



COUNTY ADVISORY BULLETIN

CAB

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BULLETIN 2012-07

OCTOBER, 2012

RECENT CHANGES TO LAW RELATING TO COMPETITIVE BIDDING, PURCHASING AND COUNTY FINANCE

APPLICABLE LEGISLATION: Am. Sub. H.B. 509; Am. Sub. H.B. 487

REVISED CODE SECTIONS:

Am. Sub. HB 509: Amends ORC Sections 307.86, 307.87, 307.88, 307.861, 308.13, 6119.10, 6119.02, 307.12, 5705.41, 319.09

Am. Sub. HB 487: Amends ORC Sections 2909.21 and 2909.28 Repeals ORC Sections 2909.32 – 2909.34

SPONSOR (OF AM. SUB. HB 509): Blair

Reps. Amstutz, Anielski, Antonio, Baker, Beck, Blessing, Boose, Brenner, Combs, Conditt, Derickson, Garland, Grossman, Hackett, C. Hagan, Hill, Mallory, McClain, Newbold, Pelanda, Ruhl, Schuring, Sears, Thompson, Uecker, Young, Batchelder

Sens. Coley, Eklund, Hite, Jones, LaRose, Niehaus, Patton, Seitz, Wagoner

SPONSOR (OF AM. SUB. HB 487): Amstutz (By Request)

Reps. Beck, Blair, Bucky, Combs, McClain, Sears, Sprague, Stebelton, Terhar, Wachtmann

Sens. Bacon, Coley, Eklund, Jones, Lehner, Neihaus

EFFECTIVE DATES: September 28, 2012; September 10, 2012

INTRODUCTION

Am. Sub. HB 509 was introduced by Representative Terry Blair (R-Washington Twp.) as the local government mid-biennium review (MBR) bill. This legislation was one of several bills sponsored as reforms sought by Governor John Kasich as part of a mid-biennial review of the current state budget.

Several provisions of HB 509 related to purchasing and competitive bidding were requested by CCAO, including a number of provisions that had been initially introduced by Representative Terry Boose (R – Norwalk) as HB 430. Through an omnibus amendment these provisions were incorporated into HB 509.

In addition, in separate legislation (HB 487) the legislature has repealed the requirement that certain applicants for licenses, government contracts, and candidates for public employment complete a questionnaire or Declaration of Material Assistance/Non-assistance (DMA) form. The repeal of the DMA requirement took effect September 10, 2012.

The purpose of this CAB is to summarize the provisions of HB 509 that relate primarily to county purchasing, bidding and finance and the provisions of HB 487 repealing the DMA form requirement. A separate County Advisory Bulletin 2011 – 02, revised in August 2012, summarizes changes made by HB 509 to county budget quarterly spending plans.

BULLETIN SUMMARY

Am. Sub. HB 509

1. Raises the county and county contracting authority competitive bidding threshold from \$25,000 to \$50,000.
2. Raises the emergency purchases exemption from competitive bidding from \$50,000 to \$100,000.
3. Makes the submission by a county of a bid bond with bids for supplies and services permissive for bids in excess of \$ 50,000.
4. Expands for a county the threshold for exempting a bid for a public improvement project from certain bid guaranty requirements, from \$25,000 or less, to \$100,000 or less.
5. Increases from \$10,000 to \$50,000 the county competitive bidding threshold when renewing a lease for electronic data processing equipment, services, or systems, or a radio communications system.
6. Revises the competitive bidding procedure for regional airport authorities, raises the competitive bidding threshold from \$15,000 to \$50,000, and exempts the purchases of an authority from all competitive bidding requirements under certain emergency circumstances.
7. Increases, from \$25,000 to \$50,000, the competitive bidding threshold for the purchase of supplies or materials, or for labor, for a regional water and sewer district.
8. Eliminates the requirement that county commissioners annually adopt a resolution to sell personal property by internet auction.
9. Eliminates the requirement that county commissioners annually adopt resolutions to exempt county purchases of \$1000 or less from the certification of availability of funds requirement.
10. Authorizes a county auditor, when authorized by a resolution of the board of

commissioners, to serve as the fiscal officer of any department, office, or agency of the county, provided a county elected officer or an appointed board or commission has consented in writing to the auditor serving as fiscal officer.

Am. Sub. HB 487

1. Repeals requirement that applicants for certain licenses, government contracts and public employment must complete a Declaration of Material Assistance/Non-assistance (DMA) to a terrorist organization form.

COMPETITIVE BIDDING THRESHOLD FOR COUNTIES INCREASED TO \$50,000

HB 509 (ORC 307.86) increases the competitive bidding threshold for county contracting authorities from \$25,000 to \$50,000. The new threshold applies to any county “contracting authority” which the law (ORC 307.92) defines as “any board, department, commission, authority, trustee, official, administrator, agent, or individual which has authority to contract for or on behalf of the county or any agency, department, authority, commission, office, or board thereof.”

COMPETITIVE BIDDING THRESHOLD FOR COUNTY EMERGENCY PURCHASES INCREASED TO \$100,000

HB 509 also increases the emergency purchases threshold from \$50,000 to \$100,000 below which competitive bidding is not required. Prior to making any emergency purchase, the board of commissioners, by a unanimous vote, determines that a real and present emergency exists and that determination and the reasons for it are entered into the minutes of the proceedings of the board. Unanimous vote is defined by law for purposes of making an emergency purchase as “all three members of a board of county commissioners when all three members are present, or two members of the board if only two members, constituting a quorum, are present.”

An emergency purchase involving “actual physical disaster to structures, radio communications equipment, or computers” is not subject to an informal bidding requirement or any bidding threshold, but does require the adoption of a resolution stating the determination of an emergency and the reasons for the emergency.

In cases that do not involve physical disaster to structures, radio communications equipment, or computers, the law requires a board of commissioners to secure three informal bids and to maintain a record of such estimates or informal bids for one year after the contract is awarded unless federal law requires a longer period.

PERMISSIVE AUTHORITY TO WAIVE THE SUBMISSION OF BID BONDS UNDER CERTAIN CIRCUMSTANCES

Continuing law establishes (ORC 307.88 (A)) certain general requirements for the submission of bids by vendors when a county invites bids for goods and services under the county competitive bidding law. The law distinguishes between bidding for a contract valued at more than \$50,000 that does not include a contract for the construction, demolition, alteration, repair, or reconstruction of an improvement (hereafter public improvement) and all other contracts involving a public improvement.

The law now permits rather than requires the county when bidding for a non-public improvement contract to request a bid bond in the form of a bond or certified check, cashier's check or money order in an amount not to exceed five percent of the bid conditioned that the bidder, upon the bidder's bid being accepted, will enter into a contract with the county. Prior to the adoption of HB 509, bid bonds were generally a mandatory element of the bidding process. Bid bonds are intended to protect the county in the event that a successful bidder fails to enter into a contract with the county for the goods and services requested. However, bid bonds cost both the vendor and the county money in that the cost of the bid bond is added to the amount of the bid and the bid bonds of all unsuccessful bidders must be kept in a secure place and returned to the unsuccessful bidders after the award of any contract.

Under the law, CCAO believes that a county could adopt a resolution and make it part of the county purchasing policy stating the intent of the commissioners to exempt all bids from the bond requirement for non-public improvement contracts as a general rule. Alternatively, this decision could be made at the time the commissioners authorize bidding. In either event, we recommend that the specifications clearly state whether a bid bond will be required or not.

BID GUARANTY REQUIREMENTS OF PUBLIC IMPROVEMENT PROJECTS

In the case of public improvements, the bid guaranty requirements of ORC Section 153.54 apply. This law requires any bid for a public improvement to be accompanied by:

1. A bond for the full amount of the bid, or
2. A certified check, cashier's check, or letter of credit equal to 10 percent of the bid.

If a bidder submits a bid bond for 10 percent of the bid and the bidder is awarded a contract, then the bidder must file a bond for the full amount of the bid to protect the county for any failure to perform the contract. Bid guaranty requirements are intended to assure that any successful bidder for a public improvement contract will enter into the contract and complete the construction contract according to the terms of the contract.

The board of commissioners of any county, by unanimous vote of the entire board, may waive the bid guaranty requirements of any or all of the requirements of ORC Section 153.54 if the estimated cost of the public improvement is \$100,000 or less (ORC 307.88 (B)). HB 509 increased the threshold from \$25,000 to \$100,000. Continuing law, unchanged by HB 509, requires commissioners in their bid notice to inform any potential bidder if the commissioners' waiver of the bid guaranty applies to all of the requirements of the bid guaranty law or certain requirements of this law.

ELECTRONIC DATA PROCESSING EQUIPMENT AND RADIO COMMUNICATIONS SYSTEM LEASE BIDDING THRESHOLD INCREASED TO \$50,000

HB 509 (ORC 307.861) permits any county contracting authority to renew a lease for electronic data processing equipment, services, or systems, or a radio communications system at a cost in excess of \$50,000 provided the contracting authority advertises for and receives competitive bids and the bid of the current lessor is for an amount less than the lowest and best bid obtained through competitive bidding. HB 509 raises the bid threshold for this section of law from \$10,000 to \$50,000.

COMPETITIVE BIDDING FOR REGIONAL AIRPORT AUTHORITIES INCREASED TO \$50,000; EMERGENCY PURCHASES AUTHORIZED UNDER SPECIFIC CIRCUMSTANCES

In addition to increasing the competitive bidding threshold from \$15,000 to \$50,000 for regional airport authorities (ORC 308.13), HB 509 permits such authorities to eliminate a second published notice in a newspaper of general circulation regarding a competitive bidding business opportunity if such an authority posts the bid notice on the world wide web and the first published notice meets all of the following requirements:

1. It is published at least two weeks prior to the day of the opening of bids;
2. It includes a statement that the notice is posted on the internet site on the world wide web of the authority;
3. It includes the internet address of the authority;
4. It includes instructions describing how the notice may be accessed on the internet site of the authority.

HB 509 eliminates language that required the authority to take informal bids for any contract with an estimated value of between \$ 1000 and \$15,000 and to retain copies of such estimates for at least one year following the award of the contract.

HB 509 permits an authority to waive competitive bidding under the following circumstances:

1. The airport authority board, by majority vote, determines that a real and present emergency exists under any of the following conditions and the board enters its determination and the reasons for it in its proceedings:
 - a. Affecting safety, welfare, or the ability to deliver services;
 - b. Arising out of an interruption of contracts essential to the provision of daily air services and other services related to the airport;
 - c. Involving actual physical damage to structure, supplies, equipment, or property requiring immediate repair or replacement.
2. The purchase consists of goods or services and the board finds that only one source of supply is reasonably available.
3. The expenditure is for renewal or renegotiation of a lease or license for telecommunications or IT equipment, services or systems, or for an upgrade of such equipment, services, or systems, or for an upgrade of such equipment, services or systems, or for maintenance as supplied by the original source of such equipment, services, or systems.
4. The purchase of goods or services is made from another political subdivision, or the federal government, or as a third party beneficiary under a state or federal contract, or a state agency including contracts of the Department of Administrative Services under the state cooperative purchasing program.

5. The purchase involves services of a personal, professional, technical, or scientific nature, including the services of various professionals, or involves the special skills or proprietary knowledge required for the operation of the airport.
6. Services or supplies are available from a qualified non - profit agency as listed in ORC Sections 4115.31 to 4115.35.
7. The purchase consists of the product or services of a public utility.

REGIONAL WATER AND SEWER DISTRICTS COMPETITIVE BIDDING REQUIREMENTS, COMPOSITION OF BOARD OF TRUSTEES

The competitive bidding threshold for regional water and sewer districts is increased from \$25,000 to \$50,000 (ORC 6119.10) when it involves the purchase of the following goods and services:

1. Supplies, services, labor for any work, discharge of non-contractual claims, personal services, joint use of facilities or exercise of powers of other political subdivisions, or the product or services of public utilities by a regional water and sewer district; or
2. Public improvements performed by force account or direct labor of the district, provided that if the estimated cost of the public improvement exceeds \$50,000 the district will seek competitive bids.

HB 509 (ORC 6119.02) permits the board of trustees of a regional water and sewer district to prohibit [local] elected officials from serving on the board or to permit elected officials of any appointing authority to serve on the board. The new law prohibits elected officials from the same political subdivision from comprising a majority of the members of the board, however, the law grandfathers any board appointed prior to September 28, 2012 to be comprised of any combination of appointed and elected officials in effect prior to the effective date of the bill. The new law defines an elected official to mean “an official elected to an office of municipal, township, or county government, or a person appointed to fill a vacancy in such an office.”

Continuing law (ORC 6119.02 (B)) requires a municipality, county, or township to hold a public meeting and provide public notice of the meeting prior to the filing of a petition to establish a regional water and sewer district. HB 509 permits the signer of the petition to establish the district to provide notice of the public meeting by publication once per week for two consecutive weeks in a newspaper of general circulation in each of the counties that will comprise the district or in a manner prescribed in the public notice law (ORC 7.16, not in HB 509)

SALE OF COUNTY PERSONAL PROPERTY BY INTERNET AUCTION, ANNUAL ADOPTION OF RESOLUTION NO LONGER REQUIRED

Continuing law (ORC 307.12 (E)) permits any board of commissioners to sell personal property, including motor vehicles, road machinery, equipment, tools, or supplies that is not needed for public use, or that is obsolete or unfit for the use for which it was acquired, by internet auction. Prior to selling such property the board of commissioners must adopt a resolution of intent indicating that it intends to sell property by internet auction, whether the county will conduct such auctions or if an independent contractor will conduct the auctions, and specify the number of days for bidding on such property which shall be at least ten days including Saturdays, Sundays, and legal holidays.

Prior law had required commissioners to adopt the resolution described here “during each calendar year” that the commissioners intend to sell personal property in this manner. HB 509 strikes the words “during each calendar year” so that the commissioners are only required to go through the adoption of the resolution once in order to establish the program on a continuing basis and annual adoption of the resolution is no longer required.

Continuing law requires the board of commissioners to publish notice of its intent to establish the internet auction program twice in a newspaper of general circulation or as provided in ORC Section 7.16. The notice must include a summary of the information provided in the resolution of the commissioners establishing the program. The law requires a similar notice to be posted in the office of the commissioners and county auditor and, if the county maintains a website, such notice must be published on the county website. Regarding the posted notice and the website notice, HB 509 strikes language requiring such postings to be maintained continually “throughout the calendar year.” Under HB 509, the posted and published notices must be maintained continually but such postings are not connected to any annual event since annual adoption of a resolution is no longer required.

CCAO recommends for 2013 that commissioners adopt the resolution and publish the required notice. The resolution and notice should probably note that internet auctions will be used in the future and that future annual resolutions and notices are no longer required as a result of the change in the state law. Then, starting in 2014 no resolution or notice would be required.

AUTHORITY TO EXEMPT CERTAIN PURCHASES FROM CERTIFICATION OF AVAILABILITY OF FUNDS REQUIREMENT, ANNUAL ADOPTION OF EXEMPTION RESOLUTION NO LONGER REQUIRED

Ohio law (ORC 5705.41 (D)) generally requires that any contract or order involving the expenditure of county funds in excess of \$100 must have attached to it a certificate of the county auditor certifying that the amount required to meet the contract or order:

1. Has been lawfully appropriated;
2. Is in the county treasury or in the process of collection to the proper fund;
3. Is free from previous encumbrances.

This is commonly referred to as the requirement for a “certificate of availability of funds.” The purpose of the certificate of availability of funds is to assure that before expenditures are made or obligations are incurred that monies are appropriated and there is an adequate balance in the appropriation line item to meet the proposed expenditure.

Under continuing law a board of commissioners may, by resolution, increase the threshold from \$100 to an amount not to exceed \$ 1000. County commissioners are encouraged to work with the county auditor before changing the threshold. The following guidelines apply if a county wishes to increase the threshold:

1. The resolution must state the dollar amount that will be exempted from the certificate of availability of funds requirement.
2. The amount may not exceed \$1000.

3. The resolution must state whether the increased threshold applies to:
 - a. All purchases;
 - b. One or more specific class of purchases; or
 - c. One or more specific items.
4. The commissioners must notify the county auditor and follow the procedural requirements outlined below:
 - a. The county auditor must be given written notice that the commissioners intend to adopt such a resolution;
 - b. The written notice must include the amount proposed for exemption and whether the exemption would apply to all purchases, one or more specific classes of purchases, or to one or more specific items;
 - c. The county auditor may review and comment on the proposal and must send comments to the commissioners within 15 days of receiving the notice;
 - d. The commissioners may not adopt their resolution sooner than 15 days after giving the county auditor written notice.

Continuing law, unchanged by HB 509, requires any person authorized to make a purchase above \$100 that is exempt from the certification threshold to file a written document with the county auditor within three business days after incurring the obligation. The written document must specify:

1. The purpose of the expenditure;
2. The amount of the expenditure;
3. The date of the purchase;
4. The name of the vendor; and
5. Such additional information as the state auditor may prescribe.

Prior to the enactment of HB 509 a board of commissioners wishing to increase the certification exemption threshold was required to adopt a resolution on an annual basis. HB 509 removes this requirement for annual adoption of the resolution and notice to the county auditor. For 2013, CCAO recommends commissioners follow the procedure as outlined in the statute and then the resolution and notice would not be required in 2014 or subsequent years unless the commissioners are proposing a change to the threshold for exemption, or the types of purchases, classes of purchases, or specific items that are exempt from the certification requirement.

Again, after the adoption of such a resolution in 2013, CCAO recommends that if the commissioners in any year propose any change in the threshold for exemption (up to a maximum of \$1000), or any modification to the types, classes or specific items that are exempt

from the certification requirement that adoption of a revised resolution and notification to the auditor must occur prior to implementation of any new policy.

The purpose for increasing the certification exemption threshold is to reduce unnecessary and costly purchase order paperwork. County commissioners should work closely with the county auditor to determine if an increase in the certification exemption threshold would save county funds while maintaining proper controls on the expenditure of county funds within the amounts appropriated by the commissioners.

PERMISSIVE AUTHORITY FOR COUNTY AUDITOR TO SERVE AS FISCAL OFFICER FOR VARIOUS COUNTY OFFICES

HB 509 (ORC 319.09) permits any county auditor with the consent of the board of commissioners to serve as the fiscal officer of any office, department, or agency of the county. In addition, in the case of either an elected officer or any agency governed by an appointed board or commission, the officer or agency has consented to have the auditor serve as fiscal officer and has executed a written agreement with the officer or agency. If a board of commissioners consents to such an agreement, the commissioners act by resolution of the board.

HEALTH INSURANCE COVERAGE FOR COUNTY EMPLOYEES

HB 509 eliminates provisions in prior law that prohibited boards of county commissioners from contracting for or purchasing group health insurance, policies, or benefits under the commissioners' general authority to enter such contracts and make such purchases (ORC 305.171) once the Department of Administrative Services implements for counties health care insurance plans that include those benefits and that contain best practices. The repealed language was adopted as part of the current state budget when the state believed it would be replacing local political subdivision health care insurance plans with a plan prepared under a contract authorized by the Department of Administrative Services pursuant to ORC Section 9.091 (not in HB 509). With the support of CCAO, the limitations included within the state budget regarding the general authority of counties to purchase such group health insurance, policies or benefits has been removed from the law.

REPEAL OF DECLARATION OF MATERIAL ASSISTANCE/NONASSISTANCE (DMA) TO TERRORIST ORGANIZATION FORM

HB 487, which is the main Mid Biennium Review (MBR) budget bill, repeals a requirement that applicants for certain licenses, state and local government contracts, and candidates for public employment complete a Declaration of Material Assistance/Non-assistance (DMA) form or questionnaire certifying that they have not provided "material assistance" to a terrorist organization.

Effective September 10, 2012, HB 487 repeals ORC Sections 2909.32 – 2909.34 and amends ORC Sections 2909.21 and 2909.28 eliminating the requirement that a DMA form or questionnaire be completed by certain licensees, government contractors, and candidates for public employment.

CCAO encourages county officials responsible for hiring county employees to remove the DMA form from new hire packets. County officials responsible for processing county contracts or county grants should remove any reference or copy of the DMA form from all future bid documents, contracts, RFPs and other procurement documents.

FOR ADDITIONAL INFORMATION

Attached to this advisory bulletin as Exhibit 1 are ORC Sections 307.86, 307.87, 307.88, 307.861, 308.13, 6119.10, 307.12, 5705.41, 319.09, 2909.21, 2909.28.

Attached to this advisory bulletin as Exhibit 2 is an Ohio Department of Public Safety advisory entitled "Repeal of the DMA Law." The advisory was issued following the passage of HB 487 to alert interested parties to the repeal of the DMA law.

EXHIBIT 1

OHIO REVISED CODE SECTIONS 307.86, 307.87, 307.88, 307.861, 308.13, 6119.10, 307.12, 5705.41, 319.19, 2909.21, 2909.28 AS AMENDED BY HB 509 AND HB 487 OF THE 129TH GENERAL ASSEMBLY

Sec. 307.86. Anything to be purchased, leased, leased with an option or agreement to purchase, or constructed, including, but not limited to, any product, structure, construction, reconstruction, improvement, maintenance, repair, or service, except the services of an accountant, architect, attorney at law, physician, professional engineer, construction project manager, consultant, surveyor, or appraiser, by or on behalf of the county or contracting authority, as defined in section 307.92 of the Revised Code, at a cost in excess of ~~twenty-five~~ fifty thousand dollars, except as otherwise provided in division (D) of section 713.23 and in sections 9.48, 125.04, 125.60 to 125.6012, 307.022, 307.041, 307.861, 339.05, 340.03, 340.033, 4115.31 to 4115.35, 5119.16, 5513.01, 5543.19, 5713.01, and 6137.05 of the Revised Code, shall be obtained through competitive bidding. However, competitive bidding is not required when any of the following applies:

(A) The board of county commissioners, by a unanimous vote of its members, makes a determination that a real and present emergency exists, and that determination and the reasons for it are entered in the minutes of the proceedings of the board, when either of the following applies:

(1) The estimated cost is less than ~~fifty~~ one hundred thousand dollars.

(2) There is actual physical disaster to structures, radio communications equipment, or computers.

For purposes of this division, "unanimous vote" means all three members of a board of county commissioners when all three members are present, or two members of the board if only two members, constituting a quorum, are present.

Whenever a contract of purchase, lease, or construction is exempted from competitive bidding under division (A)(1) of this section because the estimated cost is less than ~~fifty~~ one hundred thousand dollars, but the estimated cost is ~~twenty-five~~ fifty thousand dollars or more, the county or contracting authority shall solicit informal estimates from no fewer than three persons who could perform the contract, before awarding the contract. With regard to each such contract, the county or contracting authority shall maintain a record of such estimates, including the name of each person from whom an estimate is solicited. The county or contracting authority shall maintain the record for the longer of at least one year after the contract is awarded or the amount of time the federal government requires.

(B)(1) The purchase consists of supplies or a replacement or supplemental part or parts for a product or equipment owned or leased by the county, and the only source of supply for the supplies, part, or parts is limited to a single supplier.

(2) The purchase consists of services related to information technology, such as programming services, that are proprietary or limited to a single source.

(C) The purchase is from the federal government, the state, another county or contracting authority of another county, or a board of education, educational service center, township, or municipal corporation.

(D) The purchase is made by a county department of job and family services under section 329.04 of the Revised Code and consists of family services duties or workforce development activities or is made by a county board of developmental disabilities under section 5126.05 of the Revised Code and consists of program services, such as direct and ancillary client services, child care, case management services, residential services, and family resource services.

(E) The purchase consists of criminal justice services, social services programs, family services, or workforce development activities by the board of county commissioners from nonprofit corporations or associations under programs funded by the federal government or by state grants.

(F) The purchase consists of any form of an insurance policy or contract authorized to be issued under Title XXXIX of the Revised Code or any form of health care plan authorized to be issued under Chapter 1751. of the Revised Code, or any combination of such policies, contracts, plans, or services that the contracting authority is authorized to purchase, and the contracting authority does all of the following:

(1) Determines that compliance with the requirements of this section would increase, rather than decrease, the cost of the purchase;

(2) Requests issuers of the policies, contracts, plans, or services to submit proposals to the contracting authority, in a form prescribed by the contracting authority, setting forth the coverage and cost of the policies, contracts, plans, or services as the contracting authority desires to purchase;

(3) Negotiates with the issuers for the purpose of purchasing the policies, contracts, plans, or services at the best and lowest price reasonably possible.

(G) The purchase consists of computer hardware, software, or consulting services that are necessary to implement a computerized case management automation project administered by the Ohio prosecuting attorneys association and funded by a grant from the federal government.

(H) Child care services are purchased for provision to county employees.

(I)(1) Property, including land, buildings, and other real property, is leased for offices, storage, parking, or other purposes, and all of the following apply:

(a) The contracting authority is authorized by the Revised Code to lease the property.

(b) The contracting authority develops requests for proposals for leasing the property, specifying the criteria that will be considered prior to leasing the property, including the desired size and geographic location of the property.

(c) The contracting authority receives responses from prospective lessors with property meeting the criteria specified in the requests for proposals by giving notice in a manner substantially similar to the procedures established for giving notice under section 307.87 of the Revised Code.

(d) The contracting authority negotiates with the prospective lessors to obtain a lease at the best and lowest price reasonably possible considering the fair market value of the property and any relocation and operational costs that may be incurred during the period the lease is in effect.

(2) The contracting authority may use the services of a real estate appraiser to obtain advice, consultations, or other recommendations regarding the lease of property under this division.

(J) The purchase is made pursuant to section 5139.34 or sections 5139.41 to 5139.46 of the Revised Code and is of programs or services that provide case management, treatment, or prevention services to any felony or misdemeanor delinquent, unruly youth, or status offender under the supervision of the juvenile court, including, but not limited to, community residential care, day treatment, services to children in their home, or electronic monitoring.

(K) The purchase is made by a public children services agency pursuant to section 307.92 or 5153.16 of the Revised Code and consists of family services, programs, or ancillary services that provide case management, prevention, or treatment services for children at risk of being or alleged to be abused, neglected, or dependent children.

(L) The purchase is to obtain the services of emergency medical service organizations under a contract made by the board of county commissioners pursuant to section 307.05 of the Revised Code with a joint emergency medical services district.

(M) The county contracting authority determines that the use of competitive sealed proposals would be advantageous to the county and the contracting authority complies with section 307.862 of the Revised Code.

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

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

Any real estate appraiser employed pursuant to division (I) of this section shall disclose any fees or compensation received from any source in connection with that employment.

Sec. 307.87. Where competitive bidding is required by section 307.86 of the Revised Code, notice thereof shall be given in the following manner:

(A) Notice shall be published once a week for not less than two consecutive weeks preceding the day of the opening of bids in a newspaper of general circulation within the county for any purchase, lease, lease with option or agreement to purchase, or construction contract in excess of ~~twenty-five~~ fifty thousand dollars. The contracting authority may also cause notice to be inserted in trade papers or other publications designated by it or to be distributed by electronic means, including posting the notice on the contracting authority's internet site on the world wide web. If the contracting authority posts the notice on that location on the world wide web, it may eliminate the second notice otherwise required to be published in a newspaper of general circulation within the county, provided that the first notice published in such a newspaper meets all of the following requirements:

(1) It is published at least two weeks before the opening of bids.

(2) It includes a statement that the notice is posted on the contracting authority's internet site on the world wide web.

(3) It includes the internet address of the contracting authority's internet site on the world wide web.

(4) It includes instructions describing how the notice may be accessed on the contracting authority's internet site on the world wide web.

(B) Notices shall state all of the following:

(1) A general description of the subject of the proposed contract and the time and place where the plans and specifications or itemized list of supplies, facilities, or equipment and estimated quantities can be obtained or examined;

(2) The time and place where bids will be opened;

(3) The time and place for filing bids;

(4) The terms of the proposed purchase;

(5) Conditions under which bids will be received;

(6) The existence of a system of preference, if any, for products mined and produced in Ohio and the United States adopted pursuant to section 307.90 of the Revised Code.

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

Sec. 307.88. (A) Bids submitted pursuant to sections 307.86 to 307.92 of the Revised Code shall be in a form prescribed by the contracting authority and filed in the manner and at the time and place mentioned in the notice. The bids received shall be opened and tabulated at the time stated in the notice. Each bid shall contain the full name of each person submitting the bid. If the bid is in excess of ~~twenty-five~~ fifty thousand dollars and for a contract for the construction, demolition, alteration, repair, or reconstruction of an improvement, it shall meet the requirements of section 153.54 of the Revised Code. If the bid is in excess of ~~twenty-five~~ fifty thousand dollars and for any other contract authorized by sections 307.86 to 307.92 of the Revised Code, it ~~shall~~ may be accompanied by a bond or certified check, cashier's check, or money order on a solvent bank or savings and loan association in a reasonable amount stated in the notice but not to exceed five per cent of the bid, conditioned that the bidder, if the bidder's bid is accepted, shall execute a contract in conformity to the invitation and the bid.

(B) The board of county commissioners, by a unanimous vote of the entire board, may permit a contracting authority to exempt a bid from any or all of the requirements of section 153.54 of the Revised Code if the estimated cost is ~~twenty-five~~ one hundred thousand dollars or less. If the board exempts a bid from any but not all of those requirements, the bid notice published in the newspaper pursuant to section 307.87 of the Revised Code shall state the specific bid guaranty requirements that apply. If the board exempts a bid from all requirements of section 153.54 of the Revised Code, the notice shall state that none of the requirements of that section apply.

Sec. 307.861. The county or contracting authority, as defined in section 307.92 of the Revised Code, may renew a lease which has been entered into for electronic data processing equipment, services, or systems, or a radio communications system at a cost in excess of ~~ten~~ fifty thousand dollars as follows:

(A) The lessor shall submit a written bid to the county or contracting authority ~~which~~ that is the lessee under the lease, stating the terms under which the lease would be renewed, including the length of the renewal lease, and the cost of the renewal lease to the county or contracting authority. The county or contracting authority may require the lessor to submit a bond with the bid.

(B) The county or contracting authority shall advertise for and receive competitive bids, as provided in sections 307.87 to 307.90 of the Revised Code, for a lease under the same terms and for the same period as provided in the bid of the lessor submitted under division (A) of this section.

(C) The county or contracting authority may renew the lease with the lessor only if the bid submitted by the lessor under division (A) of this section is an amount less than the lowest and best bid submitted pursuant to competitive bidding under division (B) of this section.

Sec. 308.13. (A) The board of trustees of a regional airport authority or any officer or employee designated by such board may make without competitive bidding any contract for ~~the any purchase of supplies or material or for labor, lease, lease with option or agreement to purchase any property, or any construction contract~~ for any work, under the supervision of the board, the cost of which shall not exceed ~~fifteen~~ fifty thousand dollars. ~~Except where the contract is for equipment, materials, or supplies available from a qualified nonprofit agency pursuant to sections 4115.31 to 4115.35 of the Revised Code, when an expenditure, other than for the acquisition of real estate, the discharge of noncontractual claims, personal services, or~~

~~for the product or services of public utilities, exceeds fifteen~~ Any purchase, lease, lease with option or agreement to purchase, or construction contract in excess of fifty thousand dollars, such expenditure shall be made only after require that a notice calling for bids has been be published once a week for three not less than two consecutive weeks preceding the day of the opening of the bids in a newspaper of general circulation within the territorial boundaries of the regional airport authority, or as provided in section 7.16 of the Revised Code. If The regional airport authority also may cause notice to be inserted in trade papers or other publications designated by it or to be distributed by electronic means, including posting the notice on the internet site on the world wide web of the regional airport authority. If the contracting authority posts the notice on that internet web site, the requirement that a second notice be published in a newspaper of general circulation within the territorial boundaries of the regional airport authority does not apply provided the first notice published in that newspaper meets all of the following requirements:

(1) It is published at least two weeks prior to the day of the opening of the bids.

(2) It includes a statement that the notice is posted on the internet site on the world wide web of the regional airport authority.

(3) It includes the internet address of the internet site on the world wide web of the regional airport authority.

(4) It includes instructions describing how the notice may be accessed on the internet site on the world wide web of the regional airport authority.

If the bid is for a contract for the construction, demolition, alteration, repair, or reconstruction of an improvement, it shall meet the requirements of section 153.54 of the Revised Code. If the bid is for any other contract authorized by this section, it shall be accompanied by a good and approved bond with ample security conditioned on the carrying out of the contract as determined by the board. The board may let the contract to the lowest and best bidder. Such contract shall be in writing and shall be accompanied by or shall refer to plans and specifications for the work to be done, as approved by the board. The plans and specifications shall at all times shall be made and considered part of the contract. Said The contract shall be approved by the board and signed by its chief executive officer and by the contractor, and shall be executed in duplicate.

(B) Whenever a board of trustees of a regional airport authority or any officer or employee designated by the board makes a contract for the purchase of supplies or material or for labor for any work, the cost of which is greater than one thousand dollars but no more than fifteen thousand dollars, the board or designated officer or employee shall solicit informal estimates from no fewer than three potential suppliers before awarding the contract. With regard to each such contract, the board shall maintain a record of such estimates, including the name of each person from whom an estimate is solicited, for no less than one year after the contract is awarded. The competitive bidding procedures described in division (A) of this section do not apply in any of the following circumstances:

(1) The board of trustees of a regional airport authority, by a majority vote of its members present at any meeting, determines that a real and present emergency exists under any of the following conditions, and the board enters its determination and the reasons for it in its proceedings:

(a) Affecting safety, welfare, or the ability to deliver services;

(b) Arising out of an interruption of contracts essential to the provision of daily air services and other services related to the airport;

(c) Involving actual physical damage to structures, supplies, equipment, or property requiring immediate repair or replacement.

(2) The purchase consists of goods or services, or any combination thereof, and after reasonable inquiry the board or any officer or designee of the board finds that only one source of supply is reasonably available.

(3) The expenditure is for a renewal or renegotiation of a lease or license for telecommunications or informational technology equipment, services, or systems, or for the upgrade of such equipment, services, or systems, or for the maintenance thereof as supplied by the original source or its successors or assigns.

(4) The purchase of goods or services is made from another political subdivision, public agency, public transit system, regional transit authority, the state, or the federal government, or as a third-party beneficiary under a state or federal procurement contract, or as a participant in a department of administrative services contract under division (B) of section 125.04 of the Revised Code or under an approved purchasing plan of this state.

(5) The purchase substantially involves services of a personal, professional, highly technical, or scientific nature, including the services of an attorney, physician, engineer, architect, surveyor, appraiser, investigator, adjuster, advertising consultant, or licensed broker, or involves the special skills or proprietary knowledge required for the operation of the airport owned by the regional transit authority.

(6) Services or supplies are available from a qualified nonprofit agency pursuant to sections 4115.31 to 4115.35 of the Revised Code.

(7) The purchase consists of the product or services of a public utility.

Sec. 6119.10. The board of trustees of a regional water and sewer district or any officer or employee designated by the board may make any contract for the purchase of supplies or material or for labor for any work, under the supervision of the board, the cost of which shall not exceed ~~twenty-five~~ fifty thousand dollars. When an expenditure, other than for the acquisition of real estate and interests in real estate, the discharge of noncontractual claims, personal services, the joint use of facilities or the exercise of powers with other political subdivisions, or the product or services of public utilities, exceeds ~~twenty-five~~ fifty thousand dollars, the expenditures shall be made only after a notice calling for bids has been published once per week for two consecutive weeks in one newspaper of general circulation within the district or as provided in section 7.16 of the Revised Code. If the bids are for a contract for the construction, demolition, alteration, repair, or reconstruction of an improvement, the board may let the contract to the lowest and best bidder who meets the requirements of section 153.54 of the Revised Code. If the bids are for a contract for any other work relating to the improvements for which a regional water and sewer district was established, the board of trustees of the regional water and sewer district may let the contract to the lowest or best bidder who gives a good and approved bond with ample security conditioned on the carrying out of the contract. The contract

shall be in writing and shall be accompanied by or shall refer to plans and specifications for the work to be done, approved by the board. The plans and specifications shall at all times be made and considered part of the contract. The contract shall be approved by the board and signed by its president or other duly authorized officer and by the contractor. In case of a real and present emergency, the board of trustees of the district, by two-thirds vote of all members, may authorize the president or other duly authorized officer to enter into a contract for work to be done or for the purchase of supplies or materials without formal bidding or advertising. All contracts shall have attached the certificate required by section 5705.41 of the Revised Code duly executed by the secretary of the board of trustees of the district. The district may make improvements by force account or direct labor, provided that, if the estimated cost of supplies or material for any such improvement exceeds ~~twenty-five~~ fifty thousand dollars, bids shall be received as provided in this section. For the purposes of the competitive bidding requirements of this section, the board shall not sever a contract for supplies or materials and labor into separate contracts for labor, supplies, or materials if the contracts are in fact a part of a single contract required to be bid competitively under this section.

Sec. 6119.02. (A) Proceedings for the organization of a regional water and sewer district shall be initiated only by a petition filed in the office of the clerk of the court of common pleas of one of the counties all or part of which lies within the proposed district. The petition shall be signed by one or more municipal corporations, one or more counties, or one or more townships, or by any combination of them, after having been authorized by the legislative authority of the political subdivision. The legislative authority of any municipal corporation, the board of county commissioners of any county, and the board of trustees of any township may act in behalf of any part of their respective political subdivisions. The petition shall specify all of the following:

- (1) The proposed name of the district;
- (2) The place in which its principal office is to be located;
- (3) The necessity for the proposed district and that it will be conducive to the public health, safety, convenience, or welfare;
- (4) A general description of the purpose of the proposed district;
- (5) A general description of the territory to be included in the district, which need not be given by metes and bounds or by legal subdivisions, but is sufficient if an accurate description is given of the territory to be organized as a district. The territory need not be contiguous, provided that it is so situated that the public health, safety, convenience, or welfare will be promoted by the organization as a single district of the territory described.
- (6) The manner of selection, the number, the term, and the compensation of the members of the governing body of the district, which shall be called a board of trustees. The petition may set forth procedures for subsequent changes in the composition of and other provisions relating to the board of trustees. The original or properly amended petition may prohibit elected officials from serving on the board and may permit one or more elected officials from any appointing authority to serve on the board. However, elected officials from the same political subdivision shall not comprise a majority of the members of the board. Notwithstanding the foregoing, a board appointed prior to the effective date of this amendment may continue as prescribed in the petition and rules and regulations of the district that were in effect prior to the

effective date of this amendment, and, if not prohibited in the petition or rules and regulations, the board may include elected officials. As used in this division, "elected official" means an official elected to an office of municipal, township, or county government, or a person appointed to fill a vacancy in such an office.

(7) The plan for financing the cost of the operations of the district until it is in receipt of revenue from its operations or proceeds from the sale of bonds;

(8) A prayer for the organization of the district by the name proposed, either before or after a preliminary hearing as provided in section 6119.04 of the Revised Code.

(B) Prior to filing a petition under division (A) of this section, a municipal corporation, county, or township shall hold a public meeting for the purpose of receiving comments on the proposed establishment of a regional water and sewer district. If a combination of municipal corporations, counties, or townships signed the petition, the signers jointly shall hold the public meeting. At the meeting, a representative of the signer or signers of the petition shall present a preliminary study of the reasons for the proposed establishment of the district.

The signer or signers of the petition shall provide ~~written~~ notice of the public meeting to ~~each elector residing in the territory of~~ by publication once per week for two consecutive weeks in a newspaper of general circulation in each of the counties that will comprise the proposed district in whole or in part or as provided in section 7.16 of the Revised Code. ~~Failure to notify an elector does not invalidate any proceeding before a court under this chapter.~~

(C) Upon the filing of the petition, the judge of the court of common pleas of the county in which the petition is filed or, in the case of a county having more than one such judge, a judge of that court assigned by its presiding judge shall determine if the petition complies with the requirements of this section as to form and content. No petition shall be declared void by the judge on account of alleged defects. The court in subsequent proceedings at any time may permit the petition to be amended in form and substance to conform to the facts by correcting any errors in the description of the territory or in any other particular.

Sec. 307.12. (A) Except as otherwise provided in divisions (D), (E), and (G) of this section, when the board of county commissioners finds, by resolution, that the county has personal property, including motor vehicles acquired for the use of county officers and departments, and road machinery, equipment, tools, or supplies, that is not needed for public use, is obsolete, or is unfit for the use for which it was acquired, and when the fair market value of the property to be sold or donated under this division is, in the opinion of the board, in excess of two thousand five hundred dollars, the board may do either of the following:

(1) Sell the property at public auction or by sealed bid to the highest bidder. Notice of the time, place, and manner of the sale shall be published in a newspaper of general circulation in the county at least ten days prior to the sale, and a typewritten or printed notice of the time, place, and manner of the sale shall be posted at least ten days before the sale in the offices of the county auditor and the board of county commissioners.

If a board conducts a sale of property by sealed bid, the form of the bid shall be as prescribed by the board, and each bid shall contain the name of the person submitting it. Bids received shall be opened and tabulated at the time stated in the notice. The property shall be

sold to the highest bidder, except that the board may reject all bids and hold another sale, by public auction or sealed bid, in the manner prescribed by this section.

(2) Donate any motor vehicle that does not exceed four thousand five hundred dollars in value to a nonprofit organization exempt from federal income taxation pursuant to 26 U.S.C. 501(a) and (c)(3) for the purpose of meeting the transportation needs of participants in the Ohio works first program established under Chapter 5107. of the Revised Code and participants in the prevention, retention, and contingency program established under Chapter 5108. of the Revised Code.

(B) When the board of county commissioners finds, by resolution, that the county has personal property, including motor vehicles acquired for the use of county officers and departments, and road machinery, equipment, tools, or supplies, that is not needed for public use, is obsolete, or is unfit for the use for which it was acquired, and when the fair market value of the property to be sold or donated under this division is, in the opinion of the board, two thousand five hundred dollars or less, the board may do either of the following:

(1) Sell the property by private sale, without advertisement or public notification;

(2) Donate the property to an eligible nonprofit organization that is located in this state and is exempt from federal income taxation pursuant to 26 U.S.C. 501(a) and (c)(3). Before donating any property under this division, the board shall adopt a resolution expressing its intent to make unneeded, obsolete, or unfit-for-use county personal property available to these organizations. The resolution shall include guidelines and procedures the board considers necessary to implement a donation program under this division and shall indicate whether the county will conduct the donation program or the board will contract with a representative to conduct it. If a representative is known when the resolution is adopted, the resolution shall provide contact information such as the representative's name, address, and telephone number.

The resolution shall include within its procedures a requirement that any nonprofit organization desiring to obtain donated property under this division shall submit a written notice to the board or its representative. The written notice shall include evidence that the organization is a nonprofit organization that is located in this state and is exempt from federal income taxation pursuant to 26 U.S.C. 501(a) and (c)(3); a description of the organization's primary purpose; a description of the type or types of property the organization needs; and the name, address, and telephone number of a person designated by the organization's governing board to receive donated property and to serve as its agent.

After adoption of the resolution, the board shall publish, in a newspaper of general circulation in the county, notice of its intent to donate unneeded, obsolete, or unfit-for-use county personal property to eligible nonprofit organizations. The notice shall include a summary of the information provided in the resolution and shall be published twice or as provided in section 7.16 of the Revised Code. The second and any subsequent notice shall be published not less than ten nor more than twenty days after the previous notice. A similar notice also shall be posted continually in a conspicuous place in the offices of the county auditor and the board of county commissioners. If the county maintains a web site on the internet, the notice shall be posted continually at that web site.

The board or its representative shall maintain a list of all nonprofit organizations that notify the board or its representative of their desire to obtain donated property under this division

and that the board or its representative determines to be eligible, in accordance with the requirements set forth in this section and in the donation program's guidelines and procedures, to receive donated property.

The board or its representatives also shall maintain a list of all county personal property the board finds to be unneeded, obsolete, or unfit for use and to be available for donation under this division. The list shall be posted continually in a conspicuous location in the offices of the county auditor and the board of county commissioners, and, if the county maintains a web site on the internet, the list shall be posted continually at that web site. An item of property on the list shall be donated to the eligible nonprofit organization that first declares to the board or its representative its desire to obtain the item unless the board previously has established, by resolution, a list of eligible nonprofit organizations that shall be given priority with respect to the item's donation. Priority may be given on the basis that the purposes of a nonprofit organization have a direct relationship to specific public purposes of programs provided or administered by the board. A resolution giving priority to certain nonprofit organizations with respect to the donation of an item of property shall specify the reasons why the organizations are given that priority.

(C) Members of the board of county commissioners shall consult with the Ohio ethics commission, and comply with the provisions of Chapters 102. and 2921. of the Revised Code, with respect to any sale or donation under division (A) or (B) of this section to a nonprofit organization of which a county commissioner, any member of the county commissioner's family, or any business associate of the county commissioner is a trustee, officer, board member, or employee.

(D) Notwithstanding anything to the contrary in division (A), (B), or (E) of this section and regardless of the property's value, the board of county commissioners may sell or donate county personal property, including motor vehicles, to the federal government, the state, any political subdivision of the state, or a county land reutilization corporation without advertisement or public notification.

(E) Notwithstanding anything to the contrary in division (A), (B), or (G) of this section and regardless of the property's value, the board of county commissioners may sell personal property, including motor vehicles acquired for the use of county officers and departments, and road machinery, equipment, tools, or supplies, that is not needed for public use, is obsolete, or is unfit for the use for which it was acquired, by internet auction. The board shall adopt, ~~during each calendar year,~~ a resolution expressing its intent to sell that property by internet auction. The resolution shall include a description of how the internet auctions will be conducted and shall specify the number of days for bidding on the property, which shall be no less than ten days, including Saturdays, Sundays, and legal holidays. The resolution shall indicate whether the county will conduct the ~~auction~~ internet auctions or the board will contract with a representative to conduct the ~~auction~~ internet auctions and shall establish the general terms and conditions of sale. If a representative is known when the resolution is adopted, the resolution shall provide contact information such as the representative's name, address, and telephone number.

After adoption of the resolution, the board shall publish, in a newspaper of general circulation in the county, notice of its intent to sell unneeded, obsolete, or unfit-for-use county personal property by internet auction. The notice shall include a summary of the information provided in the resolution and shall be published twice or as provided in section 7.16 of the

Revised Code. The second and any subsequent notice shall be published not less than ten nor more than twenty days after the previous notice. A similar notice also shall be posted continually throughout the calendar year in a conspicuous place in the offices of the county auditor and the board of county commissioners. If the county maintains a web site on the internet, the notice shall be posted continually throughout the calendar year at that web site.

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

(F) When a county officer or department head determines that county-owned personal property under the jurisdiction of the officer or department head, including motor vehicles, road machinery, equipment, tools, or supplies, is not of immediate need, the county officer or department head may notify the board of county commissioners, and the board may lease that personal property to any municipal corporation, township, other political subdivision of the state, or to a county land reutilization corporation. The lease shall require the county to be reimbursed under terms, conditions, and fees established by the board, or under contracts executed by the board.

(G) If the board of county commissioners finds, by resolution, that the county has vehicles, equipment, or machinery that is not needed, or is unfit for public use, and the board desires to sell the vehicles, equipment, or machinery to the person or firm from which it proposes to purchase other vehicles, equipment, or machinery, the board may offer to sell the vehicles, equipment, or machinery to that person or firm, and to have the selling price credited to the person or firm against the purchase price of other vehicles, equipment, or machinery.

(H) If the board of county commissioners advertises for bids for the sale of new vehicles, equipment, or machinery to the county, it may include in the same advertisement a notice of the willingness of the board to accept bids for the purchase of county-owned vehicles, equipment, or machinery that is obsolete or not needed for public use, and to have the amount of those bids subtracted from the selling price of the other vehicles, equipment, or machinery as a means of determining the lowest responsible bidder.

(I) If a board of county commissioners determines that county personal property is not needed for public use, or is obsolete or unfit for the use for which it was acquired, and that the property has no value, the board may discard or salvage that property.

(J) A county engineer, in the engineer's discretion, may dispose of scrap construction materials on such terms as the engineer determines reasonable, including disposal without recovery of costs, if the total value of the materials does not exceed twenty-five thousand dollars. The engineer shall maintain records of all dispositions made under this division, including identification of the origin of the materials, the final disposition, and copies of all receipts resulting from the dispositions.

As used in division (I) of this section, "scrap construction materials" means construction materials that result from a road or bridge improvement, remain after the improvement is completed, and are not reusable. Construction material that is metal and that results from a road

or bridge improvement and remains after the improvement is completed is scrap construction material only if it cannot be used in any other road or bridge improvement or other project in its current state.

Sec. 5705.41. No subdivision or taxing unit shall:

(A) Make any appropriation of money except as provided in Chapter 5705. of the Revised Code; provided, that the authorization of a bond issue shall be deemed to be an appropriation of the proceeds of the bond issue for the purpose for which such bonds were issued, but no expenditure shall be made from any bond fund until first authorized by the taxing authority;

(B) Make any expenditure of money unless it has been appropriated as provided in such chapter;

(C) Make any expenditure of money except by a proper warrant drawn against an appropriate fund;

(D)(1) Except as otherwise provided in division (D)(2) of this section and section 5705.44 of the Revised Code, make any contract or give any order involving the expenditure of money unless there is attached thereto a certificate of the fiscal officer of the subdivision that the amount required to meet the obligation or, in the case of a continuing contract to be performed in whole or in part in an ensuing fiscal year, the amount required to meet the obligation in the fiscal year in which the contract is made, has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances. This certificate need be signed only by the subdivision's fiscal officer. Every such contract made without such a certificate shall be void, and no warrant shall be issued in payment of any amount due thereon. If no certificate is furnished as required, upon receipt by the taxing authority of the subdivision or taxing unit of a certificate of the fiscal officer stating that there was at the time of the making of such contract or order and at the time of the execution of such certificate a sufficient sum appropriated for the purpose of such contract and in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances, such taxing authority may authorize the drawing of a warrant in payment of amounts due upon such contract, but such resolution or ordinance shall be passed within thirty days after the taxing authority receives such certificate; provided that, if the amount involved is less than one hundred dollars in the case of counties or three thousand dollars in the case of all other subdivisions or taxing units, the fiscal officer may authorize it to be paid without such affirmation of the taxing authority of the subdivision or taxing unit, if such expenditure is otherwise valid.

(2) ~~Annually, the~~ The board of county commissioners may adopt a resolution exempting county purchases of one thousand dollars or less from the requirement of division (D)(1) of this section that a certificate be attached to any contract or order involving the expenditure of money. The resolution shall state the dollar amount that is exempted from the certificate 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 specific items. Prior to the adoption of the resolution, the board shall give written notice to the county auditor that it intends to adopt the resolution. The notice shall state the dollar amount that is proposed to be exempted and whether the exemption would apply to all purchases, to one or more specific classes of purchases, or to the purchase of one or more specific items. The county auditor may review and

comment on the proposal, and shall send any comments to the board within fifteen days after receiving the notice. The board shall wait at least fifteen days after giving the notice to the auditor before adopting the resolution. A person authorized to make a county purchase in a county that has adopted such a resolution shall prepare and file with the county auditor, within three business days after incurring an obligation not requiring a certificate, or within any other period of time the board of county commissioners specifies in the resolution, a written or electronically transferred document specifying the purpose and amount of the expenditure, the date of the purchase, the name of the vendor, the specific appropriation items from which the expenditures are to be made, and any additional information as the auditor of state may prescribe.

(3) Upon certification by the auditor or other chief fiscal officer that a certain sum of money, not in excess of an amount established by resolution or ordinance adopted by a majority of the members of the legislative authority of the subdivision or taxing unit, has been lawfully appropriated, authorized, or directed for a certain purpose and is in the treasury or in the process of collection to the credit of a specific line-item appropriation account in a certain fund free from previous and then outstanding obligations or certifications, then for such purpose and from such line-item appropriation account in such fund, over a period not extending beyond the end of the fiscal year, expenditures may be made, orders for payment issued, and contracts or obligations calling for or requiring the payment of money made and assumed; provided, that the aggregate sum of money included in and called for by such expenditures, orders, contracts, and obligations shall not exceed the sum so certified. Such a certification need be signed only by the fiscal officer of the subdivision or the taxing district and may, but need not, be limited to a specific vendor. An itemized statement of obligations incurred and expenditures made under such certificate shall be rendered to the auditor or other chief fiscal officer before another such certificate may be issued, and not more than one such certificate shall be outstanding at a time.

In addition to providing the certification for expenditures as specified in this division, a subdivision also may make expenditures, issue orders for payment, and make contracts or obligations calling for or requiring the payment of money made and assumed for specified permitted purposes from a specific line-item appropriation account in a specified fund for a sum of money upon the certification by the fiscal officer of the subdivision that this sum of money has been lawfully appropriated, authorized, or directed for a permitted purpose and is in the treasury or in the process of collection to the credit of the specific line-item appropriation account in the specified fund free from previous and then-outstanding obligations or certifications; provided that the aggregate sum of money included in and called for by the expenditures, orders, and obligations shall not exceed the certified sum. The purposes for which a subdivision may lawfully appropriate, authorize, or issue such a certificate are the services of an accountant, architect, attorney at law, physician, professional engineer, construction project manager, consultant, surveyor, or appraiser by or on behalf of the subdivision or contracting authority; fuel oil, gasoline, food items, roadway materials, and utilities; and any purchases exempt from competitive bidding under section 125.04 of the Revised Code and any other specific expenditure that is a recurring and reasonably predictable operating expense. Such a certification shall not extend beyond the end of the fiscal year or, in the case of a board of county commissioners that has established a quarterly spending plan under section 5705.392 of the Revised Code, beyond the quarter to which the plan applies. Such a certificate shall be signed by the fiscal officer and may, but need not, be limited to a specific vendor. An itemized statement of obligations incurred and expenditures made under such a certificate shall be rendered to the fiscal officer for each certificate issued. More than one such certificate may be outstanding at any time.

In any case in which a contract is entered into upon a per unit basis, the head of the department, board, or commission for the benefit of which the contract is made shall make an estimate of the total amount to become due upon such contract, which estimate shall be certified in writing to the fiscal officer of the subdivision. Such a contract may be entered into if the appropriation covers such estimate, or so much thereof as may be due during the current year. In such a case the certificate of the fiscal officer based upon the estimate shall be a sufficient compliance with the law requiring a certificate.

Any certificate of the fiscal officer attached to a contract shall be binding upon the political subdivision as to the facts set forth therein. Upon request of any person receiving an order or entering into a contract with any political subdivision, the certificate of the fiscal officer shall be attached to such order or contract. "Contract" as used in this section excludes current payrolls of regular employees and officers.

(E) Taxes and other revenue in process of collection, or the proceeds to be derived from authorized bonds, notes, or certificates of indebtedness sold and in process of delivery, shall for the purpose of this section be deemed in the treasury or in process of collection and in the appropriate fund. This section applies neither to the investment of sinking funds by the trustees of such funds, nor to investments made under sections 731.56 to 731.59 of the Revised Code.

No district authority shall, in transacting its own affairs, do any of the things prohibited to a subdivision by this section, but the appropriation referred to shall become the appropriation by the district authority, and the fiscal officer referred to shall mean the fiscal officer of the district authority.

Sec. 319.09. The county auditor, if authorized by a resolution of the board of county commissioners, may serve as the fiscal officer of any department, office, or agency of the county, except that the county auditor may not serve as the fiscal officer for the office of any county elected officer or any agency governed by an appointed board or commission without the written agreement of that elected officer or agency.

Sec. 2909.21. As used in sections 2909.21 to ~~2909.34~~ 2909.31 of the Revised Code:

(A) "Act of terrorism" means an act that is committed within or outside the territorial jurisdiction of this state or the United States, that constitutes a specified offense if committed in this state or constitutes an offense in any jurisdiction within or outside the territorial jurisdiction of the United States containing all of the essential elements of a specified offense, and that is intended to do one or more of the following:

- (1) Intimidate or coerce a civilian population;
- (2) Influence the policy of any government by intimidation or coercion;
- (3) Affect the conduct of any government by the act that constitutes the offense.

(B) "Biological agent," "delivery system," "toxin," and "vector" have the same meanings as in section 2917.33 of the Revised Code.

(C) "Biological weapon" means any biological agent, toxin, vector, or delivery system or combination of any biological agent or agents, any toxin or toxins, any vector or vectors, and any delivery system or systems.

(D) "Chemical weapon" means any one or more of the following:

(1) Any toxic chemical or precursor of a toxic chemical that is listed in Schedule 1, Schedule 2, or Schedule 3 of the international "Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (CWC)," as entered into force on April 29, 1997;

(2) A device specifically designed to cause death or other harm through the toxic properties of a toxic chemical or precursor identified in division (D)(1) of this section that would be created or released as a result of the employment of that device;

(3) Any equipment specifically designed for use directly in connection with the employment of devices identified in division (D)(2) of this section.

(E) "Radiological or nuclear weapon" means any device that is designed to create or release radiation or radioactivity at a level that is dangerous to human life or in order to cause serious physical harm to persons as a result of the radiation or radioactivity created or released.

(F) "Explosive device" has the same meaning as in section 2923.11 of the Revised Code.

(G) "Key component of a binary or multicomponent chemical system" means the precursor that plays the most important role in determining the toxic properties of the final product and reacts rapidly with other chemicals in the binary or multicomponent chemical system.

~~(H) "Material assistance" means any of the following:~~

~~(1) Membership in an organization on the United States department of state terrorist exclusion list;~~

~~(2) Use of the person's position of prominence within any country to persuade others to support an organization on the United States department of state terrorist exclusion list;~~

~~(3) Knowingly soliciting funds or other things of value for an organization on the United States department of state terrorist exclusion list;~~

~~(4) Solicitation of any individual for membership in an organization on the United States department of state terrorist exclusion list;~~

~~(5) Commission of an act that the person knows, or reasonably should have known, affords material support or resources to an organization on the United States department of state terrorist exclusion list;~~

~~(6) Hiring or compensating a person known by the person hiring or providing the compensation to be a member of an organization on the United States department of state terrorist exclusion list or a person known by the person hiring or providing the compensation to be engaged in planning, assisting, or carrying out an act of terrorism.~~

~~(I)~~ "Material support or resources" means currency, payment instruments, other financial securities, funds, transfer of funds, financial services, communications, lodging, training, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.

~~(J)~~(I) "Payment instrument" means a check, draft, money order, traveler's check, cashier's check, teller's check, or other instrument or order for the transmission or payment of money, regardless of whether the item in question is negotiable.

~~(K)~~(J) "Peace officer" and "prosecutor" have the same meanings as in section 2935.01 of the Revised Code.

~~(L)~~(K) "Precursor" means any chemical reactant that takes part at any stage in the production by whatever method of a toxic chemical, including any key component of a binary or multicomponent chemical system.

~~(M)~~(L) "Response costs" means all costs a political subdivision incurs as a result of, or in making any response to, a threat of a specified offense made as described in section 2909.23 of the Revised Code or a specified offense committed as described in section 2909.24 of the Revised Code, including, but not limited to, all costs so incurred by any law enforcement officers, firefighters, rescue personnel, or emergency medical services personnel of the political subdivision and all costs so incurred by the political subdivision that relate to laboratory testing or hazardous material cleanup.

~~(N)~~(M) "Specified offense" means any of the following:

(1) A felony offense of violence, a violation of section 2909.04, 2909.081, 2909.22, 2909.23, 2909.24, 2909.26, 2909.27, 2909.28, 2909.29, or 2927.24 of the Revised Code, a felony of the first degree that is not a violation of any provision in Chapter 2925. or 3719. of the Revised Code;

(2) An attempt to commit, complicity in committing, or a conspiracy to commit an offense listed in division ~~(N)~~(M)(1) of this section.

~~(O)~~(N) "Toxic chemical" means any chemical that through its chemical action on life processes can cause death or serious physical harm to persons or animals, regardless of its origin or of its method of production and regardless of whether it is produced in facilities, in munitions, or elsewhere.

~~(P) "United States department of state terrorist exclusion list" and "terrorist exclusion list" means the list compiled by the United States secretary of state, in consultation with or upon the request of the United States attorney general, that designates terrorist organizations for immigration purposes. "United States department of state terrorist exclusion list" and "terrorist exclusion list" also mean the list of terrorist organizations the director of public safety prepares~~

~~pursuant to rules adopted in accordance with Chapter 119. of the Revised Code, that is comprised of lists of organizations officials of the United States government designate as terrorist, including the "terrorist exclusion list" described in this division, the list of "foreign terrorist organizations" the United States secretary of state prepares in consultation with the United States attorney general and the United States secretary of the treasury, and the list of charities that support terrorist activities, known as "designated charities," that the United States department of treasury compiles.~~

~~(Q)(O)~~ "Hazardous radioactive substance" means any substance or item that releases or is designed to release radiation or radioactivity at a level dangerous to human life.

Sec. 2909.28. (A) No person, with the intent to manufacture a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device, shall knowingly assemble or possess one or more toxins, toxic chemicals, precursors of toxic chemicals, vectors, biological agents, or hazardous radioactive substances, ~~including, but not limited to, those listed in rules the director of public safety adopts,~~ that may be used to manufacture a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device.

(B) In a prosecution under this section, it is not necessary to allege or prove that the offender assembled or possessed all chemicals or substances necessary to manufacture a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device. The assembly or possession of a single chemical or substance, with the intent to use that chemical or substance in the manufacture of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device, is sufficient to violate this section.

(C) Whoever violates this section is guilty of illegal assembly or possession of chemicals or substances for the manufacture of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device, which is a felony of the fourth degree.

(D) This section does not apply when the items described in division (A) of this section are assembled or possessed for a purpose related to the performance of official duties related to any military purpose of the United States and any law enforcement purpose, including any domestic riot control purpose.

Sec. 2909.32 Repealed

Sec. 2909.37 Repealed

Sec. 2909.34 Repealed



**OHIO DEPARTMENT
OF PUBLIC SAFETY**

EXHIBIT 2

John R. Kasich, Governor
Thomas P. Charles, Director

EDUCATION • SERVICE • PROTECTION

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Emergency Management Agency
Emergency Medical Services
Office of Criminal Justice Services
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Ohio Investigative Unit
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REPEAL OF THE DMA LAW

Background Information

The Declaration of Material Assistance/Nonassistance (DMA) form is a questionnaire that must be completed by certain licensees, government contractors, and candidates for public employment, certifying that they have not provided "material assistance" to a terrorist organization. Failure to properly complete the DMA form automatically results in denial/revocation of the license, contract, or job opportunity. The DMA form, and the laws pertaining to it (R.C. 2909.32 - 2909.34, and portions of 2909.21 and 2909.28), were enacted through S.B. 9 (126th G.A.).

Despite its intended purpose, the DMA form has not uncovered any terrorists or resulted in any arrests. Instead, it has resulted in state and local agencies having to spend countless hours, and thousands of dollars, processing the forms and answering questions from the public. In addition, potential vendors and licensees have had difficulties completing the DMA form, resulting in a loss of government business/funding or licensure.

In an effort to reduce obstacles and eliminate ineffective regulations that make it difficult for businesses to operate in Ohio, the Ohio Department of Public Safety (ODPS) recently sought to repeal the DMA laws. The proposed repeal of these laws was included in H.B. 487 (129th G.A.), which was signed by Governor Kasich on June 11, 2012. The repeal of the DMA laws will take effect on **September 10, 2012**.

Repeal of the DMA Law

On September 10, 2012, the DMA laws will no longer exist; therefore, the DMA *forms* should not be distributed to anyone on or after that date. No later than September 10, 2012, the following should occur:

1. **Licensees or Applicants for Licensure** currently required to complete a DMA form must be relieved of this requirement.
 - Agencies should work with their appropriate sections (e.g., IT, Purchasing) to determine how long it will take to remove the DMA form from the application packets.
 - Agencies will be responsible for notifying their affected licensees that the DMA form requirement will be ending.
 - At the time of mailing an application, or making one available online, agencies must

consider when such application is due. If the due date falls on or after September 10, 2012, the agency must determine whether to require the DMA form for that application. Agencies must ensure that an applicant will be afforded proper due process (e.g., enough time to appeal a denial before the DMA law is repealed) if he/she improperly completes the DMA form. If an agency denies an applicant for failing to properly complete the DMA form, it must provide the applicant with notice of his/her right to request a review (i.e., appeal) with the Department of Public Safety.

- Agencies should work with their IT sections to ensure that any links to the DMA form are updated to reflect that the DMA law will be repealed.
- Agencies should contact their Communications sections to make them aware of the change in the law.

2. **Applicants for Public Employment** must be relieved from the requirement of completing a DMA form.

- Agencies should work with their Human Resources sections to ensure that the DMA form is removed from new hire packets.
- Agencies should work with their IT sections to ensure that any links to the DMA form are updated to reflect that the DMA law will be repealed.
- Agencies should contact their Communications sections to make them aware of the change in the law.

3. **Government Contractors** (i.e., individuals and/or companies seeking to do business with, or receive funding from, a governmental entity) must be relieved from the requirement to complete a DMA form.

- Agencies should work with their Purchasing and/or Contracts sections to determine how long it will take to begin deleting DMA references from all contracts, RFPs, RFQs, and other procurement documents.
- At the time of making a contract or grant available, agencies must consider when such contract or grant is awarded. If the award date falls on or after September 10, 2012, the agency must determine whether to require the DMA form on that contract and/or grant. Agencies must ensure that a potential vendor will be afforded proper due process (e.g., enough time to appeal a denial before the DMA law is repealed) if the vendor improperly completes the DMA form. If an agency denies a potential vendor a contract and/or grant for failing to properly complete the DMA form, it must provide the vendor with notice of his/her right to request a review (i.e., appeal) with the Department of Public Safety.
- Agencies should work with their IT sections to ensure that any links to the DMA form are updated to reflect that the DMA law will be repealed.
- Agencies should contact their Communications sections to make them aware of the change in the law.

4. **Office of Budget and Management (OBM)** As the agency responsible for operation of DMA pre-certification on the Ohio Business Gateway, OBM will remove those pages - including the DMA pre-certification search function - from the Gateway site on September 10, 2012, when the DMA is no longer required. However, OBM will retain an archive of past registration records for an appropriate period in accordance with its records-retention policy. OBM will communicate notice of this transition, with additional details, in advance of the September 10 effective date.