

AUDITOR OF STATE BULLETIN: 96-004
JANUARY 31, 1996

TO: ALL COUNTY COMMISSIONERS
ALL TOWNSHIP TRUSTEES
ALL CITY AUDITORS
ALL VILLAGE CLERK TREASURERS
ALL SCHOOL DISTRICT TREASURERS
ALL INDEPENDENT PUBLIC ACCOUNTANTS

SUBJECT: PUBLIC BUILDINGS, CONSTRUCTION MANAGERS, AND
DESIGN SERVICES CONTRACTS

The purpose of this Auditor of State Bulletin is to inform all political subdivisions of Substitute House Bill No. 231 which was effective November 24, 1995. This legislation amends or enacts various sections of the Ohio Revised Code to specify that plans and other materials relative to obtaining building permits are not required to be prepared by registered architects for certain buildings and structures, to require certain contractors to demonstrate proof of financial responsibility, to specify the bonding requirements of construction managers, and to permit third parties to contract with a registered architect to provide architectural services for another person.

§9.33 of the Revised Code pertaining to a construction manager's qualifications is amended to include under (B) (4) FINANCIAL RESPONSIBILITY AS EVIDENCED BY THE CAPABILITY TO PROVIDE A LETTER OF CREDIT PURSUANT TO CHAPTER 1305 OF THE REVISED CODE, A SURETY BOND, CERTIFIED CHECK, OR CASHIER'S CHECK IN AN AMOUNT EQUAL TO THE VALUE OF THE CONSTRUCTION MANAGEMENT CONTRACT, OR BY OTHER MEANS ACCEPTABLE TO THE PUBLIC OWNER.

§9.333 requires that no public owner shall enter into a contract with a construction manager unless the construction manager provides a letter of credit pursuant to Chapter 1305 of the Revised Code, a surety bond pursuant to §153.54 and §153.57 of the Revised Code, a certified check or cashier's check in an amount equal to the value of the construction management contract for the project, or provides other reasonable financial assurance of a nature and in an amount satisfactory to the owner. However, the public owner may waive this requirement for good cause.

§153.54 was amended to enact paragraph (C)(2), which states that a construction manager who enters into a contract pursuant to §9.33 to §9.333 of the Revised Code, if required by the public owner at the time the construction manager enters into the contract, shall file a letter of credit pursuant to Chapter 1305 of the Revised Code, bond, certified check, or cashier's check, for the value of the construction management contract to indemnify the state, political subdivision, district, institution, or agency against all damage suffered by the construction manager's failure to perform the contract according to its provisions, and shall agree and assent that this undertaking is for the benefit of the state, political subdivision, district institution, or agency. A letter of credit provided by the construction manager is revocable only at the option of the beneficiary state, political subdivision, district, institution, or agency.

§153.57 of the Revised Code was amended to include the exact language for the bond mentioned in §153.54(c)(2). The full text to this can be found in Sub. H. B. No. 231.

§153.65 through §153.71 of the Revised Code as amended expand the entities subject to these

professional design services contract provisions to include not only the state, but also a county, township, municipal corporation, school district, or other political subdivision, or any public agency, authority, board, commission, instrumentality, or special district of the state or county, township, municipal corporation, school district, or other political subdivision.

§153.70 of the Revised Code now requires that any person rendering professional design services to a public authority, except for those services of a research or training nature, must maintain or be covered by a professional liability insurance policy with a company that is authorized to do business in Ohio in an amount the public authority considers sufficient. The public authority may waive this requirement for good cause or may allow the person providing the professional design services to give other assurances of financial responsibility.

This legislation also amends **§3781.06, §3781.10, §3791.04, §4703.02, §4703.12, §4703.151, §4703.16, §4703.18, §4733.07, and §4733.18** and enacts **§4703.182** and **§4733.161** of the Revised Code.

If you have any questions, please contact the Local Government Services division at (800) 345-2519.