



HANDBOOK

Ohio County Commissioners

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CHAPTER 6

PROPERTY, BUILDINGS AND IMPROVEMENTS

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6.01 INTRODUCTION

The Ohio Revised Code makes it the duty of the county commissioners to have charge of all the public buildings belonging to the county, and to erect, furnish, and maintain those buildings. A county, may own property, such as courthouses, jails, roads, bridges and the like. The board of county commissioners holds title to the property of the county.

Section 307.01 of the Revised Code provides that a courthouse, jail, public comfort station, offices for county officials, and a county home shall be provided by the board when, in its judgment, any of them are needed. The board determines the style, dimensions, and expense of such buildings.

In addition, all new jails and additions to existing jails must be constructed and operated in compliance with the minimum jail standards of the Department of Rehabilitation and Corrections.

This Chapter will discuss some of the important requirements relating to property and buildings. It will discuss the basic powers to provide needed facilities, will discuss options for providing such facilities, and will discuss statutory requirements for bidding, advertising, and the award and payment of construction contracts. Other topics to be discussed include the prevailing wage law requirements, provisions relating to underground utilities, bid guaranty requirements, the county building commission, and

provisions for retaining construction project managers. This is one of the more complex areas of county law. Of particular importance are the provisions of Chapter 153 of the Revised Code.

6.02 TYPES-BUILDINGS AND FACILITIES

Section 307.02 of the Revised Code provides specific authority for the county commissioners to obtain or provide facilities for the following purposes:

1. Courthouses
2. County offices
3. Jail
4. County home
5. Juvenile court building
6. Detention home
7. Public market house
8. Childrens home
9. Mental health facility
10. Mental retardation facility
11. Developmental disability facility
12. Alcohol treatment and control center (HB 240, 4/28/72)
13. Public stadium
14. Public auditorium
15. Exhibition hall
16. Zoological park
17. Off-street parking facilities in conjunction with such building facilities (HB 450, 11/25/69)

18. Facilities for senior citizens (HB 660, 7/26/84)
19. Public library buildings (HB 847, 8/22/80)
20. Golf courses (SB 550, 11/26/82)
21. Retail store rooms and offices, if they are located in a building acquired by the county for county office purposes (SB 343, 4/20/70)
22. Other necessary buildings

6.03 METHODS TO PROCURE BUILDINGS AND FACILITIES

Section 307.02 of the Revised Code gives counties the following methods by which they may procure buildings or provide facilities:

1. Purchase for cash
2. Purchase by installment payments
3. Enter into lease-purchase agreements
4. Lease with option to purchase
5. Lease

In addition, the board of county commissioners may appropriate, construct, enlarge, improve, rebuild, equip and furnish facilities as specified in the previous section.

6.04 PURCHASE OF REAL ESTATE

The purchase of real estate by the county commissioners is exempt from competitive bidding. It should be noted that this applies only to the purchase of real estate and not to the construction of buildings, structures or other improvements. It was the reasoning of the Attorney General that because real estate was unique it was not susceptible to the competitive bidding process (OAG 79-034). However, most important in his decision was that Section 307.08 of the Revised Code authorizes the commissioners to "procure real estate." When considered in conjunction with the power of eminent domain, the Attorney General construed the law to authorize purchase without bidding because commissioners must have the authority to try to obtain the parcels without invoking eminent domain.

County commissioners may purchase or appropriate real property in the unincorporated area of the county in connection with a plan to make public infrastructure improvements to that property through a development mechanism commonly known as tax increment

financing. For the purpose of implementing tax increment financing commissioners may:

1. Sell or lease property acquired by the county by purchase or appropriation.
2. After the property is purchased from the county, exempt part or all of an improvement to such property from real property taxes.
3. Once an improvement is exempted from taxation, charge the owner of the improvement service payments.
4. Use the service payments to finance the construction or repair of public infrastructure improvements that benefit the property (ORC 307.081).

Commissioners may also enter into agreements to construct or repair public infrastructure improvements and may issue debt to finance such improvements in connection with a tax increment financing plan (ORC 307.082). For more information about tax increment financing see Chapter 17 of this *Handbook*.

County commissioners may purchase real estate at public auction by designating an individual to represent them and tender bids at the auction. Purchase of real estate at an auction is subject to a maximum purchase amount established by the commissioners or an appraisal obtained prior to sale and certification of availability of funds by the auditor (ORC 307.083).

6.05 LEASE OF LAND, BUILDINGS AND REAL PROPERTY

The leasing of land, buildings and other real property for offices, storage, parking and other purposes by a county is exempt from competitive bidding provided the contracting authority complies with the following requirements:

1. The contracting authority is authorized by law to lease the property.
2. The contracting authority develops requests for proposals for leasing the property that specify the criteria that will be considered and include the desired size and geographic location of the property.
3. The contracting authority receives responses from prospective lessors with property meeting the criteria specified in the RFD after providing public notice in a manner similar to the procedure for competitive bidding or the contracting authority directly solicits responses from at least three prospective lessors.
4. The contracting authority negotiates with prospective lessors to obtain a lease at the best and lowest price reasonably possible, considering the fair market value

of the property and relocation costs that may be incurred during the period of the lease.

The contracting authority may use the services of a real estate appraiser to advise them in the lease of property.

6.06 COUNTY BUILDING COMMISSIONS

Section 153.21 of the Revised Code authorizes the establishment of a county building commission. This law is old and is rarely, if ever used today. From the structure of the Revised Code, it could be argued that Sections 153.21 - 153.49 only apply to counties that establish building commissions.

Counties should, however, consult with counsel concerning certain specific provisions contained in this sequence of sections to determine their applicability. For example, Section 153.61, which is not included in this sequence of sections, specifically exempts a multi-county jail from the requirement of Section 153.36 dealing with the approval of plans for a courthouse or jail, and it could thus be argued that these sections have independent status even though a building commission has not been established. Other significant sections in this sequence include:

1. ORC 153.28 - Plans, Drawings and Cost Estimates to be Filed with Auditor.
2. ORC 153.31 - Plans and Estimates for Buildings and Bridge Substructures.
3. ORC 153.32 - Contracts for Erection and Repair of Superstructures.
4. ORC 153.30 - Plans Shall be Kept on File in Auditor's Office.
5. ORC 153.57 - Approval of Plans for County Home.
6. ORC 153.38 - Approval of Plans for Bridge.
7. ORC 153.39 - Approval of Plans for Children's Home.
8. ORC 153.44 - Contracts Submitted to Prosecutor.
9. ORC 153.45 - Commissioners May Annul Old and Make New Contracts.
10. ORC 153.49 - Duties of Treasurer.

The building commission law provides that when the county commissioners have determined to erect a courthouse or other county building or to make an addition to, or to make an improvement of any existing county-owned building, the board may appoint four suitable and competent freehold electors of the county, who shall, together with the

board, constitute a building commission. They serve until the courthouse, other county building, addition, or improvements thereof are completed. Not more than two of the appointees may be of the same party.

6.07 LEASE-PURCHASE PLAN IMPROVEMENTS

Buildings and other improvements specified in Section 307.02 of the Revised Code may be purchased under a lease-purchase agreement. The lease agreement can be for a period not to exceed 40 years, at the end of which period the buildings, structures, and related improvements, along with the land on which they are situated, must become the property of the county without additional cost. If such a lease is to be entered into by a county, the commissioners must file, in the office of the clerk or auditor, such basic plans, specifications, bills of materials, and estimates of cost with sufficient detail to afford bidders with all needed information. Alternatively, the commissioners may file the following information:

1. Full and accurate plans, suitable for use by mechanics and builders.
2. Details to scale and size, so as to be easily understood.
3. Accurate bills showing the exact quantity of different kinds of material necessary to the construction.
4. Definite and complete specifications, along with directions for mechanics and builders.
5. A full and accurate estimate of the cost of each item and the aggregate expense.

Bids shall be invited in the manner prescribed by Sections 307.86 to 307.92 of the Revised Code, and the bids shall contain the terms upon which the builder would propose to lease the facility to the county. The bidder shall comply with Sections 153.50 - 153.52 of the Revised Code, having to do with the separation of work and materials by class.

At the time specified for opening bids, they shall be opened and tabulated. The board of commissioners shall investigate the bids within 30 days of opening, during which time they must assure that Chapter 4123 (workers' compensation law) of the Revised Code has been complied with. Within 10 days of completing their investigation, the commissioners may award the lease agreement to the lowest and best bidder. They may reject any bid. For further details on this procedure, see Section 307.02 of the Revised Code.

6.08 LEASE OF CORRECTIONAL FACILITIES

Section 307.022 of the Revised Code authorizes leases for correctional facilities. These leases are commonly referred to as "lease-back arrangements."

The following general provisions of law apply to this approach of obtaining correctional facilities which may include jails, detention homes, work houses, community based correctional facilities, and family court centers:

1. The county can sell, lease, or grant easements or licenses to land owned by the county to a private entity without following competitive bidding procedures if the land is to be leased back to the county for the use of correctional facilities.
2. The county may enter into a lease with an option to purchase correctional facilities. The term of such a lease cannot exceed 40 years.
3. Such a lease is exempt from competitive bidding, however, the county must publish a notice in a newspaper of general circulation stating that it is accepting proposals for such a lease prior to executing the lease. The notice must be published once a week for three consecutive weeks and must include the date by which such proposals must be submitted.
4. The lease must provide that the county will be the contracting authority for the construction, improvement, furnishing, and equipping of the facilities and that such contracts will comply with competitive bidding and prevailing wage laws.
5. The lease may provide for the following:
 - a. For the county to maintain and operate the facility.
 - b. For the county to make rental payments either before or after occupying the facility.
 - c. For the county to obtain any insurance that the lessor may require including public liability, casualty, builders risk, and business interruption insurance.

This procedure can apply to facilities that are being done in conjunction with other political subdivisions; in which other county facilities are included; and, facilities which are being financed or constructed by the Ohio Building Authority and leased to the county pursuant to Section 307.021 of the Revised Code.

6.09 COMPETITIVE BIDDING REQUIREMENTS

With certain exceptions, all things purchased, leased, leased with a future purchase

option, or constructed at a cost of \$10,000 or more must be obtained through competitive bidding. Competitive bidding must also be used for contracts concerning the reconstruction, improvement, maintenance and repair of buildings and structures if in excess of \$10,000 (ORC 153.12). As outlined in Section 307.86 of the Revised Code, emergency purchases are exempt from the requirements of competitive bidding under the following conditions:

1. The county commissioners adopt a resolution unanimously stating that "a real and present emergency exists" and specifies the reason they have made the determination that there is an emergency. In case an emergency is declared, at least three informal estimates must be obtained and these records must be kept for at least one year.
2. The estimated cost is less than \$20,000; or
3. There is actual physical disaster to structures.

6.10 NOTICE REQUIREMENTS FOR COMPETITIVE BIDDING

Anything that must be competitively bid must comply with the following notice requirements:

1. A notice must be published in a newspaper of general circulation once a week for at least two consecutive weeks.
2. In addition, the notice must be posted on a bulletin board at the office of the commissioners or in another suitable place. The notice must be posted for at least two weeks prior to the bid opening.
3. The notice may also be published in trade papers or other publications.

6.11 CONTENTS OF BID NOTICE

The following items should be included in notices published in a newspaper and posted on the bulletin board:

1. A general description of the improvement.
2. Where and when plans, specifications, lists of supplies, and estimated quantities can be obtained or examined.
3. When and where the bids will be opened.
4. Time and place for submitting bids.

5. Terms of the proposed purchase.
6. Conditions under which bids will be received.
7. If the county has adopted a system of preferences for Ohio based contractors the notice must state that such a system exists (ORC 307.87).
8. If the county exempts the bid from any (but not all) of the bid guaranty requirements of Section 153.54 of the Revised Code, the notice must contain the specific bid guaranty requirements that will apply. If the county exempts the bid from all of these bid guaranty requirements, the notice must so state.

6.12 REQUIREMENTS FOR PLANS AND SPECIFICATIONS

Separate and distinct plans and specifications must be made available for the furnishing of materials and/or the conduct of the works for each separate and distinct trade such as general trades; plumbing; heating and ventilating; and, electrical (ORC 153.50). Counties may award a combined contract covering different kinds of trade if the total bid is less than the separate bids added together. In addition, a combined bid can be accepted where separate bids do not encompass all classes of work (ORC 153.51).

The plans, specifications, lists of supplies, and estimated quantities must comply with the following standards which must be prepared by a registered architect or registered professional engineer:

1. Full and accurate plans that show all necessary details of the work to be done and materials to be used including working plans that can be easily understood.
2. Accurate bills of materials that show the exact amount of the different kinds of materials.
3. Full and complete specifications showing the manner and style required so as to enable competent builders to carry them out and which will give bidders all needed information.
4. A full and accurate estimate of each item of expense and the aggregate cost (ORC 153.31).

There is an exception to the general requirement that plans and specifications be prepared by an architect or engineer for iron or reinforced bridge substructures. In this case the bidders may provide the plans and specifications if the county commissioners decide to use this procedure. In such a case the plans and specifications submitted by a bidder must be filed with the county auditor for a period of 15 days prior to the opening of bids. The plans and specifications must show the number of spans; the length of each span; the nature, quality and size of materials to be used; the length of the

structure when completed; and whether there is a patent on the proposed plan (ORC 153.33).

If a building, structure or construction project involving more than one building exceeds \$15 million then the building may be built in stages. This allows portions of large projects to be bid as plans and specifications are prepared and enables the project to begin earlier than it otherwise would if all plans and specifications had to be prepared prior to the start of any construction.

6.13 BID GUARANTY REQUIREMENTS

For most construction projects over \$10,000 the bid guaranty requirements of Section 153.54 of the Revised Code apply. This section provides two options as follows:

1. A bond for the full amount of the bid.

If a surety bond is utilized as the bid guaranty the bond is conditioned on a bidder's entering into a proper contract after the awarding of the contract. If a bidder files this 100 percent bid bond and is then awarded the contract this bond is retained as the performance bond and must be in the form specified in Section 153.571 of the Revised Code. If the bidder fails to enter into the contract, the contract is awarded to the next lowest bidder, he would be liable on the bond for the difference between his bid and the bid of the next lowest bidder or for a sum not in excess of 10 percent of the amount of the bond, whichever is less.

When a contractor fails to enter into a contract and the public authority elects to resubmit the entire project to public bidding, the unsuccessful bidder is liable on the bond for 10 percent of the amount of his bid or the cost of resubmitting the contract, whichever is less. The bond must also provide for indemnifying the public authority for the full amount of the bond for any failure to perform the contract according to its terms or for failure to pay any subcontractors or materialmen.

2. A certified check, cashier's check, or letter of credit for 10 percent of the bid.

It also must be conditioned to compensate the county if the successful bidder fails to enter into the contract. If a bidder files this 10 percent bid bond and is then awarded the contract, a performance bond for the amount of the bid utilizing the form specified in Section 153.57 of the Revised Code must be filed. Likewise, if the county decides, in the event of a contractor's default, to resubmit the entire project for bidding, the defaulting contractor will be liable on his letter of credit, cashier's check, or certified check in the amounts described above.

Where, however, the contractor elects to utilize a cashier's check, certified check, or letter of credit as his bid guaranty, the successful bidder must, at the time he enters into the contract, furnish a surety bond in the amount of the contract to guarantee

faithful performance of the contract and the payment of all subcontractors and materialmen. Upon furnishing this performance bond, the successful bidder, using this second method, will be given back his bid guaranty.

While the bid guarantee is generally held until completion of the project, Ohio law (ORC 9.313 and 153.80) authorizes counties to reduce the amount of the bond or guaranty as follows:

1. By 25 percent when the project is 50 percent complete.
2. By 50 percent when the project is 75 percent complete.

In order to reduce the bond, however, the following requirements apply to the project:

1. The work is completed satisfactorily and on time.
2. No dispute caused by the contractor remains, and
3. The bid was not more than 10 percent lower than the next lowest bid or cost estimate.

6.14 EXEMPTION FROM BID GUARANTY

For public improvement projects, county commissioners, by unanimous vote, may exempt the contractor from any or all of the requirements of Revised Code 153.54, if the estimated cost of the improvement is less than \$25,000. If the board exempts a bid from any, or all of these requirements, the published notice must state the specific bid guaranty requirements which apply. Commissioners may exempt a bidder for a public improvement project in a variety of ways. For example the county could:

1. Exempt the project from any kind of bid guaranty requirement;
2. Exempt the project from the requirement for a bid guaranty, but require a performance bond; or
3. Exempt the project from the requirement for a performance bond, but require a bid guaranty.

This exemption provision was intended to allow small contracting firms, who might be unable to afford bid guaranties, to bid on small contracts. Commissioners should exercise caution, when exempting a bidder from any or all requirements, to protect the proposed project and county funds.

6.15 WITHDRAWAL OF BIDS

The statutes provide that bidders may withdraw their bids if the bid was substantially lower than other bids, if the bid was submitted in good faith, and the reason that the bid was lower was a clerical mistake as opposed to a judgment mistake. Notice of a claim of right to withdraw must be made in writing filed with the contracting authority within two business days after the conclusion of the bid opening procedure. For more details on this subject see Section 9.31 of the Revised Code.

In addition, contractors can also withdraw bids in limited circumstances where acceptance would exceed their bonding limit (ORC 153.54(G)).

6.16 APPROVAL OF BUILDING PLANS

Before entering into a contract for a county building or beginning any construction or alteration work, county commissioners must submit plans and specifications for building code approval. Construction cannot begin until approval is granted.

Once approved, construction must start within 12 months of approval. The county may obtain one 12 month extension upon request at least 10 days before the permit expires. After construction begins, if work is suspended longer than six months, approval of the plans and specifications becomes invalid. The county may, however, obtain two additional six month extensions if they are requested at least 10 days before the permit expires (ORC 3791.04).

6.17 SUBMISSION AND OPENING OF BIDS

Bids must be submitted at the time and place mentioned in the advertisement. The contents of the bid must comply with the following standards:

1. Must be in the form specified.
2. Submitted in a sealed envelope.
3. Must contain the full name of person or company submitting the bid.
4. Must contain an appropriate bid guaranty pursuant to Section 153.54 of the Revised Code unless projects under \$25,000 have been modified or exempted. See Sections 6.12 and 6.13 for additional information.

County commissioners then open the bids at the time stated in the public notice and tabulate the bids. The lowest and best bid must be accepted or they may reject all bids. Bids can be accepted as long as the bid is not more than 10 percent higher than the estimate. Counties also have the authority to change its bid standard to the lowest

responsive and responsible bid. See Section 6.21 for more information on this standard.

The award need not be made on the day of the bid opening, and commissioners may receive advice from experts. The concept of lowest and best bidder is complex, however, the commissioners have considerable discretion to make this determination. Mandamus action against the awarding of the contract is generally precluded unless it is shown that commissioners have abused their discretion. Once a bid is accepted, or all bids rejected, bid guarantees must be returned to unsuccessful bidders.

6.18 BIDDERS STATEMENT OF PERSONAL PROPERTY TAX DELINQUENCY

After the award of any bid for any public improvement contract let by competitive bidding and prior to the time the contract is entered into the person making a bid shall submit to the county auditor a statement affirmed under oath that the person with whom the contract is to be made was not charged at the time the bid was submitted with any delinquent personal property taxes on the general tax list of personal property of the county.

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

6.19 AWARD AND PAYMENT OF CONSTRUCTION CONTRACTS

Special conditions relating to the award of contracts for construction, reconstruction, improvement, enlargement, alteration, repair, painting or decorating of public improvements are governed by provisions set forth primarily in Sections 153.12 through 153.14 and 153.63 of the Revised Code. Some of the major provisions of these sections include:

1. Contracts must be awarded within 60 days after the bid opening date. If the contract is not awarded and executed within 60 days, the bid is invalidated unless the county and the successful bidder agree to extend the date. If an extension is agreed to, the contractor is entitled to additional costs resulting from such constraints as not being able to place orders for materials which later increase a contractor's cost.
2. Any modification or addendum to bid specifications that is made within 72 hours from the scheduled time and date for the bid opening requires that the bid opening date be automatically extended one week. The 72 hour limit does not

include Saturdays, Sundays, and legal holidays. No readvertising of bids is required.

3. When the county executes a contract with the successful bidder, the contractor is entitled to a notice to proceed with the work. It should be stressed that the notice to proceed must be issued at the request of the contractor. The county may issue such a notice at any time if not requested by the contractor. This can have an effect on the completion date of the project. In addition, when the contract is awarded, the county must notify the surety and the agent for the surety of the contractor's bond that the contract has been awarded (ORC 9.32).
4. The law is specific concerning delay costs and change orders. The county is required to issue a change order authorizing delay costs under the following two circumstances.
 - a. If the time for the awarding of the contract is extended by mutual consent; and
 - b. If the county does not give a timely notice to proceed with the project after a request for such a notice by a contractor.

The change order costs will then be determined in accordance with the contract. If the contract does not contain such a provision, the contractor is entitled to his actual costs which include:

- i. Wages
- ii. Other labor costs
- iii. Wage taxes
- iv. Materials
- v. Equipment costs
- vi. Insurance
- vii. Subcontracts attributable to the delay
- viii. Reasonable overhead costs

If there is a disagreement between the county and the contractor concerning the amount of these costs, the dispute would be resolved following provisions for their resolution in the construction contract. If the contract contains no such provisions, disputes are resolved following the

procedures of Chapter 2711 of the Ohio Revised Code concerning arbitration (ORC 153.12).

In addition, a change order is mandatory if a contractor must perform additional work due to a change in law or regulation by the federal, state, or local government (ORC 153.62).

5. Very detailed requirements for partial payments to contractors on estimates, retained funds, and escrow accounts have been established and need to be followed. Generally, payments on estimates for labor and materials is paid to the contractor at the rate of 92 percent of the invoice. Eight percent is retained. For payments on labor, when the project is 50 percent complete, no further funds can be retained and labor invoices must be paid in full (ORC 153.12). The previously retained funds for labor (eight percent of the first 50 percent) must be placed in an escrow account.

For payments on materials, the contractor is entitled to be paid for 92 percent of the cost of the materials when they are delivered to the site and eight percent can be retained. The contractor is further allowed full payment when the materials are incorporated into the project and no further retainage on materials after incorporation is allowed. Materials that are damaged or destroyed before being used, however, must be replaced by the contractor at his expense.

All funds that can be retained must be placed in an escrow account that draws interest. If the funds are not placed in an escrow account, the county must pay the contractor eight percent interest, compounded daily. Escrow accounts do not have to be established if the total cost of the project is less than \$15,000.

6. If additional funds are being retained after the work is 50 percent complete, the county must pay interest to the contractor at the average prime rate at banks in the nearest city over 100,000 population.
7. Payments on estimates must be made within 30 days from receipt of an estimate by the contractor. If the county does not pay within 30 days, it must pay interest. In addition, if the county withholds retained funds without authorization, additional interest must be paid to the contractor at the average prime rate established at banks in the nearest city over 100,000 in population.
8. The retained monies in the escrow account must be paid to the contractor within 30 days after completion, acceptance, or occupancy along with the interest accumulated while in an escrow account.
9. When the contractor has completed the major portion of the project, but certain small items need to be finished, the county cannot withhold the full retainage, but only that portion of retainage needed to insure that the actual remaining work will be completed.

New legislation effective April 16, 1993, however, gives counties additional flexibility concerning retained funds. The statutory retainage may be reduced by 50 percent once the contract is 50 percent complete as long as the surety bond remains liable for:

1. Job completion,
2. All delay claims,
3. All liquidation damages, and
4. All additional owner expenses.

For further information on this new authority refer to Sections 9.313 and 153.80 of the Revised Code.

6.20 AUDITORS CERTIFICATION

After the tax budget and appropriation measure are adopted, funds are available for expenditure. The means by which such expenditures are made, and restrictions on such expenditures, are set forth in Section 5705.41 (D) of the Revised Code. No contract can be made, or expenditure ordered unless there is attached a certificate of the county auditor stating that the amount that is required to meet the contract has been lawfully appropriated and is in the treasury or in the process of collection to the credit of the appropriate fund, free from encumbrances. If a contract is a continuing contract to be performed in whole or in part in an ensuing fiscal year, such certification is necessary only for the amount required for the current fiscal year.

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

Any contract entered into without such a certificate is void, and no payment may be made on the contract. However, if the auditor prepares a certificate stating that at the time of the execution of the contract and at the time his certificate is executed, a sufficient sum appropriated for the purpose of the contract is in the treasury or in the process of collection to the credit of the appropriate fund, and unencumbered, the board may authorize the issuance of a warrant in payment of the amounts due upon the contract.

6.21 JOINT CONSTRUCTION WITH OTHER COUNTIES OR MUNICIPALITIES

Any number of counties and/or municipalities may enter into an agreement for the joint construction of any permanent improvement and providing for joint management, occupancy, maintenance, and repair of the improvement. The following provisions must

be included in such a contract authorized by the county commissioners and legislative authority of the municipality:

1. Method by which it will be constructed.
2. Designate one jurisdiction to have exclusive charge for construction, advertising, and award of the contract.
3. Manner in which title to the project and interests in the land will be held.
4. Manner in which the improvement is to be managed, occupied, maintained, repaired and a person who will be responsible for management, maintenance and repair. In the case of multi-county or multi-county-municipal jails this could be a corrections commission authorized under Section 307.93 of the Revised Code.
5. How the costs of jointly constructing, managing, maintaining, and repairing will be allocated among the jurisdictions.

This section cannot be used to construct public utility facilities (ORC 153.61).

6.22 CHANGING BID STANDARD TO LOWEST RESPONSIVE AND RESPONSIBLE BIDDER

County commissioners may adopt a resolution to change the bid standard from the lowest and best bid to the lowest responsive and responsible bid; the standard generally used by the State of Ohio. It appears that counties should not change to the standard because case law implies commissioners have broader discretion under the lowest and best standard.

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

1. The bidder is responsive if:
 - a. The proposal responds to bid specifications in all material respects.
 - b. The proposal contains no irregularities or deviations from the specifications which would affect the amount of the bid or otherwise give the bidder an advantage.
2. Factors used to determine if a bidder is responsible include:
 - a. Experience of the bidder.
 - b. Financial condition of bidder.

- c. Conduct and performance of the bidder on previous contracts.
- d. The bidder's facilities.
- e. The bidder's management skills.
- f. The ability of the bidder to properly execute the contract.

If the county finds that an apparent low bidder is not responsive and responsible the bidder must be notified of this fact in writing by certified mail. The notice must include the reasons the county found the bidder was not responsive and responsible.

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

6.23 ADOPTION OF PREFERENCE SYSTEM FOR OHIO CONTRACTORS

Counties may adopt a system that gives preference to Ohio contractors. If such a system is adopted by resolution of the commissioners it has the effect of allowing a county to award a contract to an Ohio contractor that is not the lowest and best bidder (ORC 307.90).

A county that adopts a preference system for Ohio contractors must adopt the model system for Ohio contractors as provided for in Section 125.11(E) of the Revised Code. Under this section, the Director of the Department of Administrative Services must adopt a model act for use by counties. This model act is contained in Chapter 123:5-1 of the Ohio Administrative Code.

6.24 MINORITY CONTRACTOR ASSISTANCE

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

1. Blacks or African Americans
2. American Indians

3. Hispanics or Latinos
4. Asians

6.25 CONSTRUCTION PROJECT MANAGERS

Section 9.33 et seq. of the Revised Code gives details on employing a construction project manager. A construction project manager has substantial discretion and authority to plan, coordinate, manage, and direct all phases of a project for construction, demolition, alteration, repair, or reconstruction of any building, structure, or other improvement. This is not the person who provides the professional design services or who actually performs the above services.

A construction project manager must have the following qualifications:

1. Competence to perform the required management services as indicated by training, education, and experience.
2. Ability in terms of workload and the availability of qualified personnel, equipment, and facilities to perform the required management services competently and expeditiously.
3. Past performance as evaluated by previous clients with respect to factors such as control of costs, quality of work, and meeting deadlines.
4. Other similar factors.

If the commissioners wish to enter into a contract with a construction project manager, they must advertise, in a newspaper of general circulation in the county where the contract is to be performed, notice of their intent to employ such person. The notice shall invite interested parties to submit proposals for consideration and shall be published at least 30 days prior to the date for accepting the proposals. The county may also advertise in appropriate trade journals, and may otherwise notify persons believed to be interested. The advertisement shall include a general description of the project, a statement of the specific management services required, and a description of the qualifications required for the project.

If the project is estimated to cost more than \$5 million, the commissioners will evaluate the proposals, select and rank no fewer than three managers that they consider to be most qualified, and negotiate a contract with the most qualified at a compensation determined to be fair and reasonable. Contract negotiations shall be directed toward ensuring that there is a mutual understanding of the requirements involved and that the manager will make available the necessary personnel, equipment, and facilities to perform the services in the required time. For more details see the above referenced statute.

6.26 UNDERGROUND UTILITIES

Section 153.64 of the Revised Code requires counties to protect underground utilities from being damaged during construction. In preparing plans and specifications, counties must contact the registered underground utility protection service and owners of underground facilities that are not members of a registered underground utility protection service for information as to the existence and location of all underground utility facilities. The county is then required to include in its plans and specifications the location of the existing underground utility facilities located in the construction area and the name, address, and telephone number of each owner of any underground utility facility that does not subscribe to a registered underground utility protection service.

Before commencing construction, the county must negotiate with the owners of the underground utility facilities any anticipated relocation of the facilities. Within 10 days after awarding a construction contract, counties must also advise the owners of underground utility facilities of the name and address of the contractor awarded the contract. At least two days before it begins construction, the contractor must notify the registered underground utility protection services and the owners of underground utility facilities that are not members of such services of the date it will begin construction. The owners of the underground utility facilities then are required to stake, mark, or otherwise designate the location of the underground utility facility.

6.27 NON-DISCRIMINATION PROVISIONS IN CONSTRUCTION CONTRACTS

All county construction contracts must have provisions where the contractor agrees:

1. That in hiring employees they will not discriminate against any citizen on the basis of race, creed, sex, handicap, or color.
2. That the contractor will likewise not discriminate against or intimidate any employee hired.

6.28 PREVAILING WAGES

When entering into construction projects, counties need to be aware of the prevailing wage provisions of Chapter 4115 of the Revised Code. Prevailing wages are determined by the Department of Industrial Relations on a county basis in conformity with existing pay rates in effect under private collective bargaining agreements. If there is no such agreement in effect in a particular county, the rate of the nearest county with an agreement in effect will be used.

Prevailing wages must be paid on any project which involves the construction, improvement, enlargement, alteration, repair, painting, or decorating of any public improvement which is estimated to cost more than \$4,000 and is performed by any

person other than employees of the county who have completed their probationary period in the classified service. An exception to this requirement is that a sole proprietor who personally performs the work is not subject to the prevailing wage law (*Union of Operating Eng. Local 18 v Dan Wannemacher Masonry Co.*, 521 NE 2d 809). These provisions do apply to counties who construct public improvements with their own forces.

A public improvement includes all buildings, streets, alleys, sewers, ditches, sewage disposal plants, water works, and all other structures or works constructed by a county. Construction projects financed by bonds to build public hospitals are not subject to the prevailing wage law (*Episcopal Retirement Homes, Inc. v Ohio Dept. of Indus. Relations*, 575 NE 2d 134).

The prevailing wage includes the basic rate of pay; irrevocable payments made to a plan, fund, or program on behalf of an employee; and fringe benefits which are not required by law.

Before advertising for bids or undertaking a public improvement by force account, counties must have the Department of Industrial Relations determine the prevailing wage rate for mechanics and laborers needed for the work called for by the public improvement. This schedule of wages must be attached to the specifications for the work, and shall be printed on the bidding blanks where the work is to be done by contract. These forms must also be filed with the Department of Industrial Relations prior to the award of the contract which must contain provisions requiring the payment of prevailing wages to every person who works on the project. If the county does not properly notify the contractor of the prevailing wage law requirements, then the county is liable for any back wages, fines, damages, court costs, and attorneys fees associated with the enforcement of the law.

If contracts are not awarded or construction commenced within 90 days from the establishment of the prevailing rate of wages, then there must be a redetermination of those rates. Upon receipt of a notice of a change of the prevailing wage rate, the county must, within seven working days, notify all affected contractors and subcontractors and require the contractor to make necessary adjustments in rates of pay. If the county does not so notify the contractor, is becomes liable for back wages, fines, court costs, and attorney fees.

No later than 10 days before the first payment of wages is due any employee of a contractor or subcontractor falling within the provisions of the prevailing wage law, a county must designate one of its employees as the prevailing wage coordinator for that project. The duties of the prevailing wage coordinator include:

1. Setting up and maintaining for public inspection files of payroll reports submitted by contractors and subcontractors.

2. Finding out from contractors and subcontractors the dates when wages to employees are paid.
3. Receiving from each contractor or subcontractor a complete payroll record for each employee including the employees name, current address, social security number, number of hours worked each day and each week, hourly rate of pay, job classification, fringe payments, and deductions from wages.
4. Monitoring the compliance of each contractor or subcontractor.
5. Receiving from each contractor or subcontractor, upon completion of work and before final payment, an affidavit stating compliance with the prevailing wage law.
6. Reporting any delinquency in the filing of the payroll information and the affidavit to the county commissioners and the Director of Industrial Relations.
7. Making regular site visits to verify that prevailing wages have been paid.

If a county has a permanent employee performing the functions of a prevailing wage coordinator, a separate coordinator need not be appointed for each project.

The Director of Industrial Relations is responsible for investigating all violations of the prevailing wage law. The director, the director's representative, or a hearing officer may hold hearings in the county where the violation is alleged to have been committed. The person holding the hearing may administer oaths, take depositions of witnesses, issue subpoenas, compel the attendance of witnesses, and require the provision of any and all records having to do with the investigation. Unless reversed by the courts, the decision of the director shall form the basis for the decision of any complaint. If a violation is found, and if the violation is not corrected in a timely manner, not to exceed 30 days, the director shall refer the matter to the Attorney General, who will bring suit in the court of common pleas in the county in which the responsible person is located. Any interested party may file a complaint with the director. If the director has not made a ruling within 60 days, the party may file a complaint in the court of common pleas.

6.29 MISCELLANEOUS AUTHORITIES AND RESPONSIBILITIES

Ohio law includes a wide range of statutes relating to county buildings and real and personal property. Table 6-1 at the end of this Chapter summarizes some of these authorities and responsibilities that have not been discussed elsewhere in this *Handbook*. Table 6-2 summarizes other authorities and responsibilities that are discussed elsewhere in this *Handbook* and includes *Handbook* section references.

TABLE 6-1

SELECTED PROPERTY AND BUILDING AUTHORITIES
(Not included in the Handbook)

TOPIC	ORC SECTION
Authority to sell or lease property and assets of a hospital or health care facility to a medical school or college	307.091
Authority to execute leases of minerals on lands owned by the county	307.11
Authority to sell or lease property to a non-profit senior citizens organization	307.092
Authority to erect a monument in the memory of those killed in wars	307.21
Authority to provide for the organization and maintenance of civic and social centers	307.26
Authority to own, lease, construct, acquire, operate and maintain subways and transportation systems	307.201
Authority to lease to municipalities space for courts, police stations, prosecutors' offices, and other similar purposes	307.29
Authority to improve harbors along Lake Erie	307.65
Authority to operate a police training school, a law enforcement training and research school, police science laboratory, or a crime prevention activity program	307.75
Requirement that annual inventory of all materials, machinery, tools, and other county supplies be filed with the county commissioners on the second Monday of January	305.18

TABLE 6-2

SELECTED PROPERTY AND BUILDING AUTHORITIES
(Included elsewhere in the Handbook)

TOPIC	ORC SECTION(S)	HANDBOOK SECTION
Requirement that the county provide office space for the county board of education	3319.19	131.02
Requirement that the county provide office space for the county health department	3709.34	51.024
Purchase or lease of motor vehicles	307.41	20.15
Sale, lease, and rental of real property	307.09 307.10	20.21
Sale of personal property	307.12	20.22
Authority to grant use of park land for art buildings	307.28	35.04
Authority to operate and maintain or contract for the operation and maintenance of zoological parks	307.76	35.05
Vacation and sale of unused park lands	307.81 307.82	20.23
Lease-purchase of road machinery and equipment	5549.02	20.16
Authority to operate airports or to contract for their operation	307.20	33.02
Authority to establish a multi-county correctional facility	307.93	101.04