



---

# HANDBOOK

Ohio County Commissioners

Published by: County Commissioners Association of Ohio

209 East State Street • Columbus, Ohio 43215-4309

Phone: 614-221-5627 • Fax: 614-221-6986 • www.ccao.org

---

## CHAPTER 24

### PURCHASING

Latest Revision  
December, 2009

#### 24.01 INTRODUCTION

Purchasing and approval of most contracts for materials, supplies, services, and equipment necessary to operate the many functions of county government is a primary responsibility of county commissioners. Most claims against the county must be approved by the county commissioners unless the amount due is set by law or fixed by a court or other authorized person or body (ORC 307.55). All contracts must be approved at a regular or special session of the board and entered into the minutes of the board (ORC 305.25). The law also requires a full record to be kept, including the vote on each motion. All funds must be lawfully appropriated for a proper public purpose prior to expenditure and all expenditures must be made by warrant drawn against an appropriate fund (ORC 5705.41(B)(C)). In order to be lawful, all contracts, with certain exceptions, must include certification of availability of funds by the county auditor (ORC 5705.41(D)). The legal requirement of certification of funds is discussed in greater detail in Sections 24.33 and 24.34.

This Chapter of the *Handbook* will not deal with all purchasing concepts and practices, but will review the important legal requirements for purchasing, bidding and contracting. This Chapter will also discuss some of the legal requirements concerning the sale of county-owned real and personal property.

#### 24.02 GENERAL INFORMATION

With certain exceptions, all things purchased, leased, leased with a future purchase option or constructed at a cost of \$25,000 or more must be obtained through competitive bidding (ORC 307.86) or competitive sealed proposals for certain supplies or services (ORC 307.862). Elements of competitive selection covered in this Chapter include public notice requirements, contents of notice, submission of bids, bidding standards, and bid and performance bond requirements. Competitive selection applies

to the purchase of any product, structure, construction, reconstruction, improvement, maintenance, repair, or service. This Chapter will not discuss building and structures which is covered in Chapter 6 of this *Handbook*.

### **24.03 EXEMPTIONS TO COMPETITIVE BIDDING REQUIREMENT**

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

1. Any supplies, services, materials, and equipment purchased through contracts entered into by the Department of Administrative Services (ORC 125.04(B)), the Department of Transportation, a regional planning commission (ORC 713.23(D)), or a council of governments. Please refer to Section 24.39 for additional information.
2. The county contracting authority as defined in ORC 307.92 may use competitive sealed proposals (a request for proposal process) when the contracting authority determines that the use of this process would be advantageous to the county and the contracting authority complies with ORC 307.862. Please refer to Section 24.10 for additional information.
3. Services of usually recognized professions including accountants, architects, attorneys, physicians, appraisers and consultants. Design professionals such as professional engineers, architects, landscape architects, and surveyors as well as the services of construction managers must generally be procured through a qualifications based selection process (ORC 153.65, 9.33). See Section 24.44 for additional information.
4. The county auditor may contract with persons or firms to assist in real estate appraisal work without competitive bidding (ORC 5713.01).
5. Suppliers of replacement or supplemental parts for products or equipment owned or leased by the county where the source is limited to a single supplier.
6. Suppliers of services related to information technology, such as programming services, that are proprietary or limited to a single source.
7. Purchases from other governmental contracting authorities. It should be noted, however, that in some cases other units of local, state, or the federal government do have certain restrictions. See Sections 24.39, 24.40 and 24.41 for additional information.
8. Purchase of public social services by county department of human services under ORC Section 329.04.

9. Purchases made by a public children services agency consisting of social services, programs, or ancillary services that provide case management, prevention, or treatment service for children at risk of being or alleged to be abused, neglected, or dependent (ORC 307.92, 5153.16).
10. Services of emergency medical service organizations under a contract made by the board of county commissioners with a joint emergency medical services district (ORC 307.05).
11. Purchases of supplies and services of the severely handicapped (ORC 125.60 to 125.6012). See Section 24.22 for additional information.
12. Purchase of program services by a Developmental Disabilities (DD) board under ORC Section 5126.05. Services included under this exemption are direct and ancillary client services, day care, case management, and residential and family resource services.
13. Purchase of criminal justice services, social services programs, family services, or workforce development activities from non-profit organizations that are funded with federal funds or by state grants.
14. Programs or services that provide case management, treatment, or prevention services to any felony or misdemeanor delinquent, unruly youth, or status offender under the supervision of the juvenile court, including community residential care, day treatment, services to children in their home or electronic monitoring (ORC 5139.34, 5139.41-5139.46).
15. Group insurance programs when the program is agreed to by the county and union and benefits are provided by a jointly administered health and welfare trust fund (ORC 307.171(C)).
16. The transfer of land and granting of leases, easements and rights to county owned land to governmental bodies, public utilities, and to certain non-profit corporations (ORC 307.09).
17. The transfer of personal property by the county to any political subdivision of the state or to the state or federal government (ORC 307.10).
18. A community improvement corporation, if designated by the county commissioners, may sell or lease county land to encourage development if the sale will stabilize the economy, provide employment opportunities for residents of the county and assist in the development of industrial, commercial, distribution, and research activities within the county (ORC 1724.10, OAG 88-037).
19. The purchase of real estate. For further information see Section 6.04.

20. The sale, lease and rental of county real property. For further information see Section 24.30.
21. Leases or leases with the option to purchase correctional facilities for not more than 40 years (ORC 307.022). See Section 6.07 for additional information.
22. Leasing back real property for use as correctional facilities that the county had formerly sold, leased, granted easements to or licenses for a private entity (ORC 307.022). See Section 6.07 for additional information.

#### **24.04 EMERGENCY PURCHASES EXEMPT**

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

1. The estimated cost is less than \$50,000, or
2. There is actual physical disaster to structures, radio communications equipment, or computers.

In the case where an emergency is declared, at least three informal estimates must be obtained and these records must be kept for the longer of at least one year or the amount of time the federal government requires.

#### **24.05 NOTICE REQUIREMENTS FOR COMPETITIVE SELECTION**

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

1. A notice must be published in a newspaper of general circulation once a week for at least two consecutive weeks, or notice may be published once in a newspaper of general circulation provided the notice meets all of the following requirements:
  - a. It is published at least two weeks before the opening of bids.
  - b. It states that the notice is posted on the contracting authority's internet site on the world wide web.
  - c. It provides the internet address of the contracting authority's internet site on the world wide web.

- d. d. It includes instructions describing how the notice may be accessed on the contracting authority's internet site on the world wide web.
2. In addition, the notice must be posted on a bulletin board at the office of the commissioners or in another suitable place. The notice must be posted for at least two weeks prior to the bid opening (ORC 307.87).
3. The notice may also be published in trade papers or other publications.

#### **24.06 CONTENTS OF BID NOTICE**

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

1. A general description of the purchase.
2. Where and when plans, specifications, lists of supplies, and estimated quantities can be obtained or examined.
3. When and where the bids will be opened.
4. Time and place for submitting bids.
5. Terms of the proposed purchase.
6. Conditions under which bids will be received.
7. If the county has adopted a system of preferences for products mined or produced in Ohio the notice must state that such a system exists (ORC 307.90).
8. If the bid is over \$25,000, the notice must specify that the bid must be submitted with a bond or a certified check, cashier's check, or money order of an amount not to exceed five percent of the bid. This bid bond is to guarantee execution of the contract if the bidder is selected. If the bid is for a public improvement project, then the bid bond requirements of ORC Section 153.54 apply.

#### **24.07 SUBMISSION AND OPENING OF COMPETITIVE BIDS**

Contents of bids must follow these standards:

1. Must be in the form specified.
2. Submitted in a sealed envelope. This envelope should clearly identify the requisition number, if appropriate.

3. Submitted at time and place specified in the notice.
4. Bid must contain full name of person or company submitting the bid.

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

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

#### **24.08 CHANGING BID STANDARD TO LOWEST RESPONSIVE AND RESPONSIBLE BIDDER**

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

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

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

- b. Financial condition of 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 the bidder is not responsive and responsible, and the county may not award the contract until it affirms or reverses its original finding (ORC 9.312).

#### **24.09 PERFORMANCE BOND**

After a bid is accepted, the county must require faithful performance of all things included in the contract. For purchases, leases, and leases with purchase options, the county may require a surety or performance bond in an amount not to exceed the amount of the bid.

#### **24.10 COMPETITIVE SEALED PROPOSALS**

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

1. Develop factors and criteria to evaluate each proposal, specify the relative importance of each factor in writing, and describe the evaluation procedures that will be used when awarding a contract.
2. Solicit proposals through a request for proposals (RFP).

3. Give notice of the RFP in the same manner as required for competitive bidding (ORC 307.87).
4. Maintain the confidentiality of any proposals the contracting authority receives until after the award of a contract.
5. Rank each proposal using the factors and criteria used in item one above.
6. If necessary, conduct discussions with vendors for the purpose of ensuring a full understanding of and responsiveness to the requirements specified in the RFP. Information derived by the contracting authority from such discussions must be kept confidential.
7. Negotiate with the vendor who submits the proposal that the contracting authority determines is most advantageous to the county based on the rankings performed by the county and any discussions with vendors. Only one vendor may be negotiated with at one time.

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

1. The name and address of the county agency requesting supplies, services, or both.
2. Instructions for vendors to follow when submitting proposals.
3. Name, title, telephone number, and other information for a county contact person to whom questions concerning the RFP may be directed.
4. A description of the scope of work a vendor is to perform or supplies to be purchased, including the quantity of supplies or services to be purchased, requirements regarding the inspection and acceptance of supplies and services, and a delivery schedule for each supply or service.
5. Factors and criteria for evaluating proposals.
6. Any terms and conditions on the award of a contract, including any requirement for a bond and the amount of the bond.
7. The date and time for delivery of a proposal.
8. Any documents that the contracting authority incorporates by reference and the location of such documents.
9. A statement that the contracting authority reserves the right to reject any proposal for any of the following reasons:



- a. Failure to meet the terms and conditions of the RFP;
  - b. Submitting a proposal with prices that are excessive or that exceeds available funds;
  - c. That the county reserves the right to reject the proposal, in whole or in part, if the county determines the proposal is not in the best interest of the county;
  - d. That the county reserves the right to conduct discussions with vendors for purposes of clarification or correction regarding a proposal.
10. Any partial or multiple party awards and what parts of a contract might be subject to partial or multiple party awards.
11. Any other information that the contracting authority considers appropriate.

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

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

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

#### **24.11 PAYMENT OF COUNTY CLAIMS**

All claims against the county must be paid by warrant drawn upon the county treasury by the county auditor (ORC 321.15). Payments may be made by the county auditor by electronic warrant authorizing direct deposit for payment of county obligations provided the county complies with rules adopted by the State Auditor (ORC 9.37). Payment of

most claims must be approved by the board of commissioners before the county auditor may issue a warrant (ORC 307.55). Exceptions include instances where the amount owed is fixed by law or is allowed by another officer or court, including a payment of a county mental health board or county DD board. The county auditor may question the validity of certain expenditures for which a proper order or voucher and evidentiary matter is presented. The auditor may request evidentiary matter which includes original invoices, receipts, bills and checks, and legible copies of contracts. If the auditor continues to refuse to issue a warrant for an expenditure that the board, officer or court determines is valid, a writ of mandamus may be sought to compel the auditor to pay the claim (ORC 319.16).

## **24.12 COUNTY ELECTRONIC COMMERCE**

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

1. “County office” means any officer, department, board, commission, agency, court or other instrumentality of a county.
2. “Electronic” is defined as relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
3. “Electronic record” is defined as a record created, generated, sent, communicated, received, or stored by electronic means.
4. “Electronic signature” means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record (ORC 1306.01 and ORC 304.01).

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

Use of electronic records and electronic signatures by any county office is permitted, but not required by the law (ORC 304.04). If a county has adopted a credit card acceptance

policy for the payment of county expenses and permits specified county offices to accept payment by credit card (ORC 301.28), then any specified county office wishing to conduct electronic transactions may utilize that policy to accept payment of county expenses by credit card. Payment of dog and kennel license fees by credit card under ORC Section 955.013 does not require the existence of a county credit card acceptance policy in order to conduct this type of electronic transaction.

#### **24.13 UNLAWFUL INTEREST IN PUBLIC CONTRACT PROHIBITED (ORC 2921.42)**

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

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

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

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

County officials, and their family members and business associates may own shares of stock or bonds in corporations that do business with a county provided that the shares

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

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

#### **24.14 UNLAWFUL CAMPAIGN CONTRIBUTIONS BY INDIVIDUALS AND BUSINESSES THAT ARE SEEKING OR HAVE BEEN AWARDED PUBLIC CONTRACTS**

Effective April 4, 2007, (until May 29, 2009 when the law finally was voided by Ohio courts), Ohio law (H.B. 694) expanded the political contribution limits under prior law to prohibit a political subdivision, including a board of county commissioners, from awarding a contract for the purchase of goods and services with a cost aggregating more than \$10,000 in a calendar year to an individual or organization that makes a political contribution in excess of amounts designated in the law. The law's contribution limits were as follows:

1. \$1000 for the following:
  - a. Individual.
  - b. Partner or owner of the partnership or other unincorporated business.
  - c. Owner of more that 20% of a corporation or business trust.
  - d. Shareholder of an association.
  - e. Administrator or executor of an estate.
  - f. Trustee of a trust.
  - g. Spouse or child of any of the above persons.
2. \$2000 for the following:

- a. A political action committee (PAC) affiliated with a partnership, unincorporated business, corporation, or business trust.
- b. Generally, total contributions from any of the above listed persons, including a PAC.

Under the law, the prohibition applied to any contributions in excess of the above described limits for 24 months prior to the date the contract was awarded. If a board of county commissioners contracted with an individual or organization, the individual or organization could not make political contributions in excess of the contribution limits described above to any of the commissioners during the life of the contract and for one year following the conclusion of the contract.

Following the passage of H.B. 694, the United Auto Workers and the Franklin County Board of Commissioners filed suit against the state claiming, among other things, that the law included retroactive provisions that violated the Ohio Constitution. On June 8, 2007, Judge John Bender in the Franklin County Common Pleas Court ruled that H.B. 694 was unconstitutionally retroactive and did not apply to political contributions made prior to the effective date (April 4, 2007) of the law. In that litigation, Franklin County and the UAW also asserted that H.B. 694 was unconstitutional because it had never properly been enacted. On December 5, 2007, Judge Bender agreed and held that H.B. 694 was void because the Governor did not sign the version of H.B. 694 that passed the House and the Senate.

Following this ruling, the Attorney General filed a motion with Judge Bender contending that the changes made to H.B. 694 in the subsequent biennial budget bill (H.B.119) cured the defects that the court held unconstitutional in December. On June 18, 2008, Judge Bender ruled that H.B. 119 did not cure the constitutional defects of H.B. 694, thus H.B. 119 did not reenact H.B. 694. The court also held that amendments made in H.B. 119 to H.B. 694 were unconstitutional unto themselves because the amendments violated the single subject rule.

The Attorney General appealed Judge Bender's June 18 decision to the Tenth District Court of Appeals. On April 14, 2009, the court of appeals ruled that "Am. Sub. H.B. 694 was not properly enacted and therefore not the law of Ohio." The court also ruled that the biennial appropriations bill "could neither amend nor reenact by partial reference all the contested statutory language." The court, however, did not address the alleged violation of the single subject rule, holding that the issue was moot.

The state had 45 days to appeal the appeals court decision to the Ohio Supreme Court. The state did not appeal the decision, and so, on May 29, 2009, the appeals court decision stands: H.B. 694 is void and the law returns to the provisions that existed prior to April 4, 2007. Ohio counties no longer are required to comply with the provisions of H.B. 694.

For a full explanation of the provisions and requirements of H.B. 694 as amended by H.B. 119, and as observed by political subdivisions and vendors for the better part of two years, please see CCAO CAB 2007-03 <http://www.ccao.org/LinkClick.aspx?link=CAB+MJ%2fCAB+200703.pdf&tabid=355&mid=974&language=en-US>.

## **24.15 FINDINGS FOR RECOVERY**

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

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

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

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

6. The debtor is contesting the finding for recovery and a final determination on the action has not been reached.

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

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

1. The cost of the contract is less than \$25,000.
2. The aggregate cost of multiple contracts entered into by the government and the person within the previous fiscal year does not exceed \$50,000.
3. The contract is a renewal of a contract previously entered into and is renewed pursuant to that preceding contract.
4. The contract is an employment contract.
5. The contract involves a bonding company, a self insurance or joint self insurance pool, or a risk management or joint risk management program, unless a court has entered a final judgment against a company and the company has not satisfied the judgment.
6. The contract is a Medicaid provider agreement under ORC Chapter 5111.
7. When federal law dictates that a particular vendor be awarded a contract.

For additional information on this topic, please see CCAO CAB 2004-01 <http://www.ccao.org/LinkClick.aspx?link=CAB+MJ%2fCAB+200401.pdf&tabid=355&mid=974&language=en-US>.

#### **24.16 DECLARATION OF MATERIAL ASSISTANCE/NONASSISTANCE TO A TERRORIST ORGANIZATION (DMA)**

Ohio law requires any person or business wishing to do business with or receive funding from the county to complete a form entitled: "DECLARATION REGARDING MATERIAL ASSISTANCE/NONASSISTANCE TO TERRORIST ORGANIZATION". The purpose of this law is to provide the state with an additional tool to prevent and prosecute acts of terrorism. The form and a Terrorist Exclusion List must be provided by the county to any person or company wishing to do business with the county if the aggregate amount of business or funding exceeds \$100,000 annually. A "Government

Business and Funding Contracts” declaration, a “Pre-certification for Private Entities” declaration and the Terrorists Exclusion List (TEL) are all available on the Department of Public Safety, Division of Homeland Security website which is located at <http://www.homelandsecurity.ohio.gov>. The TEL was expanded to include additional terrorists organizations by enactment of a state law that took effect July 20, 2006.

The declaration form (ORC 2909.32(A)) includes the following questions:

1. Are you a member of an organization on the U.S. Department of State Terrorist Exclusion List? Yes.....; No....
2. Have you used any position of prominence you have within any country to persuade others to support an organization on the U.S. Department of State Terrorist Exclusion List? Yes.....; No.....
3. Have you knowingly solicited funds or other things of value for an organization on the U.S. Department of State Terrorist Exclusion List? Yes...; No....
4. Have you solicited any individual for membership in an organization on the U.S. Department of State Terrorist Exclusion List? Yes.....; No....
5. Have you committed an act that you know, or reasonably should have known, affords “material support or resources” to an organization on the US Department of State Terrorist Exclusion List? Yes.....; No....
6. Have you hired or compensated a person known to be a member of an organization on the U.S. Department of State Terrorist Exclusion List or a person you knew to be engaging in planning, assisting, or carrying out an act of terrorism? Yes.....; No....

Any answer of “yes”, or the failure to answer “no” to any question on a declaration serves for the purposes of the law as a disclosure that the person has provided material assistance to an organization on the Terrorist Exclusion List (ORC 2909.33(B)). Any person answering yes to any question on the form is ineligible to do business with the county. Failure to disclose the provision of material assistance or making false statements on the form is a fifth degree felony. Any person providing false disclosure is permanently banned from doing business with or receiving funds from the county (ORC 2909.33(G)).

For purposes of the declaration, “material support or resources” means currency, payment instruments, other financial securities, funds, transfer of funds, financial services that are in excess of \$100, as well as, 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.



The law prohibits the county from conducting business with any applicable person or company that has not certified that it does not provide material assistance to any organization on the terrorist exclusion list (ORC 2909.33(D)). Counties are permitted to pre-certify vendors by requiring them to complete a "Pre-certification for Private Entities" declaration. A pre-certification declaration is valid for one year. If the county is utilizing a competitive selection process, then the government need only provide the declaration and the terrorist exclusion list to the successful vendor and only if that vendor is not pre-certified.

The law provides an appeal process for people prohibited from doing business due to a disclosure of material assistance to an organization on the terrorist exclusion list (ORC 2909.33(E)). The law is silent regarding how long a person has to file an appeal with the Department of Public Safety, but the department must review a decision within 30 days of a request. The department must overturn the prohibition against doing business with the county if it determines all of the following:

1. The material assistance was made over ten years ago, or the organization was not on the list or was not involved in activities that would have merited inclusion on the list or it was not reasonable to assume knowledge of the organizations activities that would have merited inclusion on the list.
2. The person is unlikely to provide future material assistance to any organization on the list.
3. The person does not pose a risk to the residents of this state.

#### **24.17 BIDDERS STATEMENT OF PERSONAL PROPERTY TAX DELINQUENCY**

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

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

#### **24.18 NON-DISCRIMINATION PROVISIONS IN CONTRACTS**

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

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

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

#### **24.19 DATA PROCESSING AND RADIO COMMUNICATIONS EQUIPMENT**

Special leasing and contracting procedures have been established for the renewal of electronic data processing and radio communications equipment, systems and devices. In this case, the equipment or service provider must submit a written bid to the county to include:

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

After receiving this bid from the present provider, the county must then follow regular notice and advertising procedures using the existing providers bid as the base. The contract must still be awarded to the lowest and best bidder. The bid threshold for contracts let under this provision of law is \$10,000 and was established in 1985. This special provision is found in ORC Section 307.861.

#### **24.20 SPECIAL PROVISIONS FOR ELECTION SUPPLIES, PRINTING AND BALLOTS**

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

#### **24.21 SPECIAL PROVISIONS FOR PROPERTY AND CASUALTY AND HEALTH INSURANCE**

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

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

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

## **24.22 PURCHASE OF SUPPLIES PRODUCTS AND SERVICES OF THE SEVERELY HANDICAPPED**

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

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

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

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

1. Determine whether the supply or service is on the office's list at an established fair market price. If it is, then the supply or service shall be purchased from a qualified agent or agency at that price (ORC125.607(A)).

2. If no price has been established, the county is required to negotiate an agreement for a fair market price. If no price is successfully negotiated, the office may release the county from this requirement (ORC125.607(B)(C)) .
3. Pay administrative fees to DAS. Such fees may be billed directly to counties or may be collected by agencies or agents on behalf of the department and as part of the price of the supplies and services (ORC125.608).
4. Provide information to the office necessary for the state to administer the program (ORC 125.6012).

If the office determines for a county that compliance with this law is not possible or advantageous, the office may release the county from this requirement. Any release must be in writing, must specify the supplies or services to which it applies, the period of time during which it is effective, and the reason for the release (ORC 125.609). The law prohibits a county from purchasing supplies or services from another party or political subdivision as permitted by ORC 125.04(C) instead of this program if the supply or service is on the published list, even if it can get the supply or service at a lower price (ORC125.6011).

#### **24.23 PURCHASE OR LEASE OF MOTOR VEHICLES**

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

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

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

#### **24.24 PURCHASE OR LEASE OF ROAD EQUIPMENT**

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

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

#### **24.25 CONTRACTS WITH FINANCIAL INSTITUTIONS TO COLLECT COUNTY PAYMENTS AND FEES**

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

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

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

1. Have attached a certification by the State Auditor that the treasurer and financial institution have given assurances approved by the State Auditor that the books and records of the financial institution will be open to the State Auditor to the same extent as if the collections were being done by the treasurer.
2. The treasurer's surety bond would cover any potential loss.
3. The contract does not conflict with the State Auditor's uniform system of accounting and reporting.

## **24.26 CONTRACTS WITH FINANCIAL INSTITUTIONS TO COLLECT TAX PAYMENTS**

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

## **24.27 USE OF COUNTY HELD CREDIT CARDS**

Ohio law gives county commissioners the option of using county held credit cards, or county procurement cards, or both with respect to various county offices, officials or purposes. For the sake of clarity, the *Handbook* will discuss provisions of law relating to county held credit cards in this section and county procurement cards in Section 24.28.

The county commissioners may authorize any county official or employee to use a credit card that would be in the name of an officer or employee of a county appointing authority as determined by the county commissioners (ORC 301.27). A county credit card is defined to include gasoline and telephone credit cards but excludes any procurement card. The following provisions apply to such county held credit cards.

1. Application must be made to the county commissioners by the appointing authority for any officer or employee.
2. The credit card could be used for work-related travel, food, and lodging expenses; gasoline, oil and motor vehicle repair expenses; transportation expenses; telephone expenses; internet service provider expenses; and purchases for children for whom a public children services agency is providing temporary emergency care (ORC 301.27(B)(1)).
3. Credit cards are issued either in the name of a county appointing authority or in the name of a specified officer or employee. In order to assure accountability, it is best if the cards are issued in the name of a specified officer or employee.
4. The debt incurred is paid from funds appropriated for such purposes.
5. Any person who has been authorized to use a credit card must submit an estimate by the first day of each month of such expenses, unless the board has authorized an estimate for a period longer than one month. The board may dispense with the estimate requirement and instead limit the use of certain credit cards to the specific line item appropriation from which credit card expenses are to be paid. If a credit card is used for more than the amount authorized or appropriated, a county officer or employee is personally liable to the extent the authorized amount is exceeded. At the request of an appointing authority, the commissioners may authorize the additional expenditure based on the auditor's certification of available funds.

6. Any person who has been authorized to use a credit card who suspects that the card has been lost, stolen, or suspects unauthorized use must notify either the board or the appropriate appointing authority and the county auditor in writing of the loss, theft or unauthorized use. Personal liability is then not more than \$50 for unauthorized debt incurred prior to the date such notification is received.
7. Use of a county credit card for any use other than the purposes specifically authorized in ORC Section 301.27(B)(1) represents misuse of a credit card and is a criminal violation of ORC Section 2913.21.

## **24.28 USE OF COUNTY HELD PROCUREMENT CARDS**

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

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

Prior to authorizing any county officer or employee to use a procurement card, county commissioners must, by resolution, adopt a policy with the advice of the county auditor, for the use of those procurement cards. The law authorizes the commissioners’ resolution to limit the use of the cards as follows:

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

4. Limit card to daily or monthly spending limits.

In addition, the commissioners' resolution must contain a list of administrative controls which includes the following:

1. An aggregate amount that may be incurred through the use of each card within a day, week, or month.
2. Classes of permissible goods and services that may be purchased with a card.
3. In case a card is misused, a procedure for revocation of a card. The law also requires the county auditor to develop internal accounting controls in consultation with the auditor of state.

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

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

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

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

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



For more information on county credit card and procurement card laws please refer to CCAO CAB 2005-08

<http://www.ccao.org/LinkClick.aspx?link=CAB+MJ%2fCAB+200508.pdf&tabid=355&mid=974&language=en-US>.

## **24.29 SOIL AND WATER CONSERVATION PROJECTS**

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

1. The county commissioners designate the board of supervisors of the soil and water conservation district to be the contracting agency. In this case, the procedures of ORC Section 1515.08 (H) must be followed.
2. The project is being jointly undertaken by the county and another state and federal agency. In this case, if the state or federal agency has regulations that are in conflict with the regular bidding procedures, the county may then adopt the state or federal procedures. This applies to the county commissioners or the district supervisors of a soil and water conservation district.

## **24.30 SALE, LEASE AND RENTAL OF COUNTY REAL PROPERTY**

The county may sell, lease and rent county property not needed for public use. County commissioners may either sell the property to the highest responsible bidder after advertising once a week for four consecutive weeks or sell the property at public auction after giving at least 30 days public notice of the auction. County commissioners may reject any and all bids and may sell property as a tract or in parcels. Following are some major requirements of the law for leasing property.

1. No lease can be for a period of more than five years unless it is part of a lease purchase agreement. If this is the case, the lease cannot exceed 25 years.
2. Leases for up to 20 years are allowed when it is for retail stores, office space, or restaurants (ORC 307.09) located in a building bought to house county offices or in a parking facility bought to serve a building that houses county offices. The lease can provide for renewal for lesser periods of time.
3. Leases for airports and related facilities are limited initially to not more than 25 years, with renewals not to exceed 60 years.
4. County commissioners may, by resolution, lease real property for offices, commercial use, airport facilities and other uses prescribed by ORC Section 307.09(A) without advertising for bids.

## **24.31 SALE OF PERSONAL PROPERTY AT PUBLIC AUCTION**

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

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

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

1. When selecting the products of a recycling or resource recovery plant if the commissioners adopt a resolution to nullify this requirement (ORC 343.08).
2. If the estimated value of county personal property to be sold in one lot at one time is less than \$2500, the commissioners may sell the property by private sale, without advertisement or public notification.
3. Regardless of the property's value, the commissioners may sell or donate county personal property, including motor vehicles to the federal government, the state, or any political subdivision of Ohio without advertisement or public notification.
4. When a county officer or department head determines that certain county personal property under the jurisdiction of that department head is not of immediate need and they so notify the commissioners, then the commissioners may lease that property to a municipal corporation, township, or other political subdivision on terms established by the commissioners under a contract.
5. If the commissioners determine that county personal property is obsolete and unfit for use and has no value, then they may discard or salvage the property.
6. Regardless of the property's value, county commissioners may sell county personal property by internet auction after annually adopting a resolution of intent which describes how the auctions will be conducted, number of days for bidding on the property, the name of a representative or contact person for the

auction, and the general terms and conditions of sale. Notice of the county's intent to sell unneeded, obsolete, or unfit property by internet auction must be published at least twice in a newspaper of general circulation in the county, must be posted in the offices of the county auditor and commissioners, and must be posted on the county's internet web site, if the county maintains a website. For more information on internet auctions of county personal property, see CCAO CAB 2002-02

<http://www.ccao.org/LinkClick.aspx?link=CAB+MJ%2fCAB+200202.pdf&tabid=355&mid=974&language=en-US>.

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

#### **24.32 SALE OF PARK LANDS**

Parks and park lands that have been dedicated for public use but have remained unused and unimproved may be vacated and sold at public auction by the county commissioners upon petition of the majority of abutting landowners after publishing public notice of the petition for three consecutive weeks and holding a public hearing.

Once park or park lands have been vacated county commissioners must offer such lands for sale at public auction to the highest and best bidder and must publish notice of their intent to sell such land for four consecutive weeks.

Before acting on a petition to vacate parkland, county commissioners must notify by first class mail any political subdivision with the authority to acquire public parks or recreation areas that contain or adjoin the parkland in question that the political subdivision has 90 days in which to make an offer to the commissioners to buy or lease the parkland.

If the county commissioners receive an acceptable offer in which the political subdivision agrees to use the land for park purposes, the county commissioners must accept the offer after publishing notice for three consecutive weeks and holding a public hearing (ORC 307.81, 307.82). For further information see Section 35.08 of this *Handbook*.

#### **24.33 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 ORC Section 5705.41 (D). No contract can be made, or expenditure ordered unless there is attached a certificate of the county auditor stating that the amount that is required to meet the contract has been lawfully

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

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

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

Annually, county commissioners may adopt a resolution exempting county purchases of up to \$1000 from the certificate of availability of funds requirement. The commissioners' resolution must state the dollar amount that will be exempted from the certificate of availability of funds requirement, and whether the exemption applies to all purchases, to one or more specific classes of purchases, or to the purchase of one or more items. The procedure for adopting such a resolution includes the following:

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

If the commissioners adopt a resolution increasing the certificate of availability of funds threshold, any person authorized to make a purchase must file a written or electronic document with the county auditor within three business days or other time specified by the commissioners stating the purpose and amount of the expenditure, date of

purchase, name of vendor and any additional information prescribed by the State Auditor. A purchase order system may be used to meet the requirements of this law.

#### **24.34 BLANKET CERTIFICATES**

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

In addition to authorizing the type of blanket certificates described in the preceding paragraph, the law authorizes blanket certificates to be issued for certain types of recurring and reasonably predictable operating expenses where more than one such blanket certificate may be outstanding at any time. The purposes for which a county may appropriate, authorize or issue one or more such certificates include the services of an accountant, architect, attorney, physician, professional engineer, construction project manager, consultant, surveyor or appraiser as well as to purchase fuel oil, gasoline, food items, roadway materials, utilities, purchases made through the state cooperative purchasing program (ORC 125.04) and any other specific expenditure that is a recurring and reasonably predictable operating expense. An itemized statement of obligations and expenditures made under such a certificate must be provided to the county auditor for each certificate issued. For additional information about certificate of availability of funds, see CAB 1994-06

<http://www.ccao.org/LinkClick.aspx?link=CAB+MJ%2fCAB+199406.pdf&tabid=356&mid=976&language=en-US>.

#### **24.35 APPROVAL OF HOSPITAL PURCHASING POLICIES**

Generally, county hospitals must comply with the requirement that anything in excess of \$25,000 must be competitively bid. The board of hospital trustees, however, may each year adopt bidding procedures and purchasing policies for services provided through a joint purchasing arrangement sponsored by a nonprofit organization, and for those supplies and equipment routinely used in operating the hospital (ORC 339.05). If the policies and procedures are approved by the county commissioners, the hospital then follows these procedures instead of the procedures in ORC Sections 307.86 - 307.92.

#### **24.36 MINORITY BUSINESS ASSISTANCE**

County commissioners have very broad discretion to develop a policy to assist minority business enterprises for contracts let pursuant to competitive bidding (ORC 307.921).

The minority enterprise must be owned and controlled by U. S. citizens who are Ohio residents and who are members of one of the following economically disadvantaged groups:

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

#### **24.37 BONDS FOR MINORITY BUSINESS ENTERPRISES AND EDGE BUSINESS ENTERPRISES**

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

The law defines a “minority business enterprise” as an individual who is a U.S. citizen and resident of Ohio who owns and controls a business and who are members of one of the following economically disadvantaged groups: Blacks, American Indians, Hispanics or Latinos, or Asians. “Owned and Controlled” means that at least fifty-one per cent of the business is owned by persons who belong to one of the groups identified above, and that those owners have control over the day to day operation of the business. The owners must have had operational control over the business for at least one year prior to being awarded a contract under this law (ORC 122.71). An “EDGE business enterprise” is defined as a sole proprietorship, association, partnership, corporation, limited liability corporation, or joint venture certified as a participant in the encouraging diversity, growth, and equity (EDGE) program by the Director of Administrative Services under the law (ORC 123.152).

Effective October 16, 2009 the law requires the Director of Development to coordinate and oversee the “unbonded state contractor program”, the “unbonded political subdivision program” and to approve a “qualified contractor assistance program.” The law permits any minority business or EDGE business to bid or enter into a contract with any political subdivision of the state, including a county, or any instrumentality of a political subdivision with out being required to provide a bond under the following circumstances:

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

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

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

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

#### **24.38 ADOPTION OF PREFERENCE SYSTEM FOR OHIO CONTRACTORS**

Counties may adopt a system that gives preference to Ohio suppliers of equipment, materials, supplies, insurance, services, or a public improvement. 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 ORC Section 125.11(E). 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.

There is no statutory provision authorizing county commissioners to establish a system of local preferences for products mined or produced in a county or a geographic region smaller than the state. It is recommended that county commissioners consult with legal counsel before attempting to establish a system of preferences as provided in ORC Section 307.90 or 125.11(E).

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

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

1. The county must file a resolution with DAS, ODOT or the RPC expressing its desire to participate.
2. The resolution must agree that the county will be bound by the terms and conditions of DAS, ODOT or the RPC and, in the case of DAS and the RPC, must pay the vendor directly under each purchase contract.
3. The RPC or DAS may charge the county a reasonable fee to cover administrative costs. The law is silent on whether ODOT may charge the county an administrative fee.



4. If bids have been taken, the purchase cannot be made through DAS or RPC unless the price is lower. The law is silent on whether an ODOT contract may be used if the county has bid a purchase and a lower bid has been received.
5. Such purchases are exempt from competitive bidding, however, a RPC and a COG must follow the county competitive bidding law when purchasing on behalf of a county. For more information on the role of COGs in purchasing, see ORC Sections 167.03 and 167.08 and OAG 69-013.

#### **24.40 COUNTY JOINT PURCHASING**

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

1. Permit one or more political subdivisions to participate in contracts for equipment, materials, supplies, or services.
2. Participate in a joint purchasing program operated by or through a national or state association of political subdivisions in which the political subdivision is eligible for membership.
3. Participate in contract offerings of the federal government including contracts of the general services administration.

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

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

#### **24.41 DIRECT PURCHASING UTILIZING CONTRACT TERMS AND PRICING FROM DAS AND NATIONAL ASSOCIATION OF COUNTY OFFICIALS (NACO) CONTRACTS**

A county that is eligible to participate in a DAS state cooperative purchasing contract (ORC 125.04(C)) or a contract of a state or national association of political subdivisions in which the purchasing county is eligible for membership (ORC 9.48 (D)) may purchase supplies and services directly from a private vendor or another political subdivision if the following conditions are met:

1. The purchase of supplies or services from another party other than DAS or the National Association of County Officials (NACo) U.S. Communities contract must be upon equivalent terms, conditions, and specifications.
2. The purchase must be at a lower price than the DAS or NACo purchase price.
3. Purchases made under this provision of law are exempt from any competitive selection procedure otherwise required by law.
4. A county that makes a purchase under this law must maintain for state audit purposes sufficient information regarding the purchase to verify that the county satisfied the conditions for making a purchase under this law. This would include a copy of the DAS or NACo contract terms, specifications and pricing information for a particular good or service and the terms, pricing and an invoice from the vendor or political subdivision from which the purchase was made.

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

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

The law defines supplies to include all property, except real property, including equipment, materials, other tangible assets, and insurance. The law excludes buildings and physical structures. The law prohibits the purchase of “supplies or services by reverse auction if the contract concerns the design, construction, alteration, repair, reconstruction, or demolition of a building, highway, road, street, alley, drainage system, water system, waterworks, ditch, sewer, sewage disposal plant, or any other structure or works of any kind.” Services are defined to include any furnishing of labor, time or effort by a person that does not involve the delivery of a specific end product. A service may involve the delivery of a report only if the report is incidental to the primary service being provided. Employment agreements or collective bargaining agreements are specifically excluded from the definition of service (ORC 9.314 (A)(4)(5)).

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

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

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

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

For more information about reverse auctions, please see CCAO CAB 2002-01 <http://www.ccao.org/LinkClick.aspx?link=CAB+MJ%2fCAB+200201.pdf&tabid=355&mid=974&language=en-US>.

#### **24.43 COUNTY ADMINISTRATOR CONTRACT AUTHORITY (ORC 305.30 (G)(H))**

A county administrator may:

1. Contract on behalf of the board of commissioners within limits provided by resolution of the board. A resolution authorizing such action must specify the

types of contracts that the county administrator may act on without further resolution of the board.

2. Allow and pay claims for goods received and services rendered within limits provided by a resolution of the board. The county department receiving those goods and services must certify their receipt before the administrator allows the claim.

#### **24.44 QUALIFICATION BASED SELECTION PROCESS FOR DESIGN PROFESSIONALS AND CONSTRUCTION MANAGERS**

State law requires any county to follow what is generally referred to as a qualifications based selection process when hiring either a design professional or a construction manager. Professional design services mean the services of an architect or landscape architect or professional engineer or registered surveyor. A construction manager is a person with authority to plan, coordinate, manage, and direct all phases of a public improvement project, but excludes any person who is a design professional or who actually performs construction work.

Professional design firms (ORC 153.65(D)) and construction managers (ORC 9.33(B)) are evaluated on the basis of qualifications. Qualifications are defined to include:

1. Competence of the design firm or construction manager to perform the required services as indicated by the technical training, education, and experience of the firm's personnel, especially the personnel assigned to perform the services.
2. Ability of the firm in terms of its workload and availability of qualified personnel, equipment, and facilities to perform the required services competently and quickly.
3. Past performance of the firm as reflected by the evaluations of previous clients with respect to cost control, quality of work, and meeting of deadlines.
4. In the case of construction managers only, financial responsibility as evidenced by a letter of credit, a surety bond, certified check, or cashier's check in an amount equal to the value of the construction management contract. A county public owner may waive this requirement for good cause (ORC 9.333).
5. Any other factors as determined by the county.

Any public authority planning to contract for design services must encourage design firms to submit a statement of qualifications and generally maintain an updated file of qualification statements (ORC 153.66). The public authority must also publicly announce all contracts and the announcements must:

1. Be made in a uniform and consistent manner and sufficiently in advance so the firms have an adequate opportunity to submit a statement of interest in the project.
2. Include a general description of the project and the design services and qualifications required for the project.
3. Indicate how a design firm may submit a statement of qualifications.
4. Be sent to each design firm that has a current statement of qualifications on file and is qualified to perform the required services, or to design professional trade associations, the news media, and any other publications or media that the county considers appropriate (ORC 153.67). Counties may establish prequalification requirements for design firms and may require such statements of qualifications to be maintained on file with the county (ORC 153.68).

Before entering into a contract to employ a construction manager, a county must advertise in a newspaper of general circulation in the county notice of its intent to employ a construction manager. The notice must be published at least 30 days prior to the date for accepting proposals. Notice may also be given through appropriate trade journals. Any advertisement must include a general description of the project, a statement of construction management services required, and a description of qualifications for the project (ORC 9.331).

Each county (ORC 153.69, ORC 9.332) planning to contract for the services of a design firm or construction manager must evaluate the statements of qualifications (design firms) or proposals (construction managers) submitted and may also hold discussions with firms or construction managers to explore their qualifications or proposals, the scope and nature of the services to be provided, and the technical approaches they may take toward the project. Following this evaluation, the county must select and rank no fewer than three firms or construction managers and then negotiate a contract with the one ranked most qualified. Contract negotiations must be directed toward:

1. Ensuring that the county and the firm or construction manager have a mutual understanding of the services to be provided.
2. Determining that the firm or construction manager will provide the necessary personnel, equipment, and facilities to perform the services on time.
3. In the case of design firms, agree upon compensation which is fair and reasonable, taking into account the value, scope, complexity, and nature of services. Counties are specifically prohibited from requiring any form of fee estimate prior to selecting and ranking design firms (ORC 153.691).

If negotiations fail with the firm or construction manager ranked most qualified, then the county proceeds to the next most qualified for negotiations and so on until a contract is

negotiated. If a contract is not negotiated with any of the firms selected, then the county must select and rank additional firms or construction managers until a contract is negotiated.

Design firms must have a professional liability insurance policy for the professional design services rendered. The amount of insurance is determined by the county and the professional liability insurance may be waived by the county for good cause or the county may allow other assurances of financial responsibility (ORC 153.70).

The qualifications based selection process does not apply to any project with an estimated professional design fee of less than \$ 25,000 or any project that is determined in writing by the county to be an emergency (ORC 153.71).

For more information on the qualifications based selection process, please see County Advisory Bulletin 1996-03

<http://www.ccao.org/LinkClick.aspx?link=CAB+MJ%2fCAB+199603.pdf&tabid=356&mid=976&language=en-US>.

#### **24.45 ENERGY CONSERVATION MEASURES**

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

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

An energy conservation report must include the following:

1. Analyses of buildings' energy needs and installations and modifications to reduce energy consumption.
2. Estimates of all costs of installations and modifications, including the cost of design, engineering, installation, maintenance and repairs.

3. Estimates of the amounts by which energy consumption could be reduced.
4. The interest rate used to estimate the costs of any conservation measures that are to be financed.
5. The average system life of the energy conservation measures.
6. Estimates of probable savings that will result from the reduction in energy consumption over the average system life of the energy conservation measure, including the methods used to estimate the savings.
7. A certification under the seal of a registered professional engineer that the energy conservation report uses reasonable methods of analysis and estimation.

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

1. Insulation of the building and systems within the building.
2. Storm windows and doors.
3. Multi glazed windows and doors.
4. Heat absorbing or heat reflective glazed and coated window and door systems.
5. Additional glazing.
6. Reductions in glass area.
7. Other window and door system modifications.
8. Automatic energy control systems.
9. Heating, ventilating, or air conditioning system modifications and replacements.
10. Caulking and weather stripping.
11. Replacement or modification of lighting fixtures that increase energy efficiency without increasing illumination, unless the increase in illumination is required by a building code.
12. Energy recovery systems.
13. Co-generation systems that produce steam or forms of energy such as heat, as well as electricity, primarily for use within a building or building complex.

14. Improving a central utility plant(CUP) to provide heating and cooling services to a building or buildings together with any piping and distribution controls, equipment, and related facilities from the CUP to the building or buildings.
15. Any other modification, installation or remodeling approved by the commissioners as an energy conservation measure.

The law also permits commissioners to enter into installment payment contracts and issue debt for the purpose of financing energy conservation measures. If bonds are issued for energy conservation measures, the maximum maturity of the bonds shall not exceed the lesser of the average system life of the energy conservation measures as provided in an energy conservation report or thirty years. When entering into an installment payment contract, the county must comply with regular competitive bidding relating to the installation, modification, or remodeling of energy conservation measures unless the commissioners adopt a resolution exempting the county from this requirement. Provisions of an installment payment contract relating to interest charges and financing terms are exempt from competitive bidding. The RFP process and installment payments may be helpful to counties that can not afford to pay for such improvements with cash.

For more information on energy conservation measures, please see CCAO CAB 1994-07

<http://www.ccao.org/LinkClick.aspx?link=CAB+MJ%2fCAB+199407.pdf&tabid=356&mid=976&language=en-US>.

#### **24.46 CONTRACTS FOR PROVISION OF SERVICES BENEFITTING INDIVIDUALS OR PUBLIC**

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

1. The minimum percentage of money under the contract that will directly benefit the public or client the government program is designed to serve. Direct costs means the costs of providing services that directly benefit a patient or client or the public. Counties will need to comply with federal accounting standards under United States Office of Management and Budget Circular A-87, as revised May 10, 2004.
2. The financial review or audit requirements established under the law (ORC 9.234) and under rules adopted by the State Auditor (ORC 9.238).



3. Provisions established by rules of the Attorney General (ORC 9.237).

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

1. Receives the money directly or indirectly from the United States, and no governmental entity exercises any oversight over the use of the money.
2. Receives the money solely in return for the performance of medical, therapeutic, or other health related services.
3. Is delivering Medicaid funded services.
4. Services, other than administrative or management services that are commonly purchased by the public at an hourly rate or at a set fee for each time the services are provided.
5. Provides educational services provided by any primary or secondary school to school age children.
6. Provides services as a foster home.
7. Provides routine business services other than administrative or management services.
8. Provides services to protect the environment or promote environmental education that are offered by a nonprofit entity or funded with federal grants or revolving loan funds.
9. Receives money to preserve public health and safety under circumstances requiring immediate action as a result of a natural or man made emergency.

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

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

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

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

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

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

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