



**Board of Miami County Commissioners
Policies and Procedures Manual for
Procurement**

April 2014

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Preamble

This Manual was created for the Board of Miami County Commissioners by Bricker & Eckler LLP. This is a privileged and confidential attorney-client communication and is not a public record. The County is bound to perform procurement in accordance with state and federal law. The County may perform procurement in accordance with this Manual but is not bound to do so, to the extent it is otherwise in compliance with Ohio law. This Manual is based upon current Ohio law, which is subject to change. This Manual states legal opinions but does not create any legal rights or obligations. The County should seek specific advice of legal counsel with regard to each process.

Procurement

1 Overview of Procurement

There are several methods for procurement that the County may use and not all procurement requires competitive bidding. As the Supreme Court of Ohio stated in one of its decisions, “[w]e start with the premise that a public entity is not required to engage in competitive bidding in the absence of legislation requiring it.” *Danis Clarkco Landfill Co. v. Clark County Solid Waste Management Dist.* (1995), 73 Ohio St. 3d 590, 601.

1.1 Construction and Non-Construction Procurement

This Manual addresses procurement for both construction and non-construction (e.g., supplies, equipment, certain personal services) matters.

The Sections of this Manual addressing construction-specific procurement are:

- Competitive Bidding Procurement for Construction, Sections 2.3-2.8
- Design-Build Procurement, Section 3
- Construction Manager At-Risk Procurement, Section 4
- Design Professional Procurement, Section 5
- Construction Manager as Agent, Section 6
- Special Consideration – Purchases Costing \$1,000 to \$49,000, Section 7.1 (applies to both construction and non-construction)

- Construction and Non-Construction Procurement that Does Not Require Competitive Bidding, Section 7.2 (applies to both construction and non-construction)
- State Term Contracts/Cooperative Purchasing, Section 7.4 (applies to both construction and non-construction)
- Energy Conservation Measures, Section 7.7
- County Engineer Procurement, Section 7.9

The Sections of this Manual that address non-construction procurement are:

- Competitive Bidding Procurement for Supplies, Equipment, and Certain Services (“non-construction” matters), Section 2.2
- Special Consideration – Purchases Costing \$1,000 to \$49,000, Section 7.1 (applies to both construction and non-construction)
- Construction and Non-Construction Procurement that Does Not Require Competitive Bidding, Section 7.2 (applies to both construction and non-construction)
- Personal Services, Section 7.3 (excluding Design Professional Procurement, Section 5)
- State Term Contracts/Cooperative Purchasing, Section 7.4 (applies to both construction and non-construction)
- Joint Purchasing Authority, Section 7.5
- Reverse Internet Auctions, Section 7.6
- Competitive Sealed Proposals, Section 7.8
- Internet Auction Sale of Personal Property, Section 8

1.2 Comparison and Usage of RFB, RFQ, RFP, ITB, and STS

1.2.1 Request for Bids (“RFB”)

When the County is required to competitively bid a contract (as discussed in Section 2), it must utilize a RFB. A RFB requests that contractors submit sealed bids for specified work on a project. The RFB provides details of the work needed, should request pertinent qualifications of the bidder, and includes the Contract Documents, such as the Owner-Contractor Agreement,

bond forms, drawings, and specifications. A full list and description of each RFB document is included in Section 2 of this Manual.

1.2.2 Request for Qualifications (“RFQ”)

When procuring services of a Design Professional, Criteria Architect, Design-Builder or Construction Manager at-Risk, the County must utilize a RFQ. A RFQ provides available details of the project and requests that interested entities submit a Statement of Qualifications (“SOQ”). A RFQ typically does not request price information, and in some instances, is statutorily prohibited from requesting pricing. When procuring services of a Design Professional or Criteria Architect, the RFQ should include the Contract Documents that it has determined will be used in consultation with its legal counsel such as the Owner-Design Professional Agreement. When procuring a Design-Builder or Construction Manager at-Risk (“CMAR”), the Contract Documents are typically included with the RFP, the second step of procurement, rather than the RFQ.

When procuring a Design Professional or Criteria Architect, the County will evaluate the SOQs it receives in response to its RFQ and rank the top three candidates based on such SOQ. It will then negotiate a fee with the top-ranked candidates, if possible. If a fee cannot be agreed upon, the County can move to the second most qualified and so on. If two candidates are tied on qualifications, pricing can be requested from both.

When procuring a Design-Builder or CMAR, the County’s Evaluation Committee will evaluate the SOQ and short-list three or more entities determined to be the most qualified. It will then issue a RFP to those short-listed firms as described below.

1.2.3 Request for Proposals (“RFP”)

RFPs must be utilized for certain procurements and may be utilized for others. When procuring services under the Design-Build, Construction Manager at-Risk, or Construction Manager as Agent delivery methods, the County must utilize a RFP. Additionally, if the County is not required to competitively bid a contract, it may utilize a RFP process.

A RFP provides a description of the project and requests that Design-Builders, CMARs, Construction Managers as Agent (“CMs”), or other providers of goods and services submit proposals of the work they will perform and fee or price for such work. The RFP should include the Contract Documents and design criteria available at the time the RFP is issued. The documents included in the RFP will vary depending upon the circumstances.

Under the Design-Build and Construction Manager at-Risk methods of project delivery, after the County has issued its RFQ, received statements of qualifications, and short-listed three or more entities as most qualified, it will issue the RFP to those short-listed entities, only.

While the role of Construction Manager as Agent has become less prominent after construction reform, if procuring a Construction Manager as Agent the County must publicly announce its RFP and then provide the RFP to interested individuals or companies.

When procuring goods or services that are not required to be competitively bid or procured pursuant to another statutory process, the County may advertise its RFP and/or simply provide the RFP to selected individuals or companies. It is the County's policy to issue a RFP and receive three quotes for any purchase costing between \$1,000 and \$49,999. This procedure is described in Section 7.1. Further, the County may issue a RFP requesting competitive sealed proposals in a number of circumstances, as described in Section 7.8.

1.2.4 State Term Contracts - Invitation to Bid ("ITB")

Under O.R.C. 307.86, competitive bidding is not required when the County meets the eligibility requirements and participates in purchase contracts which the Ohio Department of Administrative Services has entered into for the purchase of supplies and services, under O.R.C. 125.04. Such contracts are known as "State Term Contracts" or "Cooperative Purchasing Contracts." Procurement via State Term Contracts or Cooperative Purchasing are different than "joint purchasing" procurement pursuant to O.R.C. 9.48. Under O.R.C. 125.04, the County may participate in a State Term Contract or Cooperative Purchasing Contract and these contracts are "exempt from any competitive selection procedures otherwise required by law." This is distinct from joint purchasing contracts with another political subdivision or an association of political subdivisions under O.R.C. 9.48(B)(1)-(B)(2), which are exempt from competitive selection requirements only if such contracts were "awarded pursuant to a publicly solicited request for a proposal or a competitive selection procedure."

Some State Term Contracts are procured using an Invitation to Bid or "ITB" process. ITB is a process used by the Ohio Department of Administrative Services (ODAS) to solicit Competitive Sealed Bids (CSBs) from vendors. These are generally used for commodity-oriented or price-sensitive purchases. A CSB is a competitive selection process that specifies terms and conditions and solicits sealed bids from vendors based on the criteria. Issuing an ITB to solicit Competitive Sealed Bids is the preferred procurement method utilized by ODAS. Sealed bids are opened publicly and contracts are awarded to the lowest responsive and responsible bidder. Price is the primary factor in awarding contracts for ITBs. ITB also refers to all documents used for soliciting CSBs.

1.2.5 State Term Schedule ("STS")

The State Term Schedule ("STS") is an alternative procurement method to purchase supplies and services, with contracts negotiated between the Ohio Department of Administrative Services ("ODAS") and vendors, for use by all State agencies and political subdivisions. STS Contracts are negotiated directly with a manufacturer or service provider (the "vendor") who must agree to terms and conditions prepared by ODAS. For an STS Contract, the vendor is required to provide the State with either the manufacturer's Federal GSA pricing or its best commercial pricing. The vendor may name any number of authorized distributors who will provide the products or services on their behalf. All vendors and their named distributors must review training materials to be eligible to receive an STS Contract.

As noted above, under O.R.C. 125.04, the County may participate in a State Term Contract such as an STS Contract, and such contracts are "exempt from any competitive

selection procedures otherwise required by law.” There is no requirement that the STS Contract must have been the result of an ITB. This is distinct from joint purchasing contracts with another political subdivision or an association of political subdivisions under O.R.C. 9.48(B)(1)-(B)(2), which are exempt from competitive selection requirements only if such contracts were “awarded pursuant to a publicly solicited request for a proposal or a competitive selection procedure.”

1.3 When Competitive Bidding is Required

Pursuant to O.R.C. 307.86, “[a]nything to be purchased, leased, leased with an option or agreement to purchase, or constructed, including, but not limited to, any product, structure, construction, reconstruction, improvement, maintenance, repair, or service... at a cost in excess of fifty thousand dollars... shall be obtained through competitive bidding.” (Emphasis added). Note that this Fifty Thousand Dollar threshold is periodically adjusted—seek the advice of legal counsel regarding whether this and other statutory requirements have been amended since the creation of this Manual. Thus, under the Ohio Revised Code, there is a presumption that competitive bidding is required if the cost is in excess of Fifty Thousand Dollars. However, as will be discussed below, there are several other exceptions to competitive bidding.

1.4 Exceptions to Competitive Bidding

In addition to the Fifty Thousand Dollar threshold, the Ohio Revised Code includes several other exceptions to the competitive bidding requirement in R.C. 307.86. These exceptions are listed below.

- (1) Design-Build
- (2) Construction Manager at-Risk
- (3) Design Professional
- (4) Construction Manager as Agent
- (5) Personal Services
- (6) Emergency
- (7) Sole Source for Parts or Products
- (8) Sole Source for Information Technology
- (9) Purchase from the Federal Government, the State of Ohio, another County, a Board of Education, Educational Service Center, Township or Municipal Corporation
- (10) Certain Purchases by the County Department of Job and Family Services
- (11) Purchase of Certain Services from Nonprofit Corporations or Associations under Programs Funded by the Federal Government or State Grants
- (12) Purchase of Certain Insurance Healthcare Plans

- (13) Purchase of Computer Hardware, Software or Consulting Services to Implement Certain Projects Administered by the Ohio Prosecuting Attorney Association
- (14) Purchase of Child Care Services for County Employees
- (15) Leasing of Certain Property
- (16) Purchase of Certain Juvenile Services
- (17) Certain Purchases by a Public Children Services Agency
- (18) Purchase to Obtain Services of Medical Service Organizations
- (19) State Term/Cooperative Purchasing
- (20) Joint Purchasing
- (21) Reverse Internet Auction
- (22) Energy Conservation Measures
- (23) Competitive Sealed Proposals
- (24) Certain Procurement by County Engineer

1.5 Description of Exceptions to Competitive Bidding

1.5.1 Design-Build

R.C. 153.50(B) states “[e]xcept for contracts made . . . with a design-build firm . . . a county . . . authorized to contract for the erection, repair, alteration, or rebuilding of a public building, institution, bridge, culvert, or improvement and required by law to advertise and receive bids for furnishing of materials and doing the work necessary for the erection thereof, shall require separate and distinct bids to be made for furnishing such materials or doing such work, or both, in their discretion, for each of the following branches or classes of work to be performed, and all work kindred thereto, entering into the improvement.” As will be discussed below in Section 3, the procurement of Design-Builders uses a Qualification Based Selection Process and not competitive bidding.

1.5.2 Construction Manager at-Risk

R.C. 153.50(B) states “[e]xcept for contracts made . . . with a construction manager at-risk . . . a county . . . authorized to contract for the erection, repair, alteration, or rebuilding of a public building, institution, bridge, culvert, or improvement and required by law to advertise and receive bids for furnishing of materials and doing the work necessary for the erection thereof, shall require separate and distinct bids to be made for furnishing such materials or doing such work, or both, in their discretion, for each of the following branches or classes of work to be performed, and all work kindred thereto, entering into the improvement.” As will be discussed below in Section 4, the procurement of Construction Managers at-Risk uses a Qualification Based Selection Process and not competitive bidding.

1.5.3 Design Professional

As will be discussed below in Section 5, there is a statutory, Qualification Based Selection Process for the procurement of a Design Professional.

1.5.4 Construction Manager as Agent

As will be discussed below in Section 6, there is a statutory, Qualification Based Selection Process for the procurement of a Construction Manager as Agent and competitive bidding is not required.

1.5.5 Personal Services

As fully discussed below in Section 7.3, under O.R.C. 307.86, competitive bidding is not required for procuring the “services of an accountant, architect, attorney at law, physician, professional engineer, construction project manager, consultant, surveyor, or appraiser.” There are certain statutory requirements for procurement of a Design Professional or attorney.

1.5.6 Emergency

Under R.C. 307.86(A), competitive bidding is not required if an emergency meets certain requirements. First, by a unanimous vote of its members, the County must make a determination that a real and present emergency exists, and that determination and the reasons for it are entered in the minutes of the proceedings of the board, when either of the following applies:

- (1) The estimated cost is less than One Hundred Thousand Dollars.
- (2) There is actual physical disaster to structures, radio communications equipment, or computers.

For purposes of the exception to competitive bidding under R.C. 307.86(A), "unanimous vote" means all three members of a Board of County Commissioners when all three members are present, or two members of the board if only two members, constituting a quorum, are present.

Whenever a contract of purchase, lease, or construction is exempted from competitive bidding under R.C. 307.86(A)(1) because the estimated cost is less than One Hundred Thousand Dollars, but the estimated cost is Fifty Thousand Dollars or more, the County shall solicit informal estimates from no fewer than three persons who could perform the contract, before awarding the contract. With regard to each such contract, the County shall maintain a record of such estimates, including the name of each person from whom an estimate is solicited. The County shall maintain the record for the longer of at least one year after the contract is awarded or the amount of time the federal government requires.

1.5.7 Sole Source for Parts or Products

Under R.C. 307.86(B)(1), competitive bidding is not required if a purchase consists of supplies or a replacement or supplemental part or parts for a product or equipment owned or

leased by the County, and the only source of supply for the supplies, part, or parts is limited to a single supplier. Thus, unless the purchase is for supplies or parts related to equipment owned or leased by the County and there is only one supplier for such purchase, this sole source exception does not apply. The County should consult with legal counsel to determine if this exception applies to a particular circumstance.

1.5.8 Sole Source for Information Technology

Under R.C. 307.86(B)(2), competitive bidding is not required if a purchase consists of services related to information technology, such as programming services, that are proprietary or limited to a single source. Thus, unless the purchase is for services related to information technology which are either 1) limited by the brand-name of the technology; or 2) there is only one source for such services, this sole source exception does not apply. The County should consult with legal counsel to determine if this exception applies to a particular circumstance.

1.5.9 Purchase from the Federal Government, the State of Ohio, Another County, a Board of Education, Educational Service Center, Township or Municipal Corporation

Under R.C. 307.86(C), competitive bidding by the County is not required if the purchase is from the federal government, the State, another county or contracting authority of another county, or a board of education, educational service center, township, or municipal corporation.

1.5.10 Certain Purchases by the County Department of Job and Family Services

Under R.C. 307.86(D), competitive bidding is not required if the purchase is made by a county department of job and family services under Section 329.04 of the Revised Code and consists of family services duties or workforce development activities or is made by a county board of developmental disabilities under Section 5126.05 of the Revised Code and consists of program services, such as direct and ancillary client services, child care, case management services, residential services, and family resource services.

1.5.11 Purchase of Certain Services from Nonprofit Corporations or Associations under Programs Funded by the Federal Government or by State Grants

Under R.C. 307.86(E), competitive bidding is not required if the purchase consists of criminal justice services, social services programs, family services, or workforce development activities by the Board of County Commissioners from nonprofit corporations or associations under programs funded by the federal government or by State grants.

1.5.12 Purchase of Certain Insurance or Healthcare Plans

Under R.C. 307.86(F), competitive bidding is not required if the purchase consists of any form of an insurance policy or contract authorized to be issued under Title XXXIX of the Revised Code or any form of health care plan authorized to be issued under Chapter 1751 of the Revised Code, or any combination of such policies, contracts, plans, or services that the

contracting authority is authorized to purchase, and the contracting authority does all of the following:

- (1) Determines that compliance with the requirements of this Section would increase, rather than decrease, the cost of the purchase;
- (2) Requests issuers of the policies, contracts, plans, or services to submit proposals to the contracting authority, in a form prescribed by the contracting authority, setting forth the coverage and cost of the policies, contracts, plans, or services as the contracting authority desires to purchase;
- (3) Negotiates with the issuers for the purpose of purchasing the policies, contracts, plans, or services at the best and lowest price reasonably possible.

Any issuer of policies, contracts, plans, or services listed in R.C. 307.86(F) may have the issuer's name and address, or the name and address of an agent, placed on a special notification list to be kept by the contracting authority, by sending the contracting authority that name and address. The contracting authority shall send notice to all persons listed on the special notification list. Notices shall state the deadline and place for submitting proposals. The contracting authority shall mail the notices at least six weeks prior to the deadline set by the contracting authority for submitting proposals. Every five years the contracting authority may review this list and remove any person from the list after mailing the person notification of that action.

Any contracting authority that negotiates a contract under R.C. 307.86(F) shall request proposals and negotiate with issuers in accordance with R.C. 307.86(F) at least every three years from the date of the signing of such a contract, unless the parties agree upon terms for extensions or renewals of the contract. Such extension or renewal periods shall not exceed six years from the date the initial contract is signed.

1.5.13 Purchase of Computer Hardware, Software or Consulting Services to Implement Certain Projects Administered by the Ohio Prosecuting Attorney Association

Under R.C. 307.86(G), competitive bidding is not required if the purchase consists of computer hardware, software, or consulting services that are necessary to implement a computerized case management automation project administered by the Ohio Prosecuting Attorneys Association and funded by a grant from the federal government.

1.5.14 Purchase of Child Care Services for County Employees

Under R.C. 307.86(H), competitive bidding is not required if child care services are purchased for provision to County employees.

1.5.15 Leasing of Certain Property

Under R.C. 307.86(I)(1), competitive bidding is not required for property, including land, buildings, and other real property, if it is leased for offices, storage, parking, or other purposes, and all of the following apply:

- (a) The contracting authority is authorized by the Revised Code to lease the property.
- (b) The contracting authority develops requests for proposals for leasing the property, specifying the criteria that will be considered prior to leasing the property, including the desired size and geographic location of the property.
- (c) The contracting authority receives responses from prospective lessors with property meeting the criteria specified in the requests for proposals by giving notice in a manner substantially similar to the procedures established for giving notice under Section 307.87 of the Revised Code.
- (d) The contracting authority negotiates with the prospective lessors to obtain a lease at the best and lowest price reasonably possible considering the fair market value of the property and any relocation and operational costs that may be incurred during the period the lease is in effect.

The contracting authority may use the services of a real estate appraiser to obtain advice, consultations, or other recommendations regarding the lease of property under R.C. 307.86(I). Additionally, any real estate appraiser employed pursuant to R.C. 307.86(I) shall disclose any fees or compensation received from any source in connection with that employment.

Any prospective lessor under R.C. 307.86(I) may have the prospective lessor's name and address, or the name and address of an agent, placed on a special notification list to be kept by the contracting authority, by sending the contracting authority that name and address. The contracting authority shall send notice to all persons listed on the special notification list. Notices shall state the deadline and place for submitting proposals. The contracting authority shall mail the notices at least six weeks prior to the deadline set by the contracting authority for submitting proposals. Every five years the contracting authority may review this list and remove any person from the list after mailing the person notification of that action.

1.5.16 Purchase of Certain Juvenile Services

Under R.C. 307.86(J), competitive bidding is not required for purchases made pursuant to Section 5139.34 or Sections 5139.41 to 5139.46 of the Revised Code and is of programs or services that provide case management, treatment, or prevention services to any felony or misdemeanor delinquent, unruly youth, or status offender under the supervision of the juvenile court, including, but not limited to, community residential care, day treatment, services to children in their home, or electronic monitoring.

1.5.17 Certain Purchases by a Public Children Services Agency

Under R.C. 307.86(K), competitive bidding is not required for purchases made by a public children services agency pursuant to Sections 307.92 or 5153.16 of the Revised Code and consists of family services, programs, or ancillary services that provide case management, prevention, or treatment services for children at risk of being or alleged to be abused, neglected, or dependent children.

1.5.18 Purchase to Obtain Services of Medical Service Organizations

Under R.C. 307.86(L), competitive bidding is not required if the purchase is to obtain the services of emergency medical service organizations under a contract made by the board of county commissioners pursuant to Section 307.05 of the Revised Code with a joint emergency medical services district.

1.5.19 State Term/Cooperative Purchasing

As fully discussed in Section 7.4 below, under O.R.C. 307.86, competitive bidding is not required when the County meets the eligibility requirements and participates in purchase contracts which the Ohio Department of Administrative Services has entered into for the purchase of supplies and services under O.R.C. 125.04.

1.5.20 Joint Purchasing

As fully discussed in Section 7.5 below, under O.R.C. 9.48, the County may participate in certain purchases jointly with other political subdivisions or government entities and such acquisitions are exempt from competitive bidding.

1.5.21 Reverse Internet Auction

As fully discussed in Section 7.6 below, under O.R.C. 9.314, where the County is required by law to purchase services or supplies by competitive sealed bidding or competitive sealed proposals, a purchase made by reverse auction satisfies that requirement.

1.5.22 Energy Conservation Measures

As fully discussed in Section 7.7 below, under O.R.C. 307.041(C)(1)(b) and (2)(b), competitive bidding is not required when the County satisfies certain statutory requirements and implements energy conservation measures.

1.5.23 Competitive Sealed Proposals

Under R.C. 307.86(M), competitive bidding is not required if the County determines that the use of competitive sealed proposals would be advantageous to the County and the contracting authority complies with Section 307.862 of the Revised Code. However, in accordance with R.C. 307.862(G), competitive sealed proposals shall not be used for contracts for construction, design, demolition, alteration, repair, or reconstruction of a building, highway, drainage system,

water system, road, street, alley, sewer, ditch, sewage disposal plant, waterworks, and all other structures or works of any nature by a County contracting authority. The competitive sealed proposals process is further described in Section 7.8 of this Manual.

1.5.24 Certain Procurement by County Engineer

Under O.R.C. 5543.19, certain procurements by the County Engineer for construction or reconstruction of roads, bridges, and culverts may be by force account, meaning that the County Engineer will act as the contractor. The requirements for this process are further described in Section 7.9 of this Manual.

2 Competitive Bidding Procurement

Again, pursuant to O.R.C. 307.86, "[a]nything to be purchased, leased, leased with an option or agreement to purchase, or constructed, including, but not limited to, any product, structure, construction, reconstruction, improvement, maintenance, repair, or service... at a cost in excess of fifty thousand dollars... shall be obtained through competitive bidding." (Emphasis added). Note that this Fifty Thousand Dollar threshold is periodically adjusted—seek the advice of legal counsel regarding whether this and other statutory requirements have been amended since the creation of this Manual. Thus, under the Ohio Revised Code, for procurement of construction, supplies, equipment, etc., there is a presumption that competitive bidding is required if the cost is in excess of Fifty Thousand Dollars and no other exception to competitive bidding, including those listed above, apply. Competitive bidding procurement for construction has a particular process that is different from competitive bidding procurement of non-construction matters such as supplies and equipment—both processes are outlined in this Section.

2.1 Special Consideration – “Pay to Play” Ethics Rules

Subject to the limitations described below, pursuant to O.R.C. 3517.13(I), the County is prohibited from awarding any contract for the purchase of goods costing more than Five Hundred Dollars or services costing more than Five Hundred Dollars to any:

- individual,
- partnership,
- association, including, without limitation, a professional association organized under O.R.C. Chapter 1785 (e.g., professional association comprising physicians, legal professional association, etc.),
- estate, or
- trust

if the individual or the individual's spouse, or any partner, shareholder, administrator, executor, or trustee, or the spouse of any of them has made, as an individual, within the two previous calendar years, one or more contributions totaling more than One Thousand Dollars to the holder of the public office having ultimate responsibility for the award of the contract or to such public officer's campaign committee, unless the contract:

- (1) is let by competitive bidding; or
- (2) is incidental to a contract let by competitive bidding; or
- (3) is by force account.

Subject to the limitations described below, pursuant to O.R.C. 3517.13(J), the County is prohibited from awarding any contract for the purchase of goods costing more than Five Hundred Dollars or services costing more than Five Hundred Dollars to a corporation or business trust, except a “professional association” organized under O.R.C. Chapter 1785 (e.g., professional association comprising physicians, legal professional association, etc.), if an owner of more than twenty percent of the corporation or business trust or the spouse of that person has made, as an individual, within the two previous calendar years, taking into consideration only owners for all of that period, one or more contributions totaling more than One Thousand Dollars to the holder of a public office having ultimate responsibility for the award of the contract or to the public officer's campaign committee, unless the contract: 1) is let by competitive bidding; or 2) is incidental to a contract let by competitive bidding; or 3) is by force account.

Under O.R.C. 3517.13(L), for purposes of O.R.C. 3517.13(I) and (J), if a public officer who is responsible for the award of a contract is appointed by the elected chief executive officer of a county operating under an alternative form of county government or county charter, excluding members of boards, commissions, committees, authorities, councils, boards of trustees, task forces, and other such entities appointed by the chief executive officer, the office of the chief executive officer is considered to have ultimate responsibility for the award of the contract. At present, this does not apply to Miami County.

Under O.R.C. 3517.13(M)(1), O.R.C. 3517.13(I) and (J) do not apply to contracts awarded by boards of county commissioners, by county courts consisting of more than one judge, courts of common pleas consisting of more than one judge, or municipal courts consisting of more than one judge, or by a division of any court if the division consists of more than one judge, where the members of such entities act collectively in the award of a contract for goods or services.

Under O.R.C. 3517.13(N)(1), O.R.C. 3517.13(I) and (J) apply to contributions made to the holder of a public office having ultimate responsibility for the award of a contract, or to the public officer's campaign committee, during the time the person holds the office and during any time such person was a candidate for the office. However, O.R.C. 3517.13(I) and (J) do not apply to contributions made to, or to the campaign committee of, a candidate for or holder of the office other than the holder of the office at the time of the award of the contract.

Under O.R.C. 3517.13 (N)(2), O.R.C. 3517.13(I) and (J) do not apply to contributions of a:

- partner,
- shareholder,
- administrator,
- executor,
- trustee, or
- owner of more than twenty percent of a corporation or business trust

where such contribution was made before the person held any of those positions or after the person ceased to hold any of those positions in the partnership, association, estate, trust, corporation, or business trust whose eligibility to be awarded a contract is being determined, nor to contributions of the person's spouse made:

- before the person held any of those positions,
- after the person ceased to hold any of those positions,
- before the two were married,
- after the granting of a decree of divorce,
- dissolution of marriage, or
- annulment, or
- after the granting of an order in an action brought solely for legal separation.

O.R.C. 3517.13(I) and (J) do not apply to contributions of the spouse of an individual whose eligibility to be awarded a contract is being determined made:

- before the two were married,
- after the granting of a decree of divorce,
- dissolution of marriage, or
- annulment, or
- after the granting of an order in an action brought solely for legal separation.

2.2 Competitive Bidding Procurement for Supplies, Equipment, and Certain Services (“Non-Construction” Matters)

2.2.1 Outline of Competitive Bidding Procedure for Supplies, Equipment, and Certain Services (non-construction matters)

2.2.1.1 Preparation of the Bid Documents

Below is a list of the documents that are either required to be included in the bid documents by law or are recommended to be included in the bid documents.

- (1) Specifications (not required to be detailed by law)

- (2) Public Announcement (required by law)
- (3) Request for Bids or Instructions to Bidders (not required by law, but necessary)
- (4) Bid Form (not required by law, but necessary)
- (5) Bid Guaranty (optional by law)
- (6) Contract Bond (optional by law)
- (7) Substitution Request Form (not required by law, but recommended)
- (8) Agreement or Purchase Order (not required by law, but necessary)
- (9) Terms and Conditions (not required by law, but necessary)

2.2.1.2 Competitive Bidding Process

Once the bid documents have been prepared, the County can proceed with releasing the project for bidding. Below is a list of steps for the competitive bidding process.

- (1) Issue the Public Announcement
- (2) Evaluate any requests for substitutions
- (3) If necessary, issue addenda
- (4) If necessary, extend the bid opening date
- (5) If necessary, allow withdrawal of bid

2.2.1.3 Bid Opening and Evaluation of the Bids

After the project has been bid, the County will receive the bids, evaluate the bids and determine the lowest and best bid for the project. Below is a list of these steps:

- (1) Receive the bids on the bid date and time
- (2) Tabulate the bids and determine the apparent low bid
- (3) If applicable, evaluate request to withdraw bid
- (4) Review bids for responsiveness
- (5) If applicable, determine which alternates will be selected
- (6) Determine the lowest and best bidder
- (7) If applicable, pursue claim against bid guaranty if lowest and best bidder refuses to execute the contract
- (8) If applicable, reject all bids

2.2.1.4 Execution of the Contract

Once the lowest and best bid has been determined, the County can proceed with executing the contract with the bidder, in accordance with the following steps:

- (1) If required by the County, confirm proper bid guaranty and/or contract bond form
- (2) Certification of Fiscal Officer
- (3) Certification of Prosecuting Attorney as to Form
- (4) Execution of the Contract

2.2.2 Preparation of Bid Documents

2.2.2.1 Specifications (not required to be detailed by law)

The specifications should include detailed requirements relating to the features and capabilities of the equipment, supplies, or services being bid to ensure that each bid is accurate and competitive with all other bids.

2.2.2.2 Public Announcement (required by law)

When procuring via competitive bidding, the County must publicly announce the opportunity to bid using a legal notice which legal counsel can help draft. The County shall include the legal notice in the bid documents.

Under R.C. 307.87(B), the notice must provide 1) a general description of the proposed contract and time, and place where the plans and specifications and other specific items may be examined; 2) the time and place where bids will be opened; 3) the time and place for filing bids; 4) the terms of the proposed purchase; 5) conditions under which bids will be received; and 6) the existence of a system of preference, if any, for products mined and produced in Ohio and the United States.

Under R.C. 307.87(A), the public notice, described above, must be published once a week for at least two consecutive weeks, preceding the bid opening, in a newspaper of general circulation within the county.¹

Under R.C. 307.87(C), the contracting authority must also maintain in a public place in its office or other suitable public place a bulletin board upon which it shall post and maintain a copy of such notice for at least two weeks preceding the day of the opening of the bids.

¹ Under 307.87(A), if the contracting authority's first notice meets certain requirements, the contracting authority may eliminate the second notice otherwise required to be published in a newspaper of general circulation by posting the notice on the county's website.

2.2.2.3 Request for Bids or Instructions to Bidders (not required by law, but necessary)

The bid documents should include a Request for Bids (“RFB”) or instructions to bidders section. The RFB should describe the bidding process, including, but not limited to, a description of the County’s award standard (lowest and best), a description of factors to be considered by the County in determining the lowest and best bidder, the documents to be submitted with the bid, and a contact person at the County. The County should consider retaining legal counsel to assist with the preparation of these documents as most contracts will require modification and the contract terms should be set so that the bid price can be based upon those terms.

2.2.2.3.1 Special Consideration – System of Preferences

Pursuant to O.R.C. 307.90(B), the County may adopt the model system of preferences set forth in OAC 123:5-1-11 which may be used voluntarily for purchasing and public improvement contracts. The Board of County Commissioners, by resolution, may adopt the model system of preferences for products mined or produced in Ohio and the United States and for Ohio-based contractors. This “model system of preferences” includes preferences based on Buy Ohio Act compliance and Buy America Act compliance, as well as preference for a contractor having its principal place of business in Ohio for public improvement contracts. See OAC 123:5-1-11 for the full system of preferences. OAC 123:5-1-11 also requires that if the model system of preferences is adopted, the County must indicate in all RFB that it will apply a domestic Ohio bid preference as outlined in the rule, in its evaluation and award of bids received. Legal counsel can assist the County in determining whether or not to adopt this system of preferences.

If the Board of County Commissioners does adopt the model system of preferences by resolution, such resolution must specify the class or classes of contracts to which the system of preferences apply, and once adopted, operates to modify the awarding of such contracts accordingly. While the system of preferences is in effect, no County officer or employee with the responsibility for doing so shall award a contract to which the system applies in violation of the preference system.

2.2.2.3.2 Special Consideration – Sole Source Procurement

If the County knows of particular equipment, systems, or services that it would like to use on a project, it should consult with legal counsel to determine if it may utilize sole source procurement. Because a unique piece of equipment or system may mean that it is not readily available from more than one vendor, this creates a tension with the requirements of competitive bidding. To ensure that the County still receives competitive pricing and complies with its competitive bidding requirements in its RFB, the County may require that its preferred equipment is bid as an alternate. The County’s discretion in determining the lowest and best bid extends to its discretion in accepting bid alternates. *Metzger-Gleisinger v. Mansfield City School District*, 2005-Ohio-2727. However, to justify sole source procurement, the County must have a rational reason why the particular equipment, system, or service is preferred.

2.2.2.4 Bid Form (not required by law, but necessary)

The bid documents should include an official bid form. The bid form shall be consistent with the bid packages that are required to be submitted for the project. Depending on the item, the bid form may include alternates and/or unit prices.

2.2.2.5 Contract Bond and/or Bid Guaranty (optional by law)

Under O.R.C. 307.89, as a condition to entering a contract with the successful bidder, the County must require faithful performance of all things to be done under the contract and may require, as a condition to entering a purchase contract, lease, or lease with option or agreement to purchase, the bond in accordance with O.R.C. 153.57 with good and sufficient surety in an amount not to exceed the amount of the bid.

Under O.R.C. 307.88(A), “[i]f the bid is in excess of fifty thousand dollars and for any other contract authorized by sections 307.86 to 307.92 of the Revised Code, it **may** be accompanied by a bond or certified check, cashier's check, or money order on a solvent bank or savings and loan association in a reasonable amount stated in the notice but not to exceed five percent of the bid, conditioned that the bidder, if the bidder's bid is accepted, shall execute a contract in conformity to the invitation and the bid.”

2.2.2.6 Substitution Request Form (not required by law, but recommended)

The Contract Documents may include certain brands of materials or equipment. The County may include provisions in the RFB for bidder to request approval of substitute equipment that is not listed in the Contract Documents. If the County allows substitutions, the RFB shall include a process for bidders to request substitutions and that gives the County adequate time to review the substitution request before the bid submission deadline. It is recommended that a substitution request form also be included in the bid documents to standardize how requests for substitutions are made. The County should also reserve the right to accept or deny any request for a substitution.

2.2.2.7 Agreement or Purchase Order & Terms and Conditions (not required by law, but necessary)

The County should also include a contract or purchase order and term and conditions of the contract with the bid documents. These documents will include the majority of the terms of the contract, including the time for delivery, contract amount, etc. The County should consider working with construction counsel to develop documents that are customized for the County and the specific procurement.

2.2.3 Competitive Bidding Process

2.2.3.1 Public Announcement

Under R.C. 307.87(A), the public notice, described above, must be published once a week for at least two consecutive weeks, preceding the bid opening, in a newspaper of general circulation within the county. However, if Miami County posts the public notice on its website, in addition to advertising in a newspaper of general circulation, the second notice in a newspaper of general circulation may be eliminated if the first notice published in a newspaper of general circulation includes the following requirements:

- a. It is published at least two weeks before the opening of bids;
- b. It includes a statement that the notice is posted on the contracting authority's internet site on the World Wide Web;
- c. It includes the internet address of the contracting authority's internet site on the World Wide Web; and,
- d. It includes instructions describing how the notice may be accessed on the contracting authority's internet site on the World Wide Web.

Under R.C. 307.87(C), the contracting authority must also maintain in a public place in its office or other suitable public place a bulletin board upon which it shall post and maintain a copy of such notice for at least two weeks preceding the day of the opening of the bids.

2.2.3.2 Withdrawal of Bid Prior to Bid Opening

A bidder may withdraw its bid at any time for any reason prior to the bid deadline established in the bid documents. It is recommended that the County include a statement in the RFB that states that a request to withdraw a bid prior to the bid deadline shall be made in writing and received by the County before the bid deadline.

2.2.4 Bid Opening and Evaluation of the Bids

As noted above in R.C. 153.12 and R.C. 307.87(A), the bid opening shall occur at the time and place identified in the legal notice, unless modified by addendum. If bids are submitted after the time for bid opening, the County may accept the bids, but it is recommended that they are not opened and read. Following the bid opening, the County shall tabulate the bids received.

2.2.4.1 Review of the Bids for Responsiveness

The County's first review of the bid document should be to see if the bidder's submission complies with all of the bidding requirements. This will include verifying that all required forms were submitted and properly completed by the bidder.

2.2.4.2 Alternates

The bid documents may or may not include alternates. If the County requests alternates, the County has the right to determine which alternates it will select after the bids are opened. The alternate can be used to either add or delete scope from the base scope of the project.

2.2.4.3 Determination of the Lowest and Best Bid

Under O.R.C. 307.90(A), the award of all of the County's contracts subject to O.R.C. 307.86 to 307.92 must be made to the lowest and best bidder. The County enjoys a great deal of discretion in selecting the lowest and best bidder—typically, only an abuse of discretion will overturn the County's decision. If the County has adopted the system of preferences pursuant to OAC 123:5-1-11, described in Section 2.2.2.3.1 above, it must incorporate these preferences in its determination, in accordance with OAC 123:5-1-11.

2.2.4.4 County has Discretion to Reject All Bids

Under O.R.C. 307.90(A), the County may reject all bids. If the County rejects all bids, O.R.C. 307.91 allows the County to either re-advertise, using the original estimate, or amend the estimate and proceed to advertise in the manner provided for advertisement in O.R.C. 307.86 and Section 2.2.2.2 of this Manual.

2.2.5 Execution of the Contract

2.2.5.1 Confirm Proper Bid Guaranty and/or Bond

If a bid guaranty and/or contract bond was required by the County, before executing the contract, the County should confirm that the proper form of bid guaranty and/or contract bond has been provided.

2.2.5.2 Certification of Fiscal Officer

Under O.R.C. 5705.41, a contract is void unless it includes a certificate of available funds by the County fiscal officer.

2.2.5.3 Certification of Prosecuting Attorney as to Form

Under O.R.C. 153.44, “[b]efore work is done or material furnished, all contracts that exceed one thousand dollars in amount shall be submitted by the board of county commissioners to the prosecuting attorney of the county. If found by him to be in accordance with Sections 153.01 to 153.60, inclusive, of the Revised Code, and his certificate to that effect is indorsed thereon, such contracts shall have full effect, otherwise they shall be void.”

2.2.5.4 Execution of the Contract

It is recommended that the County send the contract to the bidder to sign before the County signs the contract. It is also recommended that the contract include a statement that the County reserves the right to reject all bids at any time before the County executes the contract.

2.3 Competitive Bidding Procurement for Construction

O.R.C. 307.02 provides broad power to the County Commissioners to construct, enlarge, improve, rebuild, equip, and furnish county facilities. Specifically, O.R.C. 307.02 states that "the board of county commissioners of any county may construct, enlarge, improve, rebuild, equip, and furnish a courthouse, county offices, jail county home, juvenile court building, detention facility, public market houses, retail store rooms and offices, county children's home, community mental health facility, community mental retardation or development disability facility, facilities for senior citizens, alcohol treatment and control center, other necessary buildings, public stadiums, public auditorium, exhibition hall, zoological park, public library buildings, golf courses and off-street parking facilities."

While the Board of County Commissioners has broad powers related to the construction of County facilities, the Board of County Commissioners has no power to bind the public except in the manner prescribed by statute. The competitive bidding procedures that the County must follow include, but are not limited to, the requirements in O.R.C. 307.86 to 307.92. When competitive bidding is required and the County elects to not use the available exceptions to competitive bidding as described above, the contract must be made substantially in conformity with the applicable statutes for competitive bidding.

If competitive bidding will be used, the County has the option to bid the project as a single prime contract (also referred to as "General Contracting") or as a multiple prime project. Under O.R.C. 153.50(B), the County must award separate prime contracts for the HVAC, electrical, and plumbing contracts for a particular project if the General Contracting ("GC"), Construction Manager at-Risk ("CMAR"), or Design-Build ("DB") delivery models are not being utilized and the project is required to be competitively bid. Regardless of whether the project is bid as a single prime project / General Contracting or multiple prime project, the procurement process is basically identical with only a few minor exceptions.

2.4 Outline of Competitive Bidding Procedure for Construction Procurement

Below is a summary of the steps for competitive bidding, which is divided into four sections. Each of these Sections and corresponding steps for competitive bidding are discussed in more detail below.

2.4.1 Preparation of the Bid Documents

Below is a list of the documents that are either required to be included in the bid documents by law or are recommended to be included in the bid documents.

- (1) Drawings (required by law)
- (2) Specifications (required by law)
- (3) Public Announcement (required by law)
- (4) Request for Bids or Instructions to Bidders (not required by law, but necessary)
- (5) Bid Form (not required by law, but necessary)
- (6) Bid Guaranty and Contract Bond (required by law)
- (7) Contract Bond (required by law)
- (8) Substitution Request Form (not required by law, but recommended)
- (9) Owner-Contractor Agreement (not required by law, but necessary)
- (10) General Conditions (not required by law, but necessary)
- (11) Contractor's Qualification Statement (not required by law, but recommended)
- (12) Contractor's Personal Property Tax Affidavit (required by law)
- (13) Prevailing Wage Rate Requirements (required by law)
- (14) Statement of Claim Form (not required by law, but recommended)
- (15) Contractor's Payment Application Checklist (not required by law, but recommended)
- (16) Tax Exempt Certificate (required by law)

2.4.2 Competitive Bidding Process

Once the Bid Documents have been prepared, the County can proceed with releasing the project for bidding. Below is a list of steps for the competitive bidding process.

- (1) Issue the Public Announcement
- (2) Evaluate any requests for substitutions
- (3) If necessary, issue addenda
- (4) If necessary, extend the bid opening date
- (5) If necessary, allow withdrawal of bid

2.4.3 Bid Opening and Evaluation of the Bids

After the project has been bid, the County will receive the bids, evaluate the bids and determine the lowest and best bid for the project. Below is a list of these steps.

- (1) Receive the bids on the bid date and time

- (2) Tabulate the bids and determine the apparent low bid
- (3) If applicable, evaluate request to withdraw bid
- (4) Determine if any bids are more than 10% over the estimate for the project
- (5) Review bids for responsiveness
- (6) Review Qualification Statements and verify references
- (7) If applicable, determine which alternates will be selected
- (8) Determine the lowest and best bidder
- (9) If applicable, pursue claim against bid guaranty if lowest and best bidder refuses to execute the contract
- (10) Return bid guaranty to unsuccessful bidders
- (11) If applicable, reject all bids
- (12) If contract is not executed within sixty days of the bid opening, request that bidders hold their bid open

2.4.4 Execution of the Contract

Once the lowest and best bid has been determined, the County can proceed with executing the contract with the bidder, in accordance with the following steps:

- (1) Confirm proper bid guaranty and bond form
- (2) Certification of Fiscal Officer
- (3) Certification of Prosecuting Attorney as to Form
- (4) Execution of the Contract

2.5 Preparation of the Bid Documents for Competitive Bidding

There are several requirements for the preparation of the bid documents to competitively bid a project as either a single prime contract or a multiple prime contract.

2.5.1 Drawings and Specifications

R.C. 153.31 states when it becomes necessary for the board of county commissioners of a county to erect or cause to be erected a public building, or a substructure for a bridge, or an addition to or alteration thereof, before entering into any contract therefor or repair thereof or for the supply of any materials therefor, they shall cause to be made by a registered architect or registered professional engineer the following:

- (A) Full and accurate plans showing all necessary details of the work and materials required, with working plans suitable for the use of mechanics or

other builders in the construction thereof, drawn so as to be easily understood;

- (B) Accurate bills, showing the exact amount of the different kinds of material, necessary for the construction, to accompany the plans;
- (C) Full and complete specifications of the work to be performed showing the manner and style required to be done, with such directions as will enable a competent builder to carry them out, and which will afford to bidders all needful information;
- (D) A full and accurate estimate of each item of expense, and of the aggregate cost thereof.

2.5.2 Public Announcement

When procuring via competitive bidding, the County must publicly announce the opportunity to bid using a legal notice which legal counsel can help draft. The County shall include the legal notice in the bid documents.

Under R.C. 307.87(B), the notice must provide: 1) a general description of the proposed contract and time, and place where the plans and specifications and other specific items may be examined; 2) the time and place where bids will be opened; 3) the time and place for filing bids; 4) the terms of the proposed purchase; 5) conditions under which bids will be received; and 6) the existence of a system of preference, if any, for products mined and produced in Ohio and the United States.

Under R.C. 307.87(A), the public notice, must be published once a week for at least two consecutive weeks, preceding the bid opening, in a newspaper of general circulation within the county.

Under R.C. 307.87(C), the contracting authority must also maintain in a public place in its office or other suitable public place a bulletin board upon which it shall post and maintain a copy of such notice for at least two weeks preceding the day of the opening of the bids.

2.5.3 Request for Bids (aka Instructions to Bidders)

The bid documents should include a Request for Bids (“RFB”) or instructions to bidders section. The RFB should describe the bidding process, including, but not limited to, a description of the County’s award standard (lowest and best), a description of factors to be considered by the County in determining the lowest and best bidder, the documents to be submitted with the bid, a contact person at the County, provide the total estimated construction cost for the bid packages, etc. The County should consider retaining legal counsel to assist with the preparation of these documents as most contracts will require modification and the contract terms should be set so that the bid price can be based upon those terms. In particular, it is necessary to modify any standard form contract, including AIA contracts. Standard form

contracts should not be used without review and modification by legal counsel familiar with construction.

2.5.3.1 Special Consideration – System of Preferences

Pursuant to O.R.C. 307.90(B), the County may adopt the model system of preferences set forth in OAC 123:5-1-11 which may be used voluntarily for purchasing and public improvement contracts. The Board of County Commissioners, by resolution, may adopt the model system of preferences for products mined or produced in Ohio and the United States and for Ohio-based contractors. This “model system of preferences” includes preferences based on Buy Ohio Act compliance and Buy America Act compliance, as well as preference for a contractor having its principal place of business in Ohio for public improvement contracts. See OAC 123:5-1-11 for the full system of preferences. OAC 123:5-1-11 also requires that if the model system of preferences is adopted, the County must indicate in all RFB that it will apply a domestic Ohio bid preference as outlined in the rule, in its evaluation and award of bids received. Legal counsel can assist the County in determining whether or not to adopt this system of preferences.

If the Board of County Commissioners does adopt the model system of preferences by resolution, such resolution must specify the class or classes of contracts to which the system of preferences apply, and once adopted, operates to modify the awarding of such contracts accordingly. While the system of preferences is in effect, no County officer or employee with the responsibility for doing so shall award a contract to which the system applies in violation of the preference system.

2.5.3.2 Special Consideration – Sole Source Procurement

If the County knows of particular equipment, systems, or services that it would like to use on a project, it should consult with legal counsel to determine if it may utilize sole source procurement. Because a unique piece of equipment or system may mean that it is not readily available from more than one vendor, this creates a tension with the requirements of competitive bidding. To ensure that the County still receives competitive pricing and complies with its competitive bidding requirements in its RFB, the County may require that its preferred equipment is bid as an alternate. The County’s discretion in determining the lowest and best bid extends to its discretion in accepting bid alternates. *Metzger-Gleisinger v. Mansfield City School District*, 2005-Ohio-2727. However, to justify sole source procurement, the County must have a rational reason why the particular equipment, system, or service is preferred.

2.5.4 Bid Form

The bid documents should include an official bid form. The bid form shall be consistent with the bid packages that are required to be submitted for the project. Depending on the project, the bid form may include alternates for some or all of the bid packages, combination bids for some or all of the bid packages and/or unit prices.

2.5.5 Bid Guaranty

Each bidder must provide a bid guaranty pursuant to R.C. 153.54. Under R.C. 153.54, the bid guaranty can be in the form of either:

- (1) A bond in accordance with R.C. 153.54(B), in the form provided in R.C. 153.571 for the full amount of the bid; or,
- (2) A certified check, cashier's check, or letter of credit pursuant to Chapter 1305 of the Revised Code, and in accordance with R.C. 153.54(C). Any such letter of credit is revocable only at the option of the County. The amount of the certified check, cashier's check, or letter of credit shall be equal to ten percent of the bid.

Bid guaranties filed pursuant to either item (1) or item (2) above shall be payable to the County, be for the benefit of the County, and be deposited with, and held by the County. All bonds filed pursuant to this Section shall be issued by a surety company authorized to do business in Ohio.

2.5.6 Contract Bond

If a bidder provides a bid guaranty other than a bond in accordance with R.C. 153.54(B), the bidder shall, upon acceptance of its bid by the County, provide a bond in accordance with R.C. 153.57.

2.5.7 Substitution Request Form

The Contract Documents may include certain brands of materials or equipment. The County may include provisions in the RFB for bidders to request approval of substitute equipment that is not listed in the Contract Documents. If the County allows substitutions, the RFB shall include a process for bidders to request substitutions and that gives the County adequate time to review the substitution request before the bid submission deadline. It is recommended that a substitution request form also be included in the bid documents to standardize how requests for substitutions are made. The County should also reserve the right to accept or deny any request for a substitution.

2.5.8 Contract and General Conditions

The County should also include a contract and general conditions of the contract with the bid documents. These documents will include the majority of the terms of the contract, including the time for completion, contract amount, change order process, and claims process. It is not recommended that the County use a standard unmodified contract or general conditions such as the AIA documents or the EJCDC documents. The County should consider working with construction counsel to develop documents that are customized for the County and the specific project.

2.5.9 Contractor's Qualification Statement

The County may include a contractor's qualification statement in the bid documents. The qualification statement requires the bidder to provide specific information regarding the bidder, including the bidder's past performance on other projects. The qualifications statement should be customized to the specific project to request information necessary for the County to evaluate the bidder's ability to perform the project being bid.

2.5.10 Contractor's Personal Property Tax Affidavit

Under R.C. 5719.042, after the award of any contract let by competitive bid and prior to the time the contract is entered into, the bidder shall submit to the County's fiscal officer a statement affirmed under oath that the bidder was not charged, at the time the bid was submitted, with any delinquent personal property taxes on the general tax list of personal property of any county in the State of Ohio or that the bidder was charged with delinquent personal property taxes on any such tax list, in which case the statement shall also set forth the amount of such due and unpaid delinquent taxes and any due and unpaid penalties and interest thereon. If the statement indicates that the taxpayer was charged with any such taxes, a copy of the statement shall be transmitted by the fiscal officer to the county treasurer within thirty days of the date it is submitted.

2.5.11 Prevailing Wage

O.R.C. Chapter 4115 requires that County projects comply with Ohio prevailing wage law. R.C. 4115.06 states that in all cases where any public authority fixes a prevailing rate of wages under Section 4115.04 of the Revised Code, and the work is done by contract, the contract executed between the public authority and the successful bidder shall contain a provision requiring the successful bidder and all his subcontractors to pay a rate of wages which shall not be less than the rate of wages so fixed. The bid documents shall include the current prevailing wage rates for the location of the project. For "construction" projects as defined in Section 4115.03 of the Ohio Revised Code, the successful contractor and all of its subcontractors, regardless of tier, must strictly comply with the obligation to pay a rate of wages on the construction project not less than the rate of wages fixed for the construction project under Section 4115.04 of the Ohio Revised Code. Additionally, for such "construction" projects, the successful contractor will comply with all other provisions of Chapter 4115 of the Ohio Revised Code. If federal funding is involved, federal prevailing wage or Davis-Bacon requirements may apply. The County should work with legal counsel to determine which prevailing wage requirements apply.

Under R.C. 4115.071, the County shall, no later than ten days before the first payment of wages is payable to any employee of any contractor or subcontractor, designate and appoint one of its own employees to serve as the prevailing wage coordinator during the life of the contract. The duties of the coordinator shall include:

- (1) Setting up and maintaining, available for public inspection including inspection by interested parties or affected employees, files of payroll

reports and affidavits submitted by contractors and subcontractors pursuant to Sections 4115.03 to 4115.16 of the Revised Code;

- (2) Ascertaining from each contractor or subcontractor, at the beginning of performance under the contract, the dates during its life when payments of wages to employees are to be made;
- (3) Receiving from each contractor or subcontractor, a copy of the contractor's or subcontractor's complete payroll for each date exhibiting for each employee paid any wages, the employee's name, current address, social security number, number of hours worked each day during the pay period and the total for each week, the employee's hourly rate of pay, the employee's job classification, fringe payments, and deductions from the employee's wages;
- (4) Establishing and following procedures to monitor the compliance by each contractor and subcontractor with the requirement imposed by this Section for timely filing of copies of payroll records;
- (5) Receiving from each contractor or subcontractor upon completion of the public improvement and prior to final payment therefor the affidavit required by Section 4115.07 of the Revised Code;
- (6) Reporting any delinquency in the filing of the certified copy of the payroll and the affidavit to the Board of Commissioners and the director of commerce.

The prevailing wage coordinator must register the project and wage determinations for the project by going to <http://com.ohio.gov/dico/default.aspx>.

Information relating to Federal Davis Bacon prevailing wage rates and wage determinations is available here: <http://www.dol.gov/compliance/guide/dbra.htm>.

2.5.12 Statement of Claim Form

There is good case law in Ohio regarding strict enforcement of notice requirements. It is recommended that the Contract Documents include specific time periods for the contractor to submit a claim on the project. As part of these requirements, it is recommended that the County include a Statement of Claim Form to identify the exact date the contractor submits a claim. If the claim has not been submitted timely, the County can raise this issue as a contractual defense to the claim. The Statement of Claim Form can also require the contractor to provide other information regarding the claim.

2.5.13 Contractor's Payment Application Checklist

It is recommended that the County include a Contractor's Payment Application Checklist. This document will identify all documents that the contractor is required to provide with each payment application.

2.5.14 Tax Exempt Certificate

The County is a political subdivision of the State of Ohio and is exempt from taxation under the Ohio Sales Tax and Use Tax Laws. Building materials that are purchased by the contractor for incorporation into the project will be exempt from State sales and use taxes if the contractor provides a properly completed Ohio Department of Taxation Construction Contract Exemption Certificate to the vendors or suppliers when the materials are acquired.

2.6 Competitive Bidding Process

2.6.1 Public Announcement

Under R.C. 307.87(A), the public notice, described above, must be published once a week for at least two consecutive weeks preceding the bid opening in a newspaper of general circulation within the county.²

Under R.C. 307.87(C), the contracting authority must also maintain in a public place in its office or other suitable public place a bulletin board upon which it shall post and maintain a copy of such notice for at least two weeks preceding the day of the opening of the bids.

2.6.2 Extending the Bid Opening Date

Under R.C. 153.12(A), the bid for which the award is to be made shall be opened at the time and place named in the advertisement for bids, unless extended by the County or unless, within seventy-two hours prior to the published time for the opening of bids, excluding Saturdays, Sundays, and legal holidays, any modification of the plans or specifications and estimates of cost for the project for which bids are solicited is issued and mailed or otherwise furnished to persons who have obtained plans or specifications for the project, for which the time for opening of bids shall be extended one week, with no further advertising of bids required.

2.6.3 Withdrawal of Bid Prior to Bid Opening

A bidder may withdraw its bid at any time for any reason prior to the bid deadline established in the bid documents. It is recommended that the County include a statement in the RFB that states that a request to withdraw a bid prior to the bid deadline shall be made in writing and received by the County before the bid deadline.

² Under 307.87(A), if the contracting authority's first notice meets certain requirements, the contracting authority may eliminate the second notice otherwise required to be published in a newspaper of general circulation by posting the notice on the county's website.

2.7 Bid Opening and Evaluation of the Bids

As noted above in R.C. 153.12 and R.C. 307.87(A), the bid opening shall occur at the time and place identified in the legal notice, unless modified by addendum. If bids are submitted after the time for bid opening, the County may accept the bids, but it is recommended that they are not opened and read. Following the bid opening, the County shall tabulate the bids received.

2.7.1 Bid Withdraw After Bid Opening

Under R.C. 9.31, a bidder for a contract with the County for the construction, demolition, alteration, repair, or reconstruction of any public building, structure, highway, or other improvement may withdraw his bid from consideration if the price bid was substantially lower than the other bids, providing the bid was submitted in good faith, and the reason for the price bid being 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. Notice of a claim of right to withdraw such bid must be made in writing filed with the County within two business days after the conclusion of the bid opening procedure.

No bid may be withdrawn under R.C. 9.31 when the result would be the awarding of the contract on another bid of the same bidder.

No bidder who is permitted to withdraw a bid shall for compensation supply any material or labor to, or perform any subcontract or other work agreement for, the person to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted, without the approval of the County. The person to whom the contract was awarded and the withdrawing bidder are jointly liable to the County in an amount equal to any compensation paid to or for the benefit of the withdrawing bidder without such approval, in addition to the penalty provided in R.C. 2913.31.

If a bid is withdrawn under R.C. 9.31, the County may award the contract to the next lowest bidder or reject all bids and resubmit the project for bidding. In the event the County resubmits the project for bidding the withdrawing bidder shall pay the costs, in connection with the resubmission, of printing new Contract Documents, required advertising, and printing and mailing notices to prospective bidders, if the contracting authority finds that such costs would not have been incurred but for such withdrawal. The County should consult with legal counsel regarding this process.

2.7.2 Contract May Not Be More than 10% Above Estimate

Under O.R.C. 153.12(A), a County cannot enter into a contract if the “price of the contract, or, if the project involves multiple contracts where the total of all contracts for the project, is in excess of ten per cent above the entire estimate thereof.” The Ohio Revised Code requires that the estimated construction cost for the project be included in the specifications with the bid documents. (O.R.C. 153.12).

2.7.3 Review of the Bids for Responsiveness

The County's first review of the bid document should be to see if the bidder's submission complies with all of the bidding requirements. This will include verifying that all required forms were submitted and properly completed by the bidder.

2.7.4 Review Qualification Statements and Verification of References

If the County includes a bidder's qualification statement in the bid documents, the County should review the bidder's responses and should contact the references. It should be noted that some Public Owners may be reluctant to discuss the poor performance of a bidder on their project. If another Owner has documents that relate to the poor performance of a bidder on another project, the County can offer to make a public records request to the other Public Owner.

2.7.5 Alternates

The bid documents may or may not include alternates. If the County requests alternates, the County has the right to determine which alternates it will select after the bids are opened. The alternate can be used to either add or delete scope from the base scope of the project.

2.7.6 Determination of the Lowest and Best Bid

Under O.R.C. 307.90(A), the award of all of the County's contracts subject to O.R.C. 307.86 to 307.92 must be made to the lowest and best bidder. The County enjoys a great deal of discretion in selecting the lowest and best bidder—typically, only an abuse of discretion will overturn the County's decision. If the County has adopted the system of preferences pursuant to OAC 123:5-1-11, described in Section 2.5.3.1 above, it must incorporate these preferences in its determination, in accordance with OAC 123:5-1-11.

2.7.7 Refusal of the Lowest and Best Bidder to Execute the Contract

Under R.C. 153.54(B)(1) and (C)(1), when the County accepts a bid but the bidder fails or refuses to enter into a proper contract in accordance with the bid, plans, details, and specifications within ten days after the awarding of the contract, the County may either award to the next lowest and best bid or reject all bids and rebid the project. If the County awards to the next lowest bidder, the bidder that refused to execute the contract shall be liable to the County for the lesser of 1) the amount of the difference between the bidder's bid and that of the next lowest bidder, or 2) a penal sum not to exceed ten percent of the amount of the bond if bidder provided a bid guaranty and contract bond or penal sum not to exceed ten percent of the amount of the bid if the bidder provided a certified check, cashier's check, or letter of credit. If the bidder that refuses to enter into the contract provided a bond as its bid guaranty, the surety shall also be liable to the County.

2.7.8 Return of Bid Guaranty

Under 153.54(H), bid guaranties in the form of a bid guaranty and contract bond provided pursuant to R.C. 153.54(A)(1) shall be returned to all unsuccessful bidders immediately after the

contract is executed. Under R.C. 153.54(H), if the successful bidder(s) provided a certified check, cashier's check, or letter of credit as its bid guaranty in accordance with R.C. 153.54(A)(2), the bid guaranty shall be returned to the successful bidder upon filing of the contract bond required in R.C. 153.54(C).

2.7.9 County has Discretion to Reject All Bids

Under O.R.C. 307.90(A), the County may reject all bids. If the County rejects all bids, O.R.C. 307.91 allows the County to either re-advertise, using the original estimate, or amend the estimate and proceed to advertise in the manner provided for advertisement in O.R.C. 307.86 and Section 2.5.2 of this Manual.

2.7.10 Sixty Days to Award

Under O.R.C. 153.12(A), a County must award and execute any construction contract “within sixty days after the date on which the bids are opened” or the bid proceedings are invalidated, unless extended by mutual consent of the owner and bidder.

2.8 Execution of the Contract

2.8.1 Confirm Proper Bid Guaranty and Bond

Before executing the contract, the County should confirm that the proper form of bid guaranty and contract bond has been provided.

2.8.2 Certification of Fiscal Officer

Under O.R.C. 5705.41, a contract is void unless it includes a certificate of available funds by the County fiscal officer.

2.8.3 Certification of Prosecuting Attorney as to Form

Under O.R.C. 153.44, “[b]efore work is done or material furnished, all contracts that exceed one thousand dollars in amount shall be submitted by the board of county commissioners to the prosecuting attorney of the county. If found by him to be in accordance with Sections 153.01 to 153.60, inclusive, of the Revised Code, and his certificate to that effect is indorsed thereon, such contracts shall have full effect, otherwise they shall be void.”

2.8.4 Execution of the Contract

It is recommended that the County send the contract to the bidder to sign before the County signs the contract. It is also recommended that the contract include a statement that the County reserves the right to reject all bids at any time before the County executes the contract.

3 Design-Build Procurement

3.1 Outline of Design-Build Procurement

3.1.1 Engage Criteria Architect or Criteria Engineer

- (1) If employee of the County – no additional process is required but the employee must be a registered architect or registered Engineer and the County must send notice to the State
- (2) Where the design services are less than Fifty Thousand Dollars and County has a minimum of three applicable qualifications on file, may select the best qualified of the firms with current (less than one year old) qualifications on file, see Section 5 of this Manual
- (3) Qualifications Based Selection Process (QBS) – using the same steps as procurement of a Design Professional, see Section 5 of this Manual

3.1.2 Establish Evaluation Committee

The County must establish an Evaluation Committee that will evaluate the statements of qualifications and proposals received from Design-Build firms and rank those firms. Persons who are not affiliated with the County in an official capacity may be an independent or outside advisor to the committee, but may not be a voting member of the Evaluation Committee. (OAC 153:1-6-02(C)(2)(b)). The Evaluation Committee must consult with the Criteria Architect or Engineer during the qualifications phase. (OAC 153:1-6-02(C)(2)(a)).

3.1.3 Preparation and Evaluation of RFQ

- (1) Set criteria for evaluating qualifications and prepare the RFQ
 - (a) Include factors from OAC 153:1-6-02(C)
 - (b) May add other legally appropriate criteria
 - (c) Attorney should prepare legal provisions
 - (d) Stipend permitted but not required
 - (e) Develop criteria and scoring method for qualifications
- (2) Issue the public announcement (two weeks is typically reasonable per the statutory requirement)
- (3) Evaluation Committee reviews qualifications and ranks at least the top three (unless less than three qualifications submitted)

3.1.4 Preparation of RFP and Contract Documents

The Criteria Architect or Criteria Engineer works with the County to develop design criteria and the RFP. The RFP contains the design criteria but the level of design included in the

RFP is highly variable. Note that the RFP can be developed prior to and during the RFQ process to save time. Contract Documents should be prepped by legal counsel and included in the RFP. Below is a list of the steps for the development of the RFP and the documents that are either required to be included in the Contract Documents or recommended to be included in the Contract Documents with the Owner-Design-Builder Agreement and general conditions.

- (1) Prepare the RFP
 - (a) Determine if a Guaranteed Maximum Price (“GMP”) will be provided with the proposals
 - (b) Develop the pricing criteria in accordance with OAC 153:1-6-02(D)(1)
 - (c) Develop the technical criteria in accordance with OAC 153:1-6-02(D)(2)
 - (d) Develop scoring method for proposals

- (2) Prepare the Contract Documents
 - (a) Statutory form of bonds (required)
 - (b) Statement of Claim Form (not required by law, but recommended)
 - (c) Design-Builder’s Proposal (not required by law, but recommended)
 - (d) Design-Builder’s Guaranteed Maximum Price Proposal (may be required)
 - (e) Design-Builder’s Personal Property Tax Affidavit (O.R.C. 5719.042) (required)
 - (f) Subcontractors – Suppliers Waiver and Release Affidavit (recommended)
 - (g) Design and Technical Reference Documents (recommended)
 - (h) Tax Exempt Certificate (required)
 - (i) Wage Rate Requirements (required)
 - (j) Design-Builder’s Application for Payment (not required by law, but recommended)
 - (k) Design-Builder’s Payment Application Checklist (not required by law, but recommended)
 - (l) Owner-Design-Builder Contract (not required by law, but necessary)
 - (m) General Conditions (not required by law, but necessary)

The RFP is distributed to the short-listed firms. Other issues to consider when preparing the RFP and the Contract Documents are:

- (1) Contingency – establish what is a “cost of the work” and what is not
- (2) Shared savings – not required but gives Design-Builder incentive to save
- (3) Open book pricing – back up provided with pay applications; County has right to audit

3.1.5 Evaluation of Proposals

The Evaluation Committee reviews the proposals and selects the Design-Build firm with the “best value” based upon technical criteria and pricing criteria. Below is a summary of this procedure:

- (1) Conduct pre-proposal meeting with short-listed firms – optional
- (2) Receive the proposals from the short-listed firms
- (3) Conduct interviews with each short-listed firm
- (4) Evaluate and score the technical proposals
- (5) Open the GMP, if requested with the proposals
- (6) Perform comparative analysis of GMP proposals, if applicable
- (7) Evaluate and score the pricing proposals
- (8) Score and rank the short-listed firms based on best value when considering the technical and pricing criteria
- (9) Announce the firm determined to be the best value
- (10) Enter into negotiations and finalize contract

3.1.6 Execution of the Contract

Once the Design-Build firm offering the best value has been determined, the County can proceed with executing the contract with the Design-Builder, in accordance with the following steps:

- (1) Certification of Fiscal Officer
- (2) Certification of Prosecuting Attorney as to Form
- (3) Execution of the Contract

3.2 Procurement Process for Design-Build

3.2.1 Engage Criteria Architect or Criteria Engineer

O.R.C. 153.692 requires the County to engage the services of a “Criteria Architect” or “Criteria Engineer” to assist with the selection of a Design-Builder. The Criteria Architect/Engineer may be either an outside consultant or a properly qualified employee of the County. The function of this individual is to develop baseline design criteria and requirements for the project. The Criteria Architect/Engineer also works with the County to evaluate proposals from the Design-Build candidates. O.R.C. 153.65 defines Criteria Architect or Engineer as “the architect or engineer retained by a public authority to prepare conceptual plans and specifications, to assist the public authority in connection with the establishment of the design criteria for a design-build project, and, if requested by the public authority, to serve as the representative of the public authority and provide, during the design-build project, other design and construction administration services on behalf of the public authority, including but not limited to, confirming that the design prepared by the design-build firm reflects the original design intent established in the design criteria package.” The Revised Code prohibits the Criteria Architect/Engineer from working for the Design-Builder once the contract has been awarded to the Design-Builder.

Under O.R.C. 153.692 (A), the County may procure the services of a Criteria Architect or Engineer using the same qualifications based selection (“QBS”) process required to procure a Design Professional, consistent with Sections 153.65 to 153.70 of the Revised Code. Alternatively, pursuant to O.R.C. 153.692 (B), the County may obtain the Criteria Architect or Engineer services through an architect or engineer who is an employee of the County and must notify the Ohio Facilities Construction Commission before the services are performed.

As fully outlined in Section 5 of this Manual, if utilizing the QBS Process, the County, in consultation with legal counsel, must distribute its Request for Qualifications (“RFQ”), publicly advertise that it is seeking Criteria Architect/Engineer services, evaluate the Statements of Qualifications, rank the top three qualified architect / engineers (unless fewer than three are available), and provide those top three firms a Request for Proposals (“RFP”) with additional details about the project. The County must then evaluate the proposals it receives in response to the RFP, re-rank the firms, and negotiate with the top-ranked firm until an agreement is reached. (O.R.C. 153.65 to 153.70).

3.2.2 Establish Evaluation Committee

The County must establish an Evaluation Committee that will evaluate the Statements of Qualifications and proposals received from Design-Build firms and rank those firms. The composition of the Evaluation Committee is at the County’s discretion however, voting members of the committee must be currently affiliated with the County in an official capacity. Persons who are not affiliated with the County in an official capacity may be an independent or outside advisor to the committee, but may not be a voting member of the Evaluation Committee. (OAC

153:1-6-02(C)(2)(b)). The Evaluation Committee must consult with the Criteria Architect or Engineer during the qualifications phase. (OAC 153:1-6-02(C)(2)(a)).

3.2.3 Establish Evaluation Criteria

Again, with the Design-Build model, the County will contract with a single entity for both design and construction services.

Prior to publicly announcing its Request for Qualifications (“RFQ”), the County must identify the criteria and scoring method for the evaluation of the received qualifications.³ (OAC 153:1-6-02). The County must include the following as part of its qualifications criteria:

- Competence to perform the required Design-Build services as indicated by the technical training, education, and experience of the Design-Builder’s personnel, especially the technical training, education, and experience of the Design-Builder’s employees who would be assigned to perform the services;
- Ability in terms of workload and the availability of qualified personnel, equipment, and facilities to perform the required Design-Build services competently and expeditiously, and experience working on similar types of projects;
- Past performance as reflected by the evaluation of previous clients with respect to factors such as control of costs, quality of work, dispute resolution, administration of subcontractors, and meeting of deadlines;
- Financial responsibility including evidence of the capability to provide a surety bond in accordance with paragraph (A) of rule 153:1-4-02 of the Administrative Code;
- History of performance with meeting goals of any diversity and inclusion programs required by a Public Owner or by applicable law, and compliance with applicable affirmative action programs. For public improvement projects subject to Section 9.47 of the Revised Code, a valid certificate of compliance shall be submitted; and
- Other qualifications that are consistent with the scope and needs of the project including, but not limited to, knowledge of the local area and working relationships with local subcontractors and suppliers.

3.2.4 Preparation and Evaluation of RFQ

Under the Design-Build model, the County must then issue a public announcement requesting Statements of Qualifications for Design-Build services. The recommended way to meet the statutory public notice requirement is by placing a brief notice in the newspaper to announce the available contract. In addition, notice may be published on the County’s website, the State public bidding website, and on the newspaper’s website (if it maintains a website).

³ Note that the County must also identify the performance and pricing criteria for the project; identify if there are any minimum or mandatory technical requirements for the project; establish a process for maintaining records of decisions made at all stages of this selection process; and if applicable, determine the amount of any stipend to be paid to the non-selected short-listed firms. (OAC 153:1-6-02).

Legal counsel can assist the County with the creation of the public legal notice which should provide a brief description of the project for which design services are needed, a statement of the specific Design-Build services required, a description of the qualifications required for the project, the deadline for interested design firms to submit qualifications and information, and a contact person who will provide the County's Request for Qualifications ("RFQ") to interested design firms. (O.R.C. 153.67). Note that the statute does not require a particular time period for the public notice. (O.R.C. 153.67). A two-week period should be sufficient under most circumstances. The County may also send the RFQ to Design-Build firms it would like to submit a Statement of Qualifications ("SOQ"). (O.R.C. 153.67).

The County must answer any questions received from interested firms, in writing, and make all such questions and answers available to all interested firms. (OAC 153:1-6-02). Next the County must convene an Evaluation Committee. Legal counsel may assist with these processes. The composition of the committee is at the County's discretion. (OAC 153:1-6-02(C)(2)). If the public authority wishes to use the project's Design Professional or other independent advisors to support the Evaluation Committee or advise it on technical and pricing issues, those advisors cannot participate as voting members of the committee. The committee will then evaluate the SOQs received and select and rank no fewer than three candidates considered most qualified based on the same factors used to select a Construction Manager at-Risk, in accordance with OAC 153:1-6-02(C)(1)⁴:

- Competence to perform the required Design-Build services as indicated by the technical training, education, and experience of the Design-Builder's personnel, especially the technical training, education, and experience of the Design-Builder's employees who would be assigned to perform the services;
- Ability in terms of workload and the availability of qualified personnel, equipment, and facilities to perform the required Design-Build services competently and expeditiously, and experience working on similar types of projects;
- Past performance as reflected by the evaluation of previous clients with respect to factors such as control of costs, quality of work, dispute resolution, administration of subcontractors, and meeting of deadlines;
- Financial responsibility including evidence of the capability to provide a surety bond in accordance with paragraph (A) of rule 153:1-4-02 of the Administrative Code;
- History of performance with meeting goals of any diversity and inclusion programs required by a Public Owner or by applicable law, and compliance with applicable affirmative action programs. For public improvement projects subject to Section 9.47 of the Revised Code, a valid certificate of compliance shall be submitted; and
- Other qualifications that are consistent with the scope and needs of the project including, but not limited to, knowledge of the local area and working relationships with local subcontractors and suppliers.

⁴ Note that the County must consult its Criteria Architect/Engineer during the qualifications phase. (OAC 153:1-6-02(C)(2)(a)).

However, under OAC 153:1-6-02(C)(1), the County must also consider information related to the Design-Build firm's compliance with sections of the Ohio Revised Code relating to the contractor's ability to provide professional design services (O.R.C. 4703.182, 4703.332, and 4733.16), including the use of a licensed Design Professional for all design services.

3.2.5 Preparation of RFP and Contract Documents

Assuming at least three candidates respond to the RFQ, the County must provide the top three candidates (the "short-listed" firms) with more detailed information about the project, including a description of the project and delivery, design criteria created by the Criteria Architect/Engineer, a preliminary project schedule, a description of requested preconstruction and design services, a description of the Guaranteed Maximum Price, and timeframe for developing the Guaranteed Maximum Price, and form of contract. (O.R.C. 153.693 and OAC 153:1-6-02). It should be noted that the County can rank and request proposals from more than three candidates at the County's discretion. Legal counsel and the Criteria Architect/Engineer should assist with the preparation of the RFP and Contract Documents.

Pursuant to OAC 153:1-6-02, the County may also request that candidates provide a technical and pricing proposal for its fees. Some projects (parking garages, etc.) may lend themselves to requesting a schematic design and a Guaranteed Maximum Price as part of the evaluation phase. Others may not be as amenable to asking for a Guaranteed Maximum Price at such an early stage. If the County wishes to obtain a Guaranteed Maximum Price at the evaluation phase of a more complicated project, the County is permitted to provide a stipend for preparing such proposals, but is not required to do so. In addition, the County can request a pricing proposal that is divided into design service, preconstruction and Design-Builder's fee.

The County should include the contract with the RFP because this makes the firms aware of what the terms of the contract will be, allowing the County to take control of the contract language, and eliminating lengthy contract negotiations and unexpected changes to terms or price later in the process.

3.2.5.1 Statutory form of bonds (required)

OAC 153:1-4-02 requires that the Design-Build firm use the State's standard bond forms. Those forms are currently the 2012 edition of "Document 00 61 13.13 – Performance Bond Form" and "Document 00 61 13.16 – Payment Bond Form," which can be found at: <http://das.ohio.gov/Divisions/GeneralServices/StateArchitectsOffice/ListofStandardRequirementsDocuments.aspx#misc>.

3.2.5.2 Statement of Claim Form (not required by law, but recommended)

Public Owners need to avoid surprise claims at the end of projects in order to avoid unexpected schedule and budget problems. There is good case law in Ohio regarding strict enforcement of notice requirements. It is recommended that the Contract Documents include specific time periods for the contractor to submit a claim on the project. As part of these

requirements, it is recommended that the County include a Statement of Claim Form to identify the exact date the contractor submits a claim. If the claim has not been submitted timely, the County can raise this issue as a contractual defense to the claim. The Statement of Claim Form should also require the contractor to provide other information regarding the claim to facilitate early evaluation of the claim.

3.2.5.3 Design-Builder's Proposal (not required by law)

The Design-Builder's proposal includes its detailed scope of work and pricing information and therefore may be included in the Contract Documents. However, modifications may need to be made to the proposal and, as such, the proposal should be reviewed by legal counsel before it becomes part of the Contract Documents.

3.2.5.4 Design-Builder's Guaranteed Maximum Price Proposal

In its Guaranteed Maximum Price proposal, the Design-Builder provides the maximum dollar amount the County will be required to pay for the project. The Design-Builder takes on certain contractually identified risks that the project will cost more than this amount. This can be an important risk-shifting mechanism for the County. The GMP may, in rare circumstances, be provided at the time of the contract but more often will be provided after a certain amount of design development has been completed.

3.2.5.5 Design-Builder's Personal Property Tax Affidavit (O.R.C. § 5719.042) (required)

Under R.C. 5719.042, after the award of any contract let by competitive bid and prior to the time the contract is entered into, the bidder shall submit to the County's fiscal officer a statement affirmed under oath that the bidder was not charged, at the time the bid was submitted, with any delinquent personal property taxes on the general tax list of personal property of any county in the State of Ohio or that the bidder was charged with delinquent personal property taxes on any such tax list, in which case the statement shall also set forth the amount of such due and unpaid delinquent taxes and any due and unpaid penalties and interest thereon. If the statement indicates that the taxpayer was charged with any such taxes, a copy of the statement shall be transmitted by the fiscal officer to the county treasurer within thirty days of the date it is submitted.

3.2.5.6 Subcontractors Suppliers Waiver and Release Affidavit (recommended)

All contractors, subcontractors, sub-subcontractors and suppliers performing work on the project sign this affidavit, releasing any and all claims against the County, except for any claims properly and timely submitted using a Statement of Claim Form. This is a typical construction document that helps shift risk away from the County and assists the County in making sure that such entities are being paid timely and properly. It is recommended that this document is included in the Contract Documents.

3.2.5.7 Design and Technical Reference Documents (recommended)

The design and technical reference documents set forth the design concepts and intent, scope of the work, requirements, and responsibilities for the project. It is recommended that these documents are included in the Contract Documents so that their terms are binding.

3.2.5.8 Tax Exempt Certificate (required)

The County is a political subdivision of the State of Ohio and is exempt from taxation under the Ohio Sales Tax and Use Tax Laws. Building materials that are purchased by the contractor for incorporation into the project will be exempt from State sales and use taxes if the contractor provides a properly completed Ohio Department of Taxation Construction Contract Exemption Certificate to the vendors or suppliers when the materials are acquired. The County provides this Certificate to the Design-Builder who provides it to subcontractors.

3.2.5.9 Wage Rate Requirements (required)

O.R.C. Chapter 4115 requires that County projects comply with Ohio prevailing wage law. R.C. 4115.06 states that in all cases where any public authority fixes a prevailing rate of wages under Section 4115.04 of the Revised Code, and the work is done by contract, the contract executed between the public authority and the successful bidder shall contain a provision requiring the successful bidder and all his subcontractors to pay a rate of wages which shall not be less than the rate of wages so fixed. The bid documents shall include the current prevailing wage rates for the location of the project. For “construction” projects as defined in Section 4115.03 of the Ohio Revised Code, the successful contractor and all of its subcontractors, regardless of tier, must strictly comply with the obligation to pay a rate of wages on the construction project not less than the rate of wages fixed for the construction project under Section 4115.04 of the Ohio Revised Code. Additionally, for such “construction” projects, the successful contractor will comply with all other provisions of Chapter 4115 of the Ohio Revised Code. If federal funding is involved, federal prevailing wage or Davis-Bacon requirements may apply. The County should work with legal counsel to determine which prevailing wage requirements apply.

Under R.C. 4115.071, the County shall, no later than ten days before the first payment of wages is payable to any employee of any contractor or subcontractor, designate and appoint one of its own employees to serve as the prevailing wage coordinator during the life of the contract. The duties of the coordinator shall include:

- (1) Setting up and maintaining, available for public inspection including inspection by interested parties or affected employees, files of payroll reports and affidavits submitted by contractors and subcontractors pursuant to Sections 4115.03 to 4115.16 of the Revised Code;
- (2) Ascertaining from each contractor or subcontractor, at the beginning of performance under the contract, the dates during its life when payments of wages to employees are to be made;

- (3) Receiving from each contractor or subcontractor, a copy of the contractor's or subcontractor's complete payroll for each date exhibiting for each employee paid any wages, the employee's name, current address, social security number, number of hours worked each day during the pay period and the total for each week, the employee's hourly rate of pay, the employee's job classification, fringe payments, and deductions from the employee's wages;
- (4) Establishing and following procedures to monitor the compliance by each contractor and subcontractor with the requirement imposed by this Section for timely filing of copies of payroll records;
- (5) Receiving from each contractor or subcontractor upon completion of the public improvement and prior to final payment therefor the affidavit required by Section 4115.07 of the Revised Code;
- (6) Reporting any delinquency in the filing of the certified copy of the payroll and the affidavit to the Board of Commissioners and the director of commerce.

The prevailing wage coordinator must register the project and wage determinations for the project by going to <http://com.ohio.gov/dico/default.aspx>.

Information relating to Federal Davis Bacon prevailing wage rates and wage determinations is available here: <http://www.dol.gov/compliance/guide/dbra.htm>.

3.2.5.10 Design-Builder's Application for Payment (not required by law, but recommended)

It is recommended and typical that the County include an Application for Payment. By drafting the Application for Payment and including it in the Contract Documents the County is able to control what information and documentation the Design-Builder must provide with each payment application.

3.2.5.11 Design-Builder's Payment Application Checklist (optional but recommended)

It is recommended that the County include a Design-Builder's Payment Application Checklist. This document will identify all documents that the Design-Builder is required to provide with each payment application.

3.2.5.12 Contract and General Conditions (not statutorily required but necessary)

The County should also include a contract and general conditions of the contract with the RFP. These documents will include the majority of the terms of the contract, including the time for completion, contract amount, change order process, and claims process. It is not recommended that the County use a standard unmodified contract or general conditions such as the AIA documents or the EJCDC documents. The County should consider working with construction counsel to develop documents that are customized for the County and the specific project.

3.2.6 Evaluation of Proposals, Ranking, Determination of Best Value

The County may meet with firms prior to submission of such proposals in pre-proposal submission meetings. (OAC 153:1-6-02).

After receiving the firms' proposals, the County will then re-rank the top three candidates, or more if the County ranks more than three short-listed firms, based on their pricing and technical proposals to determine which Design-Build firm offers the "best value." (OAC 153:1-6-02). In an effort to break away from the low-bid mentality of the past, the County is not required to accept the low dollar proposal when evaluating Design-Build candidates. Instead, Section 153.693(A)(4) of the Revised Code requires that the County "rank the selected firms based on the County's evaluation of the value of each firm's pricing proposal, with such evaluation considering each firm's proposed cost and qualifications."

Thus, best value in the context of Design-Build is determined based on pricing and technical criteria. The committee must evaluate the technical proposals separately from pricing proposals and then combine the evaluations to reach a final evaluation. (OAC 153:1-6-02(E)(2)).

Under OAC 153:1-6-02(D)(1), the pricing criteria to be used in the evaluation includes pricing for the following:

- 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 as set forth in paragraph (F) of the rule.

Under OAC 153:1-6-02(D)(2), the performance or technical criteria considered in the evaluation includes the same criteria used for selecting a CMAR:

- schedule;
- approach to the work, including any anticipated self-performed work;
- work sequencing;
- performance history;
- approaches to performance specifications when used;
- plan for anticipated procurement difficulties;
- plan for meeting any goals set as part of any diversity and inclusion program required by the Public Owner or by applicable law; and
- plan for additional considerations which may include technical design, technical approach, quality of proposed personnel and management plan.

The County has the option of seeking a Guaranteed Maximum Price proposal from the short-listed firms as a part of the pricing criteria and should consult with legal counsel regarding this option. If the County seeks a Guaranteed Maximum Price, it must define the Guaranteed Maximum Price proposal requirements. The Guaranteed Maximum Price may include the total cost of the work, allowances, unit prices, assumptions and clarifications, project schedule and the scope of work for any work the short-listed firm wishes to self-perform. (OAC 153:1-6-02).

After the short-listed firms submit their pricing proposal,⁵ technical proposal,⁶ and if applicable, Guaranteed Maximum Price proposal (in a sealed envelope), the Evaluation Committee will interview⁷ each of the short-listed firms. (OAC 153:1-6-02). The Evaluation Committee will then:

- 1) Evaluate and score the technical proposals utilizing the technical criteria established by the County (OAC 153:1-6-02);
- 2) If applicable, after the scoring of the technical proposals, open the GMP proposals and conduct a comparative analysis of, and normalize, the GMP proposals (the Evaluation Committee has the option of consulting with the Criteria Architect or Engineer, or the non-voting members of the committee in performing this analysis) and consider the GMP proposal with the technical proposal score given by the Evaluation Committee (OAC 153:1-6-02(F)); and

⁵ Note that the pricing proposal must include a list of key personnel for the project; a statement of the general conditions and contingency; a preliminary project schedule; and a fee proposal that includes the pricing criteria set forth in the rule. (OAC 153:1-6-02).

⁶ Note that the technical proposal must include a project-specific plan; identify the proposed team; a project-specific approach to deliver the services; and technical criteria components as set forth in the rule. (OAC 153:1-6-02).

⁷ Note that the interview is not scored or included in the scoring of the proposals. (OAC 153:1-6-02(E)(1)).

- 3) Evaluate and score the pricing proposals utilizing the pricing criteria established by the County. (OAC 153:1-6-02).

In its evaluation of the proposals, if the County finds a major discrepancy or irregularity in a pricing proposal, the County shall notify the affected firm in writing and require a written response from the firm no later than the date of the firm's interview. (OAC 153:1-6-02(E)(1)). After the interviews and scoring, the public authority will open the short-listed firms' Guaranteed Maximum Price proposals and conduct comparative analysis of all proposals—utilizing the assistance of the project's Design Professional or other independent advisors if necessary. (OAC 153:1-6-02). The Evaluation Committee then ranks short-listed firms based on the Evaluation Committee's technical and pricing proposal scores, announces the firm determined to be the best value, and enters into negotiations with the firm determined to provide the best value. (OAC 153:1-6-02).

If for any reason, the highest-ranked Design-Builder and the County are unable to conclude this negotiation and execute the contract, the County may suspend negotiations, in writing, with the highest-ranked Design-Builder and initiate negotiations, in writing, with the next highest-ranked Design-Builder, and so on until the contract is awarded or the procurement is terminated. If the County is unable to finalize a contract with any of its ranked Design-Builders, it may select and rank additional firms and the negotiations may continue. The County may also accept or reject any or all proposals in whole or in part. (O.R.C. 153.69). At the conclusion of successful negotiations, the Design-Builder and the County will execute the Owner-Design-Builder Agreement. Note that documents used throughout the selection process are not public records until a final selection has been made. (OAC 153:1-6-02(G)).

3.2.7 Execution of the Contract

3.2.7.1 Certification of Fiscal Officer

Under O.R.C. 5705.41, a contract is void unless it includes a certificate of available funds by the County fiscal officer.

3.2.7.2 Certification of Prosecuting Attorney as to Form

Under O.R.C. 153.44, “[b]efore work is done or material furnished, all contracts that exceed one thousand dollars in amount shall be submitted by the board of county commissioners to the prosecuting attorney of the county. If found by him to be in accordance with Sections 153.01 to 153.60, inclusive, of the Revised Code, and his certificate to that effect is indorsed thereon, such contracts shall have full effect, otherwise they shall be void.”

3.2.7.3 Execution of the Contract

It is recommended that the County send the contract to the Design-Builder to sign before the County signs the contract.

3.3 Prequalification of Subcontractors

All subcontractors must be pre-qualified based on criteria established by the Design-Builder and approved by the County.

As with a CMAR, the rules require a Design-Build firm to adopt criteria for evaluating prospective subcontractors for performing trade contracts—where trade contract is defined as “an agreement to perform any part of the work on the project under a direct contract with a Design-Build firm.” OAC 153:1-7-01(A)(4). Those criteria must:

- include the experience of the bidder, the bidder’s financial condition, conduct and performance on previous contracts, facilities, management skills, and ability to execute the contract properly;
- further any goals set as part of a diversity and inclusion program required by the public authority or by applicable law;
- require prospective bidders to affirmatively state that they have not violated any affirmative action program during the last five years preceding the date of the prequalification application. For public improvement projects governed by Section 9.47 of the Revised Code, a prospective bidder may meet this requirement by submitting a valid certificate of compliance; and
- require a prospective bidder to submit proof of current licenses to perform the work as required by a public authority or by applicable law.

A public authority may include additional criteria for trade contracts and the public authority has discretion to approve or disapprove of any of the above referenced criteria. Furthermore, if the Design-Build firm wishes to self-perform work, it must meet the above referenced criteria.

3.4 Contracts: Prescribed Contract and Subcontract Forms

The County will hold an Owner-Design-Builder Agreement. For Design-Build contracts, the rules also permit the use of various forms of Contract Documents, including Contract Documents published and licensed by the American Institute of Architects, Contract Documents published and licensed by ConsensusDOCS, LLC, Contract Documents published and licensed by the Design-Build Institute of America, Contract Documents published and licensed by the Engineers Joint Contract Documents Committee, and contract forms developed by the Office of the State Architect Department of Administrative Services. Again, none of these forms are perfectly suited to the County without modification and legal counsel should prepare or review the contracts. (OAC 153:1-2-02).

Any contractor acting in the capacity of a Design-Build firm is required to use the State subcontract form when entering into any subcontract. (OAC 153:1-2-02). The form may be modified as long as the modified form does not conflict with any of the requirements set forth in the rules. The subcontractor has no contractual rights against the County unless the County takes

an assignment of the subcontract. If a contractor fails to use the State subcontract form, the subcontract form rule provides that the contractor and subcontractor must still comply with all the requirements of the rules. The rule provides for flow-down provisions in that the contractor and subcontractor are to mutually assume towards each other the rights, remedies, obligations, and responsibilities of the other. In other words, the subcontractor has the same rights, remedies, obligations, and responsibilities between it and the contractor as the contractor has with the County. (OAC 153:1-3-02). And consequently, the contractor assumes the same rights, remedies, obligations, and responsibilities towards the subcontractor as the County assumes towards the contractor.

The subcontract form must contain a contingent assignment clause that provides the County with the option to take an assignment of the subcontract upon termination of the contractor's contract and written notice to the subcontractor. In addition, the rules require that the subcontract form contain an intended third-party beneficiary provision, which makes the County an intended third-party beneficiary of the subcontract. Where the County is an intended third-party beneficiary, it is entitled to enforce the contract against the contractor or subcontractor. (OAC 153:1-3-02).

The current version of the subcontract form is available at: <http://das.ohio.gov/Divisions/GeneralServices/StateArchitectsOffice/ListofStandardRequirementsDocuments.aspx#Misc>.

3.5 Required Form of Bond

Under OAC 153:1-4-02, before the Design-Build firm signs the contract with the public authority, it needs to provide separate performance and payment bonds to cover 100% of the contract sum. At all times during the project, the surety bonds must cover 100% of the contract value. This is important when the contract sum increases during the project as a result of receipt of GMPs or change orders. If the Design-Build firm does not cause the surety to provide written consent to such an increase in the bond, the public authority is relieved from the obligation to pay the Design-Build firm for work performed as a part of the increase in the contract sum.

In a situation where the surety enters bankruptcy, liquidates assets or makes a general assignment for the benefit of its creditors, is placed in receivership, petitions the state or federal government for protection from its creditors, or allows its license to do business in Ohio to lapse or be revoked, the Design-Build firm must provide a replacement bond within twenty-one days. Where the Design-Build firm fails to provide such a replacement bond, the public authority is relieved from paying anything to the Design-Build firm.

The surety bond rule requires that the Design-Build firm use the State's standard bond forms. Those forms are currently in the 2012 edition of "Document 00 61 13.13 – Performance Bond Form" and "Document 00 61 13.16 – Payment Bond Form," which can be found at:

<http://das.ohio.gov/Divisions/GeneralServices/StateArchitectsOffice/ListofStandardRequirementsDocuments.aspx#misc>

Again, when compared to the form of bond required by O.R.C. 153.54 and used for other project delivery methods on public projects, this bond which is required for CMAR and Design-Build projects is a similar broad form of indemnity bond, which is more owner friendly than other bond forms such as those published by the AIA.

3.6 Advantages and Disadvantages of Design-Build

O.R.C. 153.65(G) defines Design-Build (“DB”) services as the “services that form an integrated delivery system for which a person is responsible to a public authority for both the design and construction, demolition, alteration, repair, or reconstruction of a public improvement.”

There are at least five key advantages to the streamlined Design-Build delivery system:

- (1) The Owner has a single point of responsibility to deal with, the Design-Builder.
- (2) The project can usually be completed faster, with one selection process instead of two (Design-Professional followed by competitive bidding by contractors).
- (3) In some cases the cost can be determined early on, when the Design-Build team is chosen and before the design is complete. In most cases, an accurate budget can be developed earlier in the process.
- (4) Constructability issues should be minimized, as the designer and contractor will be working together from the beginning.
- (5) Errors and omissions claims against the Owner should be eliminated, i.e., no finger-pointing between the contractor and the Design Professional with the Owner caught in the middle. Since the Design-Builder is responsible for design and construction, any such fight is strictly between the Design-Builder and its design consultants.

However, any new process is likely to have kinks that need to be worked out, and Design-Build is no exception. Here are a few disadvantages to consider:

- (1) The single point of responsibility means there are fewer checks and balances than in the traditional system.
- (2) Because the “conceptual documents” on which the Design-Build teams base their proposals lack details, the Owner gives up a certain amount of control.
- (3) If necessary to obtain sufficiently detailed proposals, the County is permitted to offer an honorarium to the proposers but is not required to do so.

- (4) Keeping to the streamlined schedule requires the Owner to make decisions quickly and completely.
- (5) Procurement techniques are different from the ordinary and may not be fully understood, i.e., how bonding and design insurance should be handled.
- (6) Agencies that issue permits may be resistant to approving plans that are less than 100% complete.

3.7 Design-Build is Well-Suited for Particular Projects

The suitability of each project for Design-Build should be carefully evaluated. There are multiple factors that should be taken into account that can only be evaluated when the nature of a particular project is sufficiently defined. The County may consult legal counsel when evaluating whether to utilize the Design-Build delivery method.

4 Construction Manager At-Risk Procurement

O.R.C. 153.50(A)(1) defines a Construction Manager at-Risk as “a person with substantial discretion and authority to plan, coordinate, manage, direct, and construct all phases of a project for the construction, demolition, alteration, repair, or reconstruction of any public building, structure or other improvement and who provides the public authority with a guaranteed maximum price.”

4.1 Outline of Procurement Process for CMAR

It is recommended that a CMAR be hired at the same time as a Design Professional to provide pre-construction services. As the project progresses through design, the CMAR will provide schedules and an estimate of construction costs. They may also advise of issues such as constructability and value engineering (cost saving changes to the design). When the project design is sufficiently defined, the CMAR will provide a Guaranteed Maximum Price (“GMP”) for construction hard costs.

4.1.1 Engage Design Professional

The County should implement the process for procuring a Design Professional, pursuant to Section 5 of this Manual, while simultaneously implementing the following process to procure a CMAR.

4.1.2 Establish Evaluation Committee

The County must establish an Evaluation Committee that will evaluate the Statements of Qualifications and proposals received from CMAR firms and rank those firms. Persons, such as the project's professional design firm, who are not affiliated with the County in an official capacity may be an independent or outside advisor to the committee, but may not be a voting member of the Evaluation Committee. (OAC 153:1-6-01(C)(2)).

4.1.3 Preparation and Evaluation of RFQ

- (1) Set criteria for evaluating qualifications
 - (a) Include factors from OAC 153:1-6-01(C)
 - (b) May add other legally appropriate criteria
 - (c) Attorney should prepare legal provisions
 - (d) Develop criteria and scoring method for qualifications
- (2) Issue the public announcement (at least thirty days before deadline to submit qualifications per the statutory requirement)
- (3) Evaluation Committee reviews qualifications and ranks at least the top three (unless less than three qualifications submitted)

4.1.4 Preparation of RFP and Contract Documents

Note that the RFP can be developed prior to and during the RFQ process to save time. Contract Documents should be prepped by legal counsel and included in the RFP. Below is a list of the steps for the development of the RFP and the documents that are either required to be included in the Contract Documents or recommended to be included in the Contract Documents with the Owner-CMAR Agreement and general conditions.

- (1) Prepare the RFP
 - (a) Determine if a GMP will be provided with the proposals
 - (b) Develop pricing criteria in accordance with OAC 153:1-6-01(D)(1)
 - (c) Develop technical criteria in accordance with OAC 153:1-6-01(D)(2)
 - (d) Develop criteria and scoring method for proposals
- (2) Prepare the Contract Documents
 - (a) Statutory form of bonds (required)
 - (b) Statement of Claim Form (not required by law, but recommended)
 - (c) CMAR Guaranteed Maximum Price Proposal (required)
 - (d) Design and Technical Reference Documents (not required by law, but recommended)
 - (e) Personal Property Tax Affidavit (O.R.C. 5719.042) (required)
 - (f) Subcontractors – Suppliers Waiver and Release Affidavit (not required by law, but recommended)
 - (g) Tax Exempt Certificate (required)

- (h) CMAR Application for Payment (not required by law, but recommended)
- (i) Payment Application Checklist (not required by law, but recommended)
- (j) CMAR Affidavit with List of Subcontractors and Suppliers (optional, not required by law, but recommended)
- (k) CMAR Waiver and Release Agreement (not required by law, but recommended)
- (l) CMAR Final Waiver and Release Agreement (not required by law, but recommended)
- (m) Wage Rate Requirements (required)
- (n) Owner-CMAR Contract (not required by law, but necessary)
- (o) General Conditions (not required by law, but necessary)

The RFP is distributed to the short-listed firms. Other issues to consider when preparing the RFP and the Contract Documents are:

- (1) Contingency – establish what is a “cost of the work” and what is not
- (2) Shared savings – not required but gives CMAR incentive to save
- (3) Open book pricing – back up provided with pay applications; County has right to audit

4.1.5 Evaluation of RFP

The Evaluation Committee reviews the proposals and selects the CMAR firm with the “best value” based upon technical criteria and pricing criteria. Below is a summary of this procedure:

- (1) Conduct pre-proposal meeting with short-listed firms – optional.
- (2) Receive the proposals from the short-listed firms
- (3) Conduct interviews with each short-listed firm
- (4) Evaluate and score the technical proposals
- (5) Evaluate and score the pricing proposals
- (6) Open the GMP, if requested with the proposals
- (7) Perform comparative analysis of GMP proposals, if applicable
- (8) Score and rank the short-listed firms based on best value when considering the technical and pricing criteria

- (9) Announce the firm determined to be the best value
- (10) Enter into negotiations and finalize the contract

4.1.6 Execution of the Contract

Once the CMAR firm offering the best value has been determined, the County can proceed with executing the contract with the CMAR, in accordance with the following steps:

- (1) Certification of Fiscal Officer
- (2) Certification of Prosecuting Attorney as to Form
- (3) Execution of the Contract

4.2 Procurement Process for CMAR

4.2.1 Establish Evaluation Committee

The County must establish an Evaluation Committee that will evaluate the Statements of Qualifications and proposals received from Design-Build firms and rank those firms. Persons, such as the project's professional CMAR, who are not affiliated with the County in an official capacity may be an independent or outside advisor to the committee, but may not be a voting member of the Evaluation Committee. (OAC 153:1-6-01(C)(2)).

4.2.2 Establish Evaluation Criteria

Prior to publicly announcing its Request for Qualifications (“RFQ”), the County must identify the criteria and scoring method for the evaluation of the received qualifications.⁸ (OAC 153:1-6-01). The County must include the following as part of its qualifications criteria:

- Competence to perform the required management services as indicated by the technical training, education, and experience of the Construction Manager at-Risk’s personnel, especially the technical training, education, and experience of the Construction Manager at-Risk’s employees who would be assigned to perform the services;
- Ability in terms of workload and the availability of qualified personnel, equipment, and facilities to perform the required management services competently and expeditiously, and experience working on similar types of projects;
- Past performance as reflected by the evaluation of previous clients with respect to factors such as control of costs, quality of work, dispute resolution, administration of subcontractors, and meeting of deadlines;

⁸ Note that the County must also identify the performance and pricing criteria for the project; identify if there are any minimum or mandatory technical requirements for the project; and establish a process for maintaining records of decisions made at all stages of this selection process. (OAC 153:1-6-01).

- Financial responsibility including evidence of the capability to provide a surety bond in accordance with paragraph (A) of rule 153:1-4-02 of the Administrative Code;
- History of performance with meeting goals of any diversity and inclusion programs required by a Public Owner or by applicable law, and compliance with applicable affirmative action programs. For public improvement projects subject to Section 9.47 of the Revised Code, a valid certificate of compliance shall be submitted; and
- Other qualifications that are consistent with the scope and needs of the project including, but not limited to, knowledge of the local area and working relationships with local subcontractors and suppliers.

4.2.3 Preparation of RFQ

The first step of the two-step CMAR selection process is the County’s RFQ. O.R.C. 9.331 requires the County to first issue a public announcement for CMAR services and then receive Statements of Qualifications (“SOQ”) for at least thirty days. The recommended way to meet the statutory public notice requirement is by placing a brief notice in a newspaper in the county where the contract is being performed, to announce the available contract. (O.R.C. 9.331). Legal counsel can assist the County in preparing this legal notice which should invite interested parties to submit proposals for consideration, provide a general description of the project, include a statement of the specific management services required, and a description of the qualifications required for the project. Again, the notice must be published at least thirty days prior to the date for accepting the proposals. (O.R.C. 9.331).

4.2.3.1 Electronic Advertising Rule

The County may also publish its public notice electronically pursuant to the electronic advertising rule. The electronic advertising rule applies only to projects using a Construction Manager or a Construction Manager at-Risk. (OAC 153:1-5-01). Under this rule, the County has three electronic options.

One option is to place an advertisement on the website of the newspaper of general circulation in the county where the contract will be performed. (OAC 153:1-5-01).

Another option is to place an advertisement on the State public notification website developed by the Ohio Department of Administrative Services, Office of Information Technology. The website is available at <http://publicnotice.ohio.gov/default.aspx>. Users of the website will be required to register with the Ohio Business Gateway and establish an online account to use the State public notice website. (OAC 153:1-5-01).

The final electronic way a public authority can advertise its construction project is to place an advertisement on its own official website or websites of appropriate trade associations. (OAC 153:1-5-01).

The County does not have to provide all information in the advertisement. The advertisement can simply direct interested Construction Managers to a full description of the project and provide information to submit a proposal.

4.2.4 Qualifications Evaluation

Note that the County must answer any questions received from interested firms, in writing, and make all such questions and answers available to all interested firms. (OAC 153:1-6-01). Next, the County must convene an Evaluation Committee to evaluate the Construction Manager candidates. (OAC 153:1-6-01(C)(2)). The County has discretion to select the members of the Evaluation Committee. If the public authority wishes to use the project's Design Professional or other independent advisors to support the Evaluation Committee or advise it on technical and pricing issues, those advisors cannot participate as voting members of the committee.

Section 9.334 of the Revised Code requires the Evaluation Committee to rank order at least the top three CMAR candidates (assuming three proposals are received), based upon the established criteria. These are the "short-listed" firms. (OAC 153:1-6-01). It should be noted that the County can rank more than three candidates at its discretion.

As noted, under OAC 153:1-6-01(C)(1), the criteria to be considered in selecting the top CMAR candidates include:

- Competence to perform the required management services as indicated by the technical training, education, and experience of the Construction Manager at-Risk's personnel, especially the technical training, education, and experience of the Construction Manager at-Risk's employees who would be assigned to perform the services;
- Ability in terms of workload and the availability of qualified personnel, equipment, and facilities to perform the required management services competently and expeditiously, and experience working on similar types of projects;
- Past performance as reflected by the evaluation of previous clients with respect to factors such as control of costs, quality of work, dispute resolution, administration of subcontractors, and meeting of deadlines;
- Financial responsibility including evidence of the capability to provide a surety bond in accordance with paragraph (A) of rule 153:1-4-02 of the Administrative Code;
- History of performance with meeting goals of any diversity and inclusion programs required by a Public Owner or by applicable law, and compliance with applicable affirmative action programs. For public improvement projects subject to Section 9.47 of the Revised Code, a valid certificate of compliance shall be submitted; and
- Other qualifications that are consistent with the scope and needs of the project including, but not limited to, knowledge of the local area and working relationships with local subcontractors and suppliers.

Note that while price cannot be considered when ranking the top three CMAR candidates, during the RFQ phase, the County may request pricing from the top three CMAR candidates after they have been ranked, to determine which CMAR offers the best value.

4.2.5 Preparation of RFP and Contract Documents

The County then provides the selected candidates with its Request for Proposals (“RFP”) which should include a description of the project, statement of the available design detail, description of how the Guaranteed Maximum Price will be determined, the estimated level of design detail upon which the GMP will be based, the contract to be used for the project, and a request for a pricing proposal. (O.R.C. 9.334). Legal counsel should assist with the preparation of the RFP and Contract Documents.

Based on proposed pricing and technical criteria, the public authority, through its Evaluation Committee, ranks the candidates and begins contract negotiations with the top-ranked candidate determined to be the “best value.” (O.R.C. 9.334). It will be rare that a CMAR will be able to provide a Guaranteed Maximum Price at the time of selection because the design will rarely be sufficiently developed at that point. However, as noted above, a CMAR adds the most value to a project when it has an opportunity to participate in the design development process and, therefore, should be selected at the earliest possible stage of the project.

The following Contract Documents are required or recommended to be included with the RFP.

4.2.5.1 Statutory form of bonds (required)

OAC 153:1-4-02 requires that the CMAR firm use the State’s standard bond forms. Those forms are currently the 2012 edition of “Document 00 61 13.13 – Performance Bond Form” and “Document 00 61 13.16 – Payment Bond Form,” which can be found at: <http://das.ohio.gov/Divisions/GeneralServices/StateArchitectsOffice/ListofStandardRequirementsDocuments.aspx#misc>.

4.2.5.2 Statement of Claim Form (not required by law, but recommended)

Public Owners need to avoid surprise claims at the end of projects in order to avoid unexpected schedule and budget problems. There is good case law in Ohio regarding strict enforcement of notice requirements. It is recommended that the Contract Documents include specific time periods for the contractor to submit a claim on the project. As part of these requirements, it is recommended that the County include a Statement of Claim Form to identify the exact date the contractor submits a claim. If the claim has not been submitted timely, the County can raise this issue as a contractual defense to the claim. The Statement of Claim Form should also require the contractor to provide other information regarding the claim to facilitate early evaluation of the claim.

4.2.5.3 CMAR Guaranteed Maximum Price Proposal (required)

In its Guaranteed Maximum Price proposal, the CMAR provides the maximum dollar amount the County will be required to pay for the project. The CMAR takes on certain contractually identified risks that the project will cost more than this amount. This can be an important risk-shifting mechanism for the County. The GMP may, in rare circumstances, be provided at the time of the contract but more often will be provided after a certain amount of design development has been completed.

4.2.5.4 Design and Technical Reference Documents (not required by law, but recommended)

The design and technical reference documents set forth the design concepts and intent, scope of the work, requirements, and responsibilities for the project. It is recommended that these documents are included so that their terms are binding.

4.2.5.5 Personal Property Tax Affidavit (O.R.C. § 5719.042) (required)

Under R.C. 5719.042, after the award of any contract let by competitive bid and prior to the time the contract is entered into, the bidder shall submit to the County's fiscal officer a statement affirmed under oath that the bidder was not charged, at the time the bid was submitted, with any delinquent personal property taxes on the general tax list of personal property of any county in the State of Ohio or that the bidder was charged with delinquent personal property taxes on any such tax list, in which case the statement shall also set forth the amount of such due and unpaid delinquent taxes and any due and unpaid penalties and interest thereon. If the statement indicates that the taxpayer was charged with any such taxes, a copy of the statement shall be transmitted by the fiscal officer to the county treasurer within thirty days of the date it is submitted.

4.2.5.6 Subcontractors – Suppliers Waiver and Release Affidavit (not required by law, but recommended)

All contractors, subcontractors, sub-subcontractors and suppliers performing work on the project sign this affidavit, releasing any and all claims against the County, except for any claims properly and timely submitted using a Statement of Claim Form. This is a typical construction document that helps shift risk away from the County and assists the County in making sure that such entities are being paid timely and properly. It is recommended that this document is included in the Contract Documents.

4.2.5.7 Tax Exempt Certificate (required)

The County is a political subdivision of the State of Ohio and is exempt from taxation under the Ohio Sales Tax and Use Tax Laws. Building materials that are purchased by the contractor for incorporation into the project will be exempt from State sales and use taxes if the contractor provides a properly completed Ohio Department of Taxation Construction Contract

Exemption Certificate to the vendors or suppliers when the materials are acquired. The County provides this Certificate to the CMAR who provides it to subcontractors.

4.2.5.8 CMAR Application for Payment (not required by law, but recommended)

It is recommended and typical that the County includes an Application for Payment. By drafting the Application for Payment and including it in the Contract Documents, the County is able to control what information and documentation the CMAR must provide with each payment application.

4.2.5.9 Payment Application Checklist (not required by law, but recommended)

This document will identify all documents that must be provided with each payment application.

4.2.5.10 CMAR Affidavit with List of Subcontractors and Suppliers (optional, not required by law, but recommended)

In this document, the CMAR swears under oath that all previous progress payments received on account of the work have been applied to the CMAR's legitimate obligations associated with prior Applications for Payment, that the CMAR has submitted Subcontractor(s) – Supplier(s) Waiver and Release Agreements for each of its subcontractors and suppliers using the form set forth in the Contract Documents or as requested by the County, and provides a complete list of its contractors, subcontractors, and suppliers along with complete description of all amounts withheld from any subcontractor or supplier and the reason why. This is a document that helps shift risk away from the County and also allows the County to gain valuable information about issues with the project.

4.2.5.11 CMAR Waiver and Release Agreement (not required by law, but recommended)

In this document, the CMAR, under oath, acknowledges receipt of payment for all work on the project through the date of the prior Application for Payment and covers claims by all contractors, subcontractors, and suppliers etc. The CMAR also agrees to indemnify the County from such claims. This is an important risk-shifting document for the County and it is recommended that this document is included in the Contract Documents.

4.2.5.12 CMAR Final Waiver and Release Agreement (not required by law, but recommended)

Pursuant to its receipt of final payment, the CMAR, under oath, releases any rights it has or may have to any and all types of claims relating to the project (except for those claims properly and timely submitted using a Statement of Claim Form) and certifies that this affidavit covers claims by all contractors, subcontractors, and suppliers etc. The CMAR also agrees to

indemnify the County from such claims. This is an important risk-shifting document for the County and it is recommended that this document is included in the Contract Documents.

4.2.5.13 Wage Rate Requirements (required)

O.R.C. Chapter 4115 requires that County projects comply with Ohio prevailing wage law. R.C. 4115.06 states that in all cases where any public authority fixes a prevailing rate of wages under Section 4115.04 of the Revised Code, and the work is done by contract, the contract executed between the public authority and the successful bidder shall contain a provision requiring the successful bidder and all his subcontractors to pay a rate of wages which shall not be less than the rate of wages so fixed. The bid documents shall include the current prevailing wage rates for the location of the project. For “construction” projects as defined in Section 4115.03 of the Ohio Revised Code, the successful contractor and all of its subcontractors, regardless of tier, must strictly comply with the obligation to pay a rate of wages on the construction project not less than the rate of wages fixed for the construction project under Section 4115.04 of the Ohio Revised Code. Additionally, for such “construction” projects, the successful contractor will comply with all other provisions of Chapter 4115 of the Ohio Revised Code. If federal funding is involved, federal prevailing wage or Davis-Bacon requirements may apply. The County should work with legal counsel to determine which prevailing wage requirements apply.

Under R.C. 4115.071, the County shall, no later than ten days before the first payment of wages is payable to any employee of any contractor or subcontractor, designate and appoint one of its own employees to serve as the prevailing wage coordinator during the life of the contract. The duties of the coordinator shall include:

- (1) Setting up and maintaining, available for public inspection including inspection by interested parties or affected employees, files of payroll reports and affidavits submitted by contractors and subcontractors pursuant to Sections 4115.03 to 4115.16 of the Revised Code;
- (2) Ascertaining from each contractor or subcontractor, at the beginning of performance under the contract, the dates during its life when payments of wages to employees are to be made;
- (3) Receiving from each contractor or subcontractor, a copy of the contractor's or subcontractor's complete payroll for each date exhibiting for each employee paid any wages, the employee's name, current address, social security number, number of hours worked each day during the pay period and the total for each week, the employee's hourly rate of pay, the employee's job classification, fringe payments, and deductions from the employee's wages;
- (4) Establishing and following procedures to monitor the compliance by each contractor and subcontractor with the requirement imposed by this Section for timely filing of copies of payroll records;

- (5) Receiving from each contractor or subcontractor upon completion of the public improvement and prior to final payment therefor the affidavit required by Section 4115.07 of the Revised Code;
- (6) Reporting any delinquency in the filing of the certified copy of the payroll and the affidavit to the Board of Commissioners and the director of commerce.

The prevailing wage coordinator must register the project and wage determinations for the project by going to <http://com.ohio.gov/dico/default.aspx>.

Information relating to Federal Davis Bacon prevailing wage rates and wage determinations is available here: <http://www.dol.gov/compliance/guide/dbra.htm>.

4.2.5.14 Contract and General Conditions (not statutorily required but necessary)

The County should also include a contract and general conditions of the contract with the RFP. These documents will include the majority of the terms of the contract, including the time for completion, contract amount, change order process, and claims process. It is not recommended that the County use a standard unmodified contract or general conditions such as the AIA documents or the EJCDC documents. The County should consider working with construction counsel to develop documents that are customized for the County and the specific project.

4.2.6 Evaluation of Proposals, Ranking, Determination of Best Value

The County may meet with firms prior to submission of such proposals in pre-proposal submission meetings. (OAC 153:1-6-01).

Best value in the context of CMAR is determined based on pricing and technical criteria. The committee shall evaluate the technical proposals separately from pricing proposals and then combine the evaluations to reach a final evaluation. (OAC 153:1-6-01(E)(2)).

Under OAC 153:1-6-01(D)(1), the pricing criteria used in the evaluation must include pricing for the following:

- Pre-construction fee;
- Construction fee;
- At-risk fee;
- General conditions;
- Contingency; and

- Guaranteed Maximum Price proposal, if applicable at the time proposals are requested.

Under OAC 153:1-6-01(D)(2), the technical criteria considered in the evaluation may include the following:

- Schedule;
- Approach to the work, including any anticipated self-performed work;
- Work sequencing;
- Performance history;
- Approaches to performance specifications when used;
- Plan for anticipated procurement difficulties;
- Plan for meeting any goals set as part of any diversity and inclusion program required by the County or by applicable law; and
- Plan for additional considerations which may include technical design, technical approach, quality of proposed personnel and management plan.

The County has the option of seeking a Guaranteed Maximum Price proposal from the short-listed firms as a part of the pricing criteria. If the County seeks a Guaranteed Maximum Price, it must define the Guaranteed Maximum Price proposal requirements. The Guaranteed Maximum Price may include the total cost of the work, allowances, unit prices, assumptions and clarifications, project schedule and the scope of work for any work the short-listed firm wishes to self-perform. (OAC 153:1-6-01(F)).

After the short-listed firms submit their pricing proposal,⁹ technical proposal,¹⁰ and if applicable, Guaranteed Maximum Price proposal (in a sealed envelope), the Evaluation Committee will interview¹¹ each of the short-listed firms. (OAC 153:1-6-01(E)). The Evaluation Committee will then:

- (1) Evaluate and score the technical proposals utilizing the technical criteria established by the County (OAC 153:1-6-01);
- (2) Evaluate and score the pricing proposals utilizing the pricing criteria established by the County (OAC 153:1-6-01); and

⁹ Note that the pricing proposal must include a list of key personnel for the project; a statement of the general conditions and contingency; and a fee proposal that includes the pricing criteria set forth in the rule. (OAC 153:1-6-01).

¹⁰ Note that the technical proposal must include a project-specific plan; identify the proposed team; a project-specific approach to deliver the services; and technical criteria components as set forth in the rule. (OAC 153:1-6-01).

¹¹ Note that the interview is not scored or included in the scoring of the proposals. (OAC 153:1-6-01(E)(1)).

- (3) If applicable, after the scoring of the technical and pricing proposals, open the GMP proposals and conduct a comparative analysis of, and normalize, the GMP proposals (the Evaluation Committee has the option of consulting with the Design Professional for the project, or the non-voting members of the committee, in performing this analysis) and consider the GMP proposal with the technical proposal score given by the Evaluation Committee. (OAC 153:1-6-01(F)).

In its evaluation of the proposals, if the County finds a major discrepancy or irregularity in a pricing proposal, the County shall notify the affected firm in writing and require a written response from the firm no later than the date of the firm's interview. (OAC 153:1-6-01(E)(1)). After the interviews and scoring, the public authority will open the short-listed firms' Guaranteed Maximum Price proposals and conduct comparative analysis of all proposals—utilizing the assistance of the project's Design Professional or other independent advisors if necessary. (OAC 153:1-6-01(F)).

The Evaluation Committee then ranks short-listed firms based on the Evaluation Committee's technical and pricing proposal scores, announces the firm determined to be the best value, and enters into negotiations with the firm determined to provide the best value. (OAC 153:1-6-01(F)).

If for any reason, the highest-ranked CMAR and the County are unable to conclude this negotiation and execute the contract, the County may suspend negotiations, in writing, with the highest-ranked CMAR and initiate negotiations, in writing, with the next highest-ranked CMAR, and so on until the contract is awarded or the procurement is terminated. If the County is unable to finalize a contract with any of its ranked CMARs, it may select and rank additional firms and the negotiations may continue. The County may also accept or reject any or all proposals in whole or in part. (O.R.C. 9.334). At the conclusion of successful negotiations, the CMAR and the County will execute the Owner-Construction Manager at-Risk Agreement. Note that documents used throughout the selection process are not public records until a final selection has been made. (OAC 153:1-6-01(G)).

The Revised Code does place some restrictions on the use of CMARs. First, CMARs may self-perform work but only after first seeking authority from the County. Also, in order to self-perform work, the CMAR must submit a signed and sealed bid for the portion of work it is self-performing prior to receiving and opening bids for the same work.

4.2.7 Execution of the Contract

4.2.7.1 Certification of Fiscal Officer

Under O.R.C. 5705.41, a contract is void unless it includes a certificate of available funds by the County fiscal officer.

4.2.7.2 Certification of Prosecuting Attorney as to Form

Under O.R.C. 153.44, “[b]efore work is done or material furnished, all contracts that exceed one thousand dollars in amount shall be submitted by the board of county commissioners to the prosecuting attorney of the county. If found by him to be in accordance with Sections 153.01 to 153.60, inclusive, of the Revised Code, and his certificate to that effect is indorsed thereon, such contracts shall have full effect, otherwise they shall be void.”

4.2.7.3 Execution of the Contract

It is recommended that the County send the contract to the Construction Manager at-Risk to sign before the County signs the contract.

4.3 Pre-Qualification of Subcontractors

All subcontractors must be pre-qualified based on criteria established by the CMAR and approved by the County.

The rules require a CMAR to adopt criteria for evaluating prospective subcontractors for performing trade contracts—where trade contract is defined as “an agreement to perform any part of the work on the project under a direct contract with a construction manager at-risk or design-build firm.” OAC 153:1-7-01(A)(4). Those criteria must:

- include the experience of the bidder, the bidder’s financial condition, conduct and performance on previous contracts, facilities, management skills, and ability to execute the contract properly;
- further any goals set as part of a diversity and inclusion program required by the public authority or by applicable law;
- require prospective bidders to affirmatively state that they have not violated any affirmative action program during the last five years preceding the date of the prequalification application. For public improvement projects governed by Section 9.47 of the Revised Code, a prospective bidder may meet this requirement by submitting a valid certificate of compliance; and
- require a prospective bidder to submit proof of current licenses to perform the work as required by a public authority or by applicable law.

The County may include additional criteria for trade contracts and the County has discretion to approve or disapprove of any of the above referenced criteria. Furthermore, if the CMAR wishes to self-perform work, it must meet the above referenced criteria.

4.4 Contracts: Prescribed Contract and Subcontract Forms

The County will hold a Design Services Agreement and an Owner-Construction Manager at-Risk Agreement.

For the Owner-CMAR Agreement, the rules permit the use of various forms of Contract Documents, including Contract Documents published and licensed by the American Institute of Architects, Contract Documents published and licensed by ConsensusDOCS, LLC, and Contract Documents published and licensed by the Construction Management Association of America. In addition, the rules permit the use of contract forms developed by the Office of the State Architect Department of Administrative Services. Again, none of these forms are perfectly suited to the County without modification and legal counsel should prepare or review the contracts. (OAC 153:1-2-01).

As with a general contractor, any contractor acting in the capacity of a CMAR is required to use the State subcontract form when entering into any subcontract. (OAC 153:1-3-02). The form may be modified as long as the modified form does not conflict with any of the requirements set forth in the rules. The subcontractor has no contractual rights against the County unless the County takes an assignment of the subcontract. If a contractor fails to use the State subcontract form, the subcontract form rule provides that the contractor and subcontractor must still comply with all the requirements of the rules. The rule provides for flow-down provisions in that the contractor and subcontractor are to mutually assume towards each other the rights, remedies, obligations, and responsibilities of the other. In other words, the subcontractor has the same rights, remedies, obligations, and responsibilities between it and the contractor as the contractor has with the County. (OAC 153:1-3-02). And consequently, the contractor assumes the same rights, remedies, obligations, and responsibilities towards the subcontractor as the County assumes towards the contractor.

The subcontract form must contain a contingent assignment clause that provides the County with the option to take an assignment of the subcontract upon termination of the contractor's contract and written notice to the subcontractor. In addition, the rules require that the subcontract form contain an intended third-party beneficiary provision, which makes the County an intended third-party beneficiary of the subcontract. Where the County is an intended third-party beneficiary, it is entitled to enforce the contract against the contractor or subcontractor. (OAC 153:1-3-02).

The current version of the subcontract form is available at: <http://das.ohio.gov/Divisions/GeneralServices/StateArchitectsOffice/ListofStandardRequirementsDocuments.aspx#Misc>.

4.5 Required Form of Bond

Under OAC 153:1-4-02, before the CMAR signs the contract with the public authority, it needs to provide separate performance and payment bonds to cover 100% of the contract sum. At all times during the project, the surety bonds must cover 100% of the contract value. This is important when the contract sum increases during the project as a result of receipt of GMPs or change orders. If the Construction Manager at-Risk or the Design-Build firm does not cause the surety to provide written consent to such an increase in the bond, the public authority is relieved from the obligation to pay the CMAR for work performed as a part of the increase in the contract sum.

In a situation where the surety enters bankruptcy, liquidates assets or makes a general assignment for the benefit of its creditors, is placed in receivership, petitions the state or federal government for protection from its creditors, or allows its license to do business in Ohio to lapse or be revoked, the CMAR must provide a replacement bond within twenty-one days. Where the CMAR fails to provide such a replacement bond, the public authority is relieved from paying anything to the CMAR.

The surety bond rule requires that the CMAR firm use the State's standard bond forms. Those forms are currently the 2012 edition of "Document 00 61 13.13 – Performance Bond Form" and "Document 00 61 13.16 – Payment Bond Form," which can be found at:

<http://das.ohio.gov/Divisions/GeneralServices/StateArchitectsOffice/ListofStandardsRequirementsDocuments.aspx#misc>

When compared to the form of bond required by O.R.C. 153.54 and used for other project delivery methods on public projects, the bond required for a CMAR is a similar broad form of indemnity bond, which is more Owner friendly than other bond forms such as those published by the AIA.

4.6 Advantages and Disadvantages of CMAR

A Construction Manager at-Risk differs from a CM as Agent because the CMAR actually performs the construction, holds and enforces the contracts, and provides the Guaranteed Maximum Price ("GMP") for the project, this is the "risk" the CMAR undertakes. Therefore, utilizing a CMAR shifts a considerable amount of risk away from the County.

In addition, Construction Managers at-Risk differ from general contractors in that Construction Managers at-Risk typically provide pre-construction services. As the project design progresses, Construction Managers at-Risk provide schedules and estimated construction costs, advise on constructability and value engineering, and provide a GMP for construction costs when the design is sufficiently complete. Construction Managers at-Risk contract with subcontractors to perform the work.

The benefits and risk shifting attributes of CMAR are similar to the general contracting delivery model: a reduced chance of gaps in each contractors' scope of work; risks associated with project coordination are shifted away from the County to one entity; and in the event of defective work and a dispute between contractors, it is the CMAR, not the County, that resolves the dispute. The difference and benefit is that hiring a Construction Manager at-Risk during design will allow for troubleshooting of possible design issues early in the life of the project when it is less expensive to correct such defects. Having a Construction Manager at-Risk on board during the course of design may also serve as a cost containment measure. If the CMAR observes the estimated cost of the project getting too high during the design process, the design can be adjusted to address this issue.

5 Design Professional Procurement

Under O.R.C. 307.86, competitive bidding is not required for procuring the “services of an accountant, architect, attorney at law, physician, professional engineer, construction project manager, consultant, surveyor, or appraiser.”

5.1 Outline of Design Professional Procurement

The County has two options for procurement of a Design Professional.

5.1.1 Design Professional Qualifications File

Where the design services are less than Fifty Thousand Dollars and the County has at least three qualifications on file, the County may select the best qualified of the Design Professionals with current qualifications on file.

5.1.2 Qualifications Based Selection Process (QBS)

- (1) Evaluation Committee for Procurement of Design Professional established by the County Commissioners
- (2) Prepare the RFQ
- (3) Prepare the Design Professional Agreement
- (4) Prepare public notice and publish a reasonable time before deadline to submit qualifications (two weeks is typically reasonable per the statutory requirement)
- (5) Receive the Statements of Qualifications
- (6) Evaluation Committee reviews Statements of Qualifications (SOQs) and ranks at least the top three (unless less than three SOQs submitted)
- (7) County enters into negotiations with top-ranked Design Professional
- (8) Execution of contract

5.2 Design Professional Qualifications File

The selection of a Design Professional is a form of procurement that does not require competitive bidding. In most instances, the County must implement the Qualifications Based Selection (“QBS”) Process under O.R.C. 153.65-153.69 to select its Design Professional. This Qualification Based Selection Process is required regardless of the cost of the project, unless the County maintains a file with current (no more than one year old) qualifications from Design Professionals, AND the services will cost less than Fifty Thousand Dollars, AND the Design Professional complies with O.R.C. 153.69(B) with respect to the negotiation of the agreement. It is recommended that the County have a minimum of three qualifications on file that it will be considering for procurement of any such Design Professional. Where such requirements are met, the Public Owner may select from its file, Design Professionals that have submitted a current

Statement of Qualifications within the immediately preceding year, rather than implementing the QBS Process. (O.R.C. 153.71). This process may be utilized for procurement of engineers as well as architects. The County should consult with legal counsel to determine whether the necessary requirements are met.

5.3 Qualifications-Based Selection of Design Firm

If the County is not selecting a Design Professional from its file, for the QBS Process, it must prepare and issue a public announcement for professional design services. The recommended way to meet the statutory public notice requirement is by placing a brief notice in the newspaper to announce the available contract. In addition, notice may be published on the County's website, the State public bidding website, and on the newspaper's website (if it maintains a website). The public notice should provide a brief description of the project for which design services are needed, the deadline for interested design firms to submit qualifications and information, and a contact person who will provide the County's Request for Qualifications ("RFQ") to interested design firms. (O.R.C. 153.67). Legal counsel can assist the County in preparing such notice. Note that the statute does not require a particular time period for the public notice. (O.R.C. 153.67). A two-week period should be sufficient under most circumstances.

After providing the public notice, the County may then send its RFQ to particular design firms that it would like to submit qualifications and to firms that request information based upon the public notice. This RFQ should describe the available contract and qualifications to be considered by the County; it also identifies a contact person at the County, describes the submittal process, and includes other information that can be helpful to a professional in assembling a proposal and qualifications (such as a facility assessment or other summary of identified needs, if one has been prepared). Note that the Ohio Revised Code prohibits asking for any fee information as part of the Qualification Based Selection Process before one firm has been determined to be most qualified. (O.R.C. 153.691). The RFQ should also include the Design Services Agreement and other project information. It is necessary to modify any standard form contract including AIA and State contracts. Legal counsel familiar with such agreements should be consulted to review and modify the Design Services Agreement and can assist with the creation of the RFQ.

The County must evaluate the Statements of Qualifications ("SOQ") that are submitted and develop a short list of the most qualified firms. (O.R.C. 153.69). The County may interview the individual firms to further discuss the firm's SOQ. The County must then select and rank at least three firms that it considers to be most qualified. If fewer than three qualified firms are available, the County must make this determination in writing and rank the top available firms. (O.R.C. 153.69). If firms are ranked as equally qualified, fee proposals from these firms can be considered to break the tie. *See 1998 Ohio Op. Atty Gen. No. 27, Ohio Ass'n of Consulting Eng'rs v. Voinovich*, 83 Ohio App. 3d 601 (Ohio Ct. App., Franklin County 1992).

The County then enters into contract negotiations with the top-ranked firm. In an effort to break away from the low-bid mentality of the past, O.R.C. 153.69 requires that the contract be

“at a compensation determined in writing to be fair and reasonable” to the County with negotiations focusing on: 1) a mutual understanding of the essential requirements for design services for the project; 2) whether the necessary personnel, equipment, and facilities will be available; and 3) fair and reasonable compensation based upon the estimated value, scope, complexity, and nature of the design services. If for any reason, the highest-ranked firm and the County are unable to conclude this negotiation and execute the contract, the County may suspend negotiations, in writing, with the highest-ranked firm and initiate negotiations, in writing, with the next highest-ranked firm, and so on until the contract is awarded or the procurement is terminated. If the County is unable to finalize a contract with any of its ranked firms, it may select and rank additional firms and the negotiations may continue. The County may also accept or reject any or all proposals in whole or in part. (O.R.C. 153.69). At the conclusion of successful negotiations, the Design Professional and the County will execute the Design Services Agreement.

6 Construction Manager as Agent

O.R.C. 9.33 defines “Construction Manager” as “a person with substantial discretion and authority to plan, coordinate, manage, and direct all phases of a project for the construction, demolition, alteration, repair, or reconstruction of any public building, structure, or other improvement, but does not mean the person who provides the professional design services or who actually performs the construction, demolition, alteration, repair, or reconstruction work on the project.” A Construction Manager (“CM”) as Agent or advisor is typically hired to manage a multiple prime or single prime project. (However, if used on a single prime project, the CM as Agent’s duties should be very limited because the general contractor takes on many management duties—utilizing an Owner’s Representative rather than a CM as Agent may be a better alternative for a single prime project.)

6.1.1 Advantages and Disadvantages of CM as Agent

While a Construction Manager at-Risk actually performs the construction, holds and enforces the contracts, and provides the GMP for the project, a CM as Agent does not take on these “risks.” A CM as Agent does not hold any of the contracts for construction, does not have the ability to directly enforce any contracts, and does not guarantee the cost of the work. Therefore a CM as Agent undertakes considerably less risk. Because using a CM as Agent does not shift much risk away from the County, it is not recommended that the County use the CM as Agent delivery method.

6.1.2 Qualifications Based Selection Process (QBS)

- (1) Evaluation committee for procurement of CM established by the County Commissioners
- (2) Prepare the RFP
- (3) Prepare the CM Agreement

- (4) Prepare public notice and publish 30 days before the deadline to submit proposals
- (5) Receive proposals
- (6) Interview CMs who submitted proposals – optional
- (7) Evaluation Committee reviews proposals and ranks at least the top three (unless less than three proposals submitted)
- (8) County enters into negotiations with top-ranked CM
- (9) Execution of contract

6.1.3 Procurement Process for CM as Agent

6.1.3.1 Public Notice

The recommended way to meet the statutory public notice requirement is by placing a brief notice in a newspaper in the county where the contract is being performed, to announce the available contract. (O.R.C. 9.331). Legal counsel can assist the County in creating this public notice which should invite interested parties to submit proposals for consideration, provide a general description of the project, include a statement of the specific management services required, and a description of the qualifications required for the project. The notice must be published at least thirty days prior to the deadline for submitting the proposals. (O.R.C. 9.331).

6.1.3.2 Electronic Advertising Rule

The County may also publish its public notice electronically pursuant to the electronic advertising rule. The electronic advertising rule applies only to projects using a Construction Manager or a Construction Manager at-Risk. (OAC 153:1-5-01). Under this rule, the County has three electronic options.

One option is to place an advertisement on the website of the newspaper of general circulation in the county where the contract will be performed. (OAC 153:1-5-01).

Another option is to place an advertisement on the State public notification website developed by the Ohio Department of Administrative Services, Office of Information Technology. The website is available at <http://publicnotice.ohio.gov/default.aspx>. Users of the website will be required to register with the Ohio Business Gateway and establish an online account to use the State public notice website. (OAC 153:1-5-01).

The final electronic way a public authority can advertise its construction project is to place an advertisement on its own official website or websites of appropriate trade associations. (OAC 153:1-5-01).

The County does not have to provide all information in the advertisement. The advertisement can simply direct interested Construction Managers to a full description of the project and provide information to submit a proposal.

6.1.3.3 Evaluation of Proposals

The County must evaluate the proposals that are submitted and may interview the individual firms to further discuss the firm's proposal. (O.R.C. 9.332). The County must then select and rank at least three CMs that it considers to be most qualified. O.R.C. 9.33(E) defines "qualified" to include:

- Competence to perform the required management services as indicated by the technical training, education, and experience of the Construction Manager's personnel, especially the technical training, education, and experience of the Construction Manager's employees who would be assigned to perform the services;
- Ability in terms of workload and the availability of qualified personnel, equipment, and facilities to perform the required management services competently and expeditiously;
- Past performance as reflected by the evaluations of previous clients with respect to factors such as control of costs, quality of work, and meeting of deadlines;
- 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 public authority; and
- Other similar factors.

If fewer than three qualified CMs are available, the County must make this determination in writing and rank the top available CMs. (O.R.C. 9.332).

The County then enters into contract negotiations with the top-ranked CM. In an effort to break away from the low-bid mentality of the past, O.R.C. 9.332 requires that the contract be "at a compensation determined in writing to be fair and reasonable" to the County with negotiations focusing on: 1) a mutual understanding of the essential requirements for the management services for the project; 2) whether the necessary personnel, equipment, and facilities will be available; and 3) fair and reasonable compensation based upon the estimated value, scope, complexity, and nature of the construction management services. If for any reason, the highest-ranked CM and the County are unable to conclude this negotiation and execute the contract, the County may suspend negotiations, in writing, with the highest-ranked CM and initiate negotiations, in writing, with the next highest-ranked CM, and so on until the contract is awarded or the procurement is terminated. If the County is unable to finalize a contract with any of its ranked CMs, it may select and rank additional firms and the negotiations may continue. The County may also accept or reject any or all proposals in whole or in part. (O.R.C. 9.332). At the conclusion of successful negotiations, the CM and the County will execute the Owner-Construction Manager as Agent Agreement.

6.1.3.4 Contract

If using a CM as Agent, the County would enter into an Owner-Construction Manager as Agent Agreement. Again, the County should not use an agreement without review and modification by legal counsel.

7 Procurement that does Not Require Competitive Bidding

7.1 Special Consideration – Purchases Costing \$1,000 to \$49,999

For both construction procurement and non-construction procurement—such as equipment and supplies—although not required by Ohio statute, it is the County’s policy to receive and compare three price quotes for all purchases costing One Thousand Dollars to Forty-Nine Thousand Nine Hundred Ninety-Nine Dollars. When the Board of County Commissioners finds it necessary to make such a purchase, it should prepare a Request for Proposals (“RFP”). Ideally, the RFP should describe the details of the scope of work, the deadline to submit proposals, criteria, and/or specifications, warranty requirements, bond requirements, if any, delivery time, project time, and attaching Contract Documents preferably prepared by legal counsel. Including such information and documents with the RFP allows all vendors to create precise proposals and facilitates the County’s ability to do an “apples-to-apples” comparison when reviewing all proposals. The Board of County Commissioners may authorize the RFP to be issued, including any of the aforementioned documents. The County then should distribute the RFP to vendors that it wishes to submit a proposal.

If a County contract is not being used, and a vendor has included its own terms and conditions in its proposal, the County should consider requesting that its legal counsel review such terms and conditions prior to awarding the contract. After reviewing received proposals, the Board of County Commissioners should award the contract to its selected vendor and authorize the execution of the contract. Legal counsel may assist with finalizing the Contract Documents and creating the Board resolution.

7.2 Construction and Non-Construction Procurement that Does Not Require Competitive Bidding

Even in circumstances where a procurement matter fits one of the exceptions to competitive bidding as described throughout this Manual, for both construction procurement and non-construction procurement, such as equipment and supplies, the County should consult with legal counsel to review any agreement or terms and conditions as most standard agreements or vendor agreements will require modification. These vendor agreements often include provisions that are very one-sided and include little, if any, protections for the purchaser.

7.3 Personal Services

Under O.R.C. 307.86, competitive bidding is not required for procuring the "services of an accountant, architect, attorney at law, physician, professional engineer, construction project manager, consultant, surveyor, or appraiser."

7.3.1 Design Professional

The statutory requirements for procurement of a Design Professional are discussed in Section 5 of this Manual.

7.3.2 Attorney

Under O.R.C. 305.14(B) and O.R.C. 309.09, when the Board of County Commissioners finds it advisable or necessary to have legal counsel in addition to the County Prosecutor, either for a particular matter or on an annual basis, it may hire such legal counsel to represent it in any matter of public business coming before the Board, and in the prosecution or defense of any action or proceeding in which the Board is a party or has an interest, in its official capacity. Such legal counsel must be hired pursuant to an order of the Board of County Commissioners, and recorded in its journal along with the compensation to be paid for the legal services. Pursuant to O.R.C. 309.09(C), the total compensation paid to such legal counsel, in any year, shall not exceed the total annual compensation of the prosecuting attorney for the County unless authorization by the court of common pleas is obtained in accordance with O.R.C. 305.14 which requires an application to the court of common pleas be made by the prosecuting attorney and the Board of County Commissioners.

7.4 State Term Contracts/Cooperative Purchasing

Ohio's Cooperative Purchasing Program offers Ohio counties and other public entities the benefits and costs savings of buying goods and services through State contracts without formal bidding.

Under O.R.C. 307.86, competitive bidding is not required when the County meets the eligibility requirements and participates in purchase contracts which the Ohio Department of Administrative Services has entered into for the purchase of supplies and services, under O.R.C. 125.04.

The Ohio Department of Administrative Services ("ODAS") has authority under O.R.C. 125.02 to purchase supplies and services for the use of State agencies and political subdivisions. The County can purchase these supplies and services without itself engaging in competitive bidding as such contracts are "exempt from any competitive selection procedures otherwise required by law." (O.R.C. 125.04). This is distinct from joint purchasing contracts under O.R.C. 9.48, discussed in Section 7.5, which are exempt from competitive selection requirements only if such contracts were "awarded pursuant to a publicly solicited request for a proposal or a competitive selection procedure." Note, however, that if the County has already taken bids for a

purchase, the County can only opt to use State Term Contracts for such purchase where the terms, conditions, and specifications remain the same but the price is lower. (O.R.C. 125.04(3)).

Under O.R.C. 125.04(B)(2), the County is eligible to participate in the purchase of supplies through ODAS. Generally, to participate, the County must provide to ODAS: 1) a County ordinance authorizing participation; 2) an enrollment form; 3) an annual administrative fee; and 4) quarterly usage reports. The full details of these requirements are below.

Under O.R.C. 125.04(B)(2), the County Commissioners must pass an ordinance authorizing the County to participate in such contracts and agreeing that the County will be bound by such terms and conditions as ODAS prescribes and that it will directly pay the vendor under each purchase contract. The County must then file a certified copy of this ordinance with ODAS. Legal counsel can assist with the preparation and filing of this ordinance.

The County must also register with ODAS and pay an annual administrative fee. An online enrollment form is available here:

<http://das.ohio.gov/LinkClick.aspx?fileticket=2vGMCbHV3mw%3d&tabid=304>; and fee information is available on the ODAS website: <http://das.ohio.gov/Divisions/GeneralServices/ProcurementServices/CooperativePurchasing.aspx>

Following the authorization by ordinance, enrollment, and fee payment, the County is eligible to participate in State Term/Cooperative Purchasing Contracts. A group leader from the Cooperative Purchasing Unit at ODAS will contact the County to provide a listing of all available contracts, information regarding how the process works, and will be available to guide the County step-by-step through the State Cooperative Purchasing procurement process.

The County must also provide a quarterly usage report to ODAS, listing the State Term Contracts the County participated in. The quarterly usage report form is available here: <http://apps.das.ohio.gov/coopmap/coopusagerptform.aspx>.

A searchable database of the available Cooperative Purchasing Agreements can be found here: <https://procure.ohio.gov/proc/searchCurContracts.asp?type=Coop&sort=1&printopt=2>.

Additional information is available on the ODAS website: <http://das.ohio.gov/Divisions/GeneralServices/ProcurementServices/CooperativePurchasing.aspx>

The competitive purchasing process established by the legislature through the use of State Term Contracts only applies to those items and vendors listed on the State Term Contracts. Any purchase off the State Term Contracts would still need to be made in compliance with all laws or regulations which apply to any purchase made by the County. It should be noted that if the County purchases supplies or services that are included in the ODAS purchase contract along with supplies and services that are not, the typical acquisition process for the supplies and services that are not included in the ODAS purchase contract must be followed.

Under O.R.C. 125.04(C), the County may also purchase supplies or services from another party, including a political subdivision, instead of through participation in State Term Contracts of this Section if the County can purchase those supplies or services from the other party upon equivalent terms, conditions, and specifications but at a lower price than it can through State Term Contracts. Such purchases are also exempt from any competitive selection procedures otherwise required by law. The County must maintain sufficient information regarding such purchases to verify that the County satisfied the conditions for making a purchase under O.R.C. 125.04(C).

7.4.1 Invitation to Bid (“ITB”)

Some State Term Contracts are procured using an Invitation to Bid or “ITB” process. ITB is a process used by the Ohio Department of Administrative Services (“ODAS”) to solicit Competitive Sealed Bids (CSBs) from vendors. These are generally used for commodity-oriented or price-sensitive purchases. A CSB is a competitive selection process that specifies terms and conditions and solicits sealed bids from vendors based on the criteria. Issuing an ITB to solicit Competitive Sealed Bids is the preferred procurement method utilized by ODAS. Sealed bids are opened publicly and contracts are awarded to the lowest responsive and responsible bidder. Price is the primary factor in awarding contracts for ITBs. ITB also refers to all documents used for soliciting CSBs.

7.4.2 State Term Schedule (“STS”)

The State Term Schedule (“STS”) is an alternative procurement method to purchase supplies and services, with contracts negotiated between the Ohio Department of Administrative Services (“ODAS”) and vendors, for use by all State agencies and political subdivisions. STS Contracts are negotiated directly with a manufacturer or service provider (the “vendor”) who must agree to terms and conditions prepared by ODAS. For an STS Contract, the vendor is required to provide the State with either the manufacturer’s Federal GSA pricing or its best commercial pricing. The vendor may name any number of authorized distributors who will provide the products or services on their behalf. All vendors and their named distributors must review training materials to be eligible to receive an STS Contract.

As noted above, under O.R.C. 125.04, the County may participate in a State Term Contract such as an STS Contract, and such contracts are “exempt from any competitive selection procedures otherwise required by law.” There is no requirement that the STS Contract must have been the result of an ITB. This is distinct from joint purchasing contracts with another political subdivision or an association of political subdivisions under O.R.C. 9.48(B)(1)-(B)(2), which are exempt from competitive selection requirements only if such contracts were “awarded pursuant to a publicly solicited request for a proposal or a competitive selection procedure.”

7.4.3 Special Considerations when Entering into State Term Contracts

When entering into State Term Contracts, the County should consult with legal counsel and be aware of the following unfavorable terms that it may encounter:

- Terms in the State Term Contract that prohibit the County from withholding payment if there are performance problems with the contractor/vendor.
- Terms in the State Term Contract that attempt to limit the liability of the contractor/vendor to an unreasonable degree (e.g., limit the liability to the amount of the fee)
- Terms in the State Term Contract that attempt to restrict the time for the County to pursue its remedies
- Terms in the State Term Contract that limit the nature of the remedies or the types of damages that the County can recover
- Warranties that have multiple exceptions and limitations
- Arbitration requirements (rather than litigation)
- Requirements that the County bring suit against the contractor/vendor in the contractor/vendor's home state and/or county
- Disclaimers of all kinds
- Provisions that might require the County to follow various State of Ohio statutory processes that do not ordinarily apply to counties
- Excessive interest rates for late payments

7.4.4 Cooperative Purchasing Services

7.4.4.1 ezIQC The Gordian Group

While Bricker & Eckler does not promote or endorse any cooperative purchasing website or service, in addition to the State's website, there are service providers that have a database of certain competitively bid contracts and will guide public entities through the process of procurement under such contracts. Through ezIQC, the County can participate in competitively bid contracts that have been awarded to contractors for on-call facility repair and alteration construction services. The County should contact ezIQC at www.eziQC.com where it provides contract and project information. A local representative then contacts the County to provide complete information about the process. The process typically includes a joint scope meeting to discuss the scope of the work with the contractor; preparation of a detailed scope of work and Request for Proposal which is sent to the contractor; a price proposal from the contractor with a construction schedule and list of proposed local subcontractors for the County's approval; issuing a purchase order; and the usual construction process but with pre-priced change orders.

7.5 Joint Purchasing Authority

Under O.R.C. 9.48, the County may participate in certain purchases jointly with other political subdivisions or government entities. Note that the County cannot acquire equipment, materials, supplies, or services by participating in a contract under O.R.C. 9.48 if it has received

bids for such acquisition, unless its participation enables it to make the acquisition upon the same terms, conditions, and specifications at a lower price.

The County may enter into a joint purchasing contract with another political subdivision, an association of political subdivisions, or the federal government. Joint purchasing contracts with another political subdivision or an association of political subdivisions under O.R.C. 9.48(B)(1)-(B)(2), are exempt from competitive selection requirements only if such contracts were “awarded pursuant to a publicly solicited request for a proposal or a competitive selection procedure.” This is distinct from both joint purchases with the federal government and State Term Contracts or Cooperative Purchasing Contracts under O.R.C. 125.04, which are exempt from any competitive selection procedures otherwise required by law.

7.5.1 Joint Purchase through National or State Associations of Political Subdivisions

Under O.R.C. 9.48(B)(2), the County may participate in a joint purchasing program operated by or through a national or state association of political subdivisions in which the purchasing political subdivision is eligible for membership. Such acquisition is exempt from any competitive selection requirements otherwise required by law, but only if the contract in which the County is participating was awarded pursuant to a publicly solicited request for a proposal or a competitive selection procedure of another political subdivision within this State or in another state. (O.R.C. 9.48(C)). This is distinct from State Term Contracts and Cooperative Purchasing Contracts, discussed in Section 7.4, which are exempt from any competitive selection procedures under O.R.C. 125.04.

Under O.R.C. 9.48(D), where the County is eligible to participate in a joint purchasing program operated by or through a national or state association of political subdivisions in which the purchasing political subdivision, it may purchase supplies or services from another party, including another political subdivision, instead of through participation in contracts authorized by O.R.C. 9.48(B)(2) (discussed in the paragraph above) if the County can purchase those supplies or services from the other party upon equivalent terms, conditions, and specifications but at a lower price than it can through those contracts. Such purchases are exempt from any competitive selection procedures otherwise required by law. The County must maintain sufficient information regarding the purchase to verify that it satisfied the conditions for making a purchase under this provision and should seek the advice of legal counsel to do so. Nothing in this provision restricts any action taken by a political subdivision as authorized by O.R.C. 9.48(B)(1) discussed below.

While Bricker & Eckler does not promote or endorse any joint purchasing program or service, the following are examples of joint purchasing programs operated by or through a national or state association.

7.5.1.1 Interlocal Purchasing System (“TIP/TAPS”)

TIPS/TAPS is available for use by all public and private schools, colleges, universities, cities, counties, and other government entities who become members. All awarded contracts through the TIPS/TAPS program have been awarded under the competitively bid process. To become a member of TIPS/TAPS, the County should pass a resolution, if required by County policies, then execute and submit the Interlocal Agreement provided on the TIPS/TAPS website. A sample resolution form is available here: <http://www.tips-usa.com/assets/documents/docs/Resolution.pdf>; and the Ohio Interlocal Agreement is available here: http://www.tips-usa.com/assets/documents/docs/Ohio_Interlocal_Agreement.pdf. Two signed originals of the Agreement and one resolution (if required) must be mailed, emailed, or faxed to TIPS/TAPS, as provided in the Agreement. Membership for entities such as the County is free.

As a member of TIPS/TAPS, the County will have access to the TIPS/TAPS database of vendors which are listed according to the particular commodity or service for which they have been awarded a TIPS/TAPS contract. The County contacts the awarded vendor or vendors and identifies itself as a TIPS/TAPS member in order to receive the special TIPS/TAPS pricing. After approval of a price quote, the County creates a purchase order in accordance with its policies, specific requirements on the vendor’s TIPS/TAPS page, and the Interlocal Agreement, including faxing the purchase order to the vendor and/or TIPS/TAPS.

7.5.1.2 National Association of Counties (“NACo”)

NACo's Online Supplier Directory is a member benefit enabling NACo members. Suppliers in this directory may offer their products and services nationally, regionally or locally. The County can search for vendors providing a wide range of products and services essential to governments, find green businesses, find competitive pricing, and then seek anonymously a Request for Information (RFI). An RFI will provide valuable information and data prior to purchasing or developing a possible RFP. The searchable directory is found here: <http://nacoonlinesupplierdirectory.com/>.

7.5.1.3 The Cooperative Purchasing Network (“TCPN”)

TCPN has a searchable database for contracts and services relating to facilities, furniture, office supplies and equipment, technology, security systems, other products, services, and energy. All TCPN contracts are awarded by the lead public agency, Region 4 Education Service Center, using a competitive solicitation process. The County may participate in TCPN free of charge, after registering online at <http://www.tcpn.org/Pages/SignUpDirector.aspx>.

7.5.2 Joint Purchase with the Federal Government

Under O.R.C. 9.48(B)(3), the County may participate in contract offerings from the federal government that are available to the County including, but not limited to, contract offerings from the general services administration and such acquisition is exempt from competitive bidding or selection processes. (O.R.C. 9.48(C)).

7.5.3 Joint Purchase with or from Other Political Subdivisions

Under O.R.C. 9.48(B)(1), the County may permit one or more other political subdivisions to participate in contracts into which it has entered for the acquisition of equipment, materials, supplies, or services, and may charge such participating political subdivisions a reasonable fee to cover any additional costs incurred as a result of their participation. Such acquisition is exempt from any competitive selection requirements otherwise required by law, if such contract was awarded pursuant to a publicly solicited Request for a Proposal or a competitive selection procedure of another political subdivision within this State or in another state. (O.R.C. 9.48(C)).

Therefore, under O.R.C. 9.48(B)(1), the County may participate in contracts competitively bid by other political subdivisions. And such acquisition is exempt from any competitive selection requirements otherwise required by law, if such contract was awarded pursuant to a publicly solicited request for a proposal or a competitive selection procedure of another political subdivision within this State or in another state. (O.R.C. 9.48(C)). Under these provisions, the County can make a purchase under the contract of a different political subdivision if the contract was competitively bid.

The County should consult legal counsel to review such a contract but generally, the following steps should be taken:

- (1) Confirm that the contract at issue was competitively bid;
- (2) Determine if the political subdivision holding the contract will charge a fee to the County for participation in the contract;
- (3) Board approval of a resolution to make the purchase under the other political subdivision's contract;
- (4) Certification of funds for the purchase;
- (5) Agreement with the other political subdivision to allow the County to participate in the contract;
- (6) Amendment to the contract with the manufacturer to incorporate the County into the contract under the same terms between the other political subdivision and the manufacturer, executed by all parties to the amended contract.

7.6 Reverse Internet Auctions

Under O.R.C. 9.314, "reverse auction" means "a purchasing process in which offerors submit proposals in competing to sell services or supplies in an open environment via the internet." Where the County is required by law to purchase services or supplies by competitive sealed bidding or competitive sealed proposals, a purchase made by reverse auction satisfies that requirement. (O.R.C. 9.314 (G)).

The “services” for procurement using a reverse auction are “the furnishing of labor, time, or effort by a person, not involving the delivery of a specific end product other than a report which, if provided, is merely incidental to the required performance” but does not include “services furnished pursuant to employment agreements or collective bargaining agreements.” (O.R.C. 9.314(A)(4)). The “supplies” for procurement using a reverse auction are “all property, including, but not limited to, equipment, materials, other tangible assets, and insurance, but excluding real property or interests in real property.” (O.R.C. 9.314(A)(5)). A reverse internet auction may not be used “if the contract concerns the design, construction, alteration, repair, reconstruction, or demolition of a building, highway, road, street, alley, drainage system, water system, waterworks, ditch, sewer, sewage disposal plant, or any other structure or works of any kind.” (O.R.C. 9.314(B)(2)).

Under O.R.C. 9.314, wherever the County determines that the use of a reverse auction is advantageous to the County, it may purchase services or supplies via reverse auction, pursuant to O.R.C. 9.314 and any rules it has adopted. The County may consult legal counsel in making this determination and documenting the process.

The County may adopt rules for procurement via reverse auction under O.R.C. 9.314 and those rules may require the provision of a performance bond, or another similar form of financial security, in the amount and in the form specified in the rules. (O.R.C. 9.314 (F)).

Pursuant to O.R.C. 9.314(C), the County must solicit proposals through a Request for Proposals that states the relative importance of price and other evaluation factors. Legal counsel should assist with the preparation of this RFP. The County must give notice of the Request for Proposals in accordance with the rules it adopts. After receiving proposals via the internet, the County may conduct discussions with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award. The County must give offerors fair and equal treatment with respect to any opportunity for discussion regarding any clarification, correction, or revision of their proposals. (O.R.C. 9.314 (D)).

Then, the County may award a contract to the offeror whose proposal the County determines to be the most advantageous to the County, taking into consideration factors such as price and the evaluation criteria set forth in the Request for Proposals. The contract file shall contain the basis on which the award is made. (O.R.C. 9.314 (E)).

7.7 Energy Conservation Measures

Under O.R.C. 307.041(C)(1)(b) and (2)(b), while the County *may* still use competitive bidding, competitive bidding is not required when the County implements energy conservation measures by requesting proposals from at least three vendors. Whether using competitive bidding or requesting proposals, the award of a contract under O.R.C. 307.041 must be conditioned upon a finding by the County that the amount of money spent on the energy conservation measures is not likely to exceed the amount of money the County would save in energy, operating, maintenance, and avoided capital costs over the average system life of the

energy conservation measures, as specified in the energy conservation report. Legal counsel should assist with this procedure.

Under O.R.C. 307.041(A), an “energy conservation measure” is “an installation or modification of an installation in, or remodeling of, an existing building, to reduce energy consumption.” This includes the following:

- (1) Insulation of the building structure and of systems within the building;
- (2) Storm windows and doors, multiglazed windows and doors, heat-absorbing or heat-reflective glazed and coated window and door systems, additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption;
- (3) Automatic energy control systems;
- (4) Heating, ventilating, or air conditioning system modifications or replacements;
- (5) Caulking and weatherstripping;
- (6) Replacement or modification of lighting fixtures to increase the energy efficiency of the system without increasing the overall illumination of a facility, unless such an increase in illumination is necessary to conform to the applicable state or local building code for the proposed lighting system;
- (7) Energy recovery systems;
- (8) Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings;
- (9) Acquiring, constructing, furnishing, equipping, improving the site of, and otherwise improving a central utility plant 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 central utility plant to the building or buildings; and
- (10) Any other modification, installation, or remodeling approved by the Board of County Commissioners as an energy conservation measure.

Under O.R.C. 307.041(B), in order to evaluate County buildings for such energy conservation measures, the County may contract with an architect, professional engineer, energy services company, contractor, or other person experienced in the design and implementation of

energy conservation measures for an energy conservation report. This energy conservation report must include all of the following:

- (1) Analyses of the buildings' energy needs and recommendations for building installations, modifications of existing installations, or building remodeling that would significantly reduce energy consumption in the buildings owned by the County;
- (2) Estimates of all costs of those installations, those modifications, or that remodeling, including costs 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 energy conservation measures that are to be financed;
- (5) The average system life of the energy conservation measures;
- (6) Estimates of the likely 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; and
- (7) A certification under the seal of a registered professional engineer that the energy conservation report uses reasonable methods of analysis and estimation.

If the County would like to implement energy conservation measures it may either:

- (1) Advertise for bids in accordance with the competitive bidding requirements of O.R.C. 307.86 to 307.92, as outlined above, using a report or any part of an energy conservation report prepared pursuant to O.R.C. 307.041(B); or
- (2) Request proposals from at least three vendors after publishing public notice for such RFP.

Under O.R.C. 307.041(C)(2)(a), if the County elects to competitively bid an energy conservation measure project, it must analyze the bids and select the lowest and best bid or bids most likely to result in the greatest energy savings considering the cost of the project and the County's ability to pay for the improvements with current revenues or by financing the improvements. The award of a contract under O.R.C. 307.041, however, must be conditioned upon a finding by the County that the amount of money spent on the energy conservation measures is not likely to exceed the amount of money the County would save in energy, operating, maintenance, and avoided capital costs over the average system life of the energy conservation measures, as specified in the energy conservation report. In making such a finding,

the County may take into account increased costs due to inflation as shown in the energy conservation report. The County may reject all bids or select more than one bid. (O.R.C. 307.041(C)(1)(c)).

Under 307.041(C)(1)(b), if the County elects to request proposals from at least three vendors, the RFP must require each proposer to prepare an energy conservation report pursuant to O.R.C. 307.041(B); and prior to sending any vendor a copy of its RFP, the County must publicly announce the opportunity to bid using a legal notice which legal counsel can help draft. The public notice must be published in a newspaper of general circulation in the county once a week for two consecutive weeks and must:

- State that the County intends to request proposals for the installation of energy conservation measures;
- Indicate the date on which the RFP will be mailed to interested vendors—this date must be at least ten days after the second advertisement is published; and
- State that any vendor interested in receiving the Request for Proposals must submit written notice to the County not later than noon of the day on which the Request for Proposals will be mailed.

Under 307.041(C)(1)(b) and O.R.C. 7.16, the County's second public notice may be made in abbreviated form and posted to the newspaper's website, if it has one. However, this second abbreviated notice must:

- Be published in the same newspaper as the first public notice;
- Include a title and summary paragraph and a statement indicating that the notice is available in its entirety on the State public notice website; and
- Provide the web address of the State public notice website, the newspaper's website, and the township's website (if the notice is posted there,) as well as specific contact information of the parties responsible for publication of the notice.

As with competitive bidding under this Section, the award of a contract under O.R.C. 307.041 must be conditioned upon a finding by the County that the amount of money spent on the energy conservation measures is not likely to exceed the amount of money the County would save in energy, operating, maintenance, and avoided capital costs over the average system life of the energy conservation measures, as specified in the energy conservation report. In making such a finding, the County may take into account increased costs due to inflation as shown in the energy conservation report. The County may reject all proposals or select more than one proposal. (O.R.C. 307.041(C)(1)(c)).

7.7.1 Energy Conservation Measures Installment Contract

Where the energy conservation measures requirements have been met, under O.R.C. 307.041(D), the County may enter into an installment payment contract for the purchase and

installation of energy conservation measures and the provisions of such contracts that deal with interest charges and financing terms are not subject to the competitive bidding requirements of Section 307.86 of the Revised Code. Rather, these contracts must be on the following terms:

- (1) Not less than a specified percentage, as determined and approved by the Board of County Commissioners, of the costs of the contract shall be paid within two years from the date of purchase.
- (2) The remaining balance of the costs of the contract shall be paid within the lesser of the average system life of the energy conservation measures as specified in the energy conservation report or thirty years.

Legal counsel should assist with the preparation of such installment contract.

7.7.2 Energy Conservation Measures Permissible Terms of the Financing Notes

Where the energy conservation measures requirements have been met, under O.R.C. 307.041(E), the County may issue the notes of the County specifying the terms for the purchase of energy conservation measures, and securing any deferred payments pursuant to O.R.C. 307.041(D). These notes must be payable at the times provided and are to bear interest at a rate not exceeding the maximum interest rate permitted for public securities pursuant to O.R.C. 9.95. The notes may contain an option for prepayment and shall not be subject to public securities law (Chapter 133 of the Revised Code). Revenues derived from local taxes or otherwise for the purpose of conserving energy or for defraying the current operating expenses of the County may be pledged and applied to the payment of interest and the retirement of the notes. The notes may be sold at private sale or given to the contractor under an installment payment contract authorized by O.R.C. 307.041(D). The County should consult legal counsel regarding such notes.

Under O.R.C. 307.041(F), any debt incurred under O.R.C. 307.041 is not included in the calculation of the net indebtedness of the County.

7.8 Competitive Sealed Proposals

Under O.R.C. 307.86(M), competitive bidding is not required where the County contracting authority determines that the use of competitive sealed proposals would be advantageous to the County and the contracting authority complies with O.R.C. 307.862. However, competitive sealed proposals must not be used for contracts for construction, design, demolition, alteration, repair, or reconstruction of a building, highway, drainage system, water system, road, street, alley, sewer, ditch, sewage disposal plant, waterworks, and all other structures or works of any nature by a county contracting authority. (O.R.C. 307.862(G)). The County should consult legal counsel to assist with the competitive sealed proposals process.

Under O.R.C. 307.862(A), when the County uses competitive sealed proposals pursuant to O.R.C. 307.86, the County must do all of the following:

- (1) Develop factors and criteria to receive and evaluate each proposal, specify the relative importance of each factor or criterion in writing, and describe the evaluation procedures the County will follow when awarding a contract to a proposer.
- (2) Solicit competitive sealed proposals through a Request for Proposals;
- (3) Include, at a minimum, all of the information described in O.R.C. 307.862(B) below, in the Request for Proposals;
- (4) Give notice of the RFP in the same manner that notice must be given for competitive bidding pursuant to O.R.C. 307.87 and Section 2 of this Manual. The County also may give notice of the Request for Proposals and receive proposals through a uniform, interactive, and secure electronic system in a manner consistent with Chapter 1306 of the Revised Code.
- (5) Open proposals that the County receives in a manner that prevents the disclosure of contents of competing proposals to competing proposers;
- (6) Rank each proposal using the factors and criteria the County developed pursuant to O.R.C. 307.862(A)(1) above;
- (7) If necessary, conduct discussions with proposers for the purpose of ensuring full understanding of, and responsiveness to, the requirements specified in the Request for Proposals, and accord fair and equal treatment with respect to any opportunity for discussion with offerors to provide any clarification, correction, or revision of proposals;
- (8) If the County determines that discussions described in O.R.C. 307.862(A)(7) are necessary, it must avoid disclosing any information derived from proposals submitted by competing proposers during those discussions;
- (9) Negotiate with the proposer who submits the proposal that the County determines is the most advantageous to the County based on the rankings performed by the County pursuant to O.R.C. 307.862(A)(6) above and including any adjustment to those rankings based on discussions conducted pursuant to O.R.C. 307.862(A)(7) above;
- (10) Conduct negotiations with only one proposer at a time;
- (11) Except as provided in O.R.C. 307.862(F) (cancellation or reissuing RFP), award a contract in accordance with O.R.C. 307.862(E) which provides that the County may award a contract to the proposer whose proposal is determined to be the most advantageous to the County, taking into

consideration the evaluation factors and criteria developed pursuant to O.R.C. 307.862(A) (1) above and set forth in the Request for Proposals.

The County may award a contract in whole or in part to one or more proposers. The County must include a written statement in the contract file stating the basis on which the award is made. O.R.C. 307.862(E).

Under O.R.C. 307.862(B), the County must include, at a minimum, all of the following information in its RFP:

- (1) The name and address of the department, office, institution, board, or commission that is requesting to purchase supplies, services, or both;
- (2) Instructions for proposers to follow when submitting proposals;
- (3) Instructions governing communications between proposers and the County, including, but not limited to, the name, title, and telephone number of the person to whom questions concerning the RFP should be directed;
- (4) A description of the scope of work that the County requests a proposer to perform or supplies the County plans to purchase;
- (5) To the extent possible, a description of the technical criteria the County will require a proposer to satisfy, including but not limited to, the quantity of the supplies, services, or both, to be purchased; the requirements the County will follow for inspection and acceptance of the supplies, services, or both; and the delivery schedule for each such supply or service;
- (6) The factors and criteria the County will consider in evaluating proposals received;
- (7) Any terms and conditions that the County is required by law to include in the contract the County awards, including any requirement for a bond and the amount required for that bond;
- (8) The date and time by which, and the place to which a proposer must deliver its proposal to the County in order to be considered for the contract;
- (9) A list of any documents that the County incorporates by reference in the Request for Proposals, provided that the County specifies in the Request for Proposals that the documents are readily available to all proposers and the location where a proposer may obtain those documents;
- (10) A statement that includes all of the following information:

- (a) That the County reserves the right to reject any proposal in which the proposer takes exception to the terms and conditions of the RFP; fails to meet the terms and conditions of the RFP, including but not limited to, the standards, specifications, and requirements specified in the RFP; or submits prices that the County considers to be excessive, compared to existing market conditions, or determines exceed the available funds of the County;
 - (b) That the County reserves the right to reject, in whole or in part, any proposal that the County has determined, using the factors and criteria the County develops pursuant to O.R.C. 307.862(A)(1), would not be in the best interest of the County;
 - (c) That the County may conduct discussions with proposers who submit proposals for the purpose of clarifications or corrections regarding a proposal to ensure full understanding of, and responsiveness to, the requirements specified in the Request for Proposals.
- (11) Information concerning any potential partial or multiple party awards that the County may include in the contract, and a description of the supplies, services, or both that may be subject to a partial award or multiple awards;
- (12) Any additional information the County considers necessary for its purposes in determining to whom to award the contract.

Under O.R.C. 307.862(E), the County may award a contract to the proposer whose proposal is determined to be the most advantageous to the County, taking into consideration the evaluation factors and criteria developed pursuant to O.R.C. 307.862(A)(1) and set forth in the RFP. The County may award a contract in whole or in part to one or more proposers. The contracting authority shall include a written statement in the contract file stating the basis on which the award is made.

The County must send written notice to the proposer to whom it wishes to award the contract and must make that notice available to the public. Within a reasonable time period after the award is made, the County must notify all other proposers that the contract has been awarded to another proposer. (O.R.C. 307.862(E)).

A proposer may withdraw its proposal at any time prior to the award of a contract. A contracting authority may terminate negotiations with a proposer at any time during the negotiation process if the proposer fails to provide the necessary information for negotiations in a timely manner or fails to negotiate in good faith. If the County terminates negotiations, the County must then negotiate with the proposer whose proposal is ranked the next most advantageous to the County according to the factors and criteria developed pursuant to O.R.C. 307.862 (A)(1). (O.R.C. 307.862(D)).

Proposals and documents used throughout the selection process are not public records until a final selection has been made. (O.R.C. 307.862(C)).

7.9 County Engineer Procurement

7.9.1 Construction or Reconstruction of Roads by Force Account

Pursuant to O.R.C. 5543.19, when authorized by the County Commissioners, the County Engineer may do certain construction, reconstruction, improvement, maintenance, or repair work by force account. "Force account" means that the County Engineer will act as the contractor, using labor employed by the County Engineer and material and equipment either owned by the County or leased or purchased in compliance with competitive bidding requirements (O.R.C. 307.86 to 307.92). Subcontracts for any part of such work must be competitively bid in accordance with O.R.C. 307.86 to 307.92. (O.R.C. 5543.19).

Under O.R.C. 5543.19, to determine whether or not construction or reconstruction of roads, including widening and resurfacing, may be done by force account, the County Engineer must first obtain an estimate of the cost of such work using the Force Account Project Assessment Form developed by the Auditor of State under O.R.C. 117.16. If the total estimated cost of the work does not exceed Thirty Thousand Dollars per mile, the County Engineer may employ such laborers and vehicles, use such County employees and property, lease such implements and tools, and purchase such materials as are necessary, by force account, as long as competitive bidding is not required by other law. If the total estimated cost of the work exceeds Thirty Thousand Dollars per mile, the County Commissioners must use competitive bidding to procure all the labor, materials, and equipment necessary to complete the work, in accordance with O.R.C. 307.86 to 307.92.

7.9.2 Construction or Reconstruction of Bridges and Culverts by Force Account

Pursuant to O.R.C. 5543.19, when authorized by the County Commissioners, the County Engineer may do certain construction, reconstruction, improvement, maintenance, or repair work by force account. "Force account" means that the County Engineer will act as the contractor, using labor employed by the County Engineer and material and equipment either owned by the County or leased or purchased in compliance with competitive bidding requirements (O.R.C. 307.86 to 307.92). Subcontracts for any part of such work must be competitively bid in accordance with O.R.C. 307.86 to 307.92. (O.R.C. 5543.19).

Under O.R.C. 5543.19, to determine whether or not construction, reconstruction, improvement, maintenance, or repair of bridges or culverts may be done by force account, the County Engineer must first obtain an estimate of the cost of such work using the Force Account Project Assessment Form developed by the Auditor of State under O.R.C. 117.16. If the total estimated cost of the work does not exceed One Hundred Thousand Dollars, the County Engineer may employ such laborers and vehicles, use such County employees and property, lease such implements and tools, and purchase such materials as are necessary, by force account, as long as competitive bidding is not required by other law. If the total estimated cost of the

work exceeds One Hundred Thousand Dollars, the County Commissioners must use competitive bidding to procure all the labor, materials, and equipment necessary to complete the work, in accordance with O.R.C. 307.86 to 307.92.

Pursuant to O.R.C. 5543.02, for the construction or repair of a bridge, if the entire cost of such construction or repair exceeds Fifty Thousand Dollars, the County Engineer may request the Director of Transportation to review and comment on the plans for conformance with State and federal requirements. The Director must review and comment on the plans, if requested.

8 Internet Auction Sale of Personal Property

Pursuant to O.R.C. 307.12(E), the County may sell personal property, including motor vehicles acquired for the use of County officers and departments, and road machinery, equipment, tools, or supplies that is not needed for public use, is obsolete, or is unfit for the use for which it was acquired, by internet auction, regardless of the property's value.

Under O.R.C. 307.12(E), the Board of County Commissioners must first adopt a resolution stating its intent to sell property by internet auction. The resolution must include a description of how the internet auctions will be conducted and the number of days for bidding on the property, which cannot be less than ten days, including Saturdays, Sundays, and legal holidays. The resolution must establish the general terms and conditions of sale. Additionally, the resolution must indicate whether the County will conduct the internet auctions or whether the County will contract with a representative to conduct the internet auctions. If a representative is known when the resolution is adopted, the resolution must provide the representative's contact information. Legal counsel should be consulted for the preparation of such resolution.

Pursuant to O.R.C. 307.12(E), after the resolution is adopted, the County must publish, in a newspaper of general circulation in the county, notice of its intent to sell unneeded, obsolete, or unfit-for-use County personal property by internet auction. The notice must include a summary of the information provided in the resolution and shall be published twice or as provided in O.R.C. 7.16. The second and any subsequent notice must be published ten to twenty days after the previous notice. A similar notice also must be posted continually in a conspicuous place in the offices of the County Auditor and the Board of County Commissioners. If the County maintains a website, the notice shall be posted continually at that website. Legal counsel should be consulted for the preparation of such public notice and publication requirements.

The County or its representative may establish a minimum price that will be accepted for specific items and may establish any other terms and conditions for a particular sale, including requirements for pick-up or delivery, method of payment, and sales tax. This type of information must be provided on the internet at the time of the auction and may be provided before that time upon request after the terms and conditions have been determined by the County or its representative.

8.1 GovDeals.com

Pursuant to O.R.C. 307.12(E), the County may authorize GovDeals.com to serve as its representative for internet auctions for the sale of personal property, including motor vehicles acquired for the use of County officers and departments, and road machinery, equipment, tools, or supplies, that is not needed for public use, is obsolete, or is unfit for the use for which it was acquired. The County would follow the requirements of O.R.C. 307.12(E), outlined above, stating in its resolution and public notices that GovDeals.com will carry out such internet auctions.