found elsewhere in ORC Chapter 153 or in other sections of the Ohio Revised Code, as some of these statutes date from 1888, if not earlier.

Ohio's Public Improvement Law, ORC Chapter 153, was substantially amended in 2011. Referred to as "Ohio Construction Reform," and included in that year's state operating budget, the law provides alternative construction delivery methods for public buildings and other public improvement projects. For 134 years prior to this change, public authorities were required to use Multiple Prime Contracts. Under this method of construction delivery, the county would contract directly with several contractors rather than with a single prime contractor. This method usually involved the county having direct contracts with major specialized trades such as electrical, plumbing, HVAC, and others.

While the Multiple Prime Method (MP) continues to be an option for counties, the law now also allows three other alternative construction delivery methods: (1) General Contracting Method (GC), (2) Construction Manager at Risk Method (CMR), and (3) Design Build Method (DB). Each of these new alternative methods will be described later in this Chapter. Each method has pros and cons depending on the size, scope and timeline for county public improvement projects. Each method also involves different degrees of project risk assumption by the county and the contractor. Experienced counsel may be needed to more fully understand how these alternatives may apply to specific construction projects. A power point presentation that summarizes these alternative construction delivery methods is available on the CCAO web site at:

https://www.ccao.org/aws/CCAO/asset_manager/get_file/746509?ver=1

Great care is necessary applying the law when the county uses one of the new methods. When the legislature allowed methods in addition to Multiple Prime contracts,

it also enacted ORC Section 153.73, which applies to procurement of professional design services and design-build services and reads as follows:

The requirements set forth in sections 153.65 to 153.72 of the Revised Code for the bidding, selection, and award of a contract for professional design services or design-build services by a public authority prevail in the event of any conflict with any other provision of this chapter.

Likewise, similar statutory language in ORC Section 9.335 relating to CMR projects makes it clear that if there is a conflict with other provisions of ORC Chapter 153 that the specific provisions relating to DB and CMR projects prevail in the event of conflict or inconsistency.

6.03 GENERAL FRAMEWORK

County commissioners hold title to all county property and are charged with the management and control of county property. They are also the county contracting authority for the acquisition and improvement of county real property and the procurement of county personal property. Shortly after the Civil War the Ohio Supreme Court ruled that title to county property was vested in the board of county commissioners when it stated:

The board of county commissioners is the body -- the quasi corporation -- in whom is vested by law the title of all the property of the county. In one sense they are the agents of the county, and in another sense they are the county itself. It is in this latter sense that they acquire, and hold in perpetuity, the title to its property. In this capacity they not only act for the county, but also act as the county (*Carder v. Board of Commissioners*, 16 Ohio St. 353, 369 (1865)).

Thus, regardless of which county office or entity customarily uses or occupies particular county property, ownership of county property is *generally* vested in the board of county commissioners. As such the commissioners are charged with the management and control of county property (OAG 87-039). There are a few exceptions to this rule, such as the right of a county board of developmental disabilities to own property in its own name (ORC 5126.05), but the general rule is that “the board of county commissioners is the representative and guardian of the county, having the management and control of its property and financial interest, and has exclusive and original jurisdiction over all matters pertaining to county affairs, except in respect to matters the cognizance of which is exclusively vested in some other officer or person.” (*Dall v. Cuyahoga County Building Commission*, 24 Ohio Dec. 9, 11-12, C.P. Cuyahoga 1913). When exercising the responsibility to manage and control county property, however, “the board of county commissioners has broad discretion as to the manner in which it carries out such responsibilities.” (OAG 97-001).

As the legal custodian of county property with custody, management and control responsibilities, commissioners also have the duty of care and maintenance of the property (*Dittrick v. Barr*, 22 Ohio L. Rep. 289, 289-290, Ct. App. Cuyahoga County 1924). Relating to the care and custody of property, ORC Section 305.16 provides:

The board of county commissioners may employ a superintendent, and such watchmen, janitors, and other employees as are necessary for the care and custody of the court house, jail, and other county buildings, bridges, and other property under its jurisdiction and control.

While, as a general rule, commissioners have title to, manage, control and have certain responsibilities for county facilities under the law, an exception to this rule applies to the judiciary and courts. The general authority of county commissioners over the courthouse, for example, is trumped by the inherent powers of the courts doctrine. The courts have the authority to determine the sufficiency of quarters and facilities furnished for their use. Commissioners have little discretion to deprive a court of the use of any part of the building provided for the administration of justice. And while ORC Section 311.07 provides that the sheriff is in charge of the courthouse, subject to the direction and control of the county commissioners, this has been interpreted to mean the security of the facility and does not empower the sheriff to decide how the building may be occupied. The principle of commissioner control and care for county-owned buildings means that a sheriff or other county official cannot perform maintenance or make repairs and improvements over the objections of the county commissioners, and that the commissioners may stop such repairs if they find that the funds are not being used in the manner for which they were appropriated (OAG 2023-5).

It has further been found that “the powers of the county commissioners to protect and preserve county buildings must, however, be evaluated in relation to the interests of the judiciary in having facilities that permit the proper and efficient operation of the courts (OAG 87-039). Likewise, it has been found that “full control is vested in the commissioners only as to facilities not occupied by the court” (OAG 89-029). Thus, courts located in the courthouse possess the “paramount right to the space therein which is essential to the proper and efficient operation of such court” (*State ex rel. Hottle v. Board of County Commissioners of Highland County*, 52 Ohio St. 2d 117 (1977)).

Finally, even in counties where the courts occupy only part of the space in the courthouse and share the building with other county offices, the space they occupy “is as much within the control and jurisdiction of the courts as if the whole building were devoted exclusively to judicial purposes.” (*State ex rel. Bittikofer v. Babst*, 97 Ohio St. 64 (1917)). As such, a court located in a courthouse is entitled to additional space in the courthouse as opposed to other governmental offices when it is shown that the space is reasonably necessary for the proper and efficient operation of the court, as distinguished from being merely desirable (*State ex rel. Finley v. Pfeiffer*, 163 OS 149 (1955)). And in the case of other governmental offices, commissioners may transfer any office from the courthouse to other quarters provided by the commissioners (OAG 74-032).

6.04 COMPETITIVE BIDDING REQUIREMENTS AND REFERENCES TO RELEVANT PROVISIONS IN CHAPTER 24, *PURCHASING*

The county competitive bidding law, ORC Sections 307.86-307.92, generally requires that anything to be purchased, leased, leased with an option or agreement to purchase, or constructed in excess of a cost threshold established by law is subject to competitive bidding, with certain exceptions. The cost threshold is set at \$75,000 for calendar year 2024, and will be increased by 3% annually thereafter as determined and published by the Ohio Department of Commerce under ORC Section 9.17. The competitive bidding requirement includes any product, structure, construction, reconstruction, improvement, maintenance, repair, or service unless it is specifically exempted, or another section of the law provides an alternative method of procurement. The purchase of real estate, however, is not subject to competitive bidding (see Section 6.07 of this chapter).

Competitive bidding, however, is not required in the case of buildings and structures, radio communications equipment, or computers if the commissioners unanimously declare that a real and present emergency exists. In this case commissioners must specify on the commissioner's journal the reasons for the emergency, and if there is physical disaster to buildings or structures, radio communications equipment, or computers, no bidding is required irrespective of the cost. If the commissioners have unanimously determined that a real and present emergency exists, but there is no physical disaster to structures, radio communications equipment, or computers, repairs can be made without bidding as long as the cost does not exceed \$125,000. In the case where an emergency is declared and the estimated cost is between the competitive bidding threshold and \$125,000, at least three informal estimates must be obtained, and these records must be kept for at least one year or longer if required by the federal government.

Chapter 24 of this *Handbook*, Purchasing, includes the details relating to competitive bidding and other competitive selection processes that will not be repeated in this Chapter. Please refer to Chapter 24 for additional information.

6.05 ALTERNATIVE PUBLIC NOTICE PROVISIONS

A number of sections to be discussed in this Chapter of the Handbook require multiple public notices to be published in a newspaper of general circulation in the county. Ohio law now provides abbreviated alternative publication requirements in certain instances under ORC Section 7.16.

Specifically, if the Ohio Revised Code or state agency administrative rules require that notice be published two or more times in a newspaper of general circulation then the second, or any subsequent required notices, may be published in an abbreviated form, provided the second or subsequent notice meets the following requirements:

1. It is published in the newspaper of general circulation where the first notice was given.

2. It is posted at no additional cost by the newspaper on the official public notice web site which is operated by the Ohio Newspaper Association. If the site is not operational, the abbreviated second notice is not authorized.
3. The abbreviated notice includes a title, a summary describing the purpose of the notice, and a statement that the notice is posted in its entirety on the official public notice web site. The notice may also be posted on the county's website.
4. It includes the internet address of the official public notice web site and the name, address, telephone number, and email address of the commissioners' clerk or other person responsible for the publication of the notice.

Finally, it should be noted that these abbreviated publication requirements only apply to notices if the specific ORC Section number or state administrative rule specifically refers to ORC Section 7.16.

6.06 APPROVAL AND PAYMENT OF COUNTY OBLIGATIONS, INVOICES, AND OTHER CLAIMS

Purchasing and approval of most contracts for construction, materials, supplies, services and equipment necessary to operate the many functions of county government is a primary responsibility of county commissioners. Most claims against the county must be approved by the county commissioners prior to being paid unless the amount due is set by law or fixed by a court or other authorized person or body (ORC 307.55).

All contracts must be approved at a regular or special session of the board and entered into the minutes of the board (ORC 305.25). The law also requires a full record to be kept, including the vote on each motion. All funds must be lawfully appropriated for a proper public purpose prior to expenditure, and all expenditures must be made by warrant drawn against an appropriate fund (ORC 5705.41(B)(C)). In order to be lawful, all contracts, with certain exceptions, must include certification of availability of funds by the county auditor (ORC 5705.41(D)).

Finally, any claims against the county that the commissioners approve to be paid must be paid by warrant drawn upon the county treasury by the county auditor (ORC 321.15). Payments may be made by the county auditor by electronic warrant authorizing direct deposit for payment of county obligations provided the county complies with rules adopted by the State Auditor (ORC 9.37). The county auditor generally may not issue a warrant in such cases unless the claim is approved by the commissioners (ORC 319.16). The county auditor may question the validity of certain expenditures for which a proper order or voucher and evidentiary matter is presented. The auditor may request evidentiary matter which includes original invoices, receipts, bills and checks, and legible copies of contracts. If the auditor continues to refuse to issue a warrant for expenditures that the commissioners, county board or officer, or court determines is valid, a writ of mandamus may be sought to compel the auditor to pay the claim (ORC

319.16). For additional information on these issues refer to Chapter 24 of this *Handbook*.

PART II: COUNTY BUILDINGS, LAND AND FACILITIES

6.07 PURCHASE OF REAL ESTATE

The purchase of real estate by the county commissioners is exempt from competitive bidding. It should be noted that this applies only to the purchase of real estate and not to the construction of buildings, structures or other improvements. It was the reasoning of the Attorney General that because real estate is unique it was not susceptible to the competitive bidding process (OAG 79-034). However, most important in the opinion was that ORC Section 307.08 authorizes the commissioners to "procure real estate." The Attorney General construed the law to authorize the purchase of real property without competitive bidding because commissioners have "a duty to attempt to agree with the owner of real property for the purchase of realty prior to invoking the appropriation process." (OAG 79-034).

The appropriation of real property through eminent domain is governed by procedures specified in Chapter 163 of the Revised Code. Special provisions apply to the appropriation of property for the construction of sewers to address sudden and unavoidable public health threats pursuant to an order of a public health district or a finding by the Ohio EPA (ORC 307.08(B)).

County commissioners may purchase or appropriate real property in the unincorporated area of the county in connection with a plan to make public infrastructure improvements to that property through a development mechanism commonly known as tax increment financing. For the purpose of implementing tax increment financing, commissioners may:

1. Sell or lease property acquired by the county by purchase or appropriation.
2. After the property is purchased or leased from the county, exempt part or all of an improvement to such property from real property taxes.
3. Once an improvement is exempted from taxation, charge the owner of the improvement service payments in-lieu of taxes.
4. Use the service payments to finance the construction or repair of public infrastructure improvements that benefit the property (ORC 307.081).

Commissioners also may enter into agreements to construct or repair public infrastructure improvements and may issue debt to finance such improvements in connection with a tax increment financing plan (ORC 307.082). For more information about tax increment financing, see Chapter 15 of this *Handbook, Tax Abatement*.

County commissioners may purchase real estate at public auction by designating an individual to represent them and tender bids at the auction. Purchase of real estate at an auction is subject to a maximum purchase amount established by the commissioners or an appraisal obtained prior to sale and certification of availability of funds by the auditor (ORC 307.083).

Finally, commissioners have been granted authority to procure real estate by purchase or eminent domain and may donate the property to the state, the Department of Rehabilitation and Correction, or to the U. S. Bureau of Prisons for the construction of a state or federal correctional institution, facility or complex. When making such a donation the commissioners must determine such donation serves the interests of the county and attempt to obtain terms and conditions such as priority over other courts or law enforcement agencies in the placement of non-state or non-federal prisoners in the facility or an option for the county to repurchase the property if at some time in the future the donated property is no longer being used for correctional purposes (ORC 307.084).

6.08 TYPES OF BUILDINGS AND FACILITIES

ORC Section 307.02 provides specific authority for the county commissioners to construct, enlarge, improve, rebuild, equip and furnish buildings or facilities for a variety of purposes. Commissioners also have the power to appropriate, or use eminent domain powers specified in ORC Chapter 163. The following specific purposes, in addition to other purposes, are specified in this section:

1. Courthouse
2. County offices
3. Jails, which must be designed and operated to substantially comply with the Department of Rehabilitation and Correction's minimum standards
4. County home
5. Juvenile court building
6. Detention facility
7. Public market house
8. Children's home
9. Community mental health facility
10. Community developmental disability facility

11. Senior citizen facility
12. Alcohol treatment and control center
13. Public stadium
14. Public auditorium
15. Exhibition hall
16. Zoological park
17. Public library buildings
18. Golf courses
19. Off-street parking facilities in conjunction with such building facilities
20. Retail store rooms and offices, if they are located in a building acquired by the county for county office purposes
21. Other necessary buildings

ORC Section 307.02 also authorizes commissioners to provide off-street parking facilities and sites that are situated so as to be useful to any of the buildings or facilities. In this regard commissioners may establish and collect rates, charges or rent for the use of parking facilities. The county also can procure retail store rooms and offices if they are located in a building acquired to house county offices. In this case commissioners may establish and collect rent and enter into leases for such retail store rooms or offices. In this regard, the county may procure real estate adjoining such buildings or facilities that the commissioners determine is necessary, including land necessary to afford light, air, protection from fire, suitable surroundings and ingress and egress.

Finally, in addition to the general authority for commissioners to “appropriate” land in ORC Section 307.02 they may procure real estate, a right-of-way, or an easement for a courthouse, a jail, public offices, bridges, a public market place, market house, or another structure by eminent domain following the procedures of ORC Section 163.01-163.22.

In certain circumstances commissioners may utilize what is popularly referred to as “quick-take” eminent domain procedures. Quick-take can only be used in cases of a “public exigency” and can be used for sewer, in limited cases for drainage, and certain road projects. In quick-take actions, the county can take possession of condemned property before compensation litigation with owners is complete if they deposit

"probable compensation" with the court. For more information refer to Section 28.19 of this *Handbook*.

6.09 GENERAL OPTIONS FOR PROVIDING COUNTY BUILDINGS AND FACILITIES

ORC Section 307.02 authorizes county commissioners to procure buildings or provide facilities in the following ways:

1. Purchase for cash
2. Purchase by installment payments
3. Enter into lease-purchase agreements
4. Lease with option to purchase (see section 6.10 of this Chapter)
5. Lease

In addition, commissioners may also enter into sale and leaseback agreements. Under this authority, commissioners may enter into an agreement where the county conveys a building to a purchaser who must lease all or portions of the building back to the county. The sale and leaseback agreement must obligate the entity leasing the building back to the county to make public improvements to all or portions of the building subject to the lease. This includes renovations, energy conservation measures, and other measures that are necessary to improve the functionality and reduce the operating costs of the portions of the building that are subject to the lease (ORC 9.483).

6.10 LEASE-PURCHASE AGREEMENT IMPROVEMENTS

The county may utilize a lease-purchase agreement to construct or renovate buildings, structures, and other improvements specified in ORC Section 307.02 (and Section 6.08 of this Handbook). The lease agreement can be for a period not to exceed 40 years, at the end of which period the buildings, structures, and related improvements, along with the land on which they are situated, must become the property of the county without additional cost. If such a lease is to be entered into by a county, the commissioners must file, in the office of the clerk or auditor, such basic plans, specifications, bills of materials, and estimates of cost with sufficient detail to afford bidders with all needed information. Alternatively, the commissioners may file the following information:

1. Full and accurate plans, suitable for use by mechanics and builders in such construction, improvement, addition, alteration, or installation.
2. Details to scale and full sized, so as to be easily understood.

3. Accurate bills showing the exact quantity of different kinds of material necessary to the construction.
4. Definite and complete specifications of the work to be performed, along with directions for mechanics and builders to carry them out and afford bidders all needed information.
5. A full and accurate estimate of the cost of each item and the aggregate expense.

The lease purchase-plan is subject to competitive bidding and the form of the bid as approved by the commissioners must be used by bidders without modification, as set forth in Sections 307.86 to 307.92 of the Revised Code. The bids must contain the terms upon which the builder would propose to lease the facility to the county. The bidder must comply with ORC Sections 153.50-153.52. If the county uses the lease-purchase plan approach, it precludes the use of the construction manager at risk (CMR) or design build (DB) methods of project delivery. Under a separate authority, a county may use a sale and lease-back agreement for the renovation of an existing building as explained in Section 6.09 above (ORC 9.483).

At the time specified for opening bids, they are opened and tabulated. Commissioners must evaluate the bids within 30 days of opening, during which time they must assure that bidders are in compliance with certain requirements of the Bureau of Workers Compensation and the Secretary of State. Within 10 days of completing their investigation, the commissioners may award the lease agreement to the lowest and best bidder if the county prosecutor has certified approval of the agreement. They may reject any bid. In conjunction with the lease purchase agreement, commissioners may grant leases, easement, or licenses for lands controlled by the county for up to 40 years. For further details on this procedure, see ORC Section 307.02.

Commissioners should carefully consider the benefits and disadvantages of a lease-purchase agreement. The major advantages are that it does not require the issuance of voter-approved debt and does not count against a legal debt limit. The county can also avoid the fees and administrative costs associated with bonded debt, and tailor the payment schedule to meet its financial needs. On the other hand, if the county does not complete its payments, it may lose the equity interest accumulated in the building.

6.11 LEASE OF CORRECTIONAL FACILITIES

Section 307.022 of the Revised Code authorizes leases for correctional facilities. These leases are commonly referred to as "lease-back arrangements."

The following general provisions of law apply to this approach of obtaining correctional facilities which may include jails, detention facilities, work houses, community based correctional facilities, and family court centers:

1. The county can sell, lease, or grant easements or licenses to land owned by the county to a private entity without following competitive bidding procedures if the land is to be leased back to the county for the use of correctional facilities.
2. The county may enter into a lease with an option to purchase correctional facilities. The term of such a lease cannot exceed 40 years.
3. Such a lease is exempt from competitive bidding, however; the county must publish a notice in a newspaper of general circulation stating that it is accepting proposals for such a lease prior to executing the lease. The notice must be published once a week for three consecutive weeks and must include the date by which such proposals must be submitted. As an alternative, notice may be published as authorized pursuant to ORC Section 7.16 as described in Section 6.05 of this Handbook.
4. The lease must provide that the county will be the contracting authority for the construction, improvement, furnishing, and equipping of the facilities and that such contracts will comply with competitive bidding and prevailing wage laws.
5. The lease may provide for the following:
 - a. For the county to maintain and operate the facility.
 - b. For the county to make rental payments either before or after occupying the facility.
 - c. For the county to obtain any insurance that the lessor may require including, but not limited to, public liability, casualty, builders' risk, and business interruption insurance.
6. The obligations incurred under such a lease are not included within the debt limitations of Section 133.07 of the Revised Code.

This procedure can apply to facilities involving other political subdivisions; buildings in which other county facilities are included; and, facilities which are being acquired, constructed, or renovated by or on behalf of the Department of Rehabilitation and Correction or the Department of Administrative Services; facilities financed by the State Treasurer and leased to the county pursuant to ORC Section 307.021, as will be discussed in the next section; and facilities under construction or that have been completed for which no permanent financing has been arranged.

6.12 LEASES WITH STATE FOR SPECIFIED CORRECTIONAL AND COURT FUNCTIONS

ORC Section 307.021 was originally enacted in 1982 (H.B. 530, effective 5-28-82) in conjunction with the establishment a state grant program for county jails. The law has since been amended to allow for the funding of additional facilities by bonds originally issued by the Ohio Building Authority, and now by the State Treasurer.

Much of the language in this section was needed to allow the issuance of state debt to be used for local correctional and other facilities. The statute declares the acquisition, construction and renovation of certain specified capital facilities “to be a public purpose and function of the state” for the following purposes:

1. County, multi-county, municipal-county, and multi-county-municipal jail facilities or workhouses, commonly referred to as regional jails (ORC 307.93);
2. Single-county or district community-based correctional facilities (ORC 2301.51);
3. Minimum security misdemeanor jails (ORC 341.34);
4. Single-county or joint-county juvenile facilities (ORC 2151.65);
5. County family court centers.

Furthermore, the law declares that for these purposes counties and municipalities “are designated as state agencies to perform duties of the state in relation to such facilities, workhouses, jails, and centers, and such facilities, workhouses, jails, and centers are designated as state capital facilities.” Likewise, the law also designates the sheriff, a corrections commission, municipal chief of police or marshal, and the juvenile court as a state agency or branch of state government and that these “capital facilities are for the purpose of housing such state agencies, their functions, equipment, and personnel. Finally, the statute provides that counties will enter into leases for the facilities to be financed with state bonds to occupy and operate the facilities. For additional detailed information see ORC Section 307.021.

6.13 AGREEMENTS FOR REGIONAL JAILS

ORC Section 307.93 authorizes what is commonly referred to as regional jails. County commissioners of two or more adjacent counties may, by contract, provide for the establishment of a multi-county correctional facility. Likewise, a board of commissioners and one or more municipalities in the county may establish a municipal-county correctional facility by contract. Another option is for two or more boards of commissioners and one or more municipalities from any of the counties to contract for the establishment of a multi-county-municipal correctional facility. Counties and municipalities establishing any type of regional jail must establish a corrections

commission to oversee the administration of the facility. For additional information refer to Section 101.083 of this *Handbook*.

6.14 LEASE OF LAND, BUILDINGS AND REAL PROPERTY

The leasing of land, buildings and other real property for offices, storage, parking or other purposes by a county to the public is exempt from competitive bidding, provided the commissioners or other county contracting authority complies with the following requirements:

1. The commissioners are authorized by law to lease the property.
2. The commissioners develop a request for proposal (RFP) for leasing the property which specifies the criteria that will be considered and include the desired size and geographic location of the property.
3. The commissioners receive responses from prospective lessors with property meeting the criteria specified in the RFP after giving public notice using procedure substantially similar to the notice for competitive bidding required under ORC Section 307.87.
4. Upon receipt of responses, the commissioners negotiate with prospective lessors to obtain a lease at the best and lowest price reasonably possible, considering the fair market value of the property and relocation and operational costs that may be incurred during the period of the lease.

The commissioners or other contracting authority may consult with a real estate appraiser for advice and recommendations (ORC 307.86(I)). The appraiser must disclose any fees or compensation related to the consultation.

Prospective lessors may have their name and address, or the name and address of an agent, placed on a special notification list. The commissioners, or other county contracting authorities, must send notice to all persons listed on the list. Notices must include the deadline and place for submitting proposals. The commissioners must mail the notices at least six weeks prior to the deadline for proposals. Every five years the county may review this list and remove any person from the list, but must first mail notification of removal to the affected person.

In addition, another approach that could be used for the leasing of real property is the competitive sealed proposal process specified in ORC Section 307.862 which is detailed in Section 24.11 of the *Handbook*.

6.15 LEASES OF MINERAL RIGHTS

When commissioners determine the county would benefit, they may make, execute, and deliver contracts or leases to mine iron ore, stone, coal, oil gas, salt, and other minerals

on county owned land. The term of a lease for oil or gas can be for up to 40 years and for iron ore, stone, coal, salt or other mineral the length may not be for more than 15 years. The leases must provide for rental or royalty payments at least once a year. The statute provides that “the fund created by such payments shall be held and used for county purposes.” It thus appears that it may be necessary to deposit rental and royalty payments in a separate fund, however, the payments can be used for any general fund or other purpose of the county (ORC 307.11).

6.16 SALE, LEASE AND RENTAL OF COUNTY REAL PROPERTY

The county may sell, lease and rent county property not needed for public use (ORC 307.09 and 307.10). County commissioners may either sell the property to the highest responsible bidder after advertising once a week for four consecutive weeks or sell the property at public auction after giving at least 30 days public notice of the auction. As an alternative, commissioners may use the publication provisions of ORC Section 7.16 which are explained in Section 6.05 of this Handbook. County commissioners may reject any and all bids and may sell property as a tract or in parcels. As it relates to leasing county property, the following are some major requirements of the law:

1. No lease can be for a period of more than five years unless it is part of a lease purchase agreement. If this is the case, the lease cannot exceed 25 years.
2. Leases for up to 20 years are allowed when it is for retail stores, office space, or restaurants (ORC 307.09) located in a building bought to house county offices or in a parking facility bought to serve a building that houses county offices. The lease can provide for renewal for lesser periods of time.
3. Leases for airports and related facilities are limited initially to not more than 25 years, with renewals not to exceed 60 years. Related facilities include restaurants, parking lots, motels, gas stations, public parks and recreational facilities, office buildings, retail stores, and industrial uses.
4. County commissioners may, by resolution, lease real property for offices, commercial use, airport facilities and other uses prescribed by ORC Section 307.09(A) without advertising for bids, but a deed or other instrument must be executed when the action is approved (ORC 307.10(C)).
5. Finally, commissioners may provide or lease offices to a county land reutilization corporation, or county land bank.

The law allows a board of county commissioners to sell, lease or transfer the property of county hospital or medical college with the agreement of the board of trustees of the college and the Ohio Board of Regents (ORC 307.091). Another special provision allows the sale, lease, or transfer of county property to a nonprofit senior citizens' organization for the provision of housing, health, social services, or recreational

activities for seniors. The sale, lease, or transfer may be upon such terms and conditions as agreed to by the county and the organization (ORC 307.092).

The board of county commissioners may place all or some of the proceeds from any sale, lease, or rental in a special fund for the construction, equipment, furnishing, repair, or maintenance of county buildings and the acquisition of sites therefor, or for the payment of debt service on county bonds for capital construction of county buildings (ORC 307.09).

6.17 REAL PROPERTY TRANSACTIONS WITH OTHER GOVERNMENTS, PUBLIC UTILITIES, AND CERTAIN NONPROFIT ORGANIZATIONS

Commissioners may transfer real property the county owns and is not needed for public use to the U.S. government, the state, a board of developmental disabilities, a county land bank, municipalities, and other subdivisions for public purposes in fee simple without advertising for bids. Commissioners may make such transfers upon such terms they determine to be in the best interest of the county (ORC 307.10(B)).

Commissioners may grant leases, rights, and easements on or in county lands to the U.S. government, the state, municipalities and other subdivisions for public purposes. The grant must not be inconsistent with the need of such land for public use by the county. They may also make such grants to electric, natural gas, and telephone or telegraph companies to provide public utility services. Likewise, such grants may be made to nonprofit organizations for hospital, charitable, water, sewer, and recreational purposes. Similar grants may be provided to a community improvement corporation or a county land reutilization corporation, or land bank, if they determine it will promote economic development or the general welfare of the county by providing a plan to provide affordable housing, land reutilization, and community development. In the case of a lease, commissioners may charge rentals at or below market rates (ORC 307.01(D)).

The lease, right, or easement may be of such length of time, for such purposes, and upon such terms and conditions as the commissioners determine to be in the best interest of the county. Such grants may be renewed at the discretion of the commissioners (ORC 307.09(B)). These transactions also do not need to be advertised for bids (ORC 307.10(C)).

6.18 SALE OF PARK LANDS

Parks and park lands that have been dedicated for public use but have remained unused and unimproved may be vacated and sold at public auction by the county commissioners upon petition of the majority of abutting landowners after publishing public notice of the petition for three consecutive weeks and holding a public hearing.

Before acting on a petition to vacate parkland, county commissioners must notify by first class mail any political subdivision with the authority to acquire public parks or

recreation areas that contain or adjoin the parkland in question that the political subdivision has 90 days in which to make an offer to the commissioners to buy or lease the park land.

If the county commissioners receive an acceptable offer in which the political subdivision agrees to use the land for park purposes, the county commissioners must accept the offer after publishing notice for three consecutive weeks and holding a public hearing (ORC 307.81).

Notice requirements for these procedures also may be met by using the alternate procedures set forth in ORC Section 7.16. Refer to Section 6.05 of this Chapter.

Once park or park lands have been vacated, county commissioners must offer such lands for sale at public auction to the highest and best bidder and must publish notice of their intent to sell such land for four consecutive weeks. (ORC 307.082).

6.19 SOIL AND WATER CONSERVATION DISTRICT PROJECTS

Counties involved in soil and water conservation district improvements must comply with ORC Sections 307.86 -.92 except when:

1. The county commissioners designate the board of supervisors of the soil and water conservation district to be the contracting agency. In this case, the procedures of ORC Section 1515.08 (H) must be followed.
2. The project is being jointly undertaken by the county and another state and federal agency. In this case, if the state or federal agency has regulations that are in conflict with the regular bidding procedures, the county may then adopt the state or federal procedures. This applies to the county commissioners or the district supervisors of a soil and water conservation district.

PART III: APPROVAL OF PLANS AND CONTRACTS: COUNTY BUILDING COMMISSIONS AND SPECIAL PANELS

6.20 SPECIAL PROVISIONS OF ORC CHAPTER 153 WHICH SPECIFICALLY APPLY TO COUNTIES

As was mentioned in the introduction, certain provisions of ORC Chapter 153, Ohio's Public Improvement Law, apply only to state facilities while others apply to counties and other political subdivisions. For example, ORC Sections 153.21-153.31 is the law on the infrequently used authority to appoint a county building commission. Likewise, ORC Sections 153.31-153.49 are applicable specifically to counties. Thus, Part 3 of this Chapter will first address the issue of county building commissions, followed by a discussion of provisions that apply specifically to counties. Finally, Part 3 will address provisions in ORC Chapter 153, and other provisions of Ohio law, that generally apply

to all political subdivisions, including counties. This will include a general description of the four alternative project delivery methods that were recently authorized as a part of “Ohio Construction Reform” in 2011.

6.21 COUNTY BUILDING COMMISSIONS—GENERAL INFORMATION

ORC Section 153.21 authorizes the establishment of a county building commission. Historically, this section of Ohio laws goes back to the 76th General Assembly in 1904, with the enactment of H.B. 143. It was apparently based on a special Act passed by the Legislature in 1893 that specifically authorized Wood County to build a new courthouse and also required a building commission of similar membership to be responsible for the construction.

The 1904 law, which was codified as Sections 794-1 to 794-5 of the old Revised Statutes of Ohio¹ required the appointment of a county building commission in any county if a courthouse in excess of \$25,000 was to be constructed and the electors of the county had approved the issuance of bonds to pay for the courthouse (97 OL 111).

Under this Act, the commission was composed of the three county commissioners and four competent freehold electors appointed by the common pleas judge who established their compensation. Their term of office ended when the construction of the courthouse was completed. Thus, in those cases where a county building commission was formed, it had the responsibility for the planning and construction of the courthouse, not the county commissioners, who could be outvoted four to three. This statute was very controversial and was subject to interesting litigation as far back as the Wood County special statute, when the Commissioners of Wood County “wholly ignored the competent freehold members” and awarded the contract “of its own volition as a board of county commissioners” (See *Wood County Commissioners v. Pargillis*, 6 Ohio Cir. 717 (10 Ohio C.C. 369).

Later, in litigation arising over the construction of the Cuyahoga County Courthouse in 1913, the Supreme Court commented on the “purpose and object” of the requirement to have a building commission, and a general concern about the qualifications of county commissioners, when it said:

The office of county commissioner is one of the most important in the state; and the qualifications of a county commissioner ought to be such as will enable him to perform successfully the duties of that important office. In electing county commissioners, however, this matter is very often overlooked, and persons are elected as county commissioners, quite frequently, through political influence, and not because they have the special qualifications which would adapt them to the performance of the duties imposed by law. Undoubtedly, therefore, the legislature was of the opinion that in the expenditure of vast sums of money in the erection of a large and substantial courthouse, some check should be placed upon the county commissioners and some aid and assistance given to them in the performance of their duties; and it was undoubtedly supposed that the judges of the court of common pleas, in the selection of these freehold

¹ Everett, Charles E., *The Annotated Revised Statutes of the State of Ohio*. The W. H. Anderson Co., 1906.

members of the commission, would exercise the greatest caution and discretion in such selection, and appoint members to act with the board of county commissioners, and constitute with them a building commission, who are men of wide experience, known integrity and honesty; and specially adapted for the purpose in view (*Andrew Dall Et Al. v. Cuyahoga County Building Commission Et Al.*, 24 Ohio Dec. 9; 1913 Ohio Misc. LEXIS 30).

Today, however, the authority to establish a county building commission is considered to be permissive (at the discretion of the county commissioners) and is rarely used. If one is established, it is governed by the provisions of ORC Sections 153.21-153.30 which will be discussed in the next section.

6.211 COUNTY BUILDING COMMISSION—CURRENT PROVISIONS

The county building commission law provides that when the county commissioners have determined to erect a courthouse or other county building or to make an addition to, or to make an improvement of any existing county-owned building, the commissioners may appoint four suitable and competent freehold electors of the county, who shall, together with the commissioners, constitute the county building commission. They serve until the courthouse, other county building, addition, or improvements thereof are completed. Not more than two of the appointees may be of the same party (ORC 153.21).

The appointed members of a county building commission must take an oath of office and provide bond in the same amount as the bonds required of county commissioners (ORC 153.24). If a county building commission is appointed, county commissioners act as individuals and not as a board of commissioners as they are serving as a member of a new and separate entity. Following are some of the other provisions of law relating to a county building commission:

1. Compensation—The four members appointed by the commissioners are entitled to “reasonable compensation” fixed by the common pleas court, but the aggregate compensation may not exceed \$8,000 (ORC 153.22).
2. Approval of Plans and Specifications; Contracts; Bidding—If a county building commission is established, the building or construction project is essentially under the control of the county building commission, not the commissioners. As such the county building commission, not the board of county commissioners, is responsible for the adoption of plans, specifications, bills of material and the estimated of cost of the project. Likewise, it is the building commission that bids the project, selects the lowest and best bidder, and enters into contracts relating to the project, although it is governed by other provisions in the public improvement law, specifically ORC Sections 153.01-153.60 (See ORC 153.26, 153.28).
3. Required Vote of County Building Commission; Role of County Auditor—Most actions of the county building commission require the vote of at least five of the seven members of the commission. This includes resolutions on the adoption of

plans and specifications; the award of contracts, the hiring of architects; the approval of performance bonds, and the payment of contractor invoices (ORC 153.29). The proceedings of the county building commission is to be recorded in the commissioners journal by the auditor who is also required to maintain in the auditor's office plans, specifications and similar documents relating to the building (ORC 153.30).

Finally, in the construction of a multicounty or multicounty-municipal jail or correctional center under ORC Section 307.93, commonly referred to as a regional jail, each county that enters into a contract for such a facility may appoint a building commission. If they are appointed, they then function jointly in the construction of the regional jail with all the powers and duties authorized under ORC Sections 153.21-153.30. For additional information on regional jails see Section 101.083 of this *Handbook*.

6.22 APPROVAL OF SPECIAL "PANELS" FOR SELECTED COUNTY BUILDINGS AND BRIDGES

ORC Sections 153.36-153.39 require the approval of what the Attorney General has termed "a special panel" (OAG 2013-032) for the approval of various buildings and certain bridges. While some counties have apparently interpreted these legal requirements as only applicable when projects were under the jurisdiction of a county building commission, as explained in previous sections, this is not the case. The following ORC Sections apply to the following types of public improvements of the county:

1. The county court house and jails—ORC Section 153.36.
2. A county home—ORC Section 153.37.
3. A county bridge—ORC Section 153.38.
4. A county or district children's home—ORC 153.39.

These requirements were enacted in H. B. 230 of the 68th General Assembly in 1888 and are essentially the same as when enacted with the exception that the law then also applied to county infirmaries. It should be noted that these provisions of law, which were codified as Section 797 of the Revised Statutes of Ohio,² were enacted prior to the county building commission statute, which was originally mandatory and is now permissive. Thus, courts have generally ruled that there are two modes of constructing court houses and other county buildings—by the commissioners or by a county building commission (*Mackenzie et al. v. the State ex rel. McMahon, Prosecuting Attorney* (76 Ohio St. 369). As such the above listed statutes apply even when the commissioners have not established a building commission.

² Ibid

These statutes generally require that plans and specifications, drawings, bills of materials and other items must be submitted to these “panels” for approval and then be deposited with the county auditor. Each section noted above is slightly different in its application and membership on each “panel” is different. These are detailed in Table 6-2 at the end of this Chapter. It should be noted, however, that a multi-county, municipal-county, or multicounty-municipal jail or correctional facility is not subject to the provisions of ORC Section 153.36 (ORC 153.61). Commissioners are urged to consult with the county prosecutor concerning these sections when constructing, altering and repairing the facilities noted above so that these statutes are applied properly to the project.

6.23 CONSTRUCTION OF BUILDINGS IN STAGES

If a construction project is for a public building or more than one building estimated to cost more than \$15 million, then the building or multiple building project may be built in stages. This allows portions of large projects to be bid as plans and specifications are approved, enabling the project to begin earlier than it otherwise would if all plans and specifications had to be prepared prior to the start of any construction (ORC 153.311).

6.24 JOINT CONSTRUCTION WITH OTHER COUNTIES OR MUNICIPALITIES

Any number of counties and/or municipalities may enter into an agreement for the joint acquisition or construction of any permanent improvement and providing for joint management, occupancy, maintenance, and repair of the improvement. The following provisions must be included in such a contract authorized by the county commissioners and legislative authority of the municipality:

1. Method by which it will be acquired or constructed.
2. Designation of one jurisdiction to have exclusive charge for construction, advertising, and award of the contract. If joint construction is for a multicounty, municipal-county, or multicounty-municipal jail or correctional facility the general requirement that the project be approved by the special panel discussed in Section 6.22 of this Handbook does not apply.
3. Manner in which title to the project and interests in the land will be held.
4. Manner in which the improvement is to be managed, occupied, maintained, repaired and a person who will be responsible for management, maintenance and repair. In the case of multi-county or multi-county-municipal jails this could be a corrections commission authorized under Section 307.93 of the Revised Code.
5. How the costs of jointly acquiring or constructing, managing, maintaining, and repairing will be allocated among the jurisdictions.

6. Each party to the joint improvement may issue debt for its portion of the acquisition or construction if it has the authority to issue debt for the type of facility if it were acting on its own.

This section cannot be used to construct public utility facilities (ORC 153.61).

Note that the joint purchasing programs permitted to a group of political subdivisions under ORC Section 9.48 cannot be used to purchase new construction services. A separate provision does allow a regional council of governments to enter into a contract on a per unit basis for the repair, enlargement, improvement, or demolition of an existing building or structure if the contract is awarded pursuant to a competitive bidding procedure of a member political subdivision, a statewide consortium of which the council is a member, or a multi-state consortium of which the council is a member. This authority does not extend to new construction projects, however, unless the regional council is an information technology center comprised primarily of school districts (ORC 167.081 and 167.10; see Ohio Attorney General Opinion 2019-028).

6.25 APPROVAL OF BUILDING PLANS

Before beginning construction or alteration work on any county building, county commissioners must submit plans and specifications for building code approval. The plans and specifications are submitted to either a certified local building department or to the State Superintendent of Industrial Compliance where there is no certified department. Construction cannot begin until approval is granted.

Once approved, construction must start within 12 months of approval. The county may obtain one 12 month extension upon request at least 10 days before the permit expires. After construction begins, if work is suspended longer than six months, approval of the plans and specifications becomes invalid. The county may, however, obtain two additional six month extensions if they are requested at least 10 days before the permit expires (ORC 3791.04).

6.26 APPROVAL OF CONTRACTS BY COUNTY PROSECUTOR

Any construction contract where the cost is more than \$1,000 must be submitted to the county prosecutor before work is done or materials are furnished. The prosecutor reviews the contract and certifies compliance with ORC Sections 153.01-153.60. Without such a certificate by the prosecutor the contract is void (ORC 153.44).

6.27 ANNULMENT OF CONTRACTS BY COMMISSIONERS

Commissioners may annul a contract of the successful bidder if the contractor fails or refuses to proceed with work in accordance with the plans, descriptions, and specifications that are a part of the contract. If the commissioners annul the contract they continue under ORC Sections 153.01-153.60 to make another contract for the completion of the work (ORC 153.45).

6.28 UNDERGROUND UTILITY PROTECTION

ORC Section 153.64 requires counties to protect underground utilities from being damaged during construction. ORC Section 5547.03 provides counties with the right to order utility relocation. While in some circumstances counties are also defined as a “utility” under the law and must comply with the marking and other requirements for county utility facilities such as water and sewer lines and drainage facilities, this Chapter of the *Handbook* will focus on county responsibilities when constructing a public improvement, and not as a utility provider.

For more detailed information on Ohio’s utility protection law refer to ORC Sections 3781.25 - 3781.38. In addition, the Public Utilities Commission of Ohio has exclusive enforcement authority of the law under ORC Chapter 4913. The law is usually popularly associated with the Ohio Utilities Protection Service (OUPS), the non-profit organization that utilities subscribe to for damage prevention services to comply with the law. The OUPS web site includes valuable information about the law at: <http://www.oups.org/>.

The law applies to virtually all county public improvements including any construction, reconstruction, improvement, enlargement, alteration, or repair of a building, highway, drainage system, water system, road, sewer, ditch, water and sewer plant, and all other structures (ORC 153.64(A)(1)).

Counties are required to contact a protection service (OUPS) or owners of underground utilities that do not subscribe to a protection service like OUPS prior to preparing plans and specifications for the improvement to see if there are utility facilities in the construction area and the location of the facilities. Upon notification the utility has 10 days of receiving the notice from the county or the protection service to do one of the following:

1. Mark the location of the utility facilities in the construction area using a uniform statewide color-coding system, or
2. Provide paper or digital drawings drawn to scale showing items locatable on the ground such as poles, pedestals, the back of the curb, a sidewalk, the edge of the pavement, the centerline of a ditch, property lines, or similar locatable items. The drawings must also depict the location of the underground utility facility.

The county is then required to include in its plans and specifications the identity and location of the existing underground utility facilities located in the construction area as provided by the utility and the name, address, and telephone number of each owner of any underground utility facility that does not subscribe to a protection service.

If the county does not comply with these requirements to obtain the locations of utility facilities and a contractor or subcontractor encounters facilities not shown on the plans and specifications, then the contractor or subcontractor is entitled to an increase in the

contract price for any additional required work or time. They are also entitled to an extension of the completion date of the contract due to such delays. Disputes in this regard are resolved under the terms of the contract between the contractor and the county. If the contract does not provide for the final resolution of the dispute the arbitration procedures of ORC Chapter 2711 must be used.

Before commencing construction, the county must negotiate with the owners of the underground utility facilities any anticipated temporary or permanent relocation of the facilities. If relocation is required the county must give the utility a reasonable period of time to move the facility, however, the county's contractor or subcontractor and the utility may agree coordinate the relocation during construction of the improvement.

Within 10 days after awarding a construction contract, counties must also advise the owners of underground utility facilities of the name and address of the contractor awarded the contract. At least two working days, but not more than 10 working days, before the contractor begins construction, the contractor must notify the protection service and the owners of underground utility facilities who do not subscribe to such services of the date it will begin construction. The owners of the underground utility facilities then are required to stake, mark, or otherwise designate the location and approximate depth of the underground utility facility within 48 hours of notice, excluding Saturdays, Sundays, and legal holidays.

6.29 SPECIAL PROVISIONS OF ORC CHAPTER 153 WHICH APPLY TO COUNTY BRIDGES

In the case of county bridges there is an exception to the general requirement that plans and specifications be prepared by an architect or engineer for iron or reinforced concrete bridge substructures. In this case the bidders may provide the plans and specifications if the county commissioners decide to use this procedure.

In such a case, the plans and specifications submitted by a bidder must be filed with the county auditor for a period of 15 days prior to the opening of bids. The plans and specifications must show the number of spans; the length of each span; the nature, quality and size of materials to be used; the length of the structure when completed; and whether there is a patent on the proposed plan (ORC 153.31, 153.33).

Likewise, when the commissioners erect a bridge, they must determine the length and width of the superstructure of the bridge, determine if it will be a single or double track bridge and then competitively bid the bridge (ORC 153.32). In addition to the content of the competitive bid advertisement required by ORC Section 307.87, it must also invite bidders to make bids for furnishing all the materials and performing all the work, or for such parts of thereof as the bidders deem proper (ORC 153.34). When commissioners execute contracts for the alteration, repair, or an addition to a bridge, the contract must conform to the requirements of ORC Sections 153.01-153.60 in relation to the erection of bridges as nearly as possible (ORC 153.35).

Finally, in these cases, the plans and specifications upon which contracts are let are kept on file in the county auditor's office and must be a part of the contract with a successful bidder as is the case for public buildings (ORC 153.35). Finally, refer to Section 6.22 of this Handbook dealing with approval of certain bridges by a special "panel" as required by ORC Section 153.38.

PART IV: TRADITIONAL PROJECT DELIVERY METHODS

6.30 OVERVIEW OF PROJECT DELIVERY METHODS

One of the first things the county needs to decide is which project delivery method it will use for the project. Prior to September 29, 2011, counties were required to construct public improvements using the Multiple Prime (MP) contract method. This approach required the county was to have separate and distinct traditional competitive bids for the major classes or branches of work on the project. Separate bids were received and separate construction contracts awarded for plumbing, heating, ventilating and air conditioning (HVAC), and electrical.

All of this changed with the enactment of Ohio Construction Reform which "included the first changes in the state's method of performing public construction in over 134 years."³ ORC Section 153.50 now only requires separate trade contracts if the county chooses not use one of the three other alternative project delivery methods.

These three alternative methods are (1) General Contracting (GC), (2) Design Build (DB), and (3) Construction Manager at Risk (CMR). Each method has been used in private sector construction in Ohio for nearly 50 years and by public jurisdictions in other states. Each of these delivery methods will be described in subsequent sections of this Chapter.

While each of these alternative delivery methods has certain advantages and disadvantages, the alternatives have increased the complexity of the decision making process at the county level. It is thus necessary to obtain counsel from experienced individuals that are familiar with construction law when making a decision on which alternative to use for a particular project.

The following table summarizes the primary provisions of Ohio law dealing with the four construction delivery methods.

³ Ohio Facilities Construction Commission (OFCC) website at: <http://ofcc.ohio.gov/Resources/ConstructionReform.aspx>

| Alternative Project Delivery Method | Primary ORC Sections | |
|---|---|---|
| Multiple Prime (MP) | 153.50 153.51 | 153.52 |
| General Contracting (GC) | 153.50 153.501 | 153.502 |
| Design Build (DB) | 153.50 153.501 153.502 153.503 153.65 153.66 153.67 | 153.692 153.693 153.694 153.70 153.71 153.72 153.73 |
| Construction Manager at Risk (CMR) | 9.33 9.331 9.333 9.334 9.335 | 153.50 153.501 153.502 153.503 |

At the state level, the Ohio Facilities Construction Commission (OFCC), a merger of the State Architect’s Office and the Ohio School Facilities Commission, is the primary entity responsible for state capital projects and is knowledgeable about the new project delivery methods. It is important to counties because the OFCC establishes rules and standardized documents relating to some of the project delivery methods. In addition, the Commission’s website includes a number of excellent educational documents on the new alternative project delivery methods. Readers are encouraged to review the following documents for a better general understanding of these construction project delivery methods:

1. The *Project Delivery Method Comparison Guide*. The *Guide* describes the alternative project delivery methods and lists advantages and disadvantages for each method. The *Guide* is available at:
https://dam.assets.ohio.gov/image/upload/ofcc.ohio.gov/Portals/0/20120319_OC_R_Methods_Comparison_Guide_Rev110118.pdf
2. The *Ohio Facilities Construction Manual* provides an in-depth description of project delivery methods designed specifically for projects receiving state funds. The *Manual* is available at:
<https://ofcc.ohio.gov/our-programs/higher-education-and-state-agencies/ofc-manual>
3. The *OCR Glossary* includes a series of terms and definitions that are important to better understand the construction industry and the four alternative project delivery methods. The *Glossary* is available at:

<https://ofcc.ohio.gov/our-programs/k-12-schools/k12-resources/glossary-of-terms>

The following sections will explain in general terms each of the project delivery methods. These summaries are not meant to be detailed procedural guides but are intended to give a general overview of the methods. In addition to the statutory references to the methods included in the previous table, the OFCC has been given the responsibility to adopt the following:

1. Rules on procedures and criteria to determine best value selection of a DB firm and a CMR.
2. Standards to be followed by DB firms and CMR's when they establish prequalification criteria for subcontractors.
3. The form for contract documents to be used by either a GC, DB firm, or CMR when entering into contracts with subcontractors.
4. The form for the contract documents to be used by the county when entering into a contract with a DB firm or a CMR.

The following rules are especially important and can be accessed on the OFCC website at: <http://ofcc.ohio.gov/About.aspx>. In addition, the following website can be used to access the Ohio Administrative Code: <http://codes.ohio.gov/oac/>. The OFCC website also includes various forms that are used with some of the alternative project delivery methods.

| Ohio Administrative Code Section | Topic |
|----------------------------------|--|
| 153:1-2 | Contract Documents for DB & CMR Projects |
| 153:1-3 | Form of Subcontracts for GC, DB & CMR Projects |
| 153:1-4 | Surety Bonds for DB & CMR Projects |
| 153:1-5 | Electronic Advertising for CM or CMR Projects |
| 153:1-6 | Best Value Selection for DB Firms & CMR's |
| 153:1-7 | Prequalification Criteria for Subcontractors for DB & CMR Projects |

6.31 MULTIPLE PRIME PROJECT DELIVERY METHOD (MP)

The Multiple Prime (MP) method is the traditional project delivery method that has been used by counties. Ohio law required this method for most projects prior to 2011. When the MP method, the county retains an architect or engineer to fully document the project criteria and design before traditional competitive bidding. Packages for the various

trades, such as plumbing, HVAC, and electrical, are separately bid. Each bid is awarded to the lowest and best bidder (ORC 153.52) and the county holds all of the separate contracts awarded to the various trades (ORC 153.50(B)).

If the MP method is used, a Construction Manager as Agent or Advisor (CMA) may be retained during the design phase of the project as the agent of the county using the Qualifications Based Selection (QBS) process explained in Section 6.37 of this Handbook. The CMA provides estimates during design, assists the county with competitive bidding, and coordinates prime contractors during construction. This construction manager scope of work is very different from a construction manager at risk scope.

When using the MP model, the law prohibits a contract for the entire project or a portion of the project that encompasses more than one trade, branch, or class of work except in limited circumstances. A contract for the entire project, or two or more trades, may be awarded only if: (1) the separate and distinct bids do not cover all of the work and materials required for the project or the bids for the entire project, or (2) the bids for the whole or for two or more of the trades are lower than are the separate bids in the aggregate (ORC 153.51). This authority is essentially a holdover from the law prior to authorization to use the other three project delivery methods.

Counties have the option to develop a policy to assist minority business enterprises as defined in ORC sections 122.71 and 122.921 (ORC 307.90 and 307.921).

6.32 PREPARATION OF PLANS AND ESTIMATES

Before engaging in procurement and entering into a contract for the construction, addition, alteration, repair, or the supplying of materials for a county building or a substructure of a bridge, the general rule is that commissioners must have prepared by a registered architect or registered professional engineer:

1. Full and accurate plans that show all necessary details of the work to be done and materials to be used including working plans that can be easily understood.
2. Accurate bills of materials that show the exact amount of the different kinds of materials needed.
3. Full and complete specifications showing the manner and style required so as to enable competent builders to carry them out and which will give bidders all needed information.
4. A full and accurate estimate of each item of expense and the aggregate cost (ORC 153.31, See also ORC 153.12(A)).

In addition, the plans and specifications upon which contracts are let must be kept on file in the county auditor's office and must be a part of the contract with a successful bidder (ORC 153.35).

After the plans, specifications, bills of materials, and estimate of cost are completed the project is then subject to traditional competitive bidding or other procurement if the cost is in excess of the competitive bidding threshold established under ORC 9.17, subject to the procedures specified in ORC Sections 307.86-307.92. Refer to Section 6.04 of this Chapter and to Chapter 24 for further information.

6.33 PROFESSIONAL DESIGN SERVICES

The first phase of a construction project requires selecting an architect, landscape architect, surveyor, and/or professional engineer to produce plans and designs. Counties and other public authorities must contract for these professional design services through a qualifications-based selection process (ORC 153.65-153.72). Counties can also opt to use a "design-build" contract that combines design and construction services into one overall contract for the project. Evaluation and selection methods for design-build firms are discussed below in the Alternative Project Delivery Methods section (Section 6.49 of this Chapter).

For a professional design services contract, a county must consider the following qualifications criteria:

1. Competence to perform the required services as indicated by the technical training, education, and experience of the firm's personnel and especially the personnel who will be assigned to the project.
2. Ability in terms of its work load and availability of qualified personnel, equipment and facilities to perform the required services competently and quickly.
3. Past performance as reflected by the evaluations of other public authorities with respect to cost control, work quality and meeting deadlines.
4. Any other relevant factors as determined by the county. (ORC 153.65).

The law directs a county that plans to contract for professional design services or design-build services to encourage professional design firms and design-build firms to submit a statement of qualifications and update the statements at regular intervals (ORC 153.66). Firms that keep an updated statement on file may be considered prequalified (ORC 153.58). The law prohibits a county from requiring any form of fee estimate, fee proposal, or other estimate or measure of compensation prior to selecting and ranking professional design firms, unless a state agency has previously selected and ranked firms for a project (ORC 153.691).

6.34 ANNOUNCEMENT OF CONTRACTING OPPORTUNITIES FOR PROFESSIONAL DESIGN SERVICES

A county planning to contract for professional design services must publicly announce all contracts available from it for such services (ORC 153.67). These same procedures apply to the selection of a design-build firm. The announcements must conform to the following specifications:

1. Be made in a uniform and consistent manner and shall be made sufficiently in advance of the time that responses must be received from qualified professional design firms for the firms to have an adequate opportunity to submit a statement of interest in the project;
2. Include a general description of the project, a statement of the specific professional design services or design-build services required, and a description of the qualifications required for the project;
3. Indicate how qualified professional design firms may submit statements of qualifications in order to be considered for a contract to design or design-build the project;
4. Be sent to any of the following that the county considers appropriate:
 - a. design-build firms, including contractors or other entities that seek to perform the work as a design-build firm;
 - b. architect, landscape architect, engineer, and surveyor associations;
 - c. news media;
 - d. any publications or other public media, including electronic media.

6.35 EVALUATING AND SELECTING PROFESSIONAL DESIGN SERVICES FIRMS

For every professional design services contract, the county planning to contract for professional design services must evaluate the statements of qualifications submitted by professional design firms specifically regarding the project, and may hold discussions with individual firms to explore further the firms' statements of qualifications, the scope and nature of the services the firms would provide, and the various technical approaches the firms may take toward the project.

Following this evaluation, the county must select and rank no fewer than three firms which it considers to be the most qualified to provide the required professional design services, except when the public authority determines in writing that fewer than three qualified firms are available in which case the county must select and rank those firms.

After ranking at least three firms, the county may proceed to negotiate a contract with the most qualified firm to perform the required services at a compensation determined in writing to be fair and reasonable.

Contract negotiations must be directed toward the following objectives:

1. Ensuring that the professional design firm and the agency have a mutual understanding of the essential requirements involved in providing the required services;
2. Determining that the firm will make available the necessary personnel, equipment, and facilities to perform the services within the required time;
3. Agreeing upon compensation which is fair and reasonable, taking into account the estimated value, scope, complexity, and nature of the services.

If negotiations fail with the most qualified firm, the county shall inform the firm in writing of the termination of negotiations and may enter into negotiations with the firm ranked next most qualified. If negotiations again fail, the same procedure may be followed with each next most qualified firm selected and ranked pursuant to the procedures above, in order of ranking, until a contract is negotiated. The county may select and rank additional firms, based on their qualifications, until a contract is negotiated. The county retains the right to accept or reject any proposal in whole or in part.

6.36 SMALL CONTRACT AND EMERGENCY EXCEPTIONS

The law provides that the announcement and selection procedures for professional design services do not have to be followed if a project has an estimated professional design fee of less than \$25,000, or if the estimated professional design fee is more than \$25,000 but less than \$50,000 and both of the following conditions apply:

1. The county selects a single design professional or firm from among those that have submitted a current statement of qualifications within the immediately preceding year, based on the public authority's determination that the selected design professional or firm is the most qualified to provide the required professional design services;
2. The public authority and the selected design professional or firm comply with the legally-required objectives for negotiating a professional design services contract (see above).

The law also creates an exception for any project determined in writing to be an emergency requiring immediate action including, but not limited to, any projects requiring multiple contracts let as part of a program requiring a large number of professional design firms of the same type (ORC 153.71). The law refers to the head of

a public authority making this determination, but in the case of a county, it may preferable for the commissioners to pass a resolution to this effect.

6.37 CONSTRUCTION MANAGERS AND CONSTRUCTION MANAGERS AT RISK

ORC Section 9.33, *et seq.* provides the legal framework for employing a construction manager or a construction manager at risk (CMAR). These are two different functions. A construction manager has substantial discretion and authority to plan, coordinate, manage, and direct all phases of a project for construction, demolition, alteration, repair, or reconstruction of any building, structure, or other improvement. A construction manager is not the person who provides the professional design services or who actually performs construction or repair services. A CMAR is a firm that has the authority to plan, coordinate, manage, and *construct* all phases of a public improvement project (see Section 6.47).

A construction manager and a construction manager at risk must have the following qualifications:

1. Competence to perform the required management services as indicated by training, education, and experience.
2. Ability in terms of workload and the availability of qualified personnel, equipment, and facilities to perform the required management services competently and expeditiously.
3. Past performance as evaluated by previous clients with respect to factors such as control of costs, quality of work, and meeting deadlines.
4. Financial responsibility as evidenced by the capability to provide a letter of credit pursuant to Chapter 1305 of the Revised Code, a surety bond, certified check, or cashier's check in an amount equal to the value of the construction management contract, or by other means acceptable to the county.
5. Other similar factors.

If the commissioners wish to enter into a contract with a construction manager or a construction manager at risk, they must advertise, in a newspaper of general circulation in the county where the contract is to be performed, and may advertise by electronic means pursuant to rules adopted by the Department of Administrative Services, notice of their intent to employ such person. The notice must invite interested parties to submit proposals for consideration and must be published at least 30 days prior to the date for accepting the proposals. The county may also advertise in appropriate trade journals, and may otherwise notify persons believed to be interested. The advertisement must include a general description of the project, a statement of the specific management

services required, and a description of the qualifications required for the project. (ORC 9.331)

Commissioners evaluate the proposals, and may hold discussions with proposers to explore their proposals, the scope and nature of the services they would provide, and the various technical approaches they may take to the project. (ORC 9.332)

After this evaluation, commissioners must select and rank no fewer than three construction managers that they consider to be most qualified, unless they determine in writing that fewer than three qualified construction managers are available, in which case they can proceed to rank remaining the remaining applicants.

After the ranking, the county can proceed to negotiate a contract with the most qualified construction manager at a compensation determined to be fair and reasonable. Contract negotiations shall be directed toward ensuring that there is a mutual understanding of the requirements involved and that the construction manager will make available the necessary personnel, equipment, and facilities to perform the services in the required time. If the negotiations fail with the most qualified firm, the commissioners must inform the most qualified construction manager of the termination of negotiations, and can then proceed to negotiate with the next most qualified construction manager. If negotiations fail with the initial three firms, the county can select and rank additional construction managers, based on their qualifications, and continue negotiating. The commissioners have the right to accept or reject any or all proposals in whole or in part. (ORC 9.332)

The commissioners cannot enter into a construction management agent or advisor contract unless the construction manager provides a letter of credit pursuant to Chapter 1305 of the Revised Code, a surety bond pursuant to Sections 153.54 and 153.57 of the Revised Code, or a certified check or cashier's check in an amount equal to the value of the construction management contract for the project, or provides other reasonable financial assurance of a nature and in an amount satisfactory to the county. The commissioners may waive this requirement for good cause (ORC 9.333). However, a construction manager at risk must provide performance and payment bonds pursuant to ORC 9.333(B) and that requirement cannot be waived. (See Section 6.47 of this Handbook).

While the law grants counties broad discretion to accept other forms of financial responsibility or even to waive financial responsibility altogether for a construction manager as agent or advisor, CCAO recommends that counties require evidence of financial responsibility in one of the forms recognized by the law. If the county permits the construction manager to use a form of financial responsibility other than those listed in the statute, the burden will be on the county to demonstrate that the county's interest in the contract is adequately protected under the form of financial assurance allowed. The law is silent on what constitutes "other reasonable financial assurance of a nature and in an amount satisfactory to the owner." One possible financial assurance alternative would be to require collateral in the form of real or personal property in an

amount equal to the value of the contract. This would presumably require a legal document to be prepared in which specified property would be pledged to reimburse the county for any failure of the construction manager to perform according to the terms of the contract.

Although the law permits a county to waive the requirement of financial responsibility for “good cause,” this circumstance is not defined in the law, but might reasonably be related to the size of the contract, the cost or availability of financial assurance, the size and financial integrity of the company or other related factors. For example, if the construction management contract is small relative to the size of the company, then it might be appropriate to waive the financial responsibility requirement. It might also be appropriate to waive the financial responsibility requirement if the cost of financial assurance represents a disproportionate amount of the overall cost of the contract. In any case, if the county decides to waive financial responsibility, the decision and reasons for the waiver should be documented in writing. This documentation could be either in the contract or in the commissioners’ resolution approving the contract.

The state auditor’s office will review construction management contracts for evidence of compliance with the financial responsibility requirements. The law specifically provides that all forms of financial responsibility are intended to protect the public owner from any damages suffered by the construction manager’s failure to perform the contract according to its terms. To further protect the county, in the case of a letter of credit from a financial institution, the letter of credit may be revoked only at the option of the county.

6.38 SUBMISSION AND OPENING OF TRADITIONAL COMPETITIVE BIDS

Competitive bidding is used with multiple prime project delivery. Bids must be submitted at the time and place mentioned in the notice. Bids may be submitted electronically, and the opening of bids may be broadcast under rules adopted by the Ohio Facilities Construction Commission. The contents of the bid must comply with the following standards:

1. Must be in the form specified.
2. Submitted in a sealed envelope.
3. Must contain the full name of person or company submitting the bid.
4. Must contain an appropriate bid guaranty required by ORC Section 153.54 unless projects under \$100,000 have been modified or exempted. See Sections 6.39 and 6.40 for additional information. Note that in the case of alternative project delivery methods different surety requirements apply.

County commissioners then open the bids at the time stated in the public notice and tabulate the bids. The lowest and best bid must be accepted or they may reject all bids.

Bids can be accepted as long as the bid is not more than 20 percent higher than the estimate (ORC 153.12(A)). Counties also have the authority to change its bid standard to the lowest responsive and responsible bid (ORC 9.312). See Section 24.08 of this Handbook for more information on this standard.

The award need not be made on the day of the bid opening, and commissioners may receive advice from experts. The evaluation process may take up to 30 days. The concept of lowest and best bidder is complex, however, the commissioners have considerable discretion to make this determination. Mandamus action against the awarding of the contract is generally precluded unless it is shown that commissioners have abused their discretion. Once a bid is accepted, or all bids rejected, bid guarantees must be returned to unsuccessful bidders. For more information see ORC 153.08 and 153.12.

6.39 GENERAL BID GUARANTY REQUIREMENTS

When submitting a bid for most construction projects over the competitive bidding threshold, those bidding on the project must comply with the bid guaranty requirements of ORC Section 153.54. (Construction manager at risk and design build projects are exceptions to this requirement.) This section provides two options as follows:

1. A bond payable to the county and issued by a surety authorized to do business in Ohio for the full amount of the bid; or,
2. A certified check, cashier's check, or letter of credit, revocable only by the county, for 10 percent of the bid.

If a bond is utilized as the bid guaranty, the bond is conditioned on a bidder entering into a proper contract in conformance with the bid, details and specifications after the award of the contract. If a bidder files this 100 percent bid bond and is then awarded the contract, this bond is retained as the performance bond and must be in the form specified in ORC Section 153.571. If the lowest and best bidder fails to enter into the contract, the contract is awarded to the next lowest bidder, and the lowest bidder is liable on the bond for the difference between his bid and the bid of the next lowest bidder or for a sum not in excess of 10 percent of the amount of the bond, whichever is less.

When a contractor fails to enter into a contract and the county elects to rebid the entire project, the bidder is liable on the bond for 10 percent of the amount of his bid or the cost of rebidding the project, whichever is less.

The bond must also indemnify the county, subcontractors, material suppliers, and laborers against damage suffered by failure to perform the contract according to its provisions and to pay claims of subcontractors, material suppliers, and laborers in the performance of the contract. The form of the bond is specified in ORC 153.571 and is included at the end of this Chapter as Exhibit 6-2.

The form of the bid guaranty must be as specified in ORC Section 157.57(A) and is included as Exhibit 6-3 at the end of this Chapter. The bid guaranty also must be conditioned to compensate the county if the lowest and best bidder fails to enter into the contract. If the lowest and best bidder fails to enter into a contract, the liability is the difference between this bid and next lowest bidder or for a sum not to exceed 10 percent of the bid, whichever is less. If the county rebids the project, the liability of the bidder failing to enter into the contract is for an amount not to exceed 10 percent of the bid or the costs of rebidding, whichever is less.

In this case, if the bidder is awarded the contract, a bond payable to the county and issued by an authorized Ohio surety, must be filed for the amount of the contract to indemnify the county against damages for failing to perform the contract in accordance with the plans, details, and specifications. The bond must also agree to pay claims of subcontractors, material suppliers, and laborers in performing the contract and agree that they also are covered by the bond. Upon furnishing this bond, the bid guaranty submitted with the bid is returned.

In the case of either type of bid guaranty, if the county awards the contract to the second lowest and best bidder and that bidder also fails to enter into a contract within 10 days, the liability of the second lowest bidder is the difference between the second and the third lowest bidders, within the previous limits specified above. Liability on account of an award to any lowest bidder beyond the third lowest bidder is calculated in a similar way. Likewise, in the event that multiple bidders refuse to enter into a contract and the county chooses to rebid the project each of the firms refusing to enter into contracts share equally the rebidding costs.

While the bid guaranty is generally held until completion of the project, Ohio law (ORC 9.313 and 153.80) authorizes counties, in their sole discretion, to reduce the amount of the bond or guaranty as follows:

1. By 25 percent when the project is 50 percent complete.
2. By 50 percent when the project is 75 percent complete.

In order to reduce the bond, however, the following conditions apply to the project:

1. The percentage of the work specified above has been completed satisfactorily, on time, and meets the terms of the contract.
2. No disputed claim caused by the contractor exists or is unresolved, and
3. The bid was not more than 10 percent lower than the next lowest bid or cost estimate.

6.40 EXEMPTION FROM BID GUARANTY FOR CERTAIN PUBLIC IMPROVEMENT PROJECTS

County commissioners, by unanimous vote, may exempt the contractor from any or all of the requirements of ORC Section 153.54, if the estimated cost of the improvement is less than \$100,000. If the board exempts a bid from any, or all of these requirements, the published notice must state the specific bid guaranty requirements which apply. Commissioners may exempt a bidder for a public improvement project in a variety of ways. For example, the county could:

1. Exempt the project from any kind of bid guaranty requirement;
2. Exempt the project from the requirement for a bid guaranty, but require a performance bond; or
3. Exempt the project from the requirement for a performance bond, but require a bid guaranty.

This exemption provision (ORC 307.88(B)) was intended to allow small contracting firms, who might be unable to afford bid guaranties, to bid on small contracts. Commissioners should exercise caution when exempting a bidder from any or all requirements, and balance any request with the need to protect the proposed project and county funds.

6.41 WITHDRAWAL OF BIDS

Bidders may withdraw a bid after it is submitted if the bid was substantially lower than other bids, the bid was submitted in good faith, and the reason that the price was “substantially lower was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional and substantial arithmetic error or an unintentional omission of a substantial quantity of work, labor, or material made directly in the compilation of the bid” (ORC 9.31). Notice of a claim of right to withdraw must be made in writing filed with the county within two business days after the conclusion of the bid opening.

Bids may not be withdrawn if the withdrawal would result in a contract award on another bid to the firm requesting the withdrawal. In addition, no withdrawing bidder may be compensated for any subcontract, labor or material from the firm that is finally awarded the contract, unless approved by the county. If this occurs, the firm awarded the contract and the withdrawing bidder are jointly liable to the county for any compensation paid to the withdrawing bidder without county approval, plus any penalty specified in ORC Section 2913.31.

If the bid is withdrawn, the county may then award the bid to the next lowest bidder or may reject all bids and rebid the project. In this case, the withdrawing bidder pays the

costs of rebidding the project if the county finds that the costs are required because of the withdrawal of the bid.

The county may contest the withdrawal, and if it does, must hold a hearing within 10 days after the opening of bids and must adopt a resolution allowing or denying the withdrawal within five days after the hearing. The county must give reasonable notice of the hearing to the withdrawing bidder prior to holding the hearing. The county must make a stenographic record of testimony. The finding by the county may be appealed under ORC Section 119.12. The withdrawing bidder is required to pay the cost of the hearing.

In addition, bids may be withdrawn in limited circumstances where acceptance would exceed the bidders bonding limit (ORC 153.54(G)). This only applies to contracts of less than \$500,000 when the bidder has been awarded another contract from the state or a political subdivision and the bidder certifies to the county that the total amount of the bidder's current contracts are less than \$500,000 and that the bidder's bonding capacity would be exceeded if the proposed contract were executed. If the bid is withdrawn for this reason, the county can award the bid to the next lowest bidder or may rebid the project. If the county determines to rebid, the withdrawing firm is not liable for any of the costs of rebidding (ORC 153.54(G)).

6.42 AWARD AND PAYMENT OF CONSTRUCTION CONTRACTS

Various detailed provisions of law apply to the award of contracts for construction, reconstruction, improvement, enlargement, alteration, repair, painting or decorating of public improvements. ORC Sections 153.12-153.14 and 153.63 detail the legal requirements for the award of construction contracts. These sections also address the payment and partial payment of contractor, the authorized retainage and escrowing of certain payments, required interest payments to contractors, and, provisions relating to change orders which will be discussed in the following sections. The major provisions of law relating to the award of construction contracts include:

1. Contracts must be awarded and executed within 60 days after the bid opening date. As previously mentioned, the bid cannot be awarded or the contract executed if the price is greater than 10 percent of the estimate. If the contract is not awarded and executed within 60 days, the bid is invalidated unless the county and the successful bidder agree to extend the date. If an extension is agreed to, the contractor is entitled to additional costs resulting from such constraints as not being able to place orders for materials which later increase a contractor's cost.
2. If the county modifies the plans, specifications, or estimates of cost via an addendum within 72 hours of the scheduled time and date for the bid opening, the modifications must be mailed or provided to those who have obtained the bid package. In this case the bid opening date is automatically extended one week not including Saturdays, Sundays, and legal holidays. No additional advertising of bids is required.

3. When the county executes a construction contract, the contractor, after making a request to the county, is entitled to a notice to proceed with the work. The county may, however, issue this notice at any time if not requested by the contractor. This can have an effect on the completion date of the project.
4. When the contract is awarded, the county must provide written notice that the contract has been awarded to the surety and the agent for the surety of the contractor's bond (ORC 9.32).

6.43 PROVISIONS RELATING TO CHANGE ORDERS ON CONSTRUCTION PROJECTS

The law is specific concerning delay costs and change orders. The county is required to issue a change order authorizing delay costs to the contractor under the following two circumstances:

1. If the time for the awarding of the contract is extended by mutual consent, and
2. If the county does not give a timely notice to proceed with the project after the contractor makes such a request.

The change order costs will then be determined in accordance with the contract. If the contract does not contain such a provision, the contractor is entitled to his actual costs including:

1. Wages,
2. Labor costs other than wages,
3. Wage taxes,
4. Materials,
5. Equipment costs and rentals,
6. Insurance,
7. Subcontracts attributable to the delay,
8. Reasonable overhead costs.

If there is a disagreement between the county and the contractor concerning the change order, the dispute is resolved following contract resolution procedures in the

construction contract. If the contract contains no such procedures, disputes are resolved following the arbitration procedures in ORC Chapter 2711 (ORC 153.12).

A change order is mandatory and additional costs must be authorized if a contractor must perform additional work due to the enactment or amendment of federal or state statutes or regulations or local ordinances or resolutions after the submission of the successful bid. While these types of change orders are often directed to environmental regulations, their scope is broader than only environmental regulations (ORC 153.62). The county must give the contractor written authorization to undertake this additional work. The costs are calculated in accordance with the contract or as specified above. The same dispute resolution procedures also apply to these types of change orders.

6.44 PAYMENTS, PARTIAL PAYMENTS AND RETAINAGE OF CERTAIN PAYMENTS ON CONSTRUCTION CONTRACTS

The amounts and time of payments are generally governed by ORC Sections 153.13 and 153.14 (ORC 153.12(A)). The time of payments to contractors is usually specified in the construction contract (ORC 153.13). It should also be noted that state law specifies that either the county or the contractor may determine it is advisable that estimates and payments should be made twice a month. This often occurs with very large projects. In these circumstances, once either party determines that the “rate of work and amounts are so large that it is considered advisable” for payments to be made twice a month, then the timetable for estimates and payments must comply with this schedule (ORC 153.14).

The unit or lump sum price included in a construction contract is used to determine the amount to be paid to a contractor and constitutes full and final compensation for the work (ORC 153.12(A)). The county treasurer pays all warrants drawn for materials and labor furnished on county construction contracts using the estimates prepared by the contractor and approved by the county pursuant to ORC Section 153.14. The treasurer files the documents and is required to maintain a register containing the names of persons paid (ORC 153.49).

Very detailed requirements for payments and partial payments to contractors on estimates, retained funds, and escrow accounts have been established and need to be followed. The county must approve payments based on a series of full, accurate and detailed estimates for the various types of labor performed and materials furnished for the project. These estimates must specify the amount due for each type of labor and material and the aggregate amount due for both based on the actual measurement of the labor and materials furnished. The estimate also includes, after the payment is made on the initial estimate, the amount of the previous estimate and the amount of labor and materials furnished since the last estimate (ORC 153.13). This process thus results in a series of partial payments to contractors. After submission of estimates by the contractor payment must be made within 30 days or the county is required to pay interest to the contractor (ORC 153.14), unless the contract provides otherwise.

Partial payments for work performed under a lump sum price are based on a schedule prepared by the contractor and approved by the project architect or engineer who has the responsibility to apportion the lump sum price among the major components of the project.

Partial payment based on estimates for labor performed under either a unit or lump sum price contract is paid to the contractor at the rate of 92 percent of the estimates prepared by the contractor and approved by the architect or engineer. Eight percent is retained. For payments on labor, when the project is 50 percent complete, no further funds can be retained, and labor must be paid in full on the basis of estimates submitted by the contractor and approved by the architect or engineer (ORC 153.12(A)). The previously retained funds for labor (8 percent of the first 50 percent) must be placed in an interest-bearing escrow account, unless the contract provides otherwise.

For partial payments on materials, similar provisions apply. The contractor is entitled to be paid for 92 percent of the cost of the materials when they are delivered to the site, a railroad station or siding, or other storage site, and 8 percent can be retained. The contractor is entitled to full payment when the delivered materials are incorporated into the project and no further retainage on materials after incorporation is permitted. Delivered materials that are stolen, damaged or destroyed before being used, however, must be replaced at the contractor's expense. In addition, the following requirements apply:

1. Payments and partial payments on estimates must be paid to the contractor, or if a part of the payment is retained it must be deposited in an interest bearing escrow account, on the day it is due to the contractor. If the funds are not paid to the contractor or if retainage is not deposited into the interest bearing escrow account when due, the county must pay the contractor 8 percent interest, compounded daily (ORC 153.63(D)). Escrow accounts do not have to be established if the total cost of the project is less than \$15,000 (ORC 153.13) unless the contract provides otherwise.
2. If additional funds are being retained and are deposited into the interest bearing escrow account after the work is 50 percent complete, the county must pay interest to the contractor at the average prime rate at banks in the nearest city of over 100,000 population. This interest is in addition to the interest due the contractor from the escrow account (ORC 154.14).
3. When the major portion of a project is substantially completed, occupied, accepted, or in use and there is no reason to withhold retainage, the retainage and accumulated interest for that portion of the project must be released from the interest bearing escrow account and paid to the contractor within 30 days (ORC 153.13). Likewise, when a project, or a divisible part of the project, is complete the maintenance and repair of the project becomes the responsibility of the county (ORC 153.14).

Finally, a county may, in its sole discretion, reduce statutory retainage by 50 percent once the contract is 50 percent complete as long as the surety issuing the bond remains liable for all of the following caused by default of the contractor (ORC 153.80(B)(2)):

1. Job completion,
2. All delay claims,
3. All liquidation damages, and
4. All additional owner expenses.

6.45 ESTABLISHMENT AND PAYMENTS OF RETAINED FUNDS FROM ESCROW ACCOUNTS

As discussed in the previous section, Ohio law establishes requirements for the payment of contractors on construction projects. This includes various provisions relating to the retainage of certain portions of payments made on the basis of estimates submitted to the county by the contractor.

Unless otherwise provided in the contract, when retainage is authorized to be withheld from a payment, it must be deposited in an interest bearing escrow account. The escrow account must be with a bank or building and loan within Ohio that is mutually agreed to by the county and the contractor that will serve as the escrow agent. The following provisions apply to the establishment of the escrow account:

1. The money is deposited in a savings account or is invested by the escrow agent in obligations specified in the agreement establishing the account. The escrow agent must keep separate records on the amount of principal paid to the account and investment earnings on the principal.
2. The escrow agent is required to hold the funds until receipt of a notice from the county and the contractor that specifies the amount of principal to be released and the person to whom it is to be paid. The escrow agent then pays the specified amount of principal and a proportionate amount of accumulated interest.
3. If there is a disagreement between the county and the contractor, it will be submitted to arbitration under ORC Chapter 2711 unless the contract provides for another type of dispute resolution. If the issues are subject to arbitration, court proceedings on the same issue are precluded. When arbitration is concluded, the escrow agent then pays the principal and interest pursuant to the arbitration order.

The escrow agent receives compensation from the interest earned on the escrow account, as agreed to by the county and the contractor. In addition, the agreement establishing the escrow account may include other provisions such as allowing the

escrow agent to combine funds from other escrow accounts and provisions that limit the liability of the escrow agent.

PART V: ALTERNATIVE PROJECT DELIVERY METHODS

6.46 OVERVIEW OF ALTERNATIVE PROJECT DELIVERY METHODS

As noted in section 6.30 of this Handbook, state construction law was changed in 2011 to allow for more flexibility in procuring design professional and construction services. Some options allow for qualifications-based selection of a construction manager at risk or design-build firm and remove the need to solicit separate bids as required in the multiple prime method. Using one of these methods, counties can negotiate an overall price for the entire contract. Counties should carefully consider the advantages and disadvantages of the following options:

1. A “*general contracting firm*” constructs and manages an entire public improvement project including the classes of work that traditionally would require separate bids. A contract for general contracting is awarded by competitive bidding to the lowest and best bidder (ORC 153.52). Work is performed under a single aggregate lump sum contract. It should be noted that the county retains the authority to reject a subcontract award by the general contractor if the county determines that the bidder is not responsible (ORC 153.501).
2. A “*construction manager at risk*” is a firm that has the authority to plan, coordinate, manage, and construct all phases of a public improvement project. This method provides for the negotiation of a guaranteed maximum price using an open book method in which the construction manager at risk provides the county with all records, documents, and data relating to the bidding, pricing, or performance of a construction contract (see ORC sections 9.33, *et seq.*).
3. A “*design-build*” firm provides an integrated delivery system for both the design and construction of a public improvement (see ORC sections 153.65 to 153.73). The design-build contract provides a guaranteed maximum price using open book pricing. Before planning to contract for design-build services, the county must obtain the services of a *criteria architect or engineer* either through a contract or the use of its own personnel. The criteria architect or engineer prepares conceptual plans and specifications to assist the county in the establishment of design criteria, and may serve as the county’s representative during the project to ensure that the plans submitted by the design-build firm reflect the original intent of the design criteria.

Sections 6.47 through 6.51 explain the alternative project delivery options in more detail. Section 6.52 discusses special provisions related to energy conservation projects.

6.47 CONSTRUCTION MANAGER AT RISK

A “construction manager at risk” performs the same planning, coordinating, managing and directing functions as a construction manager, but also provides the county with construction services and a guaranteed maximum price. (ORC 9.33). The advertising and selection processes for a construction manager at risk are similar to that of a construction manager (see section 6.37 of this Chapter above). However, instead of receiving proposals in response to the advertisement, the county will receive qualifications from interested construction manager at risk firms. The county must proceed to evaluate and rank the qualifications using the criteria published in the Ohio Administrative Code (OAC 153:1-6-01). The rule requires the creation of an Evaluation Committee to examine the qualifications. The composition of the Evaluation Committee is at the discretion of the county, but it may not comprise enough members of the board of commissioners to constitute a quorum. The Evaluation Committee must include at least three firms in its “short-list,” unless the Evaluation Committee determines in writing that fewer than three qualified construction managers at risk are available. The short-listed firms will each prepare a technical and pricing proposal in response to the county’s RFP, which shall include the following in accordance with OAC 153:1-6-01:

1. A description of the project, including a statement of available design detail;
2. A description of any preconstruction services;
3. The form of the construction management contract;
4. A description of how the guaranteed maximum price for the project will be determined, including the estimated level of design detail upon which the guaranteed maximum price shall be based, if not otherwise set forth in the construction management contract; and
5. A request for a pricing proposal, including the estimated cost of construction for the project, for the purpose of calculating the fees proposed by a construction manager at risk.

The pricing proposal of each short-listed construction manager at risk must include at least the following:

1. A list of key personnel for the project;
2. A statement of the general conditions and contingency;
3. A fee proposal divided into a preconstruction fee, a construction fee, the portion of the construction fee to be at risk and, if applicable at the time proposals are requested, guaranteed maximum price proposal in accordance with OAC 153:1-6-01(f).

The technical proposal of each short-listed construction manager at-risk must include at least the following:

1. A project-specific plan;
2. The identity of the proposed team;
3. The project-specific approach to deliver the expected services; and
4. The following performance criteria components as established by the county:
 - a. Schedule;
 - b. Approach to the work, including any anticipated self-performed work;
 - c. Work sequencing;
 - d. Performance history;
 - e. Approaches to performance specifications when used;
 - f. Plan for anticipated procurement difficulties;
 - g. Plan for meeting any goals set as part of any diversity and inclusion program required by the county or by applicable law; and
 - h. Plan for additional considerations which may include technical design, technical approach, quality of proposed personnel, and management plan.

After the Evaluation Committee evaluates the submitted pricing and technical proposals, it must hold interviews with each interested construction manager at risk to allow each short-listed firm to clarify and respond to questions related to its proposal. The interviews are not scored. After evaluating the pricing and technical proposals, the Evaluation Committee must rank the short-listed construction managers at risk based on its evaluation of the value of each pricing and technical proposal, taking into account the performance criteria and pricing criteria established by the county separately and then combining the evaluations to reach a final evaluation.

The county must announce and enter into negotiations with the construction manager at risk whose pricing proposal is determined to be the best value. Contract negotiations must be directed toward the following objectives:

1. Ensuring that the construction manager at risk and the county mutually understand the essential requirements involved in providing the required construction

management services, including the provisions for the use of contingency funds and the possible distribution of savings in the final costs of the project;

2. Ensuring that the construction manager at risk will be able to provide the necessary personnel, equipment, and facilities to perform the construction management services within the time required by the construction management contract;
3. Agreeing upon a procedure and schedule for determining a guaranteed maximum price using an open book pricing method that represents the total maximum amount to be paid by the county to the construction manager at risk for the project; the price includes the costs of all the work, the cost of its general conditions, the contingency, and the fee payable to the construction manager at risk (ORC 9.334).

If the county fails to negotiate a construction management contract with the construction manager at risk whose pricing and technical proposal the county determines to be the best value, the county must inform the construction manager at risk, in writing, of the termination of negotiations and may proceed to negotiate with the next highest ranked firm. If negotiations with the initially ranked firms fail, the county may proceed to evaluate, rank, and request pricing and technical proposals from other construction managers at risk, or the county may choose an alternative delivery method. If the county and construction manager at risk fail to agree upon a guaranteed maximum price, the county may allow the construction manager at risk to provide construction manager services. The county can always maintain the right to accept any or all proposals in whole or in part.

Before construction begins, the construction manager at risk must provide a surety bond to the county in accordance with Ohio Facilities Construction Commission rules. Unlike a construction manager contract, the law does not permit waiving this requirement for good cause.

6.48 PREQUALIFICATION OF SUBCONTRACTORS

The law requires both construction managers at risk and design-build firms to establish criteria to prequalify prospective bidders on subcontracts. The criteria are subject to approval by the county and must be consistent with rules adopted by the Ohio Facilities Construction Commission and OAC 153:1-7-01.

For each subcontract to be awarded, the construction manager at risk or design-build firm must identify at least three prequalified prospective bidders. The subcontracting process may proceed with fewer than three potential bidders only if the construction manager at risk or design-build firm establishes to the satisfaction of the county that fewer than three are available. The county must verify that each prospective bidder meets the prequalification criteria and may eliminate any bidder that it determines is not qualified.

Once the prospective bidders are prequalified and found acceptable by the county, the construction manager at risk or design-build firm can proceed to solicit proposals from the bidders. The solicitation and selection of a subcontractor must be conducted under an open book pricing method. A construction manager at risk or design-build firm is not required to award a subcontract to a low bidder (ORC 153.502).

6.49 DESIGN-BUILD SERVICES

Design-build services integrate the design function with the actual performance of construction work. The law requires a county considering project delivery through a design-build contract to have the proper technical expertise in order to evaluate the qualifications of a design-build firm and to assess the plans submitted under the contract. In order to achieve this, a county must hire a criteria architect or engineer either by contracting for the service in accordance with Ohio law or designating a qualified county employee (ORC 153.692). The statutory procurement process for a criteria architect or engineer is the same as for a design professional (see Sections 6.33–6.35 of this Handbook). If a county employee is designated, the county must notify the Ohio Facilities Construction Commission before services are performed.

The role of a criteria engineer is to prepare conceptual plans and specifications to assist with establishment of design criteria for the project. The county can request that the criteria engineer serve as the county's representative and provide construction administration services on behalf of the county, including confirming that the plans prepared by the design-build firm reflect the original intent of the design criteria package (ORC 153.65(I)). A firm that is providing services as criteria architect or engineer cannot also provide design-build services on the same project (ORC 153.694).

6.50 EVALUATION AND SELECTION OF DESIGN-BUILD FIRMS

For every design-build contract, a county, in consultation with the criteria architect or engineer, must publish a request for qualifications in accordance with OAC 153:1-1-01 at least 14 days prior to the deadline for interested design-build firms to submit their statements of qualifications. The Evaluation Committee will assess the statements of qualifications submitted by design-build firms specifically regarding the project, including the design-build firm's proposed architect or engineer of record. Following this evaluation, the evaluation committee must undertake the following actions:

1. Select and announce not fewer than three firms which it considers to be the most qualified to provide the required design-build services, unless it determines in writing that fewer than three qualified firms are available, in which case it may proceed to announce the two qualified firms;
2. Provide each short-listed design-build firm with a request for pricing and technical proposal, which must include all of the following:
 - a. A description of the project and project delivery;

- b. The design criteria produced by the criteria architect or engineer;
 - c. A preliminary project schedule;
 - d. A description of any preconstruction services;
 - e. A description of the proposed design services;
 - f. The form of the design-build services contract;
 - g. A description of how the guaranteed maximum price for the project shall be determined, including the estimated level of design detail upon which the guaranteed maximum price shall be based, if not otherwise set forth in the design-build contract;
3. Review the pricing and technical proposal of each design-build firm, which shall include at least all of the following:
- a. Pricing:
 - 1) A list of key personnel and consultants for the project;
 - 2) Design concepts adhering to the design criteria produced by the criteria architect or engineer under ORC Section 153.692;
 - 3) The design-build firm's statement of general conditions and contingency;
 - 4) A preliminary project schedule; and
 - 5) A pricing proposal which includes the design services fee, preconstruction fee, design-build services fee, general conditions, contingency, and if applicable at the time proposals are requested, a guaranteed maximum price proposal in accordance with OAC 153:1-6-02.
 - b. Performance:
 - 1) A project-specific plan;
 - 2) The identity of the proposed team;
 - 3) The project-specific approach to deliver the expected services; and

- 4) The following performance criteria components as established by the county:
 - i. Schedule;
 - ii. Approach to the work, including any anticipated self-performed work;
 - iii. Work sequencing;
 - iv. Performance history;
 - v. Approaches to performance specifications when used;
 - vi. Plan for anticipated procurement difficulties;
 - vii. Plan for meeting and goals set as part of any diversity and inclusion program required by the county or by applicable law; and
 - viii. Plan for additional considerations which may include design, technical approach, quality of proposed personnel, and management plan.
4. Evaluate the pricing and technical proposal submitted by each short-listed firm and, hold interviews with each firm to allow each short-listed firm to clarify and respond to questions related to its proposal. The interviews are not scored;
5. Rank the selected firms based on the committee's evaluation of the value of each firm's pricing and technical proposal, with such evaluation considering each firm's performance criteria and pricing criteria established by the county separately;
6. Announce and enter into contract negotiations for design-build services with the design-build firm whose pricing proposal the county determines to be the best value under this section (OAC 153:1-6-02).

The law specifies that contract negotiations must be directed toward the following objectives:

1. Ensuring that the design-build firm and the county mutually understand the essential requirements involved in providing the required design-build services, the provisions for the use of contingency funds, and the terms of the contract, including terms related to the possible distribution of savings in the final costs of the project;
2. Ensuring that the design-build firm is able to provide the necessary personnel, equipment, and facilities to perform the design-build services within the time required by the design-build construction contract;

3. Agreeing upon a procedure and schedule for determining a guaranteed maximum price using an open book pricing method that represents the total maximum amount to be paid by the county to the design-build firm for the project and that includes the costs of all work, the cost of its general conditions, the contingency, and the fee payable to the design-build firm. (ORC 153.693)

If the county does not reach an agreement with the design-build firm whose pricing and technical proposal the county determines to be the best value, the county must notify the firm in writing of the termination of the negotiations. The county may then proceed to negotiate with the next highest-ranked firm in the manner described above for construction manager at risk firms (see Section 6.47 of this Handbook). A design-build firm contracted for design-build services by a county may provide professional design services on a project even if it is not a professional design firm (ORC 153.72).

The law also permits the county to provide a stipend for pricing proposals received from design-build firms. The county may retain the right to accept or reject any or all proposals in whole or in part (ORC 153.693).

6.51 PROFESSIONAL LIABILITY INSURANCE

The law requires any person rendering professional design services to the county or to a design-build firm to carry professional liability insurance. The county must designate an amount of coverage it considers sufficient, and may require the design-build firm to carry insurance for its contractors. The county may waive this insurance requirement for good cause, or may choose to allow the professional design firm to provide other assurances of financial responsibility.

Before construction begins on a design-build contract, the design-build firm must provide a surety bond to the county in accordance with Ohio Facilities Construction Commission rules (ORC 153.70).

6.52 ENERGY CONSERVATION MEASURES

A board of commissioners wishing to implement energy conservation measures may proceed under one of two methods (ORC 307.041):

1. Contract with an architect, engineer, energy services company or contractor to prepare an energy conservation report that analyzes county buildings' energy needs and makes recommendations and estimates of cost for the purpose of competitively bidding improvements;
2. Issue a request for proposal (RFP) to at least three vendors capable of installing energy conservation measures. Prior to sending the RFP to any vendor, commissioners must publish notice of intent to issue the RFP in a newspaper of general circulation in the county once a week for at least two consecutive weeks.

As an alternative, notice may be provided as authorized in ORC Section 7.16, as described in Section 6.05 of this Handbook. The RFP must require the vendor that is awarded the contract to prepare an energy conservation report. The contract may be awarded to one or more vendors on the basis of greatest energy savings considering the cost of the project and the county's ability to pay for or finance the improvements. The commissioners must also find that the energy savings over the average system life of the energy conservation measures as specified in the energy conservation report exceeds the cost of the improvements. The commissioners may reject all proposals.

An energy conservation report must include the following:

1. Analyses of buildings' energy needs and installations and modifications to reduce energy consumption.
2. Estimates of all costs of installations and modifications, including the cost of design, engineering, installation, maintenance and repairs.
3. Estimates of the amounts by which energy consumption could be reduced.
4. The interest rate used to estimate the costs of any conservation measures that are to be financed.
5. The average system life of the energy conservation measures.
6. Estimates of probable savings that will result from the reduction in energy consumption over the average system life of the energy conservation measure, including the methods used to estimate the savings.
7. A certification under the seal of a registered professional engineer that the energy conservation report uses reasonable methods of analysis and estimation.

The law defines energy conservation measures to mean an installation, modification of an installation or remodeling of an existing building to reduce energy consumption.

Energy conservation measures include:

1. Insulation of the building structure and systems within the building.
2. Storm windows and doors.
3. Multi glazed windows and doors.
4. Heat-absorbing or heat-reflective glazed and coated window and door systems.
5. Additional glazing.

6. Reductions in glass area.
7. Other window and door system modifications that reduce energy consumption.
8. Automatic energy control systems.
9. Heating, ventilating, or air conditioning system modifications and replacements.
10. Caulking and weather stripping.
11. Replacement or modification of lighting fixtures that increase energy efficiency without increasing the overall illumination of a facility, unless the increase in illumination is required by a state or local building code for the proposed lighting system.
12. Energy recovery systems.
13. Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, primarily for use within a building or building complex.
14. Acquiring, constructing, furnishing, equipping, improving the site of, and otherwise improving a central utility plant (CUP) to provide heating and cooling services to a building or buildings together with distribution piping and ancillary distribution controls, equipment, and related facilities from the CUP to the building or buildings.
15. Any other modification, installation or remodeling approved by the commissioners as an energy conservation measure.

The law also permits commissioners to enter into installment payment contracts and issue debt for the purpose of financing energy conservation measures. If bonds are issued for energy conservation measures, the maximum maturity of the bonds cannot exceed the lesser of the average system life of the energy conservation measures as provided in an energy conservation report or 30 years. When entering into an installment payment contract, the county must comply with regular competitive bidding relating to the installation, modification, or remodeling of energy conservation measures unless the commissioners adopt a resolution exempting the county from this requirement. Provisions of an installment payment contract relating to interest charges and financing terms are exempt from competitive bidding. The RFP process and installment payments may be helpful to counties that cannot afford to pay for such improvements with cash.

Part VI: PREVAILING WAGES

6.53 PREVAILING WAGES—GENERAL

Counties involved in construction projects need to understand Ohio's prevailing wage law, ORC Chapter 4115. Ohio's prevailing wage law was first enacted during the Great Depression in 1931 "by the Republican-led 89th General Assembly to prevent out-of-state incursions against local, small businesses."⁴ The enactment of Ohio's law followed Congressional enactment of federal prevailing wages in the Davis-Bacon Act in 1931 with strong support from the Administration of Herbert Hoover, and state equivalents were often referred to as "little Davis-Bacon's." The Ohio prevailing wage law applies to skilled trades and is administered by the Ohio Department of Commerce (DOC), Division of Industrial Compliance, Bureau of Wage and Hour Administration.

Prevailing wages are determined by the Bureau of Wage and Hour Administration of the Department of Commerce within a "locality" in conformity with existing pay rates in effect under private collective bargaining agreements. A "locality" is defined as the county where physical work is performed on a public improvement project (ORC 4115.03(D)). If there is no collective bargaining agreement in effect in a particular county, the rate of the nearest county with an agreement in effect is used (ORC 4115.05).

Prevailing wages must be paid on any project which involves the construction, reconstruction, enlargement, alteration, repair, remodeling, renovation, or painting of any public improvement above certain threshold dollar amounts and is performed by any person other than employees of the county who have completed their probationary period in the classified civil service (ORC 4115.03(B)(1)-(4)).

A public improvement includes all buildings, roads, streets, alleys, sewers, ditches, sewage disposal plants, water works, and all other structures or works constructed by a county or any contractor. If a county rents or leases a newly constructed structure within six months after completion of such construction, all work performed on such structure to suit it for occupancy by the county also is defined as a public improvement (ORC 4115.03(C)).

However, a public improvement of a soil and water conservation district authorized by ORC Section 940.06, and county petition ditch projects are not considered as public improvement projects for the purpose of the prevailing wage law in certain circumstances. This includes single, joint, and interstate ditches petitioned under ORC Chapters 6131, 6133, and 6135 as described in Chapter 29 of this *Handbook*. In the case of such projects, however, at least 75 percent of the project must be located on private land and at least 75 percent of the cost of the project must be paid by special

⁴ Luther, Liggett, Jr. for the American Institute of Architects, Ohio. New Ohio Prevailing Wage Law Explained, July 2011. <http://www.aiaohio.org/the-news/34-latest-aia-news/410-new-ohio-prevailing-wage-laws-explained> .

assessments on private property owners in order to not be considered as public improvements for the purpose of prevailing wages.

6.531 DETERMINATION OF PREVAILING WAGE RATES AND THRESHOLDS

The prevailing wage rate includes the basic rate of pay; irrevocable payments made to a plan, fund, or program on behalf of an employee; and fringe benefits which are not required by law, including:

1. Medical or hospital care or insurance.
2. Pensions on retirement or death or related insurance.
3. Compensation for injuries or illnesses in addition to workers compensation coverage.
4. Supplemental unemployment benefits in addition to those required under law.
5. Life, disability, accident and sickness insurance.
6. Vacation and holiday pay.
7. Defraying of costs for apprenticeship or other similar training programs which are beneficial only to the laborers and mechanics affected.
8. Other bona fide fringe benefits.

Prevailing wage rates were recently adjusted by the Legislature for so called “vertical” improvements as shown in the first two rows of the following table. Other improvements, often referred to as “horizontal” improvements, such as roads, bridges and sewers, are subject to a biennial adjustment by the Director of Commerce every two years. This adjustment for “horizontal” projects, as shown in the last two rows of the following table, is based on the average increase or decrease for each of the two preceding years as set forth in the construction cost index published by the engineering news-record (ORC 4115.034)). The Bureau currently uses the Building Cost for Skilled Labor Index published by McGraw-Hill’s Engineering News-Record. In no case, however, can the threshold increase or decrease by more than 3 percent from the previous amount. Current thresholds for 2019 are shown in the following table:

| Type of Construction | Current Threshold | Effective Date of Current Threshold |
|--|-------------------|-------------------------------------|
| Buildings and structures – new construction | \$250,000 | 9-29-13 |
| Buildings and structures -- reconstruction, enlargement, alteration, repair, remodeling, renovation, or painting | \$75,000 | 9-29-13 |
| Roads and Bridges -- new construction (streets, alleys, sewers, ditches and other public improvements connected to road or bridge construction) | \$98,974 | 1-1-24 |
| Reconstruction, enlargement, alteration, repair, remodeling, renovation, or painting of roads, streets, alleys, sewers, ditches and other public improvements connected to road or bridge construction | \$29,653 | 1-1-24 |

In determining whether the construction project is below the threshold that requires the payment of prevailing wages, a county may not subdivide the project into separate component parts or projects unless the subdivided components are conceptually separate and unrelated to each other, or encompass independent and unrelated needs of the public authority (ORC 4115.033).

6.532 COUNTY PREVAILING WAGE OBLIGATIONS AND PREVAILING WAGE COORDINATOR

Before advertising for bids or undertaking a public improvement by force account, counties must have the Director of Commerce (DOC) determine the prevailing wage rate for mechanics and laborers needed for the work called for by the public improvement in the county where the work is to be performed. This schedule of wages must be attached to the specifications for the work, and must be printed on the bidding blanks where the work is to be done by contract. A copy of the bidding blanks also must be filed with the DOC prior to the award of the contract (ORC 4115.04).

All county construction contracts must contain provisions requiring the payment of prevailing wages to every person who works on the project (ORC 4115.05, 4115.06). In the case of county road, bridge and culvert force account projects refer to ORC Sections 5543.19 and 117.16 that include detailed provisions concerning whether the county may use force account procedures or if the county must offer the improvement under competitive bidding procedures.

If contracts are not awarded or construction commenced within 90 days from the establishment of the prevailing wage rates, then there must be a redetermination of those rates (ORC 4115.05). If the county receives a notice of a change in the prevailing

wage rate from the DOC it must, within seven working days of receipt, notify all affected contractors and subcontractors and require the contractor and subcontractor to make necessary adjustments in rates of pay.

Likewise, if the DOC determines that prevailing wages have changed because of changes to collective bargaining agreements in a county where an ongoing project is being constructed, the change in rate takes effect two weeks after the Department receives the relevant portions of the agreement and notice must be given to the county. The county then must provide notice to contractors and subcontractors as specified above. It is important that the county notify contractors and subcontractors under both of these circumstances because if the county does not provide notification to the contractor, it becomes liable for back wages, fines, damages, court costs, and attorney fees.

No later than 10 days before the first payment of wages is due any employee of a contractor or subcontractor falling within the provisions of the prevailing wage law, a county must designate one of its employees as the prevailing wage coordinator for that project (ORC 4115.071(A)). If a county has a permanent employee performing the functions of a prevailing wage coordinator, a separate coordinator need not be appointed for each project (ORC 4115.071(B)).

The statutory duties of the prevailing wage coordinator include:

1. Setting up and maintaining for public inspection files of payroll reports and affidavits submitted by contractors and subcontractors.
2. Determining from contractors and subcontractors the dates when wages to employees are paid.
3. Receiving from each contractor or subcontractor a complete payroll record for each employee including the employee's name, current address, last four digits of the employee's social security number, number of hours worked each day and each week, hourly rate of pay, job classification, fringe payments, and deductions from wages.
4. Establishing and following procedure to monitor the compliance of each contractor or subcontractor for the requirement imposed for timely filing copies of payroll records. This often includes regular site visits to the construction site to verify that the prevailing wage rates have been paid.
5. Receiving from each contractor or subcontractor, upon completion of work and before final payment, an affidavit stating compliance with the prevailing wage law.
6. Reporting any delinquency in the filing of the certified copy payroll information and the affidavit to the county commissioners and the DOC.

Finally, the Department of Commerce has provided guidance concerning the responsibilities of prevailing wage coordinators. These guidelines are specified in Exhibit 6-4 at the end of this Chapter.

6.533 ENFORCEMENT OF PREVAILING WAGE LAW

The Director of Commerce is responsible for investigating all alleged violations of the prevailing wage law. Complaints may be initiated by the Director, or complaints may be filed. Interested parties include all bidders on the project, subcontractors, labor organizations representing employees, and associations whose members are contractors or subcontractors (ORC 4115.03(F)).

The DOC investigates, and the Director of the Department of Commerce, the Director's representative, or a hearing officer may hold hearings in the county where the violation is alleged to have been committed or in Franklin County, whichever county the person alleged to have committed the violation chooses. (ORC 4115.13). The person holding the hearing may administer oaths, take depositions of witnesses, issue subpoenas, compel the attendance of witnesses, and require the provision of any and all records having to do with the investigation. If it is determined that an intentional violation occurred the contractor or subcontractor is notified and has right to appeal the determination of the violation. Procedural details concerning violations are specified in ORC Sections 4115.13 and 4115.14.

In addition, when the DOC makes a finding that a contractor or subcontractor has intentionally violated the prevailing wage law the contractor or subcontractor is prohibited from directly or indirectly contracting with public authorities for public improvements and from performing any work on public improvements anywhere in the state for certain periods of time (ORC 4115.13(D)). In the case of the initial intentional violation, the contractor or subcontractor may not contract or perform public improvement work for a period of one year. If another intentional violation occurs within five years, the prohibition is for three years. The Department files a list of debarred contractors and subcontractors who have intentionally violated the law with the Secretary of State (ORC 4115.133). No county may award a contract to a contractor or subcontractor that has been debarred. The Secretary of State maintains this list of debarred contractors on a website. It is important that counties check this web site prior to awarding a contract as filing of the list by the Secretary of State constitutes notice to the county. The link to the web site is:

<https://www.sos.state.oh.us/records/debarred-contractors/#gref>

6.534 EXEMPTIONS FROM THE PREVAILING WAGE LAW

Most county construction projects above the thresholds specified earlier are subject to prevailing wages. However, some projects that a county has an interest in are exempt from the payment of prevailing wages. Traditionally, county public improvement projects were exempt from paying prevailing wages when:

1. Federal loans or grants were involved for all or part of the project and Davis-Bacon Act wages, or other federal prevailing wages, apply (ORC 4115.04(B)(1)).
2. A participant in a work activity, developmental activity, or an alternative work activity of under the Ohio Works First Program administered by a County Department of Job and Family Services under ORC Sections 5107.40- 5107.69 when the county directly uses the labor of the participant to construct a public improvement and the participant is not paid or participating in a subsidized employment program pursuant to the activity (ORC 4115.04(B)(2)).
3. Board of education of any school district or the governing board of any educational service center projects (ORC 4115.04(B)(3)).
4. County or municipal hospital projects provided that the county has not issued debt pledging the full faith and credit of the county and no funds used for construction or the payment of bonds have been appropriated by the county from a property tax levy, unless the county hospital elects to utilize prevailing wages. (ORC 4115.04(B)(4)).
5. Certain residential housing projects that may involve the county (ORC 4115.04(B)(5)). For additional information see ORC Section 176.05.
6. Public improvement projects undertaken by either an “old” or “new” port authority (ORC 4115.04(B)(6)).
7. Any part of a public improvement completed solely with donated labor by a labor organization and its members or by a contractor or subcontractor that donates all labor and materials for that part of the project (ORC 4115.04(B)(7)).

APPENDIX

**TABLE 6-1
REFERENCE GUIDE TO COMPETITIVE BIDDING
AND PREVAILING WAGE THRESHOLDS**

| Type of Transaction | Requirements |
|---|---|
| Competitive Bidding Threshold for Most Purchases | Project cost over \$75,000 for 2024, revised annually thereafter by the department of commerce (ORC 9.17) |
| Emergency Purchase Exemption to Competitive Bidding | Unanimous resolution that a real and present emergency exists, and either: 1. Project cost is less than \$125,000; or, 2. Actual physical danger to structures, radio communications equipment, or computers. |
| Bid guarantee requirements | 1. Surety bond for full amount of bid amount 2. Certified check, cashier's check, or letter of credit for 10% of bid amount |
| Exemption from bid guarantee | 1. Project cost is less than \$100,000 2. County may exempt from bid guarantee or performance bond, or both |
| Partial payments (Retainage) | County retains 8% of invoice for materials and labor until project is 50% complete |
| Prevailing Wage Thresholds (in 2024) | <p><u>Buildings</u> New Construction: \$250,000 Reconstruction and Repair: \$75,000</p> <p><u>Streets, Bridges, Ditches</u> New Construction: \$98,974 Reconstruction and Repair: \$29,653</p> |

TABLE 6-2**SELECTED PROPERTY, BUILDING & PUBLIC IMPROVEMENT
AUTHORITIES**

(Arranged by ORC Section)

| Topic | ORC Section | Handbook Section |
|--|--------------------|-----------------------------|
| Requirement that annual inventory of all materials, machinery, tools, and other county supplies be filed with the county commissioners on the second Monday of January | 305.18 | 24.32 |
| Authority to acquire, construct, improve, maintain, operate, and lease a major league professional sports facility | 307.023 307.696 | |
| Authority to permit the use of county grounds and buildings for public library or any other public purpose under terms prescribed by the commissioners | 307.03 | 6.08 |
| Provisions authorizing commissioners to enter into contracts for the supply of light, heat or power to county buildings for a period not to exceed 10 years. | 307.04 | |
| Authority for commissioners to retain appraisers and expert witnesses in eminent domain proceedings. | 307.06 | |
| Basic county authority to appropriate land or to use eminent domain. | 307.08 | |
| Authority for commissioners to purchase or obtain land by eminent domain to donate for a state correctional institution or a federal correctional facility or complex. | 307.084 | 6.07 |
| Sale, lease, and rental of county real property | 307.09 307.10 | 6.16 |
| Authority to sell or lease property and assets of a hospital or health care facility to a medical school or college | 307.091 | |
| Authority to sell or lease property to a non-profit senior citizens organization | 307.092 | |
| Authority to execute leases of minerals on lands owned by the county | 307.11 | 6.15 |

| | | |
|--|----------------------------|---------|
| Sale & Donation of personal property | 307.12 | 24.32 |
| Authority to operate airports or to contract for their operation | 307.20 | 33.02 |
| Authority to own, lease, construct, acquire, operate and maintain subways and transportation systems | 307.201 | |
| Authority to acquire, rehabilitate & develop rail property and service | 307.202 | |
| Authority to accept bequests and erect a monument in the memory of those killed in wars | 307.21 | |
| Authority to provide for the organization and maintenance of civic and social centers | 307.26 | |
| Authority to grant use of park land for art buildings | 307.28 | 35.04 |
| Authority to lease to municipalities space for courts, police stations, prosecutors' offices, and other similar purposes | 307.29 | |
| Purchase or lease of motor vehicles | 307.41 | 24.23 |
| Authority to improve harbors along Lake Erie | 307.65 | 79.03 |
| Authority to provide equipment to specific types of non-profit corporations | 307.691 | |
| Authority to operate a police training school, a law enforcement training and research school, police science laboratory, or a crime prevention activity program | 307.75 | |
| Authority to operate and maintain or contract for the operation and maintenance of zoological parks | 307.76 | 35.05 |
| Authority to maintain a facility to encourage the study and promotion of science and natural history | 307.761 | |
| Authority to give aid to certain water management public improvements | 307.77 307.771 | |
| Vacation and sale of unused park lands | 307.81 307.82 307.83 | 6.18 |
| Authority to establish a multi-county, municipal-county or multicounty-municipal correctional centers | 307.93 | 101.083 |

| | | |
|---|---------|--------|
| Authority to spend funds to support senior citizen services or facilities. | 307.932 | |
| Authority to purchase or lease real estate for holding of fairs and to erect, improve, and repair buildings on county fair lands. Also to pay rent and indebtedness of a county agricultural society. | 1711.15 | 134.05 |
| Requirement that the county insure buildings on the grounds of a county agricultural society | 1711.24 | 134.05 |
| Authority for county to allow certain amusement, museum, and park corporations to build and maintain buildings on county park lands | 1743.10 | 35.04 |
| Requirement to provide offices for OSU Extension. | 3335.36 | |
| Requirement to provide space and utilities to county law library | 3375.49 | |
| Requirement that the county provide office space and utilities for the county health department (see also Ohio Atty. Gen. Opinion 85-003) | 3709.34 | 49.024 |
| Lease-purchase of road machinery and equipment | 5549.02 | 24.24 |

**TABLE 6-3
PROVISIONS OF OHIO LAW APPLYING TO APPROVAL OF CERTAIN BUILDINGS & BRIDGES
BY SPECIAL PANELS**

| Purpose of Special Panel | ORC Section | Membership of Special Panel | Items Subject to Approval by Special Panel | Types of Project Subject to Approval by Special Panel | Other Provisions |
|---------------------------------|--------------------|--|--|---|--|
| Court House | 153.36 | <ul style="list-style-type: none"> • Board of County Commissioners • Clerk of Courts • Sheriff • Probate Judge • One Person Appointed by Common Pleas Judge | <ul style="list-style-type: none"> • Plans • Drawings • Representations • Specifications • Bills of Materials • Estimated Cost in Detail & Aggregate as required by ORC Sections 153.31-153.35 | <ul style="list-style-type: none"> • Building • Addition • Alteration • Repair • Improvement | <ul style="list-style-type: none"> • Deposited in County Auditor's Office and Kept in the Office. |
| Jail | 153.36 | <ul style="list-style-type: none"> • Board of County Commissioners • Clerk of Courts • Sheriff • Probate Judge • One Person Appointed by Common Pleas Judge | <ul style="list-style-type: none"> • Plans • Drawings • Representations • Specifications • Bills of Materials • Estimated Cost in Detail & Aggregate as required by ORC Sections 153.31-153.35 | <ul style="list-style-type: none"> • Building • Addition • Alteration • Repair • Improvement | <ul style="list-style-type: none"> • Deposited in County Auditor's Office and Kept in the Office. • Multicounty, Municipal-County, and Multicounty-Municipal jails are exempt from this requirement as provided in ORC Section 153.61. |
| County Home | 153.37 | <ul style="list-style-type: none"> • Board of County Commissioners | <ul style="list-style-type: none"> • Plans • Drawings • Representations | <ul style="list-style-type: none"> • Building • Addition • Alteration | <ul style="list-style-type: none"> • Deposited in County Auditor's Office for use and inspection of interested parties. |

| Purpose of Special Panel | ORC Section | Membership of Special Panel | Items Subject to Approval by Special Panel | Types of Project Subject to Approval by Special Panel | Other Provisions |
|--------------------------|-------------|---|--|---|---|
| | | | <ul style="list-style-type: none"> • Specifications • Bills of Materials • Estimated Cost | | |
| Bridge | 153.38 | <ul style="list-style-type: none"> • Board of County Commissioners • County Auditor • County Engineer | <ul style="list-style-type: none"> • Plans • Drawings • Representations • Specifications • Bills of Materials • Estimated Cost | • Building | <ul style="list-style-type: none"> • Deposited in County Auditor's Office for use and inspection of interested parties. |
| Children's Home | 153.39 | <ul style="list-style-type: none"> • Board of County Commissioners • 3 Citizens Appointed by Common Pleas Judge | <ul style="list-style-type: none"> • Plans • Drawings • Representations • Specifications • Bills of Materials • Estimated Cost | • Building | <ul style="list-style-type: none"> • Deposited in County Auditor's Office for use and inspection of interested parties. • Prior to adoption of plans they must be submitted to the Department of Job and Family Services for suggestions & criticism. • When counties comprise a district for the establishment of a district home, contracts for buildings or their repair and alteration must comply with laws relating to letting contracts for erecting, repairing, and altering other public buildings. |

EXHIBIT 6-1
FORM OF PAYMENT AND PERFORMANCE BOND PURSUANT TO
ORC SECTION 153.54(C)(2)

KNOW ALL PERSONS BY THESE PRESENTS, that we, the undersigned as Principal and as Sureties, are hereby held and firmly bound unto as Obligee(s) in the penal sum of dollars, for the payment of which well and truly be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns. Signed this day of , THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that whereas the above named Principal did on the day of , , entered into a Contract with the Obligee, which said contract is made a part of this bond the same as though set forth herein and which is more fully described below as:

Project Number: _____

Project Name: _____

Contract Description: _____

NOW, THEREFORE, if the above-named Principal shall pay all lawful claims of subcontractors, material suppliers, and laborers, for labor performed and materials furnished in the carrying forward, performing, completing of said Contract; we agreeing and assenting that this undertaking shall be for the benefit of any material supplier or laborer having a just claim, as well as for the Obligee(s) herein; then this obligation shall be void; otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall in no event exceed the penal amount of the obligation as herein stated. The Surety hereby stipulates and agrees that no modifications, omissions, or additions, in or to the terms of said Contract or in or to the Plans and Specifications therefore shall in any way affect the obligations of the Surety on its bond, and said Surety hereby waives notice of any such modifications, omissions, or additions in or to the terms of the Contract, the Work, or the Contract Documents, including without limitation the Plans and Specifications.

EXHIBIT 6-2
FORM OF BID GUARANTY AND CONTRACT BOND PURSUANT TO
ORC SECTION 153.571

KNOW ALL PERSONS BY THESE PRESENTS, that we, the undersigned (“Contractor”) as principal and as sureties, are hereby held and firmly bound unto as obligee in the penal sum of the dollar amount of the bid submitted by the principal to the obligee on to undertake the construction of the (“Project”). The penal sum referred to herein shall be the dollar amount of the principal’s bid to the obligee, incorporating any additive or deductive Alternates made by the principal on the date referred to above to the obligee, which are accepted by the obligee. In no case shall the penal sum exceed the amount of dollars. (If the foregoing blank is not filled in, the penal sum will be the full amount of the principal’s bid, including add Alternates. Alternatively, if the blank is filled in, the amount stated must not be less than the full amount of the bid including add Alternates, in dollars and cents. A percentage is not acceptable.) For the payment of the penal sum well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns. Signed this day of ,

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that whereas the above named principal has submitted a bid for work on the Project.

Now, therefore, if the obligee accepts the bid of the principal and the principal fails to enter into a proper contract in accordance with the bid, plans, details, specifications, and bills of material; and in the event the principal pays to the obligee the difference not to exceed ten percent (10%) of the penalty hereof between the amount specified in the bid and such larger amount for which the obligee may in good faith contract with the next lowest bidder to perform the work covered by the bid; or in the event the obligee does not award the contract to the next lowest bidder and resubmits the project for bidding, the principal pays to the obligee the difference not to exceed ten percent (10%) of the penalty hereof between the amount specified in the bid, or the costs, in connection with the resubmission, of printing new contract documents, required advertising, and printing and mailing notices to prospective bidders, whichever is less, then this obligation shall be null and void, otherwise to remain in full force and effect; if the obligee accepts the bid of the principal and the principal within ten (10) days after the awarding of the contract enters into a proper contract in accordance with the bid, plans, details, specifications, and bills of material, which said contract is made a part of this bond the same as though set forth herein;

Now also, if the said principal shall well and faithfully do and perform the things agreed by said principal to be done and performed according to the terms of said contract; and shall pay all lawful claims of subcontractors, materialmen, and laborers, for labor performed and materials furnished in the carrying forward, performing, or completing of said contract; we agreeing and assenting that this undertaking shall be for the benefit of any materialmen or laborer having a just claim, as well as for the obligee herein; then this obligation shall be void; otherwise the same shall remain in full force and effect; and surety shall indemnify the obligee against all damage suffered by failure of the principal to perform the contract according to its provisions and in accordance with the plans, details, specifications, and bills of material therefor and to pay all lawful claims of

subcontractors, materialmen, and laborers for labor performed or material furnished in carrying forward, performing, or completing the contract and surety further agrees and assents that this undertaking is for the benefit of any subcontractor, materialman, or laborer having a just claim, as well as for the obligee; it being expressly understood and agreed that the liability of the surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated.

The said surety hereby stipulates and agrees that no modifications, omissions, or additions, in or to the terms of the said contract or in or to the plans or specifications therefor shall in any wise affect the obligations of said surety on its bond, and does hereby waive notice of any such modifications, omissions or additions to the terms of the contract or to the work or to the specifications.

EXHIBIT 6-3
FORM OF BOND PURSUANT TO ORC SECTION 153.57

KNOW ALL PERSONS BY THESE PRESENTS, that we, the undersigned (“Contractor”) as principal and as sureties, are hereby held and firmly bound unto (“Owner”) as obligee, in the penal sum of dollars, for the payment of which well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that whereas the above named principal did on the day of , , enter into a contract with the Owner for construction of the (“Project”), which said contract is made a part of this bond the same as though set forth herein;

Now, if the said Contractor shall well and faithfully do and perform the things agreed by the Contractor to be done and performed according to the terms of said contract; and shall pay all lawful claims of subcontractors, materialmen, and laborers, for labor performed and materials furnished in the carrying forward, performing, or completing of said contract; we agreeing and assenting that this undertaking shall be for the benefit of any materialman or laborer having a just claim, as well as for the obligee herein; then this obligation shall be void; otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated.

The said surety hereby stipulates and agrees that no modifications, omissions, or additions, in or to the terms of the said contract or in or to the plans or specifications therefor shall in any wise affect the obligations of said surety on its bond, and does hereby waive notice of any such modifications, omissions or additions to the terms of the contract or to the work or to the specifications.

EXHIBIT 6-4

PREVAILING WAGE COORDINATOR GUIDELINES*

**For more detailed information please refer to Chapter 4115
of the Ohio Revised Code**

- A. Attend any pre-bid and/or pre-construction meetings.
 - a. To explain the prevailing wage rate requirements.
 - b. To explain the contractor's responsibilities.
- B. Set up and maintain files containing all contractors' and subcontractors' payroll reports, affidavits, and related documents. These files must be available for public inspection.
- C. Obtain from each contractor a list of their subcontractors' names, addresses, telephone numbers, and email addresses.
- D. Require each contractor and subcontractor to provide their project dates. This will be used to make a time schedule for receiving their certified payrolls.
- E. Obtain from each contractor, the name and address of their Bonding\Surety Company.
- F. Obtain from out-of-state corporations, the name and address of their Statutory Agent. (This agent must be located in the State of Ohio and registered with the Ohio Secretary of State.)
- G. Records made in connection with the public improvement must not be removed from the State of Ohio for the period of one year following the completion of the project.
- H. Supply contractors with any changes in the Prevailing Wage Rates.
- I. Within two weeks after the first pay, obtain a certified payroll report from each contractor. A certified report is one that is sworn to and signed by the contractor.
 - 1. If the job will exceed four months, all reports after the initial report can be filed once per month. (The initial report must be filed within two weeks.)
 - 2. If the job will last less than four months, all reports are to be filed weekly after the initial report.

- J. Establish and follow procedures to monitor compliance by contractors and subcontractors.
1. Visit project to verify posting requirements and job classifications.
 2. Review certified payroll reports to ensure they are submitted in a timely fashion and complete with the following information for each employee:
 - a. Name, current address, and their social security number or last 4 when permitted.
 - b. Classification (must be specific for laborers and operators, including level)
 - c. Hours worked on the project.
 - d. Hourly rate.
 - e. Fringe benefits, if applicable.
 - f. Total hours worked for the week (all jobs).
 - g. Gross wages, all deductions, net pay
 3. Compare rates and fringes reported to rates in prevailing wage schedule.
- K. Upon completion of the project and prior to the final payment, require an affidavit of compliance each contractor and subcontractor. No public authority shall make final payment to any contractor or subcontractor unless the final affidavits have been filed by the respective contractor or subcontractor (ORC 4115.07).
- L. Report any non-compliance to Ohio Department of Commerce, Division of Industrial Compliance, and Bureau of Wage & Hour Administration. The PW complaint form and instructions can be obtained on the website www.com.ohio.gov.

*Source: *Prevailing Wage Guidelines for the Public Authority's PW Coordinator*. Ohio Department of Commerce, Division of Industrial Compliance and Labor, Bureau of Wage and Hour Administration. Revised, April, 2015.