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**Guidance to Public Authorities on  
Changes to Construction Law Contained in HB96**

With the passage of HB96 that will go into effect on September 30, 2025, there are several changes in Ohio law that will impact construction projects. The Ohio Facilities Construction Commission (OFCC) is providing the following guidance to public authorities to assist them in the implementation of these changes.

**Revised Public Solicitations, Durations and Notices**

**ORC 9.331** requires a public authority to advertise its intent to employ a construction manager by electronic means and permits advertising in news media available in that particular county. Similarly, **ORC 153.07** requires a public authority to publish notice of public bids electronically in a manner as prescribed by the OFCC and permits notice in other news media in the county where the activity for which the bids are submitted is to occur.

**ORC 153.09** requires electronic notice when bids are rejected and re-advertised. Previously, newspaper advertisement was required, and electronic advertisement was permitted. State agencies and institutions of higher education will now only be required to electronically post their solicitations for construction manager services on OFCC's website. Newspaper advertising is an option but no longer required. In addition, state agencies and institutions of higher education (unless otherwise exempt) are required to provide notice of public bids and re-bids on OFCC's website or a link to a public electronic bidding platform.

Both **ORC 9.331** and **153.07** require electronic public notice a minimum of 14 days before receiving proposals or bids. Previously, it was 30 days for construction managers and 3 weeks plus 8 days for public bids. Rebids must be posted electronically a minimum of 7 days before the submission deadline.

**ORC 9.312** requires a state agency or political subdivision that determines a low bidder is not responsive or responsible to provide notice electronically. Certified mail delivery is required only if an electronic method is not available. This revises the prior language that permitted either method of notice.

**ORC 1311.252** removes the requirement that a public authority file a notice of commencement in affidavit form. This eliminates the need to notarize the notice of commencement form.

**Add Electronic Surety as Accepted Form of Bid Guaranty**

**ORC 153.54** allows bidders for most contracts with the state or a political subdivision to file a bid guaranty in the form of an electronic verification through an electronic verification and security system, if the state or political subdivision accepts bids electronically. The state's current electronic bidding platform, Bid Express, already has integration with the two electronic surety exchanges that verifies receipt of a valid bond verification number. A PDF copy of the bid guaranty may also be requested as part of the bid to aid in the review of a bid's responsiveness.

### **Streamlined Best Value Selection Process for Projects Under \$4M**

**ORC 9.334** authorizes a public authority, for contracts under \$4 million, to require a construction manager at risk or design-builder to submit an initial qualification statement, along with a pricing proposal, instead of sending them in separate rounds.

Public authorities must also hold a pre-proposal meeting with interested proposers to discuss project scope, nature of the proposed services, as well as potential technical approaches. Qualifications are evaluated first to short list firms; then price proposals for short-listed firms only are considered. Interviews are optional.

The public authority now has the option of choosing between the new 1-step or existing 2-step best value selection processes for projects under \$4 million. Ohio administrative rules are required to be approved prior to using this new procurement method. The OFCC anticipates finalizing these rules in early 2026.

**ORC 153.501** exempts construction manager at risk and design build firms from the requirement to submit a sealed bid to self-perform a portion of work before accepting and opening any bids for the same work from subcontractors when the public authority requests a guaranteed maximum price due at the time of selection.

### **Add Building Information Modeling (BIM) As Option**

**ORC 153.01** allows owners the option to require architects or engineers preparing public works contracts worth \$200,000 or more to use building information modeling systems, as long as the requirements follow a nationally recognized standard for Building Information Modeling (BIM). Currently the OFCC is developing State of Ohio BIM Standards which will be published and available for use in July 2026. Any necessary language in our contracts or new exhibits will be incorporated after the BIM standards have been published.

### **Remove Affirmative Action Requirements**

**ORC 9.47; 125.11; 153.59** eliminates the requirement that contractors from whom the state or a political subdivision makes purchases to have a written affirmative action program for the employment and utilization of economically disadvantaged persons. In addition, **ORC 153.502** prohibits disqualification of bidders for not complying with an affirmative action program, or a diversity, equity, and inclusion program. It also allows an exception to the above prohibition for county policies to assist minority business enterprises in competitively bid contracts. It does not affect any set aside programs for minority business enterprises or EDGE business enterprises. This will eliminate the collection of Affirmative Action Certificates in the contracting process, and monthly reporting on I-29 Work Hour Utilization forms during the project. Demographic information may still be required for submission to the Controlling Board.

### **Retainage Reform**

**ORC 153.12-153.14; 153.63** revise retainage requirements:

- Retainage is capped at four percent or less of labor for the entire duration of the work, rather than eight percent of labor on the first 50 percent of the work and zero percent on the remaining portion.
- Prohibits contractors from paying subcontractors at a retainage rate lower than the rate being paid to the contractor by the public authority.
- The public authority is no longer required to deposit the retained amount in an escrow account.
- The retained funds are required to be paid to the primary contractor within 30 days of substantial completion of the project, with the public authority withholding only that amount reasonably necessary to assure final completion of the project. Any withheld retained funds and interest accrued is to be paid by the contractor no later than 30 days after the date of final completion of the project.

For construction contracts or guaranteed maximum price amendments executed prior to the effective date of HB96, the current retainage method will continue through the entire duration of all remaining work. For all forms of new construction contracts executed after September 30, 2025, the revised retainage method described above will be followed.

#### **Public Records**

**ORC 9.28** was revised to clarify that all solicitation-related materials through competitive selection, and not just the vendor-submitted materials, are not considered public records until after the contract is executed. If a contract is not awarded after the first solicitation, and the project rebid, materials related to the first solicitation are not considered public records until the contract is awarded.

#### **Updated Contract Documents**

The OFCC will be publishing updated contract documents that incorporate these legislative changes as well as other updates in mid-October. These documents will cover General Contracting, Construction Manager at Risk and Design Build delivery methods. Multiple Prime delivery documents will be updated and published in December 2025. Supplemental conditions that incorporate only the legislative changes will also be provided on OFCC's website for any new contracts that are needed between September 30, 2025, and the date of publication of the full contract document updates in mid-October.