



Commissioners Handbook

County Commissioners Association of Ohio

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CHAPTER 24

PURCHASING

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24.01 INTRODUCTION

Purchasing and approval of most contracts for materials, supplies, services, and equipment necessary to operate the many functions of county government are primary responsibilities of county commissioners. Most claims against the county must be approved by the county commissioners unless the amount due is set by law or fixed by a court or other authorized person or body (ORC 307.55). All contracts must be approved at a regular or special session of the board and entered into the minutes of the board (ORC 305.25). The law also requires a full record to be kept, including the vote on each motion. All funds must be lawfully appropriated for a proper public purpose prior to expenditure and all expenditures must be made by warrant drawn against an appropriate fund (ORC 5705.41(B)(C)). In order to be lawful, all contracts, with certain exceptions, must include certification of availability of funds by the county auditor (ORC 5705.41(D)). The legal requirement of certification of funds is discussed in greater detail in Section 24.33.

This Chapter of the *Handbook* will not deal with all purchasing concepts and practices, but will review the important legal requirements for purchasing, bidding and contracting. This Chapter will not discuss detailed procedures for building construction and real property, which are covered in *Handbook* Chapter 6.

24.02 GENERAL INFORMATION

With certain exceptions, all things purchased, leased, leased with a future purchase option or constructed at a cost of \$75,000 or more must be obtained through competitive bidding (ORC 307.86) or competitive sealed proposals for certain supplies or services

(ORC 307.862). The competitive bidding threshold will be revised upward by 3% each year starting January 1, 2025, as published by the Ohio Department of Commerce (ORC 9.17). Elements of competitive selection covered in this Chapter include public notice requirements, contents of notice, submission of bids, bidding standards, and bid and performance bond requirements. Competitive selection applies to the purchase of any product, structure, construction, reconstruction, improvement, maintenance, repair, or service.

24.03 EXEMPTIONS TO COMPETITIVE BIDDING REQUIREMENT

The following purchases or services are exempt from the requirements of competitive bidding:

1. Any supplies, services, materials, and equipment purchased through contracts entered into by the Department of Administrative Services (ORC 125.04(B)), the Department of Transportation, a regional planning commission (ORC 713.23(D)), or a council of governments. Please refer to Section 24.39 for additional information.
2. The county contracting authority as defined in ORC 307.92 may use competitive sealed proposals (a request for proposal process) when the contracting authority determines that the use of this process would be advantageous to the county and the contracting authority complies with ORC 307.862. Please refer to Section 24.11 for additional information.
3. Services of usually recognized professions including accountants, architects, attorneys, physicians, appraisers, surveyors, and consultants (ORC 307.86). Design professionals such as professional engineers, architects, landscape architects, and surveyors as well as the services of construction managers must be procured through a qualifications-based selection process (ORC 153.65 - 153.69, 9.33 - 9.334). See Section 24.45 for additional information.
4. The county auditor may contract with persons or firms to assist in real estate appraisal work without competitive bidding (ORC 5713.01).
5. Suppliers of replacement or supplemental parts for products or equipment owned or leased by the county where the source is limited to a single supplier (ORC 307.86(B)(1)).
6. Suppliers of services related to information technology, such as programming services, that are proprietary or limited to a single source (ORC 307.86(B)(2)).
7. Purchases from other governmental contracting authorities. It should be noted, however, that in some cases other units of local, state, or the federal government do have certain restrictions. See Sections 24.39, 24.40 and 24.41 for additional information.
8. Purchases made by a county department of job and family services under ORC section 329.04 consisting of family services duties or workforce development

activities (ORC 307.86(D)). However, if the purchase is made with federal funds the county must follow Ohio Department of Job and Family Services administrative rules in Ohio Administrative Code (OAC) Section 5101:9-4-07.1 (see Section 24.22).

9. Purchases made by a public children services agency consisting of social services, programs, or ancillary services that provide case management, prevention, or treatment service for children at risk of being or alleged to be abused, neglected, or dependent (ORC 307.86(K)).
10. Services of emergency medical service organizations under a contract made by the board of county commissioners with a joint emergency medical services district (ORC 307.05).
11. The purchase of used supplies at a public auction. Supplies include any personal property, such as equipment, materials, and other tangible assets (ORC 307.86(N)), as of July 3, 2019).
12. Purchases of supplies and services of the severely handicapped (ORC 125.60 to 125.6012). See Section 24.21 for additional information.
13. Purchase of program services by a Developmental Disabilities (DD) board under ORC Section 5126.05. Services included under this exemption are direct and ancillary client services, day care, case management, and residential and family resource services (ORC 307.86(D)).
14. Purchase of criminal justice services, social services programs, family services, or workforce development activities from non-profit organizations that are funded with federal funds or by state grants (ORC 307.86(E)), but see discussion of ODJFS rules in section 24.22.
15. 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 community residential care, day treatment, services to children in their home or electronic monitoring (ORC 307.86(J), for purchases under 5139.34, 5139.41-5139.46).
16. Group insurance programs when the program is agreed to by the county and union and benefits are provided by a jointly administered health and welfare trust fund (ORC 305.171(D)).
17. Any form of property insurance issued under Title 39 of the Revised Code or any form of health care plan authorized to be issued under Revised Code Chapter 1751. Please refer to Section 24.20 for more information.
18. The transfer of land and granting of leases, easements and rights to county owned land to governmental bodies, public utilities, and to certain non-profit corporations (ORC 307.09).

19. The transfer of personal property by the county to any political subdivision of the state or to the state or federal government (ORC 307.10).
20. A community improvement corporation, if designated by the county commissioners, may sell or lease county land to encourage development if the sale will stabilize the economy, provide employment opportunities for residents of the county and assist in the development of industrial, commercial, distribution, and research activities within the county (ORC 1724.10, OAG 88-037).
21. The purchase of real estate. For further information about property and construction see *Handbook* Chapter 6.
22. Leases or leases with the option to purchase correctional facilities for not more than 40 years (ORC 307.022).
23. Leasing back real property for use as correctional facilities that the county had formerly sold, leased, granted easements to or licenses for a private entity (ORC 307.022).

24.04 EMERGENCY PURCHASES EXEMPT

Emergency purchases are also exempt from the requirements of competitive selection if certain conditions are met (ORC 307.86(A)). The county commissioners must adopt a resolution unanimously stating that "a real and present emergency exists" and specify the reason they have made the determination that there is an emergency. "Unanimous vote" is defined as all three members when all three members of the board are present, or only two members if only two members are present. The board may proceed when either of the following applies:

1. The estimated cost is less than \$125,000, or
2. There is actual physical disaster to structures, radio communications equipment, or computers.

In the case where an emergency is declared and the estimated cost is at least \$75,000 or as updated annually by the Department of Commerce, but less than \$125,000, the county must obtain at least three informal estimates and these records must be kept for the longer of at least one year or the amount of time the federal government requires.

24.05 NOTICE REQUIREMENTS FOR COMPETITIVE SELECTION

Anything that must be competitively bid or purchased through competitive sealed proposal must comply with the following notice requirements:

1. A notice must be published in a newspaper of general circulation once a week for at least two consecutive weeks, or notice may be published once in a newspaper of general circulation provided the notice meets all of the following requirements:
 - a. It is published at least two weeks before the opening of bids.

- b. It states that the notice is posted on the contracting authority's internet site on the world wide web.
 - c. It provides the internet address of the contracting authority's internet site on the world wide web.
 - d. It includes instructions describing how the notice may be accessed on the contracting authority's internet site on the world wide web. If the contracting authority posts the notice on its website, it may eliminate the second notice otherwise required to be published in the newspaper provided that the first notice meets the specified requirements (ORC 307.87(A)).
2. In addition, the notice must be posted on a bulletin board at the office of the commissioners or in another suitable place. The notice must be posted for at least two weeks prior to the bid opening (ORC 307.87).
 3. The notice may also be published in trade papers or other publications.

24.06 CONTENTS OF BID NOTICE

The following items should be included in notices published in a newspaper, posted on the internet site, if a county elects to post notices on their internet site, and on the bulletin board:

1. A general description of the purchase.
2. Where and when plans, specifications, lists of supplies, and estimated quantities can be obtained or examined.
3. When and where the bids will be opened.
4. Time and place for submitting bids.
5. Terms of the proposed purchase.
6. Conditions under which bids will be received.
7. Whether a bid bond or other performance guarantee is required. If the bid is over \$50,000, and for the construction, demolition, alteration, repair, or reconstruction of a public improvement, it must meet the bond requirement of state construction law (ORC 153.54). Commissioners, by a unanimous vote, may choose to allow a contracting authority to exempt a construction bid from some or all of the bond requirements if the cost is \$100,000 or less, but the notice must state whether some requirements of ORC Section 153.54 still apply.

If the bid is in excess of \$50,000 but not for construction or repair of a public improvement, commissioners have the discretion to require that it be accompanied

by a bond or certified check, cashier's check, or money order, for a reasonable amount stated in the notice but not to exceed five per cent of the bid (ORC 307.88).

24.07 SUBMISSION AND OPENING OF COMPETITIVE BIDS

Contents of bids must follow these standards:

1. Must be in the form specified.
2. Submitted in a sealed envelope. This envelope should clearly identify the requisition number, if appropriate.
3. Submitted at time and place specified in the notice.
4. The full name of the person or company submitting the bid.

The county commissioners' office then opens the bids at the time stated and tabulates the bids. The commissioners must accept the lowest and best bid or may reject all bids. The award need not be made on the day of the bid opening, and the commissioners may receive advice from experts. (*State, ex rel. Evans v. J. A. Swingle Contracting Co.*) (1913), 15 N.P.(N.S.) 279. The concept of lowest and best bidder is complex; however, the commissioners have considerable discretion to make the determination. Commissioners may change the bid standard from the lowest and best bid to the lowest responsive and responsible bid. This will be explained in the next section.

Mandamus action against the awarding of the contract is generally precluded unless it is alleged or shown that the commissioners have abused their discretion (*State, ex rel. Lane v. Commissioners*), 13 N.P. (N.S.) 246. It should also be noted that the details and court decisions surrounding these statutes are complex and the advice of the county prosecutor is vital. Once a bid is accepted, or all bids rejected, bid-bonds, cashier checks, certified checks, or money orders must be returned to the unsuccessful bidders.

24.08 CHANGING BID STANDARD TO LOWEST RESPONSIVE AND RESPONSIBLE BIDDER

County commissioners may adopt a resolution to change the bid standard from the lowest and best bid to the lowest responsive and responsible bid (ORC 9.312(C)); the lowest responsive and responsible bid standard is the one generally used by state entities. The bid standard of lowest responsible bidder has generally been held to confer less discretion to the contracting authority than the standard of lowest and best bidder (*Fogarty v. Cincinnati*) (1907), 17 Ohio Dec. 752; *State ex rel. Ross v. Board of Education* (1884), 42 Ohio St. 374). County commissioners should review the case law on bid standards and consult with the county prosecutor prior to adopting the lowest responsive and responsible bid standard for the county.

If, however, this standard is adopted the following apply to such bids:

1. The bidder is **responsive** if:

- a. The proposal responds to bid specifications in all material respects.
 - b. The proposal contains no irregularities or deviations from the specifications which would affect the amount of the bid or otherwise give the bidder an advantage.
2. Factors used to determine if a bidder is **responsible** include:
- a. Experience of the bidder.
 - b. Financial condition of the bidder.
 - c. Conduct and performance of the bidder on previous contracts.
 - d. The bidder's facilities.
 - e. The bidder's management skills.
 - f. The ability of the bidder to properly execute the contract.

If the county finds that an apparent low bidder is not responsive and responsible the bidder must be notified of this fact in writing by certified mail or, if the county has an internet identifier of record, by first class mail and by electronic means. The notice must include the reasons the county found the bidder was not responsive and responsible.

If the county found the apparent low bidder, other than for construction or repair of a public improvement, not to be responsive and responsible the bidder may file a written protest to such a finding by the county. The county must then meet with the bidder. The written protest must be filed within five days after the county notifies the apparent low bidder that the bidder is not responsive and responsible, and the county may not award the contract until it affirms or reverses its original finding (ORC 9.312).

24.09 APPLICATION OF PUBLIC RECORDS LAW TO BIDS OR PROPOSALS

Bids or proposals received by a county agency are not automatically considered public records. Instead, state law provides that materials received in response to a competitive solicitation are not considered public records until the date the agency announces the award of the contract. If the agency rejects all of the bids or proposals and concurrently announces its intention to reissue the solicitation, then the previous bids or proposals and any new bids or proposals received for the reissued solicitation do not become public records until the date on which the agency announces the contract award based on the reissued solicitation (ORC 9.28).

24.10 PERFORMANCE BOND

After a bid is accepted other than for a public improvement, the county must require faithful performance of all things included in the contract. For purchases, leases, and leases with purchase options, the county may require a surety or performance bond in an

amount not to exceed the amount of the bid (ORC 307.89). A performance bond is required if the contract is for a public improvement.

24.11 COMPETITIVE SEALED PROPOSALS

In lieu of competitive bidding, a county contracting authority may use competitive sealed proposals when it determines that the use of competitive sealed proposals would be advantageous to the county and it complies with ORC Section 307.862. Competitive sealed proposals may not be used for any public improvement project. A competitive sealed proposal entails the use of a request for proposal and may be advantageous to a contracting authority when it is proposing to purchase supplies or services of a qualitative rather than quantitative nature. In order to use competitive sealed proposals, a contracting authority must do the following:

1. Develop factors and criteria to evaluate each proposal, specify the relative importance of each factor in writing, and describe the evaluation procedures that will be used when awarding a contract.
2. Solicit proposals through a request for proposals (RFP).
3. Give notice of the RFP in the same manner as required for competitive bidding (ORC 307.87). The county contracting authority may also give notice of the RFP and receive proposals through a uniform, interactive, and secure electronic system.
4. Maintain the confidentiality of any proposals the contracting authority receives until after the award of a contract. This includes opening the proposals in a manner that prevents the disclosure of information in a bid to a competing offeror.
5. Rank each proposal using the factors and criteria used in item one above.
6. If necessary, conduct discussions with vendors for the purpose of ensuring a full understanding of and responsiveness to the requirements specified in the RFP. Information derived by the contracting authority from such discussions must be kept confidential.
7. Negotiate with the vendor who submits the proposal that the contracting authority determines is most advantageous to the county based on the rankings performed by the county and any discussions with vendors. Only one vendor may be negotiated with at one time.

In addition to the steps outlined above, a county contracting authority must at least include the following information in an RFP:

1. The name and address of the county agency requesting supplies, services, or both.
2. Instructions for vendors to follow when submitting proposals.

3. Name, title, telephone number, and other information for a county contact person to whom questions concerning the RFP may be directed.
4. A description of the scope of work a vendor is to perform or supplies to be purchased, including the quantity of supplies or services to be purchased, requirements regarding the inspection and acceptance of supplies and services, and a delivery schedule for each supply or service.
5. Factors and criteria for evaluating proposals.
6. Any terms and conditions on the award of a contract, including any requirement for a bond and the amount of the bond.
7. The date and time for delivery of a proposal.
8. Any documents that the contracting authority incorporates by reference and the location of such documents.
9. A statement that the contracting authority reserves the right to reject any proposal for any of the following reasons:
 - a. Failure to meet the terms and conditions of the RFP;
 - b. Submitting a proposal with prices that are excessive or that exceeds available funds;
 - c. That the county reserves the right to reject the proposal, in whole or in part, if the county determines the proposal is not in the best interest of the county;
 - d. That the county reserves the right to conduct discussions with vendors for purposes of clarification or correction regarding a proposal.
10. Any partial or multiple party awards and what parts of a contract might be subject to partial or multiple party awards.
11. Any other information that the contracting authority considers appropriate.

After complying with these requirements, the county contracting authority may negotiate with the vendor whose proposal is determined to be most advantageous to the county. If the county can not reach an agreement with the vendor with the highest ranked proposal, then they may terminate negotiations with the vendor and proceed to negotiate with the vendor whose proposal is ranked the next most advantageous until a contract is negotiated. Once the County starts negotiations with the second ranked vendor the County cannot stop and go back and restart negotiations with the highest ranked vendor. The vendor may also withdraw at any point prior to the award of a contract. Contracts may be awarded in whole or in part to one or more vendors consistent with the RFP. The county must maintain a contract file stating in writing the basis upon which an award is made. Successful vendors must be notified in writing of the contract award and this

information must be made available to the public. All unsuccessful vendors must also be notified by the county.

The law provides that a contracting authority may cancel or reissue a RFP for any of the following reasons:

1. Supplies or services offered by various vendors are not in compliance with the RFP.
2. The prices submitted by vendors are excessive or exceed available funds.
3. The contracting authority determines that award of the contract is not in the best interest of the county.

24.12 PAYMENT OF COUNTY CLAIMS

All claims against the county must be paid by warrant drawn upon the county treasury by the county auditor (ORC 321.15). Payments may be made by the county auditor by electronic warrant authorizing direct deposit for payment of county obligations provided the county complies with rules adopted by the Director of the Office of Budget and Management (ORC 9.37). Payment of most claims must be approved by the board of commissioners before the county auditor may issue a warrant (ORC 307.55). Exceptions include instances where the amount owed is fixed by law or is allowed by another officer or court, including a payment of a county mental health board or county DD board. The county auditor may question the validity of certain expenditures for which a proper order or voucher and evidentiary matter is presented. The auditor may request evidentiary matter which includes original invoices, receipts, bills and checks, and legible copies of contracts. If the auditor continues to refuse to issue a warrant for an expenditure that the board, officer or court determines is valid, a writ of mandamus may be sought to compel the auditor to pay the claim (ORC 319.16).

24.13 COUNTY ELECTRONIC COMMERCE

Under the Uniform Electronic Transactions Act and related statutes, any “county office” may decide to conduct certain county business by “electronic” means with “electronic records” and “electronic signatures”. The following definitions are critical to understand this law:

1. “County office” means any officer, department, board, commission, agency, court or other instrumentality of a county.
2. “Electronic” is defined as relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
3. “Electronic record” is defined as a record created, generated, sent, communicated, received, or stored by electronic means.

4. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record (ORC 1306.01 and ORC 304.01).

Whenever the law requires any information, document or record to be filed with a county office, the law states that a filing made by electronic record has the same force and effect as a paper filing, provided that the county office has agreed to the electronic filing and the filing is made in accordance with applicable rules or an applicable agreement (ORC 304.03). Prior to using electronic records and electronic signatures, a county office must adopt security procedures for the purpose of verifying the authenticity of any person submitting an electronic record or providing an electronic signature or for detecting changes or errors in the information in an electronic record (ORC 304.02). While conducting a county audit, the State Auditor is required to "inquire into the method, accuracy, and effectiveness of any security procedure" adopted by a county office that uses electronic records and electronic signatures under the "Uniform Electronic Transactions Act" (ORC 117.111).

Use of electronic records and electronic signatures by any county office is permitted, but not required by the law (ORC 304.04). If a county has adopted a credit card acceptance policy for the payment of county expenses and permits specified county offices to accept payment by credit card (ORC 301.28), then any specified county office wishing to conduct electronic transactions may utilize that policy to accept payment of county expenses by credit card. Payment of dog and kennel license fees by credit card under ORC Section 955.013 does not require the existence of a county credit card acceptance policy in order to conduct this type of electronic transaction. For more information on the use of county credit cards, see Section 24.28.

24.14 UNLAWFUL INTEREST IN PUBLIC CONTRACT PROHIBITED (ORC 2921.42)

State law generally prohibits any "public official" from knowingly doing any of the following:

1. Authorize, or use the authority or influence of his office to secure authorization of a public contract in which the official, a member of his family, or any of his business associates has an interest.
2. Authorize, or use the authority or influence of his office, to secure the investment of public funds in any security in which the official, a member of his family or business associate has an interest.
3. During his term of office or for one year thereafter, occupy any position of profit in the performance of a public contract authorized by the official or a legislative body, board or commission on which the official served at the time of authorization, unless the contract was let by competitive bidding to the lowest and best bidder.
4. Have an interest in the profits or benefits of a public contract entered into by or for the use of the political subdivision with which the official is connected.
5. Have an interest in the profits or benefits of a public contract that is not let by competitive bidding if required by law and involves more than \$150.

A “public official” is defined, in part, as any elected or appointed officer, or employee, or agent of the state or any political subdivision, employed on either a temporary or permanent basis (ORC 2921.01(A)). A “public contract” (ORC 2921.42(G)) is defined as:

1. The purchase or acquisition, or a contract for the purchase or acquisition, of property or services by or for the use of the state, any political subdivision of the state or any instrumentality of the state or a political subdivision; or
2. A contract for the design, construction, alteration, repair, or maintenance of any public property.

County officials, and their family members and business associates may own shares of stock or bonds in corporations that do business with a county provided that the shares or ownership interest in the debt of a corporation does not exceed 5% of the total stock of the corporation and the person in question provides full public disclosure of his financial interest. The official would be prohibited from participating, in any way, in the award of contracts to the company, even when the interest is disclosed. The law also permits officials, family members and business associates to have an interest in a public contract if the official meets a four-part exception. Some of the important aspects of the exception are that the supplies or services are necessary, are unobtainable elsewhere at a lower price or obtained as part of a continuous course of business, and are acquired in an arm’s length transaction, in which the official does not participate, on terms favorable to the county.

If commissioners have general questions or questions relating to a particular situation, they are strongly encouraged to contact the Ohio Ethics Commission. The Ethics Commission provides advisory opinions to public officials on the ethics law and offenses against justice and public administration law. The Ohio Ethics Commission maintains a website at <http://www.ethics.ohio.gov/>.

24.15 FINDINGS FOR RECOVERY

Ohio law (ORC 9.24) prohibits any county from awarding a contract for goods, services, or construction, paid for in whole or in part with state funds, to any person against whom a finding for recovery has been issued by the State Auditor, if that finding is unresolved.

This provision applies to the county if it has received more than \$50,000 of state money in the current or the preceding fiscal year. State funding does not include funds the state receives from another source and passes through to a political subdivision.

Finding for recovery means a determination by the State Auditor that public money has been illegally expended, has been collected but not accounted for, or is due but has not been collected. A finding for recovery also includes a determination that public property has been converted or misappropriated. A finding for recovery is unresolved unless one of the following criteria applies:

1. The money identified in the finding for recovery is paid in full to the county.

2. The debtor has entered into a repayment plan that is approved by the Attorney General and the county to whom the money is owed. This may include withholding payment to a debtor for goods, services or construction provided to the county.
3. The Attorney General waives a repayment plan described above for good cause.
4. The debtor and the county to whom the money identified in the finding for recovery is owed have agreed to a payment plan established through an enforceable settlement agreement.
5. The county, with the concurrence of the Attorney General, certify that all of the following are true:
 - a. Essential services the county is seeking from the debtor can not be provided by any other person;
 - b. Awarding a contract to the debtor for essential service is in the best interest of the county; and
 - c. Good faith efforts have been made to collect the money identified in the finding for recovery.
6. The debtor is contesting the finding for recovery and a final determination on the action has not been reached.

Before awarding a contract for goods, services or construction, paid for in whole or part with state funds, the county must verify that the person does not appear in a database maintained by the State Auditor. Findings for recovery may be found on the State Auditor's website at <https://ohioauditor.gov/findings.html>. A county official may access the website and perform a certified search in order to verify that the person to whom you plan to award a contract does not appear in the database.

The provisions of this law do not apply in the circumstances and to companies or agreements described below:

1. The cost of the contract is less than \$25,000.
2. The aggregate cost of multiple contracts entered into by the government and the person within the previous fiscal year does not exceed \$50,000.
3. The contract is a renewal of a contract previously entered into and is renewed pursuant to that preceding contract.
4. The contract is an employment contract.
5. The contract involves a bonding company, a self insurance or joint self insurance pool, or a risk management or joint risk management program, unless a court has entered a final judgment against a company and the company has not satisfied the judgment.

6. The contract is a Medicaid provider agreement under ORC Chapter 5111.
7. When federal law dictates that a particular vendor be awarded a contract.

For additional information on this topic, please see CCAO CAB 2004-01, *H.B. 95 Awarding of Contract Requirements*, available at: https://ccao.org/aws/CCAO/asset_manager/get_file/871234?ver=1

24.16 BIDDERS STATEMENT OF PERSONAL PROPERTY TAX DELINQUENCY

After the award of any bid, and prior to the time the contract is entered into, the person making a bid must submit to the county auditor a statement affirmed under oath that the person with whom the contract is to be made was not charged at the time the bid was submitted with any delinquent personal property taxes.

If the person was charged with delinquent personal property taxes, the statement must set forth the amount of 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 must be transmitted by the county auditor to the county treasurer within 30 days of the date it is submitted. A copy of this statement must be incorporated into the contract, and no payment can be made if the contract does not contain the statement (ORC 5719.042).

24.17 NON-DISCRIMINATION PROVISIONS IN CONTRACTS

Every contract with the county for the purchase of materials, equipment, supplies, services, or insurance must contain provisions similar to those in ORC Section 153.59 relating to construction contracts by which the firm agrees:

1. That in the hiring of employees for work that the firm under the contract shall not discriminate on the basis of race, color, religion, sex, age, disability as defined in ORC Section 4112.01, national origin, or ancestry if the person is qualified.
2. That the firm or any person acting for them will not discriminate against, intimidate, or retaliate against any employee hired for performance of work under the contract.

In addition, these firms must have a written affirmative action program. Each year the firm must file a description of the program and a progress report with the Equal Employment Opportunity Office of the Department of Administrative Services (ORC 125.111).

24.18 DATA PROCESSING AND RADIO COMMUNICATIONS EQUIPMENT

Special leasing and contracting procedures have been established for the renewal of electronic data processing and radio communications equipment, systems and devices at a cost in excess of \$75,000. This threshold will also be increased annually by 3% under ORC Section 9.17 starting January 1, 2025. In this case, the equipment or service provider must submit a written bid to the county to include:

1. Terms by which the lease would be renewed,
2. Length of renewal, and
3. Cost of renewal.

The contracting authority may require the lessor to submit a bond with the bid. After receiving this bid from the present provider, the county must then follow regular notice and advertising procedures using the existing providers bid as the base. The contract must still be awarded to the lowest and best bidder. This special provision is found in ORC Section 307.861.

24.19 SPECIAL PROVISIONS FOR ELECTION SUPPLIES, PRINTING AND BALLOTS

Special provisions have been established for use of the board of elections when purchasing supplies, general printing, and ballot printing. These procedures are found in ORC Sections 3501.301 and 3505.13. Refer to Sections 124.14 and 124.15 of this *Handbook* for detailed information.

24.20 SPECIAL PROVISIONS FOR PROPERTY AND CASUALTY AND HEALTH INSURANCE

The purchase of insurance is exempt from competitive bidding requirements (ORC 307.86(F)) when the contracting authority does the following:

1. Determines that compliance with competitive bidding would increase, rather than decrease, the cost of the insurance.
2. Requests issuers of insurance policies, contracts, plans or services to respond to a request for proposal in a form prescribed by the county setting forth the cost of the insurance policies or plans.
3. Negotiate with the insurance company for the purpose of purchasing the policy at the best and lowest price reasonably possible.

A contracting authority must request proposals and negotiate with issuers in accordance with these procedures 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. The extension or renewal periods cannot exceed six years from the date the initial contract is signed.

Additional information may be found in Chapter 8 of this *Handbook* about the purchase of property and casualty insurance and in Chapter 67 for health insurance.

24.21 PURCHASE OF SUPPLIES PRODUCTS AND SERVICES OF THE SEVERELY HANDICAPPED

Purchases of supplies and services of the severely handicapped, as specified in ORC Sections 307.86, 125.60 to 125.6012, are exempt from competitive bidding. This is the result of the "state use law" originally enacted in 1976 and revised with the adoption of the state budget in 2005. The purpose of this law is to assist Ohio's severely handicapped citizens to obtain long-term gainful employment by providing an increased market for supplies and services of sheltered workshops or the employment of developmentally disabled persons.

The law establishes the Office of Procurement from Community Rehabilitation Programs (hereafter referred to as the office) within the Department of Administrative Services (DAS). DAS had until July 1, 2007 to establish the office and transfer all of the programs and functions of the former "state use committee" to the office (ORC 125.601). The office determines which products or services of a community rehabilitation program or sheltered workshop are suitable for use and fixes the price for those products and services (ORC 125.606). The price may not result in any profit, however.

The office must maintain, periodically update, and publish a procurement list that includes all products and services that the office determines suitable for use (ORC 125.603). This list is distributed to state and local agencies. The office certifies community rehabilitation programs to provide supplies and services to state agencies and local governments (ORC 125.604). The office also may certify any entity to serve as an agent of a qualified community rehabilitation program (ORC 125.605).

Before purchasing any supply or service, a county is required to do the following:

1. Determine whether the supply or service is on the office's list at an established fair market price. If it is, then the supply or service shall be purchased from a qualified agent or agency at that price (ORC 125.607(A)).
2. If no price has been established, the county is required to negotiate an agreement for a fair market price. If no price is successfully negotiated, the office may release the county from this requirement (ORC 125.607(B)(C)) .
3. Pay administrative fees to DAS. Such fees may be billed directly to counties or may be collected by agencies or agents on behalf of the department and as part of the price of the supplies and services (ORC 125.608).
4. Provide information to the office necessary for the state to administer the program (ORC 125.6012).

If the office determines for a county that compliance with this law is not possible or advantageous, the office may release the county from this requirement. Any release must be in writing, must specify the supplies or services to which it applies, the period of time during which it is effective, and the reason for the release (ORC 125.609). The law prohibits a county from purchasing supplies or services from another party or political subdivision as permitted by ORC 125.04(C) instead of this program if the supply or service

is on the published list, even if it can get the supply or service at a lower price (ORC 125.6011).

24.22 PURCHASES BY A COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES AGENCIES, WORKFORCE BOARD, OR CHILDREN'S SERVICES AGENCIES WITH FEDERAL FUNDS

Generally, purchases made by a county job and family service department for family or workforce development services are exempt from state competitive bidding (ORC 307.86(D)). Nonetheless, county departments must remain compliant with federal purchasing guidelines when federal funds are used. The Ohio Department of Job and Family Services has adopted an administrative rule with detailed procedures for this purpose (OAC 5101:9-4-07.1, see also ODJFS eManual Chapter 4). The rule defines specific procedures for five types of purchases:

1. Micro-purchases are supplies or services in which the aggregate dollar amount does not exceed the threshold set by federal acquisition regulation 48 CFR subpart 2.1. As of 2023, the federal micro-purchase threshold is \$10,000. These purchases can be awarded without soliciting quotes if (1) the price is considered reasonable based on research, experience, purchase history or other information and documents; and (2) to the extent practical that micro-purchases are distributed equitably among qualified suppliers.

Note: The county may increase the federal micro-purchase threshold to \$50,000 through an annual self-certification process defined in 2 CFR § 200.320.

2. Small purchase procedures are used if the price does not exceed the lower of the local small purchase threshold or federal small purchase threshold, also known as the simplified acquisition threshold, for purchases involving the US Department of Health and Human Services, US Department of Labor, US Department of Agriculture – Food and Nutrition Service). For 2023, the federal simplified acquisition threshold is \$250,000. The purchasing authority may use one of two procedures:
 - a. for purchases where price is the overriding factor and which involve standardized products or services, the purchasing authority may use simple and informal procurement methods by obtaining price or rate quotations from not less than three sources, if available.
 - b. For purchases where price is not the overriding factor but where relative quality and performance must be evaluated (e.g., consultant services), the purchasing authority must maintain a list of qualified sources from which to solicit proposals and seek proposals from at least three sources, if available. The purchaser must identify and document the evaluation factors included in the solicitation and their relative importance, and make an award to the responsible source whose proposal is most advantageous to the program.

Formal procurement methods are required when the value of the purchase exceeds the lower of the local small purchase threshold or the federal small purchase threshold as set by 48 CFR subpart 2.1.

3. Competitive sealed bidding with formal advertising is used if three conditions are met:
 - a. A complete, comprehensive and realistic specification or purchase description is available;
 - b. Two or more responsible bidders are willing and able to compete effectively for the business;
 - c. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.
4. Competitive proposals are used if conditions are not appropriate for competitive sealed bidding, micro-purchases, small purchases, or non-competitive procurement. These conditions occur when the complex and technical nature of the procurement cannot be described in bid specifications and it is logical to award a contract on factors other than price. This method involves the development and advertising of requests for proposals by the purchasing agency. Evaluation factors other than price can only be used when they are clearly explained in the RFP.
5. Purchasing authorities may use noncompetitive procurement methods only when the award of a contract is infeasible under one of the four methods above, and one of the following conditions applies:
 - a. The item is available only from a sole source;
 - b. A public emergency will not permit a delay resulting from competitive solicitation;
 - c. The federal awarding agency or ODJFS authorizes noncompetitive procedures in response to a written request;
 - d. The purchases are for equipment or services where the prices are established by law for technical equipment requiring standardization and interchangeability of parts with existing equipment.

The rule also defines circumstances in which the purchasing agency may use state purchasing contracts and state term schedules, although state term schedules are to be treated only as a prequalified vendor contractor list and do not represent competitive procurement. Purchases made using the state term schedule must follow competitive requirements outlined above.

The procurement of foster care placement services by a public children's services agency (PCSA) may follow the small purchase procedures or noncompetitive proposals of the rule when they are purchased for specific individual cases. Purchases of other goods

and services by a PCSA that do not respond to a specific case need must follow the appropriate procures outlined in the rule. A PCSA may not establish an exclusive or preferential relationship with foster care maintenance providers, adoption services providers, or other service contractors to the exclusion of other service providers unless those relationships result from competitive procurement and are documented by the PCSA. For additional details, please consult Ohio Administrative Code Section 5101:9-4-07.1.

24.23 PURCHASE OR LEASE OF MOTOR VEHICLES

The purchase or lease of motor vehicles is subject to ORC Sections 307.86 - 92. Prior to proceeding under these sections, however, the commissioners must adopt a resolution that states:

1. The necessity for the purchase or lease.
2. The number and kind of vehicles required.
3. The estimated cost of purchasing or leasing each vehicle (ORC 307.41).

When advertising for bids on vehicles (and equipment and machinery) the county may include a notice that it is willing to accept bids for the purchase of unneeded county-owned vehicles. The bids on these "trade-in" vehicles can then be subtracted from the price of the bids of the new vehicles to determine the lowest responsible bidder (ORC 307.12(H)). In addition, the county can also simply sell such vehicles to the firm it is buying new vehicles from and have it deducted from the purchase price (ORC 307.12(G)). It appears that this could occur after bids are accepted on new vehicles.

24.24 PURCHASE OR LEASE OF ROAD EQUIPMENT

Ohio law provides special procedures for the purchase or leasing of machinery, tools, trucks and other equipment for use in constructing, maintaining and repairing roads as follows:

1. For the purchase of such items at least 25 percent of the cost shall be paid in cash. The value of used equipment sold to the vendor from whom the purchase is to be made may be used to reduce the 25 percent cash down payment or any installment payments. The remainder shall be paid annually of not less than three-twentieths of the total purchase price secured by notes. This effectively provides for a maximum of five deferred payments after the initial 25 percent is paid. Notes issued must contain a prepayment option (ORC 5549.02(A)).
2. For leases with an option to purchase, the county must pay at least three-twentieths of the total cost in cash as a down payment. The value of used equipment that is sold to the vendor can be considered as cash to meet the down payment requirement. These leases must be made to the lowest responsible bidder after the advertisement for bids once and not later than two weeks before the date fixed for letting the contract (ORC 5549.02(C)).

24.25 SPECIAL PROVISIONS FOR REPAIR OF A WATER TANK

A board of county commissioners, board of directors of a conservancy district, board of directors of a sanitary district, or board of trustees of a regional water and sewer district may enter into a contract for the engineering, repair, sustainability, water quality management, and maintenance of a water storage tank either by direct negotiation or through the use of a request for proposal or request for qualifications (ORC 9.29). Certain conditions must be met to invoke this provision:

1. The contracting political subdivision is not required to make payments in a single year that exceed the excess of the subdivision's water utility charges over the operating expenses of the water system payable from such charges and the total debt service payments due in that year;
2. The work must be done under the supervision of a licensed professional engineer who certifies that the work is performed in compliance with all applicable codes and engineering standards;
3. The work or service to be performed is required to bring the tank or facilities into compliance with federal, state, or local requirements and the project cost is itemized separately to the political subdivision. The cost may be spread over a period of not less than three years from the date the contract begins. Charges due under the contract must be paid after payment is made for operating expenses and debt expenses for outstanding debt due that year.

24.26 CONTRACTS WITH FINANCIAL INSTITUTIONS TO COLLECT COUNTY PAYMENTS AND FEES

Following the competitive bidding requirements of ORC Section 307.86, the county commissioners, if requested by the county treasurer, may contract with a financial institution to receive county payments and fees (ORC 321.03). Under such an arrangement the financial institution would receive all payments and fees payable to the county as specified in the contract including utility, water, sewer, refuse collection, waste disposal, and airport fees. Such provisions, however, do not apply to tax payments. Under such a system:

1. The payment would be received by the financial institution at a post office box.
2. The financial institution would open the mail, process the payment, and deposit the money in the treasurer's account.
3. The financial institution would provide the treasurer with daily receipt information.

In addition, for such a contract to be valid it must:

1. Have attached a certification by the State Auditor that the treasurer and financial institution have given assurances approved by the State Auditor that the books and records of the financial institution will be open to the State Auditor to the same extent as if the collections were being done by the treasurer.

2. The treasurer's surety bond would cover any potential loss.
3. The contract does not conflict with the State Auditor's uniform system of accounting and reporting.

24.27 CONTRACTS WITH FINANCIAL INSTITUTIONS TO COLLECT TAX PAYMENTS

In addition, under the same procedures and with the same limitations specified above, the county commissioners, if requested by the county treasurer, may enter into a contract with a financial institution to receive real property and manufactured home tax payments (ORC 323.611).

24.28 USE OF COUNTY-HELD CREDIT CARDS

Ohio law gives county commissioners the option of allowing various county offices and employees to use county credit cards or county procurement cards, or both. Counties are not permitted to use debit cards except for law enforcement purposes (ORC 9.22). The law was revised in 2023 to allow credit cards to be used for any work-related expense that serves a public purpose, subject to the availability of funds and conformity with the county's policies and procedures (ORC 301.27). For the sake of clarity, the *Handbook* will discuss provisions of law relating to county held credit cards in this section and county procurement cards in Section 24.29.

Under prior law, counties could only use a credit card to make purchases of specific work-related goods and services identified in the Revised Code. HB 33, 135th G.A., removed this list, and allows credit cards to be used for any purchase that satisfies all of the following:

1. It is for a work-related expense.
2. The purchase serves a public purpose.
3. The debt incurred as a result of the purchase is payable with available moneys appropriated to a specific appropriation line item that is appropriate for the purchase.
4. The purchase complies with ORC 301.27 and with the policy adopted by the board of county commissioners.

In order to use a credit card, the law requires a board of county commissioners, in consultation with the county auditor, to adopt a policy by resolution regarding the use of a credit card by the board of commissioners or by the office, officer, or employee of any other appointing authority. No action is necessary if the county does not wish to use a credit card. The board must deliver a copy of the policy to the county auditor. The policy must include both of the following:

1. The procedure for submitting itemized receipts for purchases to the county auditor. It is a specific legal requirement that receipts must be submitted.
2. Any other provision regarding the use of county credit cards so long as the provision does not conflict with state law.

For a list of recommended elements in a county credit card policy, see County Advisory Bulletin [2023-5](#). It is advisable that county employees undergo annual training covering the credit card policy.

In order to use a credit card, a county appointing authority must apply to the board of county commissioners for authorization to have an officer or employee of the appointing authority use the card. The request must state whether the card is to be issued in the name of the office only (which is not recommended), or whether the card will include the name of a specified officer or employee of the appointing authority. The appointing authority must notify, and update as necessary, the county auditor and the board of county commissioners regarding the specific individuals authorized to use cards.

An individual or appointing authority is liable for unauthorized use of a card that conflicts with state law or the policy adopted by the board of commissioners. Use of a county credit card that is not in accordance with county's policies or ORC Section 301.27 is a first degree misdemeanor (ORC Section 2913.21). Whenever any officer or employee who is authorized to use a credit card suspects the loss, theft, or possibility of unauthorized use of the card, the officer or employee must notify the county auditor and either the officer's or employee's appointing authority or the board of county commissioners immediately and in writing.

Liability includes finance charges, late fees or late penalties, and sales tax unless approved by the board of county commissioners. Unauthorized expenditure also includes using a card for work-related expenses that were not approved, or an individual using a card not assigned to that individual.

When an unauthorized expenditure has taken place as determined by the county auditor or the board of county commissioners acting on its own, the employee or officer responsible for misuse is required to repay the entire amount of the unauthorized purchase within 30 days of receiving written notice from the board of commissioners. If the card is issued in the name of the appointing authority, the appointing authority is liable.

The law allows an appointing authority to request that the board of county commissioners approve an unauthorized expenditure after the fact if the auditor certifies that the sum of money is in the treasury or in the process of collection to the credit of the appropriation line item.

Prior Approval of Monthly Spending Estimates

There are two procedures for approving monthly or period purchasing limits for credit cards. Under the standard method, the officer or employee with a card must submit an estimate of work-related expenses and appropriation line items from which those

expenditures are to be made to the board of commissioners. The board then may revise the estimate and certify an amount to the county auditor. If the county auditor certifies that the amount is in the treasury and free from obligations, the board then authorizes the officer or employee to incur debt up to the amount.

The alternate procedure permits the board of commissioners to adopt a resolution authorizing an officer or employee of an appointing authority to use a county credit card without submitting an estimate. The auditor must be notified before adopting the resolution. Use of a credit card under the alternate procedure is limited to the amount appropriated and encumbered in a specific appropriation line item for the permitted use designated in the authorizing resolution, or in the case of a resolution that authorizes use of a specific card, for each of the permitted uses listed in the resolution to the extent that sufficient unencumbered funds exist in the specific appropriation line item.

HB 33 clarifies that a new resolution is not necessary when a new credit card number is issued due to fraudulent use of the specified card.

24.29 USE OF COUNTY-HELD PROCUREMENT CARDS

At the request of any county appointing authority, a board of county commissioners may authorize an officer or employee to use a procurement card held by that appointing authority. Any authorization request to the commissioners must state whether the card is to be issued only in the name of the appointing authority or whether the issued card will also include the name of a specified officer or employee (ORC 301.29(D)). If county commissioners receive a request from a county appointing authority for a procurement card and the commissioners decide to pursue the adoption of a procurement card policy, it is recommended that the commissioners invite any interested county appointing authorities to participate in an informal work group to assist the commissioners in the development of that policy.

A procurement card is a “financial transaction device” which is defined to include a credit card, debit card, charge card, or prepaid or stored value card, or automated clearinghouse network credit, debit, or e-check entry that includes, but is not limited to, accounts receivable and internet-initiated applications or any other device or method for making an electronic payment or transfer of funds, but specifically excludes any county held credit card authorized under ORC Section 301.27. Procurement cards are to be used only to pay work related expenses. Late charges or finance charges are generally not an allowable expense unless authorized by the county commissioners (ORC 301.29(B)).

Prior to authorizing any county officer or employee to use a procurement card, county commissioners must, by resolution, adopt a policy with the advice of the county auditor, for the use of those procurement cards.

The commissioners’ resolution must contain a list of administrative controls which includes the following:

1. An aggregate amount that may be incurred through the use of each card within a day, week, or month.

2. Classes of permissible goods and services that may be purchased with a card.
3. In case a card is misused, a procedure for revocation of a card. The law also requires the county auditor to develop internal accounting controls in consultation with the auditor of state.

The law authorizes the commissioners' resolution to limit the use of the cards as follows:

1. Limit the use of a procurement card to one or more specific work-related or classes of work-related expenses.
2. Limit card transactions to a specific number of transactions per day, month, quarter or other period.
3. Limit card use by supplier or work-related expense.
4. Limit card to daily or monthly spending limits.

If county commissioners adopt a procurement card policy, commissioners must advertise a request for proposals from issuers of financial transaction devices. The RFP must specify the purpose of the request, the type of card or cards sought and the date for submission of proposals. The advertisement must be published twice in a newspaper of general circulation in the county unless the commissioners post the advertisement on the county's internet site in which case only one newspaper advertisement is necessary. With the advice of the county auditor and county treasurer, the commissioners determine whether to contract with one or more issuers of procurement cards.

Debt incurred from the use of procurement cards must be paid from moneys appropriated to a specific line item of an appointing authority (ORC 301.29(E)). The law prohibits procurement cards from being used to circumvent competitive bidding (ORC 301.29(F)(3)).

Procurement card expenditure limits may be set on the basis of monthly or multi-month estimates approved by the county commissioners, or specific line item appropriations in the county budget. An officer or employee to whom a procurement card has been issued is personally liable for any card expenditure beyond the estimated or appropriated amount. An appointing authority may request after the fact authorization for an increased expenditure, or a supplemental appropriation in cases where a line item appropriation has been exceeded. However, if for any reason an after the fact authorization or a supplemental appropriation is not approved by the commissioners, the officer or employee who used the card (or the appointing authority in whose name the card is listed) is personally liable for reimbursing the county treasury for the excess expenditure.

The loss, theft or possible unauthorized or unlawful use of a card must be reported to the auditor and the appointing authority or county commissioners.

Use of a procurement card for any use other than those permitted in the commissioners' procurement card policy constitutes misuse of a credit card and is a criminal offense.

24.30 DEBIT CARDS

Counties and other political subdivisions are prohibited from having or using a debit card account except for law enforcement purposes (ORC 9.22). Violation of this provision is considered misuse of a credit card, a first degree misdemeanor. The prohibition does not apply to a debit card account related to the receipt of grant funds.

24.31 SOIL AND WATER CONSERVATION PROJECTS

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

1. The county commissioners designate the board of supervisors of the soil and water conservation district to be the contracting agency. In this case, the procedures of ORC Section 940.06(H) must be followed.
2. The project is being jointly undertaken by the county and another state and federal agency. In this case, if the state or federal agency has regulations that are in conflict with the regular bidding procedures, the county may then adopt the state or federal procedures. This applies to the county commissioners or the district supervisors of a soil and water conservation district (ORC 940.29(F)).

24.32 SALE OF PERSONAL PROPERTY AT PUBLIC AUCTION

When it is found that the county has personal property that is not needed or is obsolete and the value of the property to be sold in one lot at one time is estimated to be in excess of \$2500, the county commissioners may do either of the following:

1. Sell such property at a public auction or by sealed bid to the highest bidder. Notice of the time and place and manner of the sale must be published in a newspaper of general circulation in the county and posted in the offices of the county commissioners and county auditor 10 days before the sale (ORC 307.12(A)); or
2. Donate any motor vehicle that is not worth more than \$4500 to a federal tax-exempt nonprofit organization for the purpose of meeting the transportation needs of participants in the Ohio Works First program established under ORC Chapter 5107 and participants in the Prevention, Prevention, and Contingency program established under ORC Chapter 5108.

The sale of county personal property by public auction or by sealed bid is not required under any of the following circumstances:

1. When selecting the products of a recycling or resource recovery plant if the commissioners adopt a resolution to nullify this requirement (ORC 343.08).
2. If the estimated value of county personal property to be sold in one lot at one time is less than \$2500, the commissioners may do either of the following:
 - a. Sell the property by private sale, without advertisement or public notification;

- b. Donate the property to an eligible Ohio nonprofit organization, after adopting a resolution establishing the guidelines of a donation program and providing public notice. A nonprofit organization wishing to participate must submit written notice to the board or its representative with evidence of its tax-exempt status and a description of the organization's primary purpose and other details. The law directs board members to consult with the Ohio Ethics Commission before conducting a sale or donation to any nonprofit in which the commissioner or a member of the commissioner's family is a trustee, officer, board member, or employee (ORC 307.12(B)).
3. Regardless of the property's value, the commissioners may sell or donate county personal property, including motor vehicles to the federal government, the state, or any political subdivision of Ohio without advertisement or public notification.
4. When a county officer or department head determines that certain county personal property under the jurisdiction of that department head is not of immediate need and they so notify the commissioners, then the commissioners may lease that property to a municipal corporation, township, or other political subdivision on terms established by the commissioners under a contract.
5. If the commissioners determine that county personal property is obsolete and unfit for use and has no value, then they may discard or salvage the property.
6. Regardless of the property's value, county commissioners may sell county personal property by internet auction after adopting a resolution of intent which describes how the auctions will be conducted, number of days for bidding on the property, the name of a representative or contact person for the auction, and the general terms and conditions of sale. Notice of the county's intent to sell unneeded, obsolete, or unfit property by internet auction must be published at least twice in a newspaper of general circulation in the county. The second publication may be in abbreviated form following the provisions of ORC 7.16. The notice also must be posted in the offices of the county auditor and commissioners, and must be posted on the county's internet web site, if the county maintains a website.

Materials, machinery, tools, and other supplies under the jurisdiction of a county officer or department head that is sold or otherwise disposed of by the county should be removed, if listed, from the annual inventory which all county offices and departments are required to maintain and file with board of commissioners and county auditor on the second Monday of January of each year (ORC 305.18).

24.33 AUDITORS CERTIFICATION

After the tax budget and appropriation measures are adopted, funds are available for expenditure. The means by which such expenditures are made, and restrictions on such expenditures, are set forth in ORC Section 5705.41(D). No contract can be made or expenditure ordered unless there is attached a certificate of the county auditor stating that the amount that is required to meet the contract has been lawfully appropriated and

is in the treasury or in the process of collection to the credit of the appropriate fund, free from encumbrances. If a contract is a continuing contract to be performed in whole or in part in an ensuing fiscal year, such certification is necessary only for the amount required for the current fiscal year. It is this provision of the law that makes a purchase order system helpful.

In addition, where a contract is entered into on a per unit basis, it is necessary to certify to the auditor an estimate of the total amount to come due on the contract, and a certification by the auditor as to the availability of funds to cover this estimate or so much of this portion as will come due in the current fiscal year.

Any contract entered into without such a certificate is void, and no payment may be made on the contract. However, if the auditor prepares a certificate stating that at the time of the execution of the contract and at the time his certificate is executed, a sufficient sum appropriated for the purpose of the contract is in the treasury or in the process of collection to the credit of the appropriate fund, and unencumbered, the commissioners may authorize the issuance of a warrant in payment of the amounts due upon the contract. This is frequently referred to as a "then and now certificate". If the amount due is less than \$100, the county auditor may authorize a bill to be paid without the approval of the county commissioners, if the expenditure is otherwise valid.

County commissioners may adopt a resolution exempting county purchases of up to \$1,000 from the certificate of availability of funds requirement. The benefit of this procedure is to reduce the time required to make numerous small-value, non-recurring purchases. The commissioners' resolution must state the dollar amount that will be exempted from the certificate of availability of funds requirement, and whether the exemption applies to all purchases, to one or more specific classes of purchases, or to the purchase of one or more items. The procedure for adopting such a resolution includes the following:

1. Commissioners must give written notice to the county auditor that they intend to adopt such a resolution.
2. Commissioners can not adopt any such resolution sooner than 15 days after giving the county auditor written notice.
3. The notice must include the dollar amount proposed for exemption and whether the exemption applies to all purchases, one or more specific classes of purchases, or to one or more specific items.
4. The auditor has 15 days from receiving the notice to review and comment on the proposal.

If the commissioners adopt a resolution increasing the certificate of availability of funds threshold, any person authorized to make a purchase must file a written or electronic document with the county auditor within three business days or other time specified by the commissioners stating the purpose and amount of the expenditure, date of purchase, name of vendor and any additional information prescribed by the State Auditor. A purchase order system may be used to meet the requirements of this law.

24.34 BLANKET CERTIFICATES

ORC Section 5705.41(D)(3) also authorizes the county auditor to issue "blanket certificates" in amounts not in excess of an amount established by resolution of the commissioners and not extending beyond the end of the fiscal year. Where such a certificate has been issued, purchases may be made, orders for payment issued, and obligations incurred, provided that the aggregate total of such sums, entered into for the specified purpose from the indicated fund, does not exceed the sum certified. An itemized statement of expenditures incurred and payments made must be presented to the county auditor before another certificate may be issued. Only one blanket certificate may be outstanding at a given time in a single line item appropriation under this type of blanket certificate.

In addition to authorizing the type of blanket certificates described in the preceding paragraph, the law authorizes blanket certificates to be issued for certain types of recurring and reasonably predictable operating expenses where more than one such blanket certificate may be outstanding at any time. The purposes for which a county may appropriate, authorize or issue one or more such certificates include the services of an accountant, architect, attorney, physician, professional engineer, construction project manager, consultant, surveyor or appraiser as well as to purchase fuel oil, gasoline, food items, roadway materials, utilities, purchases made through the state cooperative purchasing program (ORC 125.04) and any other specific expenditure that is a recurring and reasonably predictable operating expense. An itemized statement of obligations and expenditures made under such a certificate must be provided to the county auditor for each certificate issued.

24.35 APPROVAL OF HOSPITAL PURCHASING POLICIES

Generally, county hospitals must comply with the requirement that anything in excess of \$75,000 must be competitively bid. The board of hospital trustees, however, may each year adopt bidding procedures and purchasing or leasing policies for services provided through a joint purchasing arrangement sponsored by a nonprofit organization, and for those supplies and equipment routinely used in operating the hospital (ORC 339.05). If the policies and procedures are approved by the county commissioners, the hospital then follows these procedures instead of the procedures in ORC Sections 307.86 - 307.92.

A county board of hospital trustees also has the authority to exempt certain purchases from competitive bidding by declaring an emergency. The procedures are identical to those utilized by a county board of commissioners (see Section 24.04). The board must make a determination by unanimous vote that a real and present emergency exists, and that the estimated cost of the purchase is \$100,000 or less or there is actual physical damage to structures or equipment. If the purchase is exempted because it is less than \$100,000, but the estimated cost is \$50,000 or more, the board must solicit informal estimates from at least three potential contractors before awarding the contract. The board must maintain a record of these informal bids for at least one year after the contract is awarded or for as long as required by the federal government.

24.36 MINORITY BUSINESS ASSISTANCE

County commissioners have very broad discretion and permissive authority to develop a policy to assist minority business enterprises (MBEs) for contracts let pursuant to competitive bidding (ORC 307.921). The minority enterprise must be owned and controlled by U. S. citizens who are Ohio residents and who are members of one of the following economically disadvantaged groups:

1. Blacks
2. American Indians
3. Hispanics or Latinos
4. Asians

In making its determination as to whether a business is a MBE, women-owned business enterprise, or veteran-friendly business enterprise, the county must accept a certification issued by the Ohio Department of Development (ORC 122.921, 122.924, 122.925).

24.37 BONDS FOR MINORITY BUSINESS ENTERPRISES AND EDGE BUSINESS ENTERPRISES

The law permits the Director of Development to execute bonds as surety on behalf of minority businesses on contracts with the state and political subdivisions of the state (ORC 122.89). With the advice of the Minority Development Financing Advisory Board and the Superintendent of Insurance, the director must adopt rules under ORC Chapter 119 establishing application procedures, providing for the payment of premiums to secure such bonds, and providing for the retainage of money paid to a minority business enterprise (MBE) and EDGE business enterprise. The law requires retainage of fifteen percent for a contract valued at more than \$50,000 and retainage of twelve percent for a contract of \$50,000 or less.

The law defines a “minority business enterprise” as an individual who is a U.S. citizen and resident of Ohio who owns and controls a business and who is a member of one of the following economically disadvantaged groups: Blacks, American Indians, Hispanics or Latinos, or Asians. “Owned and Controlled” means that at least fifty-one per cent of the business is owned by persons who belong to one of the groups identified above, and that those owners have control over the day to day operation of the business. The owners must have had operational control over the business for at least one year prior to being awarded a contract under this law (ORC 122.71). An “EDGE business enterprise” is defined as a sole proprietorship, association, partnership, corporation, limited liability corporation, or joint venture certified as a participant in the encouraging diversity, growth, and equity (EDGE) program by the Director of Development under the law (ORC 122.922).

The law requires the Director of Development to coordinate and oversee the “unbonded state contractor program”, the “unbonded political subdivision program” and to approve a “qualified contractor assistance program.” The law permits any minority business or

EDGE business to bid or enter into a contract with any political subdivision of the state, including a county, or any instrumentality of a political subdivision without being required to provide a bond under the following circumstances (ORC 122.89):

1. For the first contract that a MBE or EDGE business enters into with a political subdivision or instrumentality of a political subdivision, the business may bid or enter into a contract valued at \$25,000 or less without being required to provide a bond, provided the business is participating in or has completed a qualified contractor assistance program;
2. After a political subdivision or instrumentality has accepted a contract as completed and suppliers and subcontractors have been paid, the MBE or EDGE business may bid or enter into a second contract valued at \$50,000 or less without being required to provide a bond, provided the business is participating in or has completed a qualified contractor assistance program;
3. After a political subdivision or instrumentality has accepted a second contract as completed and suppliers and subcontractors have been paid, the MBE or EDGE business may bid or enter into a third contract valued at \$100,000 or less without being required to provide a bond, provided the business has completed a qualified contractor assistance program;
4. After a political subdivision or instrumentality has accepted a contract as completed and suppliers and subcontractors have been paid, the MBE or EDGE business may bid or enter into a fourth contract valued at \$200,000 or less without being required to provide a bond, provided the business has completed a qualified contractor assistance program;
5. After a political subdivision or instrumentality has accepted a contract as completed and suppliers and subcontractors have been paid, upon demonstrating that with respect to a contract valued at \$300,000 or less with any political subdivision or instrumentality that the MBE or EDGE business has applied to two surety companies and been denied a bond, or has applied to two surety companies for a bond, and at the expiration of sixty days after making the application, has neither received nor been denied a bond, the MBE or EDGE business may repeat its participation in the unbonded political subdivision contractor program. An eligible MBE or EDGE business may not participate in the unbonded political subdivision contractor program more than twice.

An MBE or EDGE business that has successfully completed two or more contracts under the unbonded state contractor program may enter into a contract with a political subdivision or instrumentality at the same level at which the business would qualify if entering into an additional contract with the state.

The Director of Development must approve a qualified contractor assistance program that provides education and technical assistance to MBE or EDGE businesses so that they may become eligible for bonding. The director is required to provide an annual report to the governor and the General Assembly regarding the operations, activities, and achievements of the unbonded state and political subdivision contractors programs, and

a recommendation as to whether these programs should continue. Once the director has approved a qualified contractor assistance program, the director will have to establish a program for capturing data from state agencies, political subdivisions, and contractors regarding the number of entities participating in either the unbonded state contractor program or the unbonded political subdivision program.

24.38 ADOPTION OF PREFERENCE SYSTEM FOR OHIO CONTRACTORS

Effective October 3, 2023, counties are prohibited from adopting a system that gives preference to Ohio suppliers of equipment, materials, supplies, insurance, services, or a public improvement. It should also be noted that there is no statutory provision authorizing county commissioners to establish a system of local preferences for products mined or produced in a county or a geographic region smaller than the state.

24.39 PURCHASING THROUGH THE DEPARTMENT OF ADMINISTRATIVE SERVICES, DEPARTMENT OF TRANSPORTATION, STATE, OR A REGIONAL PLANNING COMMISSION, OR A COUNCIL OF GOVERNMENTS

Counties may purchase supplies, services, equipment, and materials from the Ohio Department of Administrative Services (DAS), the Ohio Department of Transportation (ODOT), a regional planning commission (RPC), or a council of governments (COG). In the case of a regional planning commission and a council of governments, the county must enter into a contract with the RPC (ORC 713.23) or COG (ORC 167.08). With respect to DAS, ODOT and RPCs, the following requirements generally apply:

1. The county must file a resolution with DAS, ODOT or the RPC expressing its desire to participate.
2. The resolution must agree that the county will be bound by the terms and conditions of DAS, ODOT or the RPC and, in the case of DAS and the RPC, must pay the vendor directly under each purchase contract.
3. The RPC or DAS may charge the county a reasonable fee to cover administrative costs. The law is silent on whether ODOT may charge the county an administrative fee.
4. If bids have been taken, the purchase cannot be made through DAS or RPC unless the price is lower. The law is silent on whether an ODOT contract may be used if the county has bid a purchase and a lower bid has been received.
5. Such purchases are exempt from competitive bidding, however, a RPC and a COG must follow the county competitive bidding law when purchasing on behalf of a county. For more information on the role of COGs in purchasing, see ORC Sections 167.03 and 167.08 and OAG 2019-028).
6. For construction, ORC 167.081 authorizes the entry into a per unit contract only for the purpose of acquiring services related to the repair, enlargement, improvement, or demolition of existing buildings or structures. A COG may not be

used for new construction. These projects are subject to state prevailing wage law if the project cost exceeds applicable thresholds (see OAG 2019-028).

24.40 COUNTY JOINT PURCHASING

The law (ORC 9.48) provides political subdivisions including counties with the following additional joint purchasing options:

1. Permit one or more political subdivisions to participate in contracts for equipment, materials, supplies, or services. This joint purchasing provision cannot be used to purchase construction services (see OAG 2019-028). The county may charge the other political subdivisions a reasonable fee to cover any additional costs incurred as a result of their participation.
2. Participate in a joint purchasing program operated by or through a national or state association of political subdivisions in which the political subdivision is eligible for membership.
3. Participate in contract offerings of the federal government including contracts of the general services administration.

Purchases made under this law are exempt from any competitive selection requirements otherwise required by law provided the original contract entered into by a political subdivision was awarded pursuant to a publicly solicited request for a proposal or a competitive selection procedure. With respect to federal contracts, purchases are exempt from any competitive selection requirements. If bids have been taken by the political subdivision, the purchase cannot be made through another political subdivision, a state or national joint purchasing program or the federal government unless the price is lower.

For purposes of this law, a political subdivision has the same meaning as in ORC Section 2744.01 and includes a county hospital as defined in ORC Section 339.01.

24.41 PURCHASE OF SUPPLIES OR SERVICES FROM THIRD PARTY ON EQUIVALENT TERMS AND LOWER PRICE

A county that 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 county is eligible for membership may purchase supplies or services from another party, including another political subdivision, instead of through participation in a contract operated by a national or state association. The county must be able to show that it 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.

Purchases made under provision (ORC 9.48(D)) are exempt from any competitive selection procedures otherwise required by law. A county that uses this procedure must maintain sufficient information regarding the purchase to verify that it satisfied the conditions for making a purchase.

24.42 COUNTIES MAY PURCHASE SERVICES AND SUPPLIES THROUGH REVERSE AUCTIONS ON THE INTERNET

The law permits any county contracting authority (as defined in ORC 307.92), including a board of commissioners, to purchase services and supplies by competitive reverse auction over the internet. A competitive reverse auction is a procedure in which a county or other entity seeking to purchase supplies or services posts via an open environment on the internet the maximum price that it is willing to pay for the supply or service. Vendors then are instructed to offer bids at or below the price listed by the county, with the county authorized to select a winning bid from those submitted (ORC 9.314 (A)(3)).

The law defines supplies to include all property, except real property, including equipment, materials, other tangible assets, and insurance. The law prohibits the purchase of “supplies or services by reverse auction 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.” Services are defined to include any furnishing of labor, time or effort by a person that does not involve the delivery of a specific end product. A service may involve the delivery of a report only if the report is incidental to the primary service being provided. Employment agreements or collective bargaining agreements are specifically excluded from the definition of service (ORC 9.314 (A)(4)(5)).

Counties may purchase services or supplies through reverse auctions whenever the contracting authority determines that a reverse auction via the internet is advantageous to the county (ORC 9.314 (B)). The contract file must contain the basis upon which an award is made (ORC 9.314(E)). The law specifically provides that competitive reverse auctions satisfy any statutory requirement for competitive sealed bidding, however, it should be noted that reverse auctions may also be used when competitive sealed bidding is not required (ORC 9.314(G)).

In order to initiate reverse auctions, a county would first solicit proposals for supplies or services through a request for proposals (RFP), with notice provided according to rules adopted by the county (ORC 9.314(C)). The RFP should clearly state the relative importance of price as related to other factors, including the past service record of the vendor and the vendor’s ability to deliver the specific supply or perform the specific service that is the subject of the auction. As provided in the RFP and the rules, a county may conduct discussions with individuals and entities that it determines to be reasonably susceptible of being selected for an award. The purpose of such discussions is to ensure full understanding of and responsiveness to solicitation requirements. The county must accord all bidders fair and equal treatment with respect to opportunities for discussions related to the clarification, correction or revision of proposals (ORC 9.314(D)).

A county should consider addressing the following issues when adopting rules to implement reverse auctions:

1. The relative importance of price, past service record, and ability to deliver or perform.
2. The rationale for the program and its potential cost savings.

3. Notice procedures in print and electronic form for the reverse auction.
4. A procedure for providing vendors with fair and equal treatment with respect to any opportunity for clarification, correction, or revision of proposals.
5. Time periods during which each auction will be posted.
6. Procedures for the notification of current vendors of the planned use of reverse auctions.
7. Requirements for bid and performance bonds, if the county decides to use them. The law specifically authorizes a county to include within its rules a requirement for a performance bond or other form of financial security (ORC 9.314 (F)).

24.43 COUNTIES MAY CONTRACT WITH OTHER POLITICAL SUBDIVISIONS TO PERFORM GOVERNMENT FUNCTIONS OR SERVICES

In addition to contracting for specific supplies or materials, state law allows counties and other political subdivisions to contract with each other to exercise any power, perform any function, or render any service for another contracting recipient political subdivision that both entities are legally authorized to perform (ORC 9.482). A county elected officer must give written consent before a county can enter into an agreement for the exercise or performance of the elected officer's functions or duties. An agreement cannot extend to levying any tax or performing an investment function for public funds, but a contract may allow for the collection and administration of a tax. Employees acting pursuant to an agreement outside of the boundaries of their employing political subdivision continue to possess immunity from civil liability and are covered by Ohio Workers' Compensation Law.

For further information, please consult County Advisory Bulletin 1998-02, *Joint and Cooperative Purchasing Programs for Counties*, available at <https://ccao.org/wp-content/uploads/CAB%20199802.pdf>.

24.44 COUNTY ADMINISTRATOR CONTRACT AUTHORITY (ORC 305.30 (G)(H))

A county administrator may:

1. Contract on behalf of the board of commissioners within limits provided by resolution of the board. A resolution authorizing such action must specify the types of contracts that the county administrator may act on without further resolution of the board.
2. Allow and pay claims for goods received and services rendered within limits provided by a resolution of the board. The county department receiving those goods and services must certify their receipt before the administrator allows the claim.

24.45 CONSTRUCTION OF PUBLIC IMPROVEMENTS

State law provides detailed procedures for bidding and procuring public construction projects, also known as “public improvements” in the Ohio Revised Code. These laws are covered in detail in CCAO Handbook Chapter 6, *Property, Buildings, and Improvements*. The traditional public improvement procurement process uses sealed competitive bidding and a multiple-prime method of contracting in which a county or other public authority must solicit separate bids and award separate contracts for (1) plumbing and gas fitting, (2) steam and hot-water heating, HVAC and steam power plant, and (3) electrical equipment, as well as bids for the prime contractor to manage the other construction services in the project (ORC 153.50). The county must reject bids with a price more than 20% higher than the architect’s estimate (ORC 153.12(A)). Under the traditional method, the default standard for counties is the lowest and best bidder, but the county may by resolution adopt the lowest responsive and responsible bidder (ORC 153.52 and 9.321). Professional design services of an architect, landscape architect, professional engineer, or surveyor are handled separately through a qualifications-based bidding process which must be followed if the professional design fee is greater than \$25,000 (ORC 153.65 – 153.70).

In recent years, state construction law has been reformed to allow for more flexibility in procuring construction management and design services. Some options allow for qualification-based bidding and negotiations with potential contractors, and remove the need to solicit separate bids as required in the multiple prime method. Using one of these methods, counties can negotiate an overall price for the contract. Counties should carefully consider the advantages and disadvantages of the following options:

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

ensure that the plans submitted by the design-build firm reflect the original intent of the design criteria.

Ohio Public Improvements law is found in Chapter 153 of the Revised Code. Procedures for the utilization of a construction manager and construction manager at risk are found in the General Provisions of the Revised Code, sections 9.33 to 9.335.

24.46 ENERGY CONSERVATION MEASURES

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

1. Contract with an architect, engineer, energy services company or contractor to prepare an energy conservation report that analyzes county buildings' energy needs and makes recommendations and estimates of cost for the purpose of competitively bidding improvements;
2. Issue a request for proposal (RFP) to at least three vendors capable of installing energy conservation measures and publish notice of the RFP in a newspaper of general circulation in the county for at least two weeks. The commissioners may follow the alternative procedures for the publication of an abbreviated second notice (ORC 7.16). The RFP must require the vendor that is awarded the contract to prepare an energy conservation report. The contract may be awarded to one or more vendors on the basis of greatest energy savings considering the cost of the project and the county's ability to pay for or finance the improvements. The commissioners must also find that the energy savings over the average system life of the energy conservation measures as specified in a energy conservation report exceeds the cost of the improvements. The commissioners may reject all proposals.

An energy conservation report must include the following:

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

7. A certification under the seal of a registered professional engineer that the energy conservation report uses reasonable methods of analysis and estimation.

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

1. Insulation of the building and systems within the building.
2. Storm windows and doors.
3. Multi-glazed windows and doors.
4. Heat absorbing or heat reflective glazed and coated window and door systems.
5. Additional glazing.
6. Reductions in glass area.
7. Other window and door system modifications.
8. Automatic energy control systems.
9. Heating, ventilating, or air conditioning system modifications and replacements.
10. Caulking and weather stripping.
11. Replacement or modification of lighting fixtures that increase energy efficiency without increasing illumination, unless the increase in illumination is required by a building code.
12. Energy recovery systems.
13. Co-generation systems that produce steam or forms of energy such as heat, as well as electricity, primarily for use within a building or building complex.
14. Improving a central utility plant (CUP) to provide heating and cooling services to a building or buildings together with any piping and distribution controls, equipment, and related facilities from the CUP to the building or buildings.
15. Any other modification, installation or remodeling approved by the commissioners as an energy conservation measure.

The law also permits commissioners to enter into installment payment contracts and issue debt for the purpose of financing energy conservation measures. If bonds are issued for energy conservation measures, the maximum maturity of the bonds shall not exceed the lesser of the average system life of the energy conservation measures as provided in an energy conservation report or thirty years. When entering into an installment payment contract, the county must comply with regular competitive bidding relating to the

installation, modification, or remodeling of energy conservation measures unless the commissioners adopt a resolution exempting the county from this requirement. Provisions of an installment payment contract relating to interest charges and financing terms are exempt from competitive bidding. The RFP process and installment payments may be helpful to counties that can not afford to pay for such improvements with cash.

24.47 CONTRACTS FOR PROVISION OF SERVICES BENEFITTING INDIVIDUALS OR PUBLIC

As part of the 2007-2008 biennial appropriations bill (H.B. 66, effective 9-29-05), the legislature adopted financial accountability provisions to strengthen the general accountability standards for recipients of public funding (ORC 9.23, 9.231-9.239). Written contracts are required anytime a government entity transfers \$25,000 or more over the course of a fiscal year to a person or entity for the provision of services for the primary benefit of individuals or the public. A governmental entity means a state agency or a political subdivision of the state. Contracts must include:

1. The minimum percentage of money under the contract that will directly benefit the public or client the government program is designed to serve. Direct cost means the cost of providing services that directly benefit a patient or client or the public. Counties will need to comply with federal accounting standards under United States Office of Management and Budget Circular A-87, as revised May 10, 2004. (Note that since this law was enacted, OMB accounting regulations from this and other circulars have been consolidated into Title 2 of the Code of Federal Regulations, Part 200.)
2. The financial review or audit requirements established under the law (ORC 9.234) and under rules adopted by the State Auditor (ORC 9.238).
3. Provisions established by rules of the Attorney General (ORC 9.237).

The contract requirement does not apply if the person or organization meets any one of the following conditions:

1. Receives the money directly or indirectly from the United States, and no governmental entity exercises any oversight over the use of the money.
2. Receives the money solely in return for the performance of medical, therapeutic, or other health related services.
3. Is delivering Medicaid-funded services.
4. Services, other than administrative or management services that are commonly purchased by the public at an hourly rate or at a set fee for each time the services are provided.
5. Provides educational services provided by any primary or secondary school to school age children.

6. Provides services as a foster home.
7. Provides routine business services other than administrative or management services.
8. Provides services to protect the environment or promote environmental education that are offered by a nonprofit entity or funded with federal grants or revolving loan funds.
9. Receives money to preserve public health and safety under circumstances requiring immediate action as a result of a natural or man made emergency.

The law sets standards for financial review or audit requirements based on level of expenditure (ORC 9.234(B)) as follows:

1. Any recipient receiving more than \$100,000 but not more than \$300,000 from a government entity must have a financial review unless waived by the county.
2. Recipients of more than \$300,000 but not more than \$500,000 are required to have a financial review and the review may not be waived.
3. Recipients of more than \$500,000 must have an audit conducted by an independent public accounting firm according to rules adopted by the Auditor of State.

The law requires recipients of applicable public contracts to open their financial books and records for inspection by the county and the state (ORC 9.235). The expenditure of non-public money by a recipient is not a public record under the law. Any contract between the State Auditor and the recipient organization of public funds must provide that the state is an intended third-party beneficiary of the audit contract.

The Attorney General is responsible for adopting rules defining what expenditures may never be included in direct costs and a nonexclusive list of expenditures that may be included in direct costs under an agreement between the parties. The State Auditor must prescribe a single form of the financial reviews to be used by all counties.

The law provides certain remedies for counties that have been overcharged by recipients of public funds (ORC. 9.236). The remedies include the following;

1. A recipient subject to the direct/non direct cost allocation must repay any public funding that is not used for direct costs or allowable non-direct costs.
2. A county may sue the recipient to fulfill contractual obligations.
3. The state has the power to recover funds from entities that are uncollectible by pursuing those who may have contracted with that private entity.
4. Any private entity with a finding for recovery against them will be barred from doing further business with the county until the finding is repaid.

The law creates a government contracting advisory council chaired by the attorney general's office which must advise the Attorney General and the State Auditor on rules related to government contracting procedures. By law the CCAO Executive Director is a member of this council.