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# COUNTY ADVISORY BULLETIN

**CAB**

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## **RECENT CHANGES TO COUNTY PURCHASING LAW**

The General Assembly has enacted legislation that makes a variety of changes to county laws relating to purchasing. This CAB will summarize the major provisions of these changes in law.

HB 300 will become effective on July 1, 1994. The bill was sponsored by Representative Darrell Opfer (D-Oak Harbor), a former Ottawa County Commissioner. Representative Opfer introduced the bill at the request of CCAO, and it contained a variety of changes proposed in the CCAO Legislative Platform.

Commissioners should three hole punch this CAB and insert it after the CCAO INFORMATION TAB in the COUNTY COMMISSIONERS' HANDBOOK for future reference.

## **SUMMARY OF MAJOR PROVISIONS OF LAW**

HB 300 contains the following provisions relating to purchasing that were enacted into law:

1. Increases the threshold on required competitive bidding from \$10,000 to \$15,000 (ORC 307.86). Commissioners may wish to adopt more stringent procurement policies and procedures for competitive bidding and require written quotations under the \$15,000 threshold for certain purchases.
2. Increases the threshold for emergency purchases which are exempt from competitive bidding from \$20,000 to \$50,000 (ORC 307.86(A)(1)).
3. Authorizes an exemption from competitive bidding in situations where there is actual physical disaster to radio communications equipment and computers. Prior law only

allowed the exemption in the case of physical disaster to structures (ORC 307.86(A)(2)).

4. If commissioners declare an emergency and there is no physical disaster to structures, radio communications equipment or computers, the county must continue to solicit informal estimates, but only if the estimated cost exceeds \$15,000 (up from the \$10,000 amount in former law). If there is no physical disaster involved, and the estimated cost exceeds \$50,000, competitive bidding is required. If informal estimates are required, the county must continue to maintain a record of these estimates for a period of one year.

5. If there is physical disaster to structures, radio communication equipment or computers the county may proceed without soliciting informal estimates. Likewise, in this situation, the \$50,000 limit does not apply. This effectively means that the commissioners may simply purchase in situations involving physical disaster. While this is the law, CCAO suggests that informal estimates be obtained and retained in all situations.

6. Exempts from competitive bidding, but establishes separate required procedures, when property is leased for offices, storage, parking, or other purposes (ORC 307.86(l)). These new procedures are described in detail in subsequent sections of this CAB.

7. Authorizes county commissioners to exempt purchases of \$750 or less from the certificate of availability of funds requirement. To implement this authority, commissioners must adopt a resolution, which may apply to one or more specific classes of purchases or to one or more specific items. This must be done on an annual basis by county commissioners, and can not be done until the county auditor is given the opportunity to comment. Under prior law only expenditures of less than \$100 were exempt (ORC 5705.41(D)(2)).

8. Changes the current law relating to blanket purchase orders (BPO's). BPO's may now exceed the former \$5,000 maximum, may cover a period of more than three months, and more than one BPO may be outstanding at any time. The law also specifically defines the services and other purposes for which a BPO may be issued (ORC 5705.41(D)(1)).

9. Establishes procedures for counties to use if they desire to install energy conservation measures (ORC 307.041). The law also provides new financing options for the purchase and installation of energy conservation measures, permits commissioners to contract for studies to evaluate buildings for energy conservation measures, and exempts debt issued for these purposes from the statutory debt limit.

The remainder of this CAB will discuss the details of changes in the law relating the

lease of office space, certificate of availability of funds, and blanket purchase orders. This CAB will not discuss new provisions related to the installation of energy conservation measures, but these will be explained in a future CAB. The changes in the law relating to the increase in the competitive bidding threshold and emergency purchases are adequately covered in this section.

## **SPECIAL PROVISIONS RELATING TO LEASE OF PROPERTY**

Special provisions apply when the county desires to lease property, including land, buildings, or other real property, for offices, storage, parking, or other purposes. The following conditions apply to such leases:

1. The county must be specifically authorized by state law to lease the property for the intended purpose.
2. The county must develop a request for proposals (RFP) for leasing the property. This RFP must specify the criteria that will be considered by the county before it enters into a lease. These criteria may include the desired size and geographic location of the property.
3. The county must give notice in a manner substantially similar to the notice required under competitive bidding as specified in ORC 307.87. In addition, if a special notification list has been established, notice must be mailed to anyone on a special notification list.
4. The county receives responses to the RFP from prospective lessors after giving public and mailed notice. The responses to the RFP from prospective lessors must meet the criteria specified in the RFP.
5. The county then negotiates with prospective lessors that meet the criteria of the RFP 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...."

## **RETENTION OF REAL ESTATE APPRAISER**

The county may use the services of a real estate appraiser to obtain advice, consultations, or to make recommendations regarding any proposed lease. If an appraiser is retained, the individual is required to disclose "any fees or compensation received from any source in connection with that employment." This provision is similar to provisions relating to the retention of an insurance consultant when purchasing insurance. The purpose is to require the disclosure of any situations where there may be a conflict of interest on the part of the appraiser.

Counties may want to consider retaining a real estate appraiser to assist them in reviewing RFP's. This may avoid legal challenges where an unsuccessful prospective lessor questions a determination of the commissioners that the property of the successful lessor provides the "best and lowest price.....considering the fair market value of the property....."

### **SPECIAL NOTIFICATION LIST OF PROSPECTIVE LESSORS**

Any prospective lessor may have his or her name and address, or the name and address of an agent of the lessor, placed on a special notification list that must be maintained by the county. If such names are sent to the county for this purpose a list must be established and maintained. When developing an RFP for the lease of property, the county must then send the RFP to lessors and agents on the special notification list. This notice must include:

1. The deadline for responding to the RFP.
2. The notice must be mailed at least six weeks before the deadline for responding to the RFP.

Finally, the county may review this list every five years and may remove any person from the list after it mails notification of such removal from the list to the person.

### **AUTHORITY TO EXEMPT CERTAIN PURCHASES FROM CERTIFICATE OF AVAILABILITY OF FUNDS REQUIREMENT**

ORC Section 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.

Some counties have suggested that this \$100 threshold is too low. They maintain that this requirement creates excessive administrative work and unnecessary paperwork.

Other counties feel that this type of spending control assures that county agencies will not incur obligations that exceed the amount appropriated for various purposes.

Under the new law county commissioners may, by resolution, increase the present threshold from \$100 to an amount not to exceed \$750. 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 \$750.
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.

The law is very flexible. It allows different amounts for different types of expenditures. A county could, for example, establish a \$750 requirement for certain large budget items, maintain the \$100 requirement for small budget items, and establish a \$500 requirement for other expenditures. This could, however, create an administrative burden on the county auditor, who should be consulted when contemplating the use of this new authority.

The reference to "specific items" applies to specific line items in the annual appropriation measure or to sub-level objects of expense in counties that maintain a more detailed expenditure system.

4. If county commissioners desire to increase the \$100 threshold, they must take action each year. The exemption from the general requirement automatically expires on December 31 of each year. A new resolution must then be adopted at the beginning of the next year, or late in the current fiscal year for the succeeding year.

County commissioners may increase the certification exemption threshold to reduce unnecessary and costly purchase order paperwork. While purchasing procedures vary significantly among counties, it is estimated that direct vouchering of routine expenses under \$750 each could reduce purchase order paperwork volume by as much as 15 to 25 percent in many counties.

Examples of categories of expenses which counties might wish to consider as candidates for exemption from the certificate requirement include:

1. Subscriptions, publications, and bulletins.
2. Conference registration expense.
3. Court transcription expense.
4. Reimbursement of personal cash expenses.
5. Licenses, permits and fees.
6. Memberships.
7. Vicinity mileage reimbursements.
8. Other routine, recurring expenses for which bidding or quotations are not required, or feasible.

## **PROCEDURAL REQUIREMENTS**

County commissioners are encouraged to work with the county auditor before changing the threshold. The statute (ORC 5705.41(D)(2)) requires that the following procedures be followed before a resolution is adopted:

1. County commissioners must give written notice to the county auditor that they intend to adopt such a resolution.
2. The commissioners can not adopt any such resolution sooner than 15 days after giving the county auditor written notice.
3. The written notice must include the dollar 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.
4. The county auditor may review and comment on the proposal and must send comments to the commissioners within 15 days of receiving the notice.

## **NOTIFICATION TO AUDITOR AFTER INCURRING EXPENDITURES**

If the commissioners adopt a resolution increasing the threshold above \$100 any person authorized to make a purchase must 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.
5. Such additional information as the State Auditor may prescribe.

## **BLANKET PURCHASE ORDERS OR CERTIFICATES**

Another way to meet the Certificate of Availability of Funds requirement is through the issuance of a Blanket Purchase Order (BPO). Under the former law BPO's could be issued for not more than \$5,000 if:

1. Funds had been appropriated for a particular purpose.
2. Monies were in the county treasury or in the process of collection to the credit of a specific line item appropriation account in a certain fund.
3. The line item appropriation account was free from previous and then outstanding certifications or other obligations.

Under the former law the BPO could be for a period of not more than three months, but could not extend beyond the end of the fiscal year (December 31). Like a regular Certificate of Availability of Funds, the purpose of the BPO is to assure that agencies live within line item appropriations and is meant to encumber money for regular and recurring expenses. The BPO gives agencies the ability to operate more efficiently and to make necessary purchases without processing individual purchase orders for small purchases. A common use of a BPO is for specific vendors where materials or supplies are periodically purchased and for recurring expenses such as bills for assigned counsel services and for utilities.

The former law also required that an itemized statement of expenditures made pursuant to a BPO had to be given to the county auditor before another BPO could be issued. No more than one BPO could be outstanding at any one time.

The law has been changed in HB 300 to remove some of the restrictions that previously applied to blanket purchase orders. The new authority is in addition to the general law relating to BPO's that has been summarized above. All provisions of the former law generally applying to BPO's continue to apply under the new law with the following exceptions:

1. The amount of the BPO may exceed \$5,000.

2. The BPO may not extend beyond the end of the current fiscal year or beyond the end of any quarter if a quarterly spending plan has been used to appropriate funds to general fund agencies. If a quarterly spending plan has not been adopted, the three month limitation does not apply.

3. More than one BPO may be outstanding at any one time.

In addition, the new provisions relating to BPO's only apply to specific types of obligations and expenditures as specified in law.

### **AUTHORIZED PURPOSES FOR NEW BPO's**

The additional provisions for BPO's of over \$5,000, where more than one outstanding certificate may be issued, and where there is no three month limit is limited to certain expenditures that are specified in the law. These include:

1. The services of the following professionals:

- a. Accountant
- b. Architect
- c. Attorney
- d. Physician
- e. Professional Engineer
- f. Construction Project Manager
- g. Consultant
- h. Surveyor
- i. Appraiser

2. The following specific purchases or obligations:

- a. Fuel oil
- b. Gasoline
- c. Food items



d. Roadway materials

e. Utilities

f. Purchases exempt from competitive bidding under ORC 125.04. These purchases are limited to items purchased pursuant to the Department of Administrative Services cooperative purchasing program.

g. Any other specific expenditure that is a recurring and reasonably predictable operating expense.

These new provisions relating to blanket purchase orders should be especially helpful in large counties where certain classes of expenditures often exceed the \$5,000 maximum in several days. These counties found themselves processing one BPO after another because they could not issue a new one until the old one was closed out. The new procedures for BPO's should be carefully implemented and structured to comply with the newly established competitive bid threshold of \$15,000.

Lifting the dollar cap and the time restriction on BPO's enables counties to consider permitting one purchase order per year per expense item for certain account expenses. A good example is utility payments to utility companies which are a sole source and not normally competitively bid. A vendor/multiple purchase order could be established to pay all utility payments for the entire year for all utility vendors utilized by a particular county. Blanket purchase orders could also be established for non-contract repairs for equipment in both emergency and non-emergency situations, where contract maintenance agreements are not already in place.

## **CONCLUSION**

The changes in purchasing laws enacted in HB 300 should simplify purchasing practices in most counties. They should reduce cumbersome paperwork and free up staff time for more productive activities.

Each county should review its own accounting/purchase order patterns to determine exactly how best to implement the blanket certificate and certificate exemption changes while still maintaining the integrity of the controls on their current purchasing policies and practices.

Existing county accounting/purchasing charts of expense accounts may dictate and limit what is permissible to exempt from the certificate requirement and also what kinds of BPO's may be lawfully established. CCAO encourages all counties to seek advice from both the county prosecutor's office and county auditor to assure proper compliance with the new law.

The changes in the competitive bid limit, emergency purchases, and lease of office space should be helpful to all counties. While the new permissive authority to exempt expenditures of up to \$750 from the Certificate of Availability of Funds requirement was requested by large counties, this procedure may also be helpful in smaller counties. Likewise, the new procedures for blanket purchase orders, while requested primarily by larger counties, should prove useful for all counties.

## **ACKNOWLEDGMENT**

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