

## CHAPTER 2

### CONTRACTS AND EXPENDITURES

In addition to using tax budgets and appropriations to control expenditures, there are several specific laws concerning contracts and the expenditure of public money. Some of these laws are in the Ohio Rev. Code, while others are in local governments' charters, ordinances, and resolutions. Therefore, prior to auditing these requirements, the auditor should determine what the legislative authority's powers and restrictions are in relation to contracts and expending public money.

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**Section A: Statutory Municipalities****Revised: SB 268****Effective: 9/12/2008**

**2-1 Compliance Requirements:** Ohio Rev. Code Sections 9.48, 715.18, 731.02, 731.12, 731.14, 731.141, 735.05, 735.051, 735.052, 735.053, 737.03, and 2921.42 - **Municipal** contracts.

**Summary of Requirements:** Generally, all contracts made by the legislative authority of a municipal government for material and labor which exceed \$25,000 are subject to competitive bidding procedures. (NOTE: This limit may not apply to some charter municipalities.) [731.14 – Villages; 735.05 Cities]

Competitive bidding procedures require that a contract be entered into in writing with the lowest and best bidder after advertisement of the proposal for bids for not less than two nor more than four consecutive weeks<sup>1</sup> in a newspaper of general circulation within the municipality. (Article XVIII, Sec. 3 of the Ohio Constitution allows municipalities to deviate from these requirements by charter.)

Contracts for used equipment or supplies at a public auction or emergencies can be entered into without following competitive bidding procedures.

Contracts with qualified non-profit agencies and contracts with state departments, political subdivisions, or a regional planning commission may be authorized without bidding and advertising.

Municipalities that participate in a joint purchasing contract are exempt from using competitive bidding. [R.C. Section 9.48(C)-(D)]

Municipalities also need not follow the bidding process where the contract involves specialized services, requiring particular skills and aptitudes, such as engineering or legal services. [State ex rel Davis Doria v. Ferguson, 145 Ohio St. 12. (1945)]

Municipalities procuring professional design services, over \$25,000, do not need to follow the competitive bidding process. However, contracts for professional design services must adhere to the provisions of R.C. Section 153.65-.71 which require municipalities to publically announce and provide notice of the contract, rank firms on the basis of qualifications, and award the contract to the most qualified firm. "Professional design services" are defined as services within the scope of practice of an architect or landscape architect registered under Chapter 4703 of the Revised Code or a professional engineer or surveyor registered under Chapter 4733 of the Revised Code. [R.C. Sections 153.65-.71]

A municipality may purchase supplies or services from another political subdivision or by contract that the Ohio Department of Administrative Services has entered into on behalf of the municipality, if the municipality can prove that it can purchase those same supplies or services from the other party upon

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<sup>1</sup> For Villages under Ohio Revised Code § 731.14, if the legislative authority posts the notice on its web site, it may eliminate the second notice otherwise required to be published in a newspaper of general circulation within the village, provided that the first notice published in such newspaper meets all of the following requirements: (A) It is published at least two weeks before the opening of bids; (B) It includes a statement that the notice is posted on the legislative authority's internet web site; (C) It includes the internet address of the legislative authority's internet web site; and (D) It includes instructions describing how the notice may be accessed on the legislative authority's internet web site.

equivalent conditions and specifications but at a lower price. If so, the municipality need not competitively bid those supplies or services. [Section 125.04.]

Ohio Rev. Code Sections 731.02 (cities), 731.12 (villages), - Interest in contracts by elected officials. These sections prohibit elected officials from having any pecuniary interest in a contract or to be otherwise employed by the entity. They also provide that contracts are void unless authorized at a regular or special meeting.

Ohio Rev. Code Section 2921.42 - This section prohibits having an unlawful interest in a public contract.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> <li>• Policies and Procedures Manuals</li> <li>• Knowledge and Training of personnel</li> <li>• Tickler Files/Checklists</li> <li>• Legislative and Management Monitoring</li> <li>• Management's identification of changes in laws and regulations</li> <li>• Management's communication of changes in laws and regulations to employees</li> </ul>		

#### **Suggested Audit Procedures - Compliance (Substantive) Tests:**

Identify a few expenditures that should have been subject to competitive bidding while reading the minutes, by inquiry of government personnel, and/or by scanning the disbursement records. In selecting payments to test, consider selecting from higher-dollar payments and perhaps one or two smaller payments (i.e. payments slightly over the competitive bidding threshold). Determine through inspection, vouching, or other such means that:

- Contracts over \$25,000 or any other local limitations were awarded using competitive bidding procedures. Be alert for indications of bid splitting or deliberate attempts to evade bid limitations, such as successive contracts just under the bid amount.
- Advertisements of the proposals for bids were made as indicated (or posted to the municipality's website, as described above).
- Documentation indicates that the lowest and best bid was accepted.
- Contracts and expenditures were approved by the legislative authority in accordance with local requirements.
- Document whether there is any apparent interest in the contract by a public official. Due to heightened public interest in these situations, we would often deem violations to be material noncompliance and could affect our assessment of the control environment and affect our fraud assessment in the FRAQ.

To enhance efficiency, include testing for unresolved findings for recovery (step 2-24) with these tests. However, violations of RC 9.24 would not normally constitute material noncompliance. They would normally be management letter comments.

- Select a representative number of purchases made through another subdivision or by “piggy backing” onto a DAS contract. Determine through inspection, vouching, comparison, or other such means whether the client is required to maintain records to demonstrate the following:
- The purchase conditions and specifications were substantially equivalent to those through the DAS Cooperative Purchasing Program.
- The purchase price was less than that available through the DAS Cooperative Purchasing Program.

**Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):**

**2-2 Compliance Requirements:** Ohio Rev. Code Sections 731.16 (villages) and 735.07 (cities) Altering or modifying **municipal** contracts.

**Summary of Requirements:** When in the opinion of: (a) the legislative officers of a village, (b) the village administrator, or (c) the director of public service, it becomes necessary, in the prosecution of any work or improvement under contract, to alter or modify a contract, such alterations or modifications can only be made upon the order of these individuals.

A change order is not effective until the price to be paid for the work and material or both, under the altered or modified contract, has been agreed upon in writing and signed by these individuals and by the contractor.

Where a board of control exists, the board must approve contract modifications. [RC 735.07]

No contractor may recover anything for work or material because of any such alteration or modification unless the contract is modified as required.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> <li>• Policies and Procedures Manuals</li> <li>• Knowledge and Training of personnel</li> <li>• Tickler Files/Checklists</li> <li>• Legislative and Management Monitoring</li> <li>• Management's identification of changes in laws and regulations</li> <li>• Management's communication of changes in laws and regulations to employees</li> </ul>		

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

For a few selected contracts, compare cumulative contract expenditures with the original bid price. If these expenditures exceed the bid price, inspect the modified contract documents for signatures of the contractor and the appropriate officials (i.e., the legislative officers of a village, the village administrator, or the director of public service).

If a board of control exists, determine that the board documented their approval of any modifications.

**Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):**

**2-3 Compliance Requirement:** Ohio Rev. Code Section 117.16 (A); 723.52 – Force accounts – [Certain] Municipal Corporations [Cities/Villages]. *This statute does not apply to a charter city or charter village pursuant to Ohio Rev. Code § 723.53.*

#### **Summary of Requirements:**

##### **AOS Force Account Project Assessment Form**

A director of public service in a city, or the legislative authority of a village, is required to estimate the costs of any “contract” for the construction, reconstruction, widening, resurfacing, or repair of a street or other public way using the Auditor of State’s force account project assessment form. *Note: the use of this form is required for contracted work pursuant to Ohio Rev Code § 723.52 and for force account projects pursuant to Ohio Rev. Code § 117.16 (A).*

The Auditor of State’s prescribed form [required by ORC 117.16(A)] for this purpose can be found on our website at the following link:

<http://www.auditor.state.oh.us/services/lgs/publications/AuditorsForms/AuditForms/ForceAccountProjectAssessmentForm.pdf>

Auditor of State Bulletin 2003-003 states an entity may use certain “safe harbor” percentages in computing its estimated costs; if the entity used these safe harbors, auditor of state auditors may accept them without further analysis. The entity may develop its own percentages for the add-ons for labor fringes and overhead costs, and materials overhead costs; the entity should present documentation to the auditor to justify these self-computed percentage add-ons.

##### **Joint Projects**

Joint projects undertaken by 2 or more of the affected entities require that the higher force account limits of the participating parties be applied [117.161]. Participating entities shall not aggregate their respective limits, and the share of each entity shall not exceed its respective force account limit. Calculating the proper project force account limits and the share thereof to each participating party should be memorialized in the contracts or other agreements between the parties. One of the participating entities shall complete the force account project form prior to proceeding by force account. An entity shall not proceed with a joint force account project if any one of them is subject to reduced force account limits under RC 117.16(C) or (D).

##### **Bid Specifications**

If the city or village has an engineer or someone performing the duties and functions of an engineer, then that person may develop the estimates.

When the estimated cost of the total project, including labor, exceeds \$30,000, the city or village must invite and receive competitive bids from private contractors for completing the work. However, force accounts **may** be used if the city or village rejects all bids. The force account work must be performed in compliance with the plans and specifications upon which the private contractor bids were based.<sup>2</sup>

<sup>2</sup> Occasionally, change orders may be necessary for force account projects. Change orders may be made for overruns in actual construction as long as: (1) the original estimate was made in good faith and (2) the change order request was for a legitimate unforeseen issue. Change orders to force account projects may constitute noncompliance if, however, estimates were intentionally low-balled to arrive under the bidding limits (e.g., not estimating the cost of labor or evidence that the entity knew from previous experience that a minimum amount of material would be required to complete a project but was not included in the original force account project estimate or was included at clearly insufficient amounts). Auditors should use professional skepticism when auditing force account project change orders and consult with Legal and A&A as needed.

The terms “construction, reconstruction, widening, resurfacing, or repair of a street or other public way” are not defined in this Ohio Rev. Code section. The city or village’s legal counsel or engineer should define these terms for the city or village. The Auditor of State will accept those definitions unless they are palpably and manifestly arbitrary or incorrect. *If the entity’s legal counsel, and/or engineer, as appropriate, did not define the indicated terms for the entity, indicate the same in your draft report. Consult with A&A Support and the AOS’s Legal department concerning any issues involving a potential finding or citation.*

*Note: The following clarifies how all entity types subject to force account limits should measure these limits for fractions of miles, excerpted from Auditor of State Audit Bulletin 2007-01:*

“A county must bid a project involving construction or reconstruction of a road if it exceeds \$30,000 per mile. However, it is unclear whether the limit for a 1.5 mile project would be \$45,000 (\$30,000 for the first mile, \$15,000 for the partial second mile), or \$60,000 (\$30,000 for each mile – full or partial – of the project). We determined that it was appropriate to consider the legislative intent separately for projects under one mile and for projects exceeding one mile.

**For projects exceeding one mile**, we determined that the intent of these statutes was to apply the limits proportionally for partial miles. In other words, for the example of the county cited above, the applicable force account limit would be \$45,000.

**For projects less than a mile**, the interpretation above would cause problems. In the example of a county commencing a small road repair project of one-tenth of a mile, a proportional limit would require the county to bid the project if it exceeded \$3,000 (one tenth of the \$30,000 per mile limit). We did not believe that this was the result intended by the legislature, so for projects of less than a mile, the entire per mile limit (in the case of the county in our example, \$30,000) will apply. In other words, any project that is less than a mile (regardless of distance) is to be treated as if it were a mile and subjected to the entity’s corresponding monetary limit.”

**Ohio Attorney General Opinion 2008-007<sup>3</sup>** briefly states:

- Completing the Auditor of State’s force account project assessment form estimating the cost of the work constitutes commencement of the project for purposes of determining which force account limit is in effect and applicable to the project;
- The Auditor of State is authorized to require the use of a “safe harbor rate” for the cost of overhead or the justification of a different rate in estimating the cost of road, bridge and culvert work;
- A public office may acquire material and equipment pursuant to contract, and may subcontract part of the work undertaken by force account, so long as the contracts for material and equipment and the subcontracts are let in compliance with the appropriate competitive bidding requirements;
- The estimate of the cost of road, bridge or culvert work must include the cost of materials and equipment that would be acquired by contract, and the cost of work that would be performed

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<sup>3</sup> Although the opinion was issued in response to a County’s inquiry, the Auditor of State will apply this guidance to each public office undertaking force account projects pursuant to AOS Bulletin 2008-004.



pursuant to a subcontract, if the project were undertaken by force account. If the total exceeds the applicable force account limit, the whole project must be competitively bid;

- Failure to comply with competitive bidding requirements when contracting for materials or equipment as part of a force account project, or when subcontracting work performed on a force account project, constitutes a violation of the force account limits as well as the applicable competitive bidding law.

Refer to AOS Bulletin 2008-004 for further information regarding Ohio Attorney General Opinion 2008-007 and the matters mentioned above.

### **Noncompliance**

Note: These laws require the Auditor of State to track all published [GAGAS-level] citations and any notifications sent to affected entities starting with the audits of fiscal year 2003 and thereafter. Auditor of State staff should document on the Audit Executive Summaries, force account citations in the GAGAS report or if you have recommended that the Auditor of State send the entity [or the State Tax Commissioner] the communication required by these changes notifying the entities of the increased force account limits. Independent Public Accountants auditing force accounts should follow the guidance in Ohio Rev. Code section 117.12.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> <li>• Policies and Procedures Manuals</li> <li>• Knowledge and Training of personnel</li> <li>• Tickler Files/Checklists</li> <li>• Legislative and Management Monitoring</li> <li>• Management's identification of changes in laws and regulations</li> <li>• Management's communication of changes in laws and regulations to employees</li> </ul>		

### **Suggested Audit Procedures - Compliance (Substantive) Tests:**

Read the minutes, inquire of management, and scan expenditures to reasonably determine if any capital construction or maintenance activity relating to a street or other public way took place during the audit period. Determine if such projects were undertaken using force accounts.

If such projects were undertaken, inspect a representative number of the entity's completed Auditor of State Uniform Force Account Project Assessment forms. Trace wage rates, etc. to entity supporting documentation on a test basis.

Inspect the Auditor of State's project assessment forms prepared by the entity and determine that work undertaken by force account for construction, reconstruction, widening, resurfacing, or repair of a street or other public way was documented to have an estimated cost of \$30,000 or less.

Determine if the entity used the “safe harbor” percentages described in Bulletin 2003 – 003. Recompute items on the form or scan the form for reasonableness. If the entity used its own labor fringes or overhead rates, or materials overhead rates, obtain supporting documentation and review for reasonableness.

Compare the actual projects’ costs with the project assessment form estimates. Inquire of management for reasons for any change orders or apparent excessive costs compared with the project estimates. Evaluate for reasonableness of the estimates. Be alert for indications of “bid-splitting” or deliberate attempts to evade bid limitations, such as successive estimations just under the bid amount.

Whether such projects have been undertaken or not, consider adding language to the audit management representation letter affirming or disaffirming the existence of projects subject to the applicable force account provisions.

Note: with “force account” provisions, it is possible to have non-compliance with the preparation of the Auditor of State form; with the bidding limits; or with both.

If the “force account” limits have been violated – that is, the municipal corporation did the work by force account even though it should have been bid – then the Auditor of State is required to notify the entity [and possibly the State tax commissioner] of the penalty provisions. Auditors should indicate in this block of the OCS if the Auditor of State is to notify the entity\State tax commissioner of any of the penalty provisions.

<p><b>Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):</b></p>
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## Section B: Counties

**2-4 Compliance Requirement:** Ohio Rev. Code Section 305.30 - Responsibilities of the county administrator.

**Summary of Requirements:** County administrator responsibilities:

- administer policies and resolutions of the board
- supervise and direct the affairs of the county government
- attend meetings
- make recommendations to the board
- report to the board
- advise the board of the county's financial condition
- perform additional duties determined by board resolution

Also, the county administrator shall, under the direction of the board of county commissioners, contract on behalf of the board and allow and pay claims for goods received and services rendered within limits provided by a resolution of the board. The board shall limit the ability of the county administrator to contract by specifying the type of contracts upon which the administrator may act without further resolution of the board. The county department receiving goods and services shall certify their receipt before the county administrator allows the payment of the claim.

Additionally, a county administrator can perform any or all functions conferred or incumbent upon the board of county commissioners in the case of a disaster or emergency, provided that the board, by resolution, has delegated the specific functions or all of the functions to the administrator. Ohio Rev. Code Sections 5502.21 (E) and (F) define "disaster" and "emergency."

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> <li>• Policies and Procedures Manuals</li> <li>• Knowledge and Training of personnel</li> <li>• Tickler Files/Checklists</li> <li>• Legislative and Management Monitoring</li> <li>• Management's identification of changes in laws and regulations</li> <li>• Management's communication of changes in laws and regulations to employees</li> </ul>		

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

Read the minutes and obtain a copy of the resolution authorizing the county administrator to contract or perform other functions on behalf of the county commissioners. When testing contract compliance, inspect contracts entered into by the county administrator to determine if the administrator had authority to enter into the contract.

When testing expenditures related to contracts entered into by the county administrator, inspect the voucher package to determine that receipt of goods was documented prior to payment.

**Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):**

<b><u>Revised: SB 268</u></b> <b><u>Effective: 9/12/2008</u></b>
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**2-5 Compliance Requirements:** Ohio Rev. Code Sections 305.27, 319.16, 307.86, 307.862, and 9.37 - County payments to be by auditor's warrant; competitive bidding. Ohio Rev. Code Sections 307.87, 307.88, 307.91 - **County** notice and other bid procedures.

**Summary of Requirements:** Generally, expenditures of county funds must be paid with warrants issued by the county auditor, with the approval of the county commissioners [Section 319.16]. The warrant and all information related to the presentment of the warrant may be provided electronically [Section 9.37].

Ohio Rev. Code Section 319.16 expressly includes county boards of mental health and county boards of mental retardation and developmental disabilities as agencies authorized to approve the issuance of warrants.

Competitive bidding is required for procurements exceeding \$25,000, except where otherwise provided by law [Section 307.86].

The commissioners, by unanimous vote (defined as all three commissioners when all three are present, or two commissioners if only two are present and they constitute a quorum), can declare an emergency and waive the competitive bidding when:

1. the estimated cost is less than \$50,000 [Section 307.86(A)(1)], or
2. there is physical disaster to structures, radio communications equipment, or computers [Section 307.86(A)(2)].

A county may purchase supplies or services from another party, including another political subdivision, instead of through a contract that the Ohio Department of Administrative Services has entered into on behalf of the county, if the county can prove that it can purchase those same supplies or services from the other party upon equivalent conditions or specifications but at a lower price. If so, the county need not competitively bid those supplies or services. [Section 125.04(C)]

Ohio Rev. Code Section 305.27, - Interest in contracts by elected officials.

These sections prohibit commissioners from having any pecuniary interest in a contract or to be otherwise employed by the entity. They also provide that contracts are void unless authorized at a regular or special meeting.

Ohio Rev. Code Section 2921.42 - This section prohibits having an unlawful interest in a public contract.

Other exceptions to the competitive bidding requirement are made for:

- purchase of supplies or replacement parts for which there is a single supplier [Section 307.86(B)];
- purchases from other government agencies [Section 307.86(C)];
- purchases of public social services by the county department of jobs and family services or of program services for provision by a county board of mental retardation and developmental disabilities [Section 307.86(D)];

- purchases of criminal justice services, social services programs, family services, or workforce development activities from nonprofit corporations or associations under programs funded by the federal government or by state grants [Section 307.86(E)];
- purchases of insurance or contracts negotiated under Section 307.86(F);
- purchases of computer hardware, software or consulting services that are necessary to implement a computerized case management automation project administered by the Ohio prosecuting attorneys association and funded by a grant from the federal government. [Section 307.86(G)];
- purchases of child day care for county employees [Section 307.86(H)];
- acquisition of property, including land, buildings, and other real property leased for offices, storage, or parking pursuant to 307.86 (I);
- purchase of programs or services under Section 307.86(J) for a felony delinquent, unruly youth, or status offender under the supervision of the juvenile court; and
- purchase of social services, programs, or certain ancillary services by a public children services agency for children at risk or alleged to be abused, neglected, or dependent children [Section 307.86(K)].
- Excluded from competitive bidding are expenditures for the services of an accountant, architect, attorney, physician, professional engineer, construction project manager, consultant, surveyor, or appraiser. [Section 307.86].
- Certain acquisitions made through another entity's purchasing program See OCS 2-20 regarding ORC 9.48.
- Counties procuring professional design services, over \$25,000, do not need to follow the competitive bidding process. However, contracts for professional design services must adhere to the provisions of R.C. Section 153.65-.71 which require counties to publically announce and provide notice of the contract, rank firms on the basis of qualifications, and award the contract to the most qualified firm. "Professional design services" are defined as services within the scope of practice of an architect or landscape architect registered under Chapter 4703 of the Revised Code or a professional engineer or surveyor registered under Chapter 4733 of the Revised Code. [R.C. Sections 153.65-.71]
- ~~SB 268. Effective 9/12/08, ORC 307.86(M) authorizes the use of competitive sealed proposals<sup>4</sup> instead of competitive bidding when the county determines the use of competitive sealed proposals would be advantageous to the county and the county contracting authority complies~~

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<sup>4</sup> Existing law generally requires a county to use an invitation to bid or sealed competitive bidding process whenever they purchase supplies or services at a price in excess of \$25,000. Competitive bids are firm, fixed price contracts where vendors bid on written bid specifications and where negotiations with a vendor are not allowed. SB 268 would ORC 307.86 (M) permits a county contracting authority to publicly request competitive sealed "proposals" through a detailed RFP process instead of using the existing competitive sealed bid process. This may be beneficial when purchasing high technology items when a standard commercial item does not meet the needs of the county, requirements can best be defined qualitatively rather than quantitatively, and purchasing complex systems and items where the county cannot fully define the specifications or scope of work. Sealed proposals permit negotiation of the scope of services and price with the highest ranked vendor. Existing sealed bidding prohibits such negotiations.

with the proposal requirements outlined in R.C. §307.862. R.C. 307.862(G) precludes a county contracting authority from using competitive sealed proposals for contracts for construction, design, demolition, alteration, repair, or reconstruction of a building, highway, drainage system, water system, road, street, alley, sewer, ditch, sewage disposal plant, waterworks, and all other structures or works of any nature. Therefore, the competitive sealed proposal method may be used only for purchases of non-construction related products and supplies and to the acquisition of services other than those services already exempted from the continuing competitive bidding procedure. For example, it might be used to acquire janitorial services or to purchase office supplies and equipment.

- A county may contract for energy conservation savings pursuant to Ohio Rev. Code Section 307.041. This section provides two procurement options:
  1. To follow Ohio Rev. Code Sections 307.86 to 307.92 (i.e. competitively bid contracts  $\geq$  \$25,000). [307.041(C)(1)]
  2. Request proposals from at least 3 vendors, after advertising the project. [307.041(C)(2)]
- Section 307.87 requires a county to advertise once per week for at least two consecutive weeks of its intent to seek competitive bids for purchases or leases with an estimated cost exceeding \$25,000. If the contracting authority posts the notice on its internet site, it may eliminate the second notice otherwise required to be published in a newspaper of general circulation within the county, provided that the first notice published in such a newspaper meets all of the following requirements: (1) It is published at least two weeks before the opening of bids; (2) It includes a statement that the notice is posted on the contracting authority's internet site on the world wide web; (3) It includes the internet address of the contracting authority's internet site on the world wide web; and (4) It includes instructions describing how the notice may be accessed on the contracting authority's internet site on the world wide web. The county should also maintain a copy of the bid. Section 307.88 requires that sealed bids be opened and tabulated (i.e., summarized).

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> <li>• Policies and Procedures Manuals</li> <li>• Knowledge and Training of personnel</li> <li>• Tickler Files/Checklists</li> <li>• Legislative and Management Monitoring</li> <li>• Management's identification of changes in laws and regulations</li> <li>• Management's communication of changes in laws and regulations to employees</li> </ul>		

#### **Suggested Audit Procedures - Compliance (Substantive) Tests:**

When testing expenditures, determine that disbursements were made only by county warrant (or electronic transaction via the county auditor).

Identify a few expenditures that should have been subject to competitive bidding while reading the minutes, by inquiry of government personnel, and/or by scanning the disbursement records. Determine through inspection, vouching, or other such means that contracts over \$25,000 were awarded using competitive bidding procedures. Be alert for indications of “bid-splitting” or deliberate attempts to evade bid limitations, such as successive contracts just under the bid amount. In selecting payments to test, consider selecting from higher-dollar payments and perhaps one or two smaller payments (i.e. payments slightly over the competitive bidding threshold).

For contracts selected above, determine whether advertisements of the proposals for bids were made at least once per week for two consecutive weeks (the notice may be posted to the county’s website in lieu of a second newspaper publication, as described above), and whether bids were tabulated.

For contracts exceeding \$25,000 meeting one or more of the exceptions indicated above, determine documentation exists to support expenditures as meeting those exceptions.

Document whether there is any apparent interest in the contract by a public official. Due to heightened public interest in these situations, we would often deem violations to be material noncompliance and could affect our assessment of the control environment and affect our fraud assessment in the FRAQ.

To enhance efficiency, include testing for unresolved findings for recovery (Step 2-24) with these tests. However, violations of ORC 9.24 would not normally constitute material noncompliance. They would normally be management letter comments.

**Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):**



**2-6 Compliance Requirement:** Ohio Rev. Code Section 117.16(A); 5543.19 – Force accounts - Counties.**Summary of Requirements:****AOS Force Account Project Assessment Form**

A county engineer, when authorized by the county commissioners, may utilize county labor and materials when undertaking the construction, reconstruction, improvement, maintenance, or repair of **roads**. Before undertaking force account activity for **construction** or **reconstruction**, including **widening** and **resurfacing**, of **roads**, an estimate of the cost of the road work must be compiled using the Auditor of State's force account project assessment form. When the estimated cost of the total project, including labor,<sup>5</sup> exceeds \$30,000 per mile, the county commissioners must invite and receive competitive bids from private contractors for completing the **road** work.

*Note: § 5543.19 (A) does not explicitly require using the Auditor of State's force account project assessment form for the **maintenance or repair** of roads. However, § 117.16(A) requires using this form for each public office that undertakes force account projects, presumably including, for counties, maintenance and repair of roads.*

The Auditor of State's prescribed form [required by ORC 117.16(A)] for this purpose can be found on our website at the following link:

<http://www.auditor.state.oh.us/services/lgs/publications/AuditorsForms/AuditForms/ForceAccountProjectAssessmentForm.pdf>

Auditor of State Bulletin 2003-003 states an entity may use certain "safe harbor" percentages in computing its estimated costs; if the entity used these safe harbors, auditor of state auditors may accept them without further analysis. The entity may develop its own percentages for the add-ons for labor fringes and overhead costs, and materials overhead costs; the entity should present documentation to the auditor to justify these self-computed percentage add-ons.

**Joint Projects**

Joint projects undertaken by 2 or more of the affected entities require that the higher force account limits of the participating parties be applied [117.161]. Participating entities shall not aggregate their respective limits, and the share of each entity shall not exceed its respective force account limit. Calculating the proper project force account limits and the share thereof to each participating party should be memorialized in the contracts or other agreements between the parties. One of the participating entities shall complete the force account project form prior to proceeding by force account. An entity shall not proceed with a joint force account project if any one of them is subject to reduced force account limits under RC 117.16(C) or (D).

**Bid Specifications**

Various terms, such as **road maintenance and repair, construction, and reconstruction**, are not defined in the Ohio Rev. Code sections discussed in the individual subsections below. We indicate in each such section that the Auditor of State will accept definitions from the entity's legal counsel, and/or county engineer, as appropriate, unless the definitions are palpably and manifestly arbitrary or incorrect. *If the entity's legal counsel, and/or county engineer, as appropriate, did not define the indicated terms for*

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<sup>5</sup> Pursuant to Ohio Attorney General Opinion No. 2008-007 discussed in section 2-3, any work subcontracted to private contractors should be included in the total cost of the project to determine if the project should be bid.

*the entity, indicate the same in your draft report. Consult with the AOS's Legal department concerning any issues involving a potential finding or citation.*

A county engineer, when authorized by the county commissioners, may utilize county labor and materials when undertaking the construction, reconstruction, improvement, maintenance, or repair of **bridges and culverts**. Before undertaking force account activity, an estimate of the cost of the bridge/culvert work must be compiled using the Auditor of State's force account project assessment form.<sup>5</sup> When the estimated cost of the work exceeds \$100,000, the county commissioners must invite and receive competitive bids from private contractors for completing the **bridge/culvert** work.

*Note: The following clarifies how all entity types subject to force account limits should measure these limits for fractions of miles, excerpted from Auditor of State Audit Bulletin 2007-01:*

"A county must bid a project involving construction or reconstruction of a road if it exceeds \$30,000 per mile. However, it is unclear whether the limit for a 1.5 mile project would be \$45,000 (\$30,000 for the first mile, \$15,000 for the partial second mile), or \$60,000 (\$30,000 for each mile – full or partial – of the project). We determined that it was appropriate to consider the legislative intent separately for projects under one mile and for projects exceeding one mile.

**For projects exceeding one mile**, we determined that the intent of these statutes was to apply the limits proportionally for partial miles. In other words, for the example of the county cited above, the applicable force account limit would be \$45,000.

**For projects less than a mile**, the interpretation above would cause problems. In the example of a county commencing a small road repair project of one-tenth of a mile, a proportional limit would require the county to bid the project if it exceeded \$3,000 (one tenth of the \$30,000 per mile limit). We did not believe that this was the result intended by the legislature, so for projects of less than a mile, the entire per mile limit (in the case of the county in our example, \$30,000) will apply. In other words, any project that is less than a mile (regardless of distance) is to be treated as if it were a mile and subjected to the entity's corresponding monetary limit."

**Ohio Attorney General Opinion 2008-007<sup>3</sup>** briefly states:

- Completing the Auditor of State's force account project assessment form estimating the cost of the work constitutes commencement of the project for purposes of determining which force account limit is in effect and applicable to the project;
- The Auditor of State is authorized to require the use of a "safe harbor rate" for the cost of overhead or the justification of a different rate in estimating the cost of road, bridge and culvert work;
- A public office may acquire material and equipment pursuant to contract, and may subcontract part of the work undertaken by force account, so long as the contracts for material and equipment and the subcontracts are let in compliance with the appropriate competitive bidding requirements;
- The estimate of the cost of road, bridge or culvert work must include the cost of materials and equipment that would be acquired by contract, and the cost of work that would be performed pursuant to a subcontract, if the project were undertaken by force account. If the total exceeds the applicable force account limit, the whole project must be competitively bid;

- Failure to comply with competitive bidding requirements when contracting for materials or equipment as part of a force account project, or when subcontracting work performed on a force account project, constitutes a violation of the force account limits as well as the applicable competitive bidding law.

Refer to AOS Bulletin 2008-004 for further information regarding Ohio Attorney General Opinion 2008-007 and the matters mentioned above.

### **Noncompliance**

Note: These laws require the Auditor of State to track all published [GAGAS-level] citations and any notifications sent to affected entities starting with the audits of fiscal year 2003 and thereafter. Auditor of State staff should document on the Audit Executive Summaries, force account citations in the GAGAS report or if you have recommended that the Auditor of State send the entity [or the State Tax Commissioner] the communication required by these changes notifying the entities of the increased force account limits. Independent Public Accountants auditing force accounts should follow the guidance in Ohio Rev. Code section 117.12.

<b>In determining how the government ensures compliance, consider the following:</b>	<b>What control procedures address the compliance requirement?</b>	<b>W/P Ref.</b>
<ul style="list-style-type: none"> <li>• Policies and Procedures Manuals</li> <li>• Knowledge and Training of personnel</li> <li>• Tickler Files/Checklists</li> <li>• Legislative and Management Monitoring</li> <li>• Management's identification of changes in laws and regulations</li> <li>• Management's communication of changes in laws and regulations to employees</li> </ul>		

### **Suggested Audit Procedures - Compliance (Substantive) Tests:**

Read the minutes, inquire of management, and scan expenditures to reasonably determine if any road capital construction or maintenance activity took place during the audit period. Determine if such projects were undertaken using force accounts.

If such projects were undertaken, inspect a representative number of the entity's completed Auditor of State Uniform Force Account Project Assessment forms. Trace wage rates, etc. to entity supporting documentation on a test basis.

Inspect the Auditor of State's project assessment forms prepared by the county engineer and determine that work undertaken by force account for construction, reconstruction, widening, or resurfacing of roads was documented to have an estimated cost of \$30,000 or less per mile.

Inspect the county engineer's project assessment forms, and determine whether they document that work undertaken by force account to construct, reconstruct, improve, maintain, or repair bridges and culverts cost an estimated \$100,000 or less.

Determine if the entity used the “safe harbor” percentages described in Bulletin 2003 – 003. Recompute items on the form or scan the form for reasonableness. If the entity used its own labor fringes or overhead rates, or materials overhead rates, obtain supporting documentation and review for reasonableness.

Compare the actual projects’ costs with the project assessment form estimates. Inquire of management for reasons for any change orders or apparent excessive costs compared with the project estimates. Evaluate for reasonableness of the estimates. Be alert for indications of “bid-splitting” or deliberate attempts to evade bid limitations, such as successive estimations just under the bid amount.

Whether such projects have been undertaken or not, consider adding language to the audit management representation letter affirming or disaffirming the existence of projects subject to the applicable force account provisions.

Note: with “force account” provisions, it is possible to have non-compliance with the preparation of the Auditor of State form; with the bidding limits; or with both.

If the “force account” limits have been violated – that is, the county did the work by force account even though it should have been bid – then the Auditor of State is required to notify the entity [and possibly the State tax commissioner] of the penalty provisions. Auditors should indicate in this block of the OCS if the Auditor of State is to notify the entity\State tax commissioner of any of the penalty provisions. Auditor of State auditors should include this in the executive summary. IPAs should notify the Auditor of State Quality Assurance department.

<p><b>Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):</b></p>
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## Section C: Townships

**Revised: HB 458, 127<sup>th</sup> GA**  
**Effective: 12/31/08**

**Revised: SB 268, 127<sup>th</sup> GA**  
**Effective: 9/12/2008**

**2-7 Compliance Requirements:** Ohio Rev. Code Sections 9.48, 505.08, 505.101, 505.267, 505.37, 505.376, 505.42, 505.46, 507.11(B), 511.12, 511.13, 515.01, 5549.21, and 5575.01 - **Township's** expenditures.

**Summary of Requirements:** No money belonging to a township may be paid out except upon an order signed personally by at least two trustees and countersigned by the fiscal officer. [Section 507.11(B)].

Footbridge repair: Construction, rebuilding and repair of footbridges across rivers and streams needed to access public schools may not exceed \$15,000. [Section 505.46]

~~Although road construction and maintenance are often the principal township services provided, general operating levy monies may not be expended for these purposes, or to purchase machinery and equipment used for road construction and maintenance. Formerly, pursuant to R.C. 5705.05 and 5705.06, townships were prohibited from using proceeds from a general levy for current expenses for the construction, reconstruction, resurfacing, or repair of roads and bridges. This had been interpreted as also prohibiting transfers from a township's general fund to their road and bridge fund, unless the general levy monies were segregated from those unrestricted portions of the general fund. House Bill 458 of the 127<sup>th</sup> General Assembly, however, removes this statutory prohibition, and townships are no longer restricted from using general levy money for road and bridge purposes. However, all payments must be made from the township road fund. [Section 5549.21].~~

Ohio Rev. Code Section 511.13, - Interest in contracts by elected officials.

These sections prohibit elected officials from having any pecuniary interest in a contract or to be otherwise employed by the entity. They also provide that contracts are void unless authorized at a regular or special meeting.

Ohio Rev. Code Section 2921.42 - This section prohibits having an unlawful interest in a public contract.

Competitive bidding is required in seven circumstances:

- Purchase of materials, machinery and tools to be used in constructing, maintaining and repairing roads and culverts, where the amount involved exceeds \$25,000. [Section 5549.21].
- Contracts for the maintenance or repair of roads, where the amount involved exceeds \$45,000. In each case, the board must advertise once, not later than two weeks prior to the letting of the contract, in a newspaper published in the county and of general circulation in the township. Award must be to the lowest responsible bidder. [Section 5575.01].
- Contracts for the construction and erection of a memorial building or monument. ~~Award must be to the lowest and best bidder after advertisement in two newspapers, published or in general circulation in the township, for a period of 30 days.~~ When competitive bidding is required, no

contract shall be made or signed until an advertisement has been placed in a newspaper, published or of general circulation in the township, at least twice. If the board posts the notice on its web site, it may eliminate the second notice otherwise required to be published in a newspaper published or of general circulation in the township, provided that the first notice published in such newspaper meets all of the following requirements: (1) It is published at least two weeks before the opening of bids; (2) It includes a statement that the notice is posted on the Board's internet web site; (3) It includes the internet address of the Board's internet web site; and (4) It includes instructions describing how the notice may be accessed on the board's internet web site. [Section 511.12(B)]. Such contracts require competitive bidding only if the amount involved exceeds \$25,000. [Section 511.12].

- Contracts for equipment for fire protection and communication purposes estimated to exceed \$50,000 pursuant to Ohio Rev. Code Sections 505.37 and 505.376 to 505.42, must be awarded in accordance with the provisions of Ohio Rev. Code Sections 731.14 to 731.16. [Section 505.42]. See step 2-1 regarding ORC 731.14 requirements. (ORC 731.15 and .16 describe certain administrative requirements related to bidding, and procedures for amending contracts, respectively.). When competitive bidding is required, the board shall advertise once a week for not less than two consecutive weeks in a newspaper of general circulation within the township. The board may also cause notice to be inserted in trade papers or other publications designated by it or to be distributed by electronic means, including posting the notice on the board's internet web site. If the board posts the notice on its web site, it may eliminate the second notice otherwise required to be published in a newspaper of general circulation within the township, provided that the first notice published in such newspaper meets all of the following requirements: (1) It is published at least two weeks before the opening of bids; (2) It includes a statement that the notice is posted on the board's internet web site; (3) It includes the internet address of the board's internet web site; and (4) It includes instructions describing how the notice may be accessed on the board's internet web site. [Section 505.37(A)].
- Contracts for street lighting systems or street lighting improvements where the cost exceeds \$25,000. The board shall prepare plans and specifications for the lighting equipment and shall, for two weeks, advertise for bids for furnishing the lighting equipment, either by posting the advertisement in three conspicuous places in the township or by publication of the advertisement once a week, for two consecutive weeks, in a newspaper of general circulation in the township. Any such contract for lighting shall be made with the lowest and best bidder. The board may also cause notice to be inserted in trade papers or other publications designated by it or to be distributed by electronic means, including posting the notice on the board's internet web site. If the board posts the notice on its web site, it may eliminate the second notice otherwise required to be published in a newspaper of general circulation in the township, provided that the first notice published in such newspaper meets all of the following requirements: (A) It is published at least two weeks before the opening of bids; (B) It includes a statement that the notice is posted on the board's internet web site; (C) It includes the internet address of the board's internet web site; and (D) It includes instructions describing how the notice may be accessed on the board's internet web site. No lighting contract awarded by the board shall be made to cover a period of more than twenty years. The cost of installing and operating any lighting system or any light furnished under contract shall be paid from the general fund of the township treasury.[Section 515.01]. The bidding procedures must be in accordance with Section 515.07.
- Contracts for street lighting improvements where the cost exceeds \$25,000. When competitive bidding is required, the board of township trustees shall post, in three of the most conspicuous public places in the district, a notice specifying the number, candle power, and location of lights and the kind of supports for the lights as provided by section 515.06 of the Revised Code, as well

as the time, which shall not be less than thirty days from the posting of the notices, and the place the board will receive bids to furnish the lights. The board shall accept the lowest and best bid, if the successful bidder meets the requirements of section 153.54 of the Revised Code. The board may reject all bids. [Section 515.07]

- Contracts for building modifications for energy savings pursuant to Ohio Rev. Code Section 505.264, where the estimated cost exceeds \$25,000, with certain exceptions. Award must be to the lowest and best bidder in accordance with the provisions of Sections 307.86 to 307.92.
- Contracts for private sewage collection tiles where the cost exceeds \$25,000 pursuant to Ohio Rev. Code Section ~~521.02 to~~ 521.05. The successful bidder must meet the requirements of Section 153.54.

By unanimous resolution that a real and present emergency exists, trustees may enter into a contract, without bidding or advertising, for the purchase of equipment, supplies, materials or services needed to meet the emergency if the estimated cost of the contract is less than \$50,000. [Section 505.08].

Purchases from a department, agency, or political subdivision of the state, or from a regional planning commission, are exempt from competitive bidding. [Section 505.101].

Townships procuring professional design services, over \$25,000, do not need to follow the competitive bidding process. However, contracts for professional design services must adhere to the provisions of R.C. Section 153.65-.71 which require townships to publically announce and provide notice of the contract, rank firms on the basis of qualifications, and award the contract to the most qualified firm. "Professional design services" are defined as services within the scope of practice of an architect or landscape architect registered under Chapter 4703 of the Revised Code or a professional engineer or surveyor registered under Chapter 4733 of the Revised Code. [R.C. Sections 153.65-.71]

Townships that participate in a joint purchasing contract are exempt from using competitive bidding. [R.C. Section 9.48(C)-(D)]

A township may purchase supplies or services from another party, including another political subdivision, instead of through a contract that the Ohio Department of Administrative Services has entered into on behalf of the township, if the township can prove that it can purchase those same supplies or services from the other party upon equivalent conditions and specifications but at a lower price. If so, the township does not have to competitively bid those supplies or services. [Section 125.04].

Townships need not competitively bid acquisitions made through another entity's purchasing program See OCS 2-20, regarding ORC 9.48.

### **Leasing Equipment:**

Ohio Rev. Code Sections 505.267 and 5549.021 expand townships' powers, allowing them to lease **or** lease with an option to purchase for any purpose for which it may acquire real or personal property, including machinery, tools, trucks and other equipment used in constructing, maintaining or repairing roads:

A lease with option to purchase shall do the following:

- Transfer title to the asset to the township on or before the end of the lease.

- If the leased asset relates to road repair, construction or maintenance, the township must comply with *all* the following:
- Make a cash down payment of at least three-twentieths (15%) of the total cost;
  - Require the cash down payment to be reduced by the amount of the selling price of the used equipment if the board sells used equipment as part of the lease with option to purchase;
  - Be entered into only with the lowest responsive and responsible bidder of the equipment after advertising for bids.

Ohio Rev. Code Sections 505.37 and 505.50 permit a board of township trustees to lease or lease with an option to purchase fire and police protection and emergency police protection, respectively. Additionally, Ohio Rev. Code Section 505.37(A) requires that contracts for the purchase of fire apparatus, mechanical resuscitators, other equipment, appliances, materials, fire hydrants, buildings, or fire-alarm communications equipment or services estimated to exceed \$50,000 be let by competitive bidding (whether leased or purchased).

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> <li>• Policies and Procedures Manuals</li> <li>• Knowledge and Training of personnel</li> <li>• Tickler Files/Checklists</li> <li>• Legislative and Management Monitoring</li> <li>• Management's identification of changes in laws and regulations</li> <li>• Management's communication of changes in laws and regulations to employees</li> </ul>		

#### **Suggested Audit Procedures - Compliance (Substantive) Tests:**

Inspect vouchers for signatures of at least two trustees and the fiscal officer.

Identify a few expenditures that should have been subject to competitive bidding while reading the minutes, by inquiry of government personnel, and/or by scanning the disbursement records. Determine through inspection, vouching, or other such means that contracts over the corresponding bid limits were awarded using competitive bidding procedures. Be alert for indications of "bid-splitting" or deliberate attempts to evade bid limitations, such as successive contracts just under the bid amount. In selecting payments to test, consider selecting from higher-dollar payments and perhaps one or two smaller payments (i.e. payments slightly over the competitive bidding threshold).

For contracts exceeding \$25,000, with certain exceptions that purport to meet one or more of the exceptions indicated above, (fire and communications equipment pursuant to Section 505.37(A) or emergency purchases and purchases from a department, agency, or political subdivision of the state, or from a regional planning commission, or pursuant to Section 125.04), determine documentation exists to support expenditures meeting those exceptions.



For footbridge construction, rebuilding and repair, determine documentation exists to support the necessity of the expenditures and that the total expenditures did not exceed \$15,000 for any footbridge accessing a school.

Document whether there is any apparent interest in the contract by a public official. Due to heightened public interest in these situations, we would often deem violations to be material noncompliance and could affect our assessment of the control environment and affect our fraud assessment in the FRAQ.

Inspect lease agreements to determine whether the agreements were for permitted equipment. Determine whether the agreement is a lease with option to purchase or an installment purchase agreement. If it is a lease with an option to purchase, determine that the township made a down payment  $\geq 15\%$ . Determine that the township selected the lowest and best bidder.

To enhance efficiency, include testing for unresolved findings for recovery (Step 2-24) with these tests. However, violations of ORC 9.24 would not normally constitute material noncompliance. They would normally be management letter comments.

**Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):**

**2-8 Compliance Requirement:** Ohio Rev. Code Section 117.16(A); 5575.01 – Force accounts - Townships.**Summary of Requirements:****AOS Force Account Project Assessment Form**

In the **maintenance** and **repair** of **roads** the board of township trustees may use force account labor provided the board has first caused **the county engineer** to complete the Auditor of State's prescribed force account project assessment form.

The Auditor of State's prescribed form [required by ORC 117.16(A)] for this purpose can be found on our website at the following link:

<http://www.auditor.state.oh.us/services/lgs/publications/AuditorsForms/AuditForms/ForceAccountProjectAssessmentForm.pdf>

Auditor of State Bulletin 2003-003 states an entity may use certain "safe harbor" percentages in computing its estimated costs; if the entity used these safe harbors, auditor of state auditors may accept them without further analysis. The entity may develop its own percentages for the add-ons for labor fringes and overhead costs, and materials overhead costs; the entity should present documentation to the auditor to justify these self-computed percentage add-ons.

Before undertaking the **construction** or **reconstruction** of a township road, the board shall obtain from the **county engineer** an estimate of the cost of such work, which estimate shall include labor, material, freight, fuel, hauling, use of machinery and equipment, and all other items of cost. The Auditor of State's interpretation of SB 82, which added § 5575.01(C), is that the county engineer should use the Auditor of State's force account project assessment form in estimating these costs. Note: when there is no AOS project assessment form completed, cite 5575.01(C). If neither the form nor any other type of estimate is completed, cite to both 5575.01(B) and (C).

The Auditor of State's force account project assessment form is **not** required if the **road maintenance or repair** project's total estimated cost is less than \$15,000 or if the **road construction or reconstruction's** total estimated cost is less than \$5,000 per mile. The terms **road maintenance and repair, construction, and reconstruction**, are not defined in this Ohio Rev. Code section. The township's legal counsel, and/or county engineer, along with the board, should define these terms for the township. The Auditor of State will accept those definitions unless they are palpably and manifestly arbitrary or incorrect.

**Joint Projects**

Joint projects undertaken by 2 or more of the affected entities require that the higher force account limits of the participating parties be applied [117.161]. Participating entities shall not aggregate their respective limits, and the share of each entity shall not exceed its respective force account limit. Calculating the proper project force account limits and the share thereof to each participating party should be memorialized in the contracts or other agreements between the parties. One of the participating entities shall complete the force account project form prior to proceeding by force account. An entity shall not proceed with a joint force account project if any one of them is subject to reduced force account limits under RC 117.16(C) or (D).

**Bid Specifications**

Various terms, such as **road maintenance and repair, construction, and reconstruction**, are not defined in the Ohio Rev. Code sections discussed in the individual subsections below. We indicate in

each such section that the Auditor of State will accept definitions from the entity's legal counsel, and/or county engineer, as appropriate, unless the definitions are palpably and manifestly arbitrary or incorrect. *If the entity's legal counsel, and/or county engineer, as appropriate, did not define the indicated terms for the entity, indicate the same in your draft report. Consult with the AOS's Legal department concerning any issues involving a potential finding or citation.* Independent Public Accountants auditing force accounts should follow the guidance in Ohio Rev. Code section 117.12.

Force accounts **may not** be used and bidding is required when the total estimated cost of the project, including labor, for **maintenance** and **repair** of roads exceeds \$45,000.

Bids from private contractors should be sought when the total estimated cost of the project, including labor, for **construction or reconstruction** of roads exceeds \$15,000 per mile. However, force accounts **may** be used if the board finds it in the best interest of the public. In this case, private contractor bids must have been received, considered, and rejected, and the force account work must be performed in compliance with the plans and specifications upon which the bids were based.<sup>1</sup>

*Note: The following clarifies how all entity types subject to force account limits should measure these limits for fractions of miles, excerpted from Auditor of State Audit Bulletin 2007-01:*

"A township must bid a project involving construction or reconstruction of a road if it exceeds \$15,000 per mile. However, it is unclear whether the limit for a 1.5 mile project would be \$22,500 (\$15,000 for the first mile, \$7,500 for the partial second mile), or \$30,000 (\$15,000 for each mile – full or partial – of the project). We determined that it was appropriate to consider the legislative intent separately for projects under one mile and for projects exceeding one mile.

**For projects exceeding one mile**, we determined that the intent of these statutes was to apply the limits proportionally for partial miles. In other words, for the example cited above, the applicable force account limit would be \$22,500.

**For projects less than a mile**, the interpretation above would cause problems. In the example of a township commencing a small road repair project of one-tenth of a mile, a proportional limit would require the township to bid the project if it exceeded \$1,500 (one tenth of the \$15,000 per mile limit). We did not believe that this was the result intended by the legislature, so for projects of less than a mile, the entire per mile limit (in the case of our example, \$15,000) will apply. In other words, any project that is less than a mile (regardless of distance) is to be treated as if it were a mile and subjected to the entity's corresponding monetary limit."

**Ohio Attorney General Opinion 2008-007<sup>3</sup>** briefly states:

- Completing the Auditor of State's force account project assessment form estimating the cost of the work constitutes commencement of the project for purposes of determining which force account limit is in effect and applicable to the project;
- The Auditor of State is authorized to require the use of a "safe harbor rate" for the cost of overhead or the justification of a different rate in estimating the cost of road, bridge and culvert work;
- A public office may acquire material and equipment pursuant to contract, and may subcontract part of the work undertaken by force account, so long as the contracts for material and equipment and the subcontracts are let in compliance with the appropriate competitive bidding requirements;

- The estimate of the cost of road, bridge or culvert work must include the cost of materials and equipment that would be acquired by contract, and the cost of work that would be performed pursuant to a subcontract, if the project were undertaken by force account. If the total exceeds the applicable force account limit, the whole project must be competitively bid;
- Failure to comply with competitive bidding requirements when contracting for materials or equipment as part of a force account project, or when subcontracting work performed on a force account project, constitutes a violation of the force account limits as well as the applicable competitive bidding law.

Refer to AOS Bulletin 2008-004 for further information regarding Ohio Attorney General Opinion 2008-007 and the matters mentioned above.

### **Noncompliance**

Note: These laws require the Auditor of State to track all published [GAGAS-level] citations and any notifications sent to affected entities starting with the audits of fiscal year 2003 and thereafter. Auditor of State staff should document on the Audit Executive Summaries, force account citations in the GAGAS report or if you have recommended that the Auditor of State send the entity [or the State Tax Commissioner] the communication required by these changes notifying the entities of the increased force account limits. Independent Public Accountants auditing force accounts should follow the guidance in Ohio Rev. Code section 117.12.

<b>In determining how the government ensures compliance, consider the following:</b>	<b>What control procedures address the compliance requirement?</b>	<b>W/P Ref.</b>
<ul style="list-style-type: none"> <li>• Policies and Procedures Manuals</li> <li>• Knowledge and Training of personnel</li> <li>• Tickler Files/Checklists</li> <li>• Legislative and Management Monitoring</li> <li>• Management's identification of changes in laws and regulations</li> <li>• Management's communication of changes in laws and regulations to employees</li> </ul>		

### **Suggested Audit Procedures - Compliance (Substantive) Tests:**

Read the minutes, inquire of management, and scan expenditures to reasonably determine if any road capital construction or maintenance activity took place during the audit period. Determine if such projects were undertaken using force accounts.

Inspect the estimates prepared by the county engineer and determine that work undertaken by force account was documented as less than \$15,000 for a **road maintenance or repair** project or less than \$5,000 per mile for a **road construction or reconstruction** project. If so, no Auditor of State force account project assessment form would have been required to have been completed.

Inspect the estimates prepared by the county engineer and determine that work undertaken by force account was documented as \$45,000 or less for **maintenance** and **repair** of roads.

Inspect the estimates prepared by the county engineer and determine that work undertaken by force account was documented as less than \$15,000 per mile for **construction or reconstruction** of roads.

If the bids from private contractors were taken for **construction or reconstruction** of roads but the board used the force account anyway, determine that the board documented that the private contractor bids were received, considered, and rejected, and the board's rationale for why using the force account approach was in the best interest of the public. Compare the force account's documented project specifications with the plans and specifications upon which the private contractor bids were based.

If such projects were undertaken, inspect a representative number of the entity's completed Auditor of State Uniform Force Account Project Assessment forms. Trace wage rates, etc. to entity supporting documentation on a test basis.

Determine if the entity used the "safe harbor" percentages described in Bulletin 2003 – 003. Recompute items on the form or scan the form for reasonableness. If the entity used its own labor fringes or overhead rates, or materials overhead rates, obtain supporting documentation and review for reasonableness.

Compare the actual projects' costs with the project assessment form estimates. Inquire of management for reasons for any change orders or apparent excessive costs compared with the project estimates. Evaluate for reasonableness of the estimates. Be alert for indications of "bid-splitting" or deliberate attempts to evade bid limitations, such as successive estimations just under the bid amount.

Whether such projects have been undertaken or not, consider adding language to the audit management representation letter affirming or disaffirming the existence of projects subject to the applicable force account provisions.

Note: with "force account" provisions, it is possible to have non-compliance with the preparation of the Auditor of State form; with the bidding limits; or with both.

If the "force account" limits have been violated – that is, the township did the work by force account even though it should have been bid – then the Auditor of State is required to notify the entity [and possibly the State tax commissioner] of the penalty provisions. Auditors should indicate in this block of the OCS if the Auditor of State is to notify the entity\State tax commissioner of any of the penalty provisions. Auditor of State auditors should include this in the executive summary. IPAs should notify the Auditor of State Quality Assurance department.

<p><b>Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):</b></p>
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## Section D: Board of Education (Schools)

**2-9 Compliance Requirement:** Ohio Rev. Code Section 3313.33 - **Board of Education** (schools) conveyances and contracts.

**Summary of Requirement:** The board president and treasurer shall execute any “Conveyances.” No contract is binding unless authorized at a regular or special board meeting. A “conveyance” is not a donation; it is a transfer *between two entities* with adequate consideration other than money (Ohio Rev. Code section 721.02).

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> <li>• Policies and Procedures Manuals</li> <li>• Knowledge and Training of personnel</li> <li>• Tickler Files/Checklists</li> <li>• Legislative and Management Monitoring</li> <li>• Management’s identification of changes in laws and regulations</li> <li>• Management’s communication of changes in laws and regulations to employees</li> </ul>		

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

Trace board approval from the minutes to the contracts or from the contracts to the minutes.

Inspect “conveyances” for board president and treasurer signatures.

**Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):**

**Revised: SB 268**  
**Effective: 9/12/2008**

**2-10 Compliance Requirement:** Ohio Rev. Code Sections 9.48, 3313.46, 125.04(C), and 3313.533 - **Board of Education** procedures for bidding and letting contracts.

**Summary of Requirements:**

- When a Board of Education determines to purchase a bus pursuant to Ohio Revised Code § 3327.08, build, repair, enlarge, improve or demolish any school building with a cost in excess of \$25,000, the Board is required to:
  - Prepare plans and specifications. [Section 3313.46(A)(1)].
  - Advertise for bids once a week for at least two consecutive weeks in a newspaper of general circulation in the district prior to the date specified by the Board for receiving bids. If the board posts the notice on its web site, it may eliminate the second notice otherwise required to be published in a newspaper of general circulation within the school district, provided that the first notice published in such newspaper meets all of the following requirements: (a) It is published at least two weeks before the opening of bids; (b) It includes a statement that the notice is posted on the board of education's internet web site; (c) It includes the internet address of the board's internet web site; and (d) It includes instructions describing how the notice may be accessed on the board's internet web site.[Section 3313.46(A)(2)].
  - Open the bids at the time and place specified by the Board in the advertisement for bids. [Section 3313.46(A)(3)].
  - When the work bid includes both labor and materials, the Board may require that each be separately bid or may require that they be bid as one. [Section 3313.46(A)(5)].
  - The award of the contract is to the lowest responsible bidder. [Section 3313.46(A)(6)].
  - The contract is between the board and the bidders. The board is required to approve and retain estimates and make them available to the Auditor of State upon request. [Section 3313.46(A)(7)].
  - If two or more bids are equal and are lower than any others, either may be accepted. However, the work is not to be divided among the bidders. [Section 3313.46(A)(8)].
  - When there is reason to suspect collusion among the bidders, those suspects are to be rejected. [Section 3313.46(A)(9)].

The above requirements (i.e., RC 3313.46(A)) do not apply to:

- acquisition of educational materials used for teaching; [Section 3313.46(B)(1)]
- any item which the Board, by a two-thirds vote, determines is available and can be obtained only through a single source; [Section 3313.46(B)(2)]
- energy conservation measures, with the approval of two-thirds of the Board [Section 3313.46(B)(3)] or

- acquiring computer software or hardware for instructional purposes pursuant to Section 3313.37 (B) (4). [Section 3313.46(B)(4)].
- School districts that participate in a joint purchasing contract are exempt from using competitive bidding. [R.C. Section 9.48(C)-(D)]
- A school district may purchase supplies or services from another party, including another political subdivision, instead of through a contract that the Department of Administrative Services has entered into on behalf of the school district, if the school district can prove that it can purchase those same supplies or services from the other party upon equivalent conditions and specifications but at a lower price. If so, the school district does not have to competitively bid those supplies or services. [Section 125.04(C)]
- School districts procuring professional design services, over \$25,000, do not need to follow the competitive bidding process. However, contracts for professional design services must adhere to the provisions of R.C. Sections 153.65-.71 which require school districts to publically announce and provide notice of the contract, rank firms on the basis of qualifications, and award the contract to the most qualified firm. "Professional design services" are defined as services within the scope of practice of an architect or landscape architect registered under Chapter 4703 of the Revised Code or a professional engineer or surveyor registered under Chapter 4733 of the Revised Code. [R.C. Sections 153.65-.71]
- Districts operating alternative schools which meet certain criteria are permitted to contract with a nonprofit or for profit entity to operate the alternative school, including the provision of personnel, supplies, equipment, or facilities. [3313.533(C)]
- When a school board contracts with a nonprofit or for-profit entity to run the school, the alternative school plan under 3313.533(B) must include the additional information 3313.533(G) describes. (See statute if this occurs.)

When a board of education determines to contract with a nonprofit or for-profit entity to operate an alternative school, the board shall:

- Publish a notice of request for proposal in a newspaper of general circulation once a week for at least two consecutive weeks prior to the date specified by the board for receiving proposals. [3313.533(H)(1)]
- After the date specified for receiving proposals, evaluate the submitted proposals (which may include discussions with respondents) to understand the proposal and the qualifications of respondents. The evaluation shall concern the entity's qualifications using factors the statute specifies. [3313.533(H)(2)]

The contract shall be awarded to the respondent the board considers to have the most merit, taking into consideration the scope, complexity, and nature of the services to be performed by the respondent under the contract. [3313.533(C), (G) and (H)(4)]

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.



<ul style="list-style-type: none"> <li>• Policies and Procedures Manuals</li> <li>• Knowledge and Training of personnel</li> <li>• Tickler Files/Checklists</li> <li>• Legislative and Management Monitoring</li> <li>• Management's identification of changes in laws and regulations</li> <li>• Management's communication of changes in laws and regulations to employees</li> </ul>		
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### **Suggested Audit Procedures - Compliance (Substantive) Tests:**

Identify a few expenditures subject to contracting/competitive bidding requirements while reading the minutes, by inquiry of government personnel, and/or by scanning the disbursement records. Determine through inspection, vouching, or other means that payments exceeding \$25,000 and contracts for the operation of alternative schools, were awarded using competitive bidding procedures. Be alert for indications of "bid-splitting" or deliberate attempts to evade bid limitations, such as successive contracts just under the bid amount. In selecting payments to test, consider selecting from higher-dollar payments and perhaps one or two smaller payments (i.e. payments slightly over the competitive bidding threshold).

Inspect bid files for documentation of:

- plans and specifications/RFP,
- bid/RFP advertising, and
- bid/proposal openings.

For contracts concerning the operation of alternative schools, review ORC 3313.533 (H) and determine whether the district documented its evaluation of the respondent's qualifications.

For contracts exceeding \$25,000 purporting to meet one or more of the exceptions indicated above (i.e., acquisition of educational materials used for teaching; any item which the Board determined was available and could be obtained only through a single source; certain energy conservation measures; acquisition of computer software or hardware for instructional purposes; and acquisitions pursuant to Section 125.04), determine documentation exists to support expenditures meeting those exceptions.

Document whether there is any apparent interest in the contract by a public official. Due to heightened public interest in these situations, we would often deem violations to be material noncompliance and could affect our assessment of the control environment and affect our fraud assessment in the FRAQ.

To enhance efficiency, include testing for unresolved findings for recovery (Step 2-24) with these tests. However, violations of ORC 9.24 would not normally constitute material noncompliance. They would normally be management letter comments.

**Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):**

**New: HB 1, 128<sup>th</sup> GA**  
**Effective: 7/17/09**

**2-11 Compliance Requirement:** Ohio Rev. Code Sections 3313.33(B), 3313.37, 3313.375, 3313.40, 3313.41, and Section 733.20 of Amended Substitute House Bill Number 1 - Acquisition of **school** real estate and building or other facilities, and office equipment; methods available.

**Summary of Requirements:** The board of education of any city, local, or exempted village school district may build, enlarge, repair and furnish school houses, purchase or lease real estate for the buildings and playgrounds or rent school rooms inside or out of the district and provide the necessary apparatus and provisions for such facilities. [Section 3313.37(A)(1)].

A governing board of an educational service center may acquire, lease or lease-purchase, or enter into a contract to purchase, lease or lease-purchase, or sell real and personal property and may construct, enlarge, repair, renovate, furnish, or equip facilities, buildings, or structures for the educational service center's purposes. The board may enter into loan agreements, including mortgages, for the acquisition of such property. [3313.37(A)(2)]

Boards of education of city, local, and exempted village school districts may acquire land by gift, devise, appropriation or purchase. Purchases can be with cash, by installment payment, with or without mortgage, lease-purchase, or lease with the option to purchase (provided that the price is to be paid over a time not exceeding 5 years and a special levy may be authorized to provide a special fund to meet future time payments). [Section 3313.37(B)(1)]

Boards may acquire "office equipment" (which includes computer hardware and software for instructional purposes) for schools, and by purchase, lease, installment payments, lease-purchase or lease with the option to purchase. If the purchase price is to be paid over a period of time, that period is limited to 5 years. [Section 3313.37(B)(4)]

Boards may also acquire the necessary equipment for maintaining facilities and land under its control by entering into lease-purchase agreements not exceeding 5 years. [3313.37(B)(5)]

Ohio Rev. Code Section 3313.33(B)- Interest in contracts by elected officials.

These sections prohibit elected officials from having any pecuniary interest in a contract or to be otherwise employed by the entity. They also provide that contracts are void unless authorized at a regular or special meeting.

Ohio Rev. Code Section 2921.42 - This section prohibits having an unlawful interest in a public contract.

**Additional Lease-Purchase Options:**

The board of education of a city, local exempted village, or joint vocational school district or the governing board of an educational service center or community school may enter into a lease-purchase agreement providing for the construction, enlarging, furnishing and equipping; lease; and eventual acquisition of a building or improvements to a building for any school district or educational service center purpose. [ORC Section 3313.375]

If a school district, educational service center or community school chooses to enter into a lease-purchase agreement, the agreement must provide for a lease with a series of 1 year renewable lease terms totaling not more than thirty years. Furthermore, the agreement must state that at the end of the series of lease terms; the title to the leased property shall be vested in the school district or educational service center, provided that all obligations stated in the agreement have been satisfied. [ORC Section 3313.375]

Additionally, any obligations under a lease-purchase agreement entered into pursuant to ORC 3313.375 shall not be considered to be net indebtedness pursuant to ORC 133.06. [ORC Section 3313.375]

### **School district ninety-nine year lease of excess real property**

Under Section 733.20 of Amended Substitute House Bill Number 1, effective 10/19/09<sup>6</sup>, if a board of education acquired or acquires a parcel of real property between January 1, 2008, and December 31, 2010, and if the board, by vote of a majority of its members, determines that a portion of the parcel, or a portion of the improvements located on or to be constructed on the parcel, is not required for school use, the board may convey a leasehold interest in that excess property for a term not to exceed 99 years, without reserving any right to cancel or terminate the lease other than breach of the lease by the lessee. The board may convey the leasehold interest as a single leasehold interest pursuant to one lease or as separate leasehold interests pursuant to two or more leases.

The board shall convey the leasehold interest at public auction or by sealed bid to the highest bidder. If the board proceeds by sealed bid, the board shall prescribe the form of the bid, and shall require that each bid contain the name of the person submitting the bid.

The board shall publish notice of the time and place of the auction or bid opening in a newspaper of general circulation in the school district or by posting notices in five of the most public places in the school district. The notice shall state that the terms and conditions of the lease are available in the office of the treasurer of the school district for review by prospective bidders. If the board proceeds by sealed bid, the notice shall include instructions for making a bid.

The board, from and after the day the notice is published, must make all the terms and conditions of the lease available in the office of the treasurer of the school district for review by prospective bidders. The notice, described above, must inform readers of this availability.

The base rent payable under the lease shall not be made part of the terms and conditions of the lease. Rather, the highest bid shall establish the base rent payable under the lease. The base rent may be in addition to other payments and nonmonetary obligations of the lessee under the lease.

If the board proceeds by auction, the board shall conduct the auction at the time and place stated in the notice. Similarly, if the board proceeds by sealed bid, the board shall open and tabulate bids at the time and place stated in the notice. The board may reject all bids, but only if the rejection occurs within 60 days following the auction or the opening of bids. Upon rejection of all the bids, the board may again proceed by public auction or sealed bid to convey the leasehold interest in the manner described here.

The president and treasurer of the board of education shall execute and deliver the lease agreement and any other agreements, documents, or instruments that are necessary to complete conveyance of the leasehold interest.

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<sup>6</sup> Section 733.20 of Amended Substitute House Bill Number 1 is **Uncodified Law**, and should, therefore, be treated accordingly.

### Acquisition by Exchange

With a majority vote, a school district board may exchange district real property for property owned by a municipal corporation upon the mutual agreement of the school district's board and the municipal corporation's legislative authority. The exchange may be made by a conveyance executed by the president and treasurer of the school district board and the mayor and clerk of the municipal corporation, respectively [Section 3313.40].

With a majority vote, a district board may acquire new real property that it determines is needed for school purposes by either (1) exchanging other district real property that it owns in its corporate capacity or (2) by using the district property as part of or as the entire consideration for the purchase price of the new property. The acquisition or exchange must be made by a conveyance executed by the president and treasurer of the school district board. [Section 3313.41(F)]

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> <li>• Policies and Procedures Manuals</li> <li>• Knowledge and Training of personnel</li> <li>• Tickler Files/Checklists</li> <li>• Legislative and Management Monitoring</li> <li>• Management's identification of changes in laws and regulations</li> <li>• Management's communication of changes in laws and regulations to employees</li> </ul>		

### Suggested Audit Procedures - Compliance (Substantive) Tests:

Read the board's minutes and determine if the board acquired the use of property, buildings, or office equipment, by purchase, exchange, rent/lease, or lease-purchase agreements during the audit period. Consider inquiry of management as to whether such property was acquired or such agreements were entered into. Scan expenditures for evidence that such property was acquired.

If the district or educational service center is making installment payments for office or maintenance equipment acquired pursuant to Ohio Rev. Code Section 3313.37, determine whether these payments exceed the 5-year limitation.

If the district, educational service center or community school has entered into an agreement pursuant to Ohio Rev. Code Section 3313.375, determine whether the agreement, 1) consists of a series of one year renewable lease terms, 2) has a maximum total term of thirty years, and 3) provides that title vests with the district or educational service center at the end of the series of lease terms and fulfillment of the agreement's obligations.

Document whether there is any apparent interest in the contract by a public official. Due to heightened public interest in these situations, we would often deem violations to be material noncompliance and could affect our assessment of the control environment and affect our fraud assessment in the FRAQ.

To enhance efficiency, include testing for unresolved findings for recovery (Step 2-24) with these tests. However, violations of ORC 9.24 would not normally constitute material noncompliance. They would normally be management letter comments. Also, note that 9.24 does not apply to community schools.

### **“Conventional” School Districts Only**

If the district is making installment payments for land acquired pursuant to Ohio Rev. Code Section 3313.37, determine whether these payments exceed the 5-year limitation.

If the district is lessor of unused property acquired between January 1, 2008, and December 31, 2010 (per uncodified law above), determine if:

- Documentation supports sale / lease to the highest bidder
  - In other words, this law only applies if a district acquired property during 2008, 2009 or 2010, then leased it to another user.
- Whether the district’s financial records recorded receipt of lease payments when due, and that the financial statements or notes reflect a capitalized lease receivable, if applicable.

If real property was acquired by exchanging real property already owned by the district (including using an exchange as partial consideration for the new real property), determine whether 1) the agreement was approved by a majority vote of the district’s board, and 2) the exchange was by a conveyance signed by the board president and the treasurer.

**Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):**

**2-12 Compliance Requirement:** Ohio Rev. Code Chapter 3318 - **School Districts** participating in classroom facilities assistance programs.

### Summary of the Program

#### Background:

Several programs provide financial assistance to construct or repair classroom facilities. The School Facilities Commission (Commission) administers these programs. The most common programs are the Classroom Facilities Assistance Program (CFAP), Expedited Loan Program, and Urban Initiative Program (i.e., applies to the following six city school districts: Akron, Cincinnati, Cleveland, Columbus, Dayton, and Toledo). Certain classroom assistance programs established by Chapter 3318 follow the basic guidelines of the CFAP.

#### Locally Funded Initiatives:

The Commission informed us that a school district board may elect to add to the scope of any project and separately fund a scope of work ("local initiative"), which involves improving all or part of a project the Commission funds. The school district board may request the Commission to approve the incorporation of design and construction of the local initiative into the overall project. Whenever a local initiative is interconnected with a project the commission funds, the district and the commission will execute a memorandum of understanding to specify the additional cost of the local initiative and the terms and conditions for accounting for the cost. ***The district must account for the local initiative in a separate fund, other than the project construction fund (USAS fund 010).***

The CFAP and related programs are discussed below.

#### CFAP Basics:

CFAP participation is based in part on the district's relative wealth, the Commission's determination of the district's facility needs, and the time elapsed since prior CFAP participation.

Project commencement is contingent upon the district obtaining:

- The district's share of project costs, funded by an additional bond levy, and /or certain local resources available for such purpose [3318.084], or
- The proceeds of a property tax/income tax levy, or a combination of both [3318.052, ORC], and
- The Board must levy an additional maintenance tax<sup>7</sup> of at least one-half mill [Sections 3318.05 (B), 3318.06 (A)(2)(a) and (A)(3), and 3318.17 ORC], or
- the Board may elect, to satisfy its local maintenance requirement by earmarking from the proceeds of an existing permanent improvement tax levied under Section 5705.21, ORC an

<sup>7</sup> The original regulations required a ½ mill levy, all of which was remitted to the State to repay project funding received. Later regulations still required the levy (or other funding), but provided that all or a portion would be retained by the district, to be used for maintenance of project facilities. All such funding is referred to as "maintenance funding" in this OCS Section. Some districts have entered into supplemental agreements which subject the district to the amended regulations.

amount equivalent to the amount of the additional tax described above or the District may elect to satisfy its local maintenance requirement by a combination of the half mill levy and the alternative funding source, or the district may elect to use a locally donated contribution under section 3318.084 of the Rev. Code. [RC 3318.05 (B), and 3318.06 (A)(2)(b)]

- SB 321, effective 9/5/06, authorizes a new alternative mechanism for school districts to meet their maintenance obligation. Under the act, a district commencing its project on or after the act's effective date may deposit into its maintenance fund, annually for 23 years, an amount from other district resources equal to 1/2 mill of the district's tax valuation<sup>8</sup>, instead of levying the maintenance tax<sup>9</sup>. The district's board must pass a resolution petitioning the Ohio School Facilities Commission to approve the arrangement. (R.C. 3318.05, 3318.051, and 3318.084)
- The district treasurer must annually certify to the Commission and the Auditor of State that the amount required for the year has been transferred<sup>10</sup> into the maintenance fund.

In order to satisfy the transfer certification requirement to the Auditor of State, districts can carbon copy the Auditor of State regional offices on their certification to the Commission. See table below for regional Auditor of State contact information:

<b>Regional Office Contact Information</b>	
<b>Toledo – George Prephan</b>	One Government Center Room 1420 • Toledo, Ohio 43604
<b>Akron/Canton – Daniel Stuetzer</b>	101 Central Plaza South 700 Chase Tower • Canton, OH 44702
<b>Cleveland – Carol-Ann Schindel</b>	Lausche Building, 12th Floor 615 Superior Avenue, NW • Cleveland, Ohio 44113
<b>Youngstown – Rick Kubic</b>	Voinovich Government Center 242 Federal Plaza West, Suite 302 • Youngstown, OH 44503

<sup>8</sup> Joint vocational school districts participating in a state facilities program, annually for 23 years, must deposit into a maintenance account an amount equal to 1.5% of the current insurance value of the acquired facilities (R.C. 3318.43).

<sup>9</sup> If a district board determines that it can no longer continue making the annual transfers, the act allows a district board to rescind its decision, but only if the district's voters approve the levy of a maintenance tax. The levy must be in effect for the remainder of the 23-year maintenance period (23 years minus the number of years that the district made transfers) and must be for not less than ½ mill for each dollar of district valuation. The act prescribes the ballot language to be used. A district electing to make the transfers authorized by the act is not relieved from its obligation to make annual deposits into its general "capital and maintenance fund," which applies to all districts under continuing law.

<sup>10</sup> SB 321 provides that districts electing to make the transfers, instead of levying the maintenance tax, may not receive the new state maintenance equalization payments. (*Beginning in fiscal year 2007, the Ohio Department of Education is required to pay an equalized subsidy to city, exempted village, and local school districts participating in state-assisted facilities programs and have tax valuations per pupil below the statewide average. The subsidy equalizes to the statewide average the per pupil amount each eligible district raises from its 1/2-mill maintenance levy.*) (R.C. 3318.18)

<b>Dayton – Mike Botkin</b>	One First National Plaza 130 West Second Street, Suite 2040 • Dayton, Ohio 45402
<b>Columbus – William Collier</b>	88 East Broad Street, 10th Floor • Columbus, OH 43215
<b>Athens – Charles Barga</b>	743 E. State Street, Suite B Athens Mall • Athens, Ohio 45701
<b>Cincinnati – Loren Crisp</b>	11117 Kenwood Road • Blue Ash, Ohio 45242

- The Auditor of State must “verify” the transfer as part of any audit of the district. If the Auditor of State finds that less than the required amount has been deposited, the Auditor must notify the district board in writing and require the board to deposit the necessary money within 90 days after the notice. If the district board fails to demonstrate to the Auditor's satisfaction that it has made the required deposit, the Auditor must notify the Ohio Department of Education. Upon that notice, the Ohio Department of Education must withhold 10% of the district's state operating funds for the current fiscal year, until the Auditor notifies the Ohio Department of Education that the Auditor is satisfied that the board has made the required transfer (ORC 3318.051(B)).
  - NOTE: Auditors should consult with the Auditor of State's Legal Division if noncompliance is identified. The Auditor of State Legal Division will prepare the written notification to the school district board and to the Ohio Department of Education, if necessary. IPA's should notify the Auditor of State's Quality Assurance Division if noncompliance is identified. The Auditor of State Quality Assurance Division will then consult with the Auditor of State Legal Division as appropriate.

Districts are to establish a project construction fund [RC 3318.08] to account for project funding and expenditures (USAS fund 010),<sup>11</sup> and a project maintenance fund [RC 3318.05] to account for maintenance funding and expenditures (USAS fund 034). ***Districts should not account for local funding initiatives in these funds. Rather, a separate fund should be established.***

The maintenance fund can only be used to maintain and repair completed facilities as identified in the approved maintenance plan, including preventative maintenance, periodic repairs, and the replacement of facility components. Routine janitorial and utility costs, equipment supplies and personnel costs associated with the day-to-day housekeeping and site upkeep are not allowable expenditures. No moneys other than costs associated with the development of the preventive maintenance plan may be expended out of fund 034 prior to the approval of the maintenance plan by the Commission. The construction manager is required to initiate the process of developing the plan at least six months prior to the completion of any facility for occupancy. [Legal criteria: The maintenance plan approved by the Commission, as evidenced by a signed Commission resolution]

#### **CFAP Written Agreement [3318.08]:**

Prior to project commencement the Commission and school district enter into a written agreement (“Project Agreement”). The Project Agreement is the contract between the district and the Commission.

<sup>11</sup> Auditor of State Bulletins 99-004 and 2001-007 include USAS accounting and legal guidance for the CFAP program. The accounting guidance still applies, but auditors should not rely on the legal guidance of those bulletins because some of it is outdated.



There can be many attachments to the Project Agreement and amendments to the Project Agreement. Some of the common attachments include schedules of the alternative funding sources for both the local portion for construction and/or the maintenance levy, and a Memorandum of Understanding (MOU) which sets forth the specific terms and conditions of the Local Initiative. The agreement and the applicable attachments, in part, will provide for the following:

- Sale and issuance of bonds or bond anticipation notes for all or a portion of the district's share of project costs (to be deposited into the district's project construction fund (USAS 010), and the transfer of approved local resources (if any) to the project construction fund. ***(Note: the district's local share of the project costs is not the same as a "locally funded initiative". Locally funded initiatives should be accounted for in separate funds, not Fund 010.)***
- The funding source for project maintenance and the conditions, if any, under which a portion of maintenance funding will be paid to the State. Repaying the State is no longer required. As noted above, the money a one-half mill maintenance levy or an alternative funding source generates must be deposited into fund 034 and can only be used to maintain and repair facilities, including preventive maintenance, periodic repairs, and replacing facility components.
- Authorization to advertise for, receive, and award construction bids for the project, subject to Commission approval.
- Disbursement of moneys from the district's project construction fund after receiving Commission approval. Payments from the construction fund are restricted to: 1) professional design and administration services, 2) payments to contractors who have performed work, 3) purchases related to the Project, and 4) any transactions authorized necessary or appropriate for establishing and administering investment accounts. Occasionally, districts will receive approval from the Commission for reimbursement of items that should have been project costs. If this is the case, the District should have an approval letter on file from the Commission that should be presented to the auditor to substantiate the expenditure. All payments from fund 010 should evidence approval by the district and by the Commission, as delegated to the construction manager. ***Locally Funded Initiatives should not be paid from fund 010, but from another fund identified by the district.***
- The Commission will pay the construction manager from the State's share of the project. (These payments should be recorded in fund 010 as receipts of the State's share and as construction expenditures. When establishing budgets for the project, these amounts should be included in estimated receipts and appropriations.)
- Disposition of any balance left in the project construction fund after completion of the project:
  - Regarding investment earnings attributable to the school's own contributions to the project, the school should either: retain them in its project construction fund for future projects, transfer them to its project maintenance fund,<sup>12</sup> or transfer them to its permanent improvement fund. [3318.12(C)(1)]
  - The school should transfer investment earnings attributable to the state's contribution to the School Facilities Commission [3318.12(C)(2)]

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<sup>12</sup> These monies shall be used solely for maintaining the classroom facilities included in the project.

- Any other surplus remaining in the school district's project construction fund after the project's completion shall be transferred to the commission and the school district board in proportion to their respective contributions to the fund. [3318.12(C)(3)]

Note: There are exceptions to some of these general requirements. Auditors should review the terms of the district's project agreement, and any attachments or amendments to the agreement, to determine requirements specific to the project.

### **Related Programs:**

Other ORC Chapter 3318 programs include the **School Building Assistance Expedited Local Partnership Program** [3318.36 and 3318.362] and the **Exceptional Needs School Facilities Assistance Program** [3318.37]. The Expedited program allows school districts to choose to fund a distinct portion of their Facilities Master Plan through local monies prior to the time their state funding becomes available. Once a district enters CFAP they receive credit against their required local contribution for the work completed under the Expedited program. None of the CFAP specific requirements related to the tracking and disposing of interest earnings apply to school districts participating in the Expedited Local Partnership Program. Since it is not a co-funded program, moneys related to that program should be accounted for in a fund other than fund 010. The Exceptional Needs program provides assistance to lower wealth districts with an exceptional need for immediate classroom facilities assistance, as determined by the Commission. The program is specifically designed for replacement as opposed to expansion or renovation.

With the exception of the Expedited program identified above, these programs follow the basic CFAP requirements discussed above, though there are differences. Districts will enter into agreements with the Commission. If the district participates in these or other Chapter 3318 facility projects, auditors should review the terms of the agreement and identify those requirements which may be material. When making that determination, auditors should consider the requirements and procedures addressed in this Ohio Compliance Supplement Section for the CFAP program.

Note: Community schools may not participate in these programs, except: per RC 3318.50, a community school may obtain a classroom facilities loan guarantee from the State, for up to 15 years.

### **Interfund Activity:**

#### ***During the project***

HB 119 (Ohio Rev. Code Section 3318.12) permits a school district board, by resolution, to use all or part of the interest attributable to the district's share of moneys in the project construction fund to pay the cost of local initiatives that are not included in the state-assisted project, but that are related to it. If a district board chooses to use some or all of the interest attributable to its share of the fund for local initiatives and, later, the cost of its state-assisted project exceeds the amount in the fund, the district must re-pay all of the interest used for those initiatives before further state funds will be released for the project.

#### ***After the project is completed***

HB 119 (Ohio Rev. Code Section 3318.12(B)(2)) permits a school district board at its option, by resolution, to transfer the interest attributable to its local share in the project construction fund to its permanent improvement fund (where presumably it could be spent on any permanent improvement) or to leave that interest in the project construction fund to pay the cost of future projects. A district board also may choose to transfer the interest to the district's maintenance fund. In either case, interest attributable to the state's share of the project construction fund must be returned to the state.

**OSFC Agreed-Upon Procedures (AUP) Engagements:**

OSFC conducts AUP engagements on select school districts that are in the construction phase. All school districts participating in classroom facilities programs will receive an AUP engagement at least once during a project's lifetime. The firms of Kennedy Cottrell Richards and Julian & Grube, Inc. conduct these engagements and are in good standing with the Auditor of State's Office.

The focus of the AUP engagements is accountability and compliance with the terms of the OSFC Project Agreement (including any amendments thereto) and Ohio Rev. Code Section 3318. The firms test the following areas, as applicable:

- deposit of project funds (both State and Local)
- spending of project funds
- interest earnings and allocation to the appropriate funds
- escrow accounting
- the closeout process

OSFC forwards the results of the AUP engagements to the Auditor of State, who then distributes the reports to regional chief auditors and independent public accounting firms. Pursuant to *Government Auditing Standards* paragraph 4.09, "auditors should evaluate whether the audited entity has taken appropriate corrective action to address findings and recommendations from previous engagements that could *materially* affect the financial statements. Auditors should use these reports when assessing risk and determining the nature, timing, and extent of current audit work, including determining the extent to which testing the implementation of the corrective actions is applicable to the current audit objectives."

**POSSIBLE NONCOMPLIANCE RISK FACTORS:**

**Note:** In assessing the risk of noncompliance, auditors should consider whether an AUP report that covered at least six months of the period under audit is available from OSFC. If so, auditors should evaluate the results of the AUP to assess the risk of noncompliance.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> <li>• Policies and Procedures Manuals</li> <li>• Knowledge and Training of personnel</li> <li>• Tickler Files/Checklists</li> <li>• Legislative and Management Monitoring</li> <li>• Management's identification of changes in laws and regulations</li> <li>• Management's communication of changes in laws and regulations to employees</li> </ul>		

**Suggested Audit Procedures - Compliance (Substantive) Tests:****Agreed-Upon Procedures:**

Per GAGAS 4.09, Inquire whether OSFC conducted an AUP engagement over the district's construction project. If so, obtain a copy of the AUP report, place it in the permanent file, and perform the following:

- Determine what period was covered by the AUP engagement procedures
- Determine the extent of testing performed over the district's construction activity. Auditors *may* rely on the AUP engagement to reduce the scope and extent of the audit steps enumerated below. *However, auditors should review the reported procedures to determine whether they apply: (1) only once during a project's lifetime, or (2) if they are ongoing and should be tested annually. For example, we would expect tests of allowability of expenditures to be tested annually during the construction phase. However, the establishment of the appropriate project funds/special cost centers would only be applicable once, generally at the onset of the project. Therefore, testing of type (1) requirements (i.e., **applicable one-time only**) does not need to be repeated each year. Auditors may refer to prior year testing or an existing AUP engagement, regardless of the period covered, to satisfy these requirements. However, an AUP engagement may only be used to reduce testing of the steps below for type (2) requirements (i.e., **applicable on an ongoing basis each year**) if the period covered by the AUP engagement included **at least six months of the current period under audit**. Auditors should carefully read the AUP procedures to ensure they obtain an appropriate understanding of the testing procedures performed when making this assessment.*
- Determine whether any significant findings or recommendations requiring corrective action or follow up were included in the results of the AUP report. If so, determine whether the district has corrected the noncompliance or can document satisfactory progress towards addressing the noncompliance. Auditors should *annually* evaluate the significance of uncorrected items for inclusion in the current audit report.
  - If the school is not adhering to agreed upon timetables for corrective action, etc., auditors should consider reporting noncompliance. Noncompliance findings should include the following: (1) a reference to the existing noncompliance such as, "... in a report dated XX, AOS or an accounting firm reported noncompliance with ORC 3318.YY", and (2) a description of the status of the noncompliance as of the date of the current audit report.

Review the project agreement between the district and Commission. Considering the requirements specific to the project, perform the following procedures (document specific requirements relevant to the following tests):

### **Project Funding:**

Scan the accounting records to determine if the proper activities are being recorded in the project activities fund (USAS 010). Determine if the District is accounting for the following four revenue streams **separately**: (1) Local Revenue, (2) Interest on Local Funds, (3) State Revenue – aka "drawdowns", and (4) Interest on State Revenue.

Determine if the District deposited the local share funds required by the Project Agreement into fund 010 for both the original contribution and any amendments.

Select contracts and related contract expenditures and determine through inspection, vouching, or other such means that contracts were awarded using competitive bidding procedures. (*Note: This step may be performed in conjunction with Step 2-10, Bidding and letting of contracts*)

Vouch a few transactions from fund 010 for allowable cost as defined in the agreements. We are not opining on this program, so we do not require a high level of assurance. Testing high dollar transactions

and scanning other selected transactions should suffice. Review the supporting documentation to determine if the expenditure was:

- a. allowed under the terms of the Project Agreement;
- b. if it was approved by the district treasurer and the construction manager prior to payment;
- c. if it excludes any costs for a locally funded initiative;
- d. if the amount paid agrees with the invoice and
- e. if it is recorded in the correct amount in the correct fund.
- f. If the District did not properly segregate transactions into a project construction fund (i.e., did not establish fund 010), report noncompliance accordingly. Auditors should also consider reporting a finding for adjustment. See the OCS Introduction for guidelines pertaining to Findings for Adjustments.

Scan interfund activity in fund 010. Determine whether material transfers or advances were properly approved and/or allowable under Ohio Rev. Code. If an advance is repaid out of fund 010 request the District provide the approval letter from the Commission which authorized the reimbursement.

### **Maintenance Funding:**

Review accounting records and the Project Agreement and determine if the proper amount of maintenance funding was posted to the project maintenance fund (USAS fund 034).

Vouch a few disbursement transactions from fund 034. We are not opining on this program, so we do not require a high level of assurance. Testing high dollar transactions and scanning other selected transactions should suffice. Determine whether expenditures were only for maintenance of the funded project facilities in accordance with the district's approved maintenance plan. (If the District did not segregate transactions related to project maintenance (i.e. did not establish fund 034), report noncompliance accordingly. As noted above, the only allowable expenditures out of fund 034 prior to the completion of the project are for the costs associated with the development of the maintenance plan.

### **Locally Funded Initiative:**

If applicable, review accounting records and related documents and determine if the district established a separate fund, or special cost center in a fund other than Fund 010, to track receipts and expenditures related to a locally funded initiative.

Vouch selected disbursement transactions from the LFI fund/special cost center. We are not opining on this program, so we do not require a high level of assurance. Testing high dollar transactions and scanning other selected transactions should suffice. Determine whether expenditures were: (1) approved by the district treasurer and construction manager prior to payment, (2) in agreement with the vendor invoice, and (3) in compliance with the district's approved Memorandum of Understanding with the OSFC. (If the district did not segregate transactions related to LFI (i.e. did not establish a separate fund or a separate special cost center in a fund other than Fund 010), report noncompliance accordingly.

### **Alternate Maintenance Obligation:**

Determine whether the school district has elected to use the new alternative mechanism for meeting its maintenance obligation. If so, obtain the district's annual certification<sup>13</sup> to the Commission and

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<sup>13</sup> The following is sample annual certificate language: "The undersigned Treasurer of the Board of Education of the XYZ District, YYY County, Ohio hereby certifies that a resolution was duly passed by the Board of Education of

determine if the school district carbon copied the Auditor of State regional office that the amount required for the year has been transferred into the maintenance fund.

IPA's perform agreed-upon procedures reports to serve as certification. Obtain a copy of this AUP report from the district and review for noncompliance. If the school district has deposited less than the required amount, determine whether AOS sent the required written notification to the district board mandating the necessary deposit within 90 days of the notice.

**Interfund Activity:**

Determine whether the district transferred interest out of the Project Construction Fund (Fund 010) during the audit period. If so, determine whether:

- the district board adopted a resolution approving the transfer
- the monies transferred represented only interest attributable to the district's local share of the project
- the monies were transferred to the appropriate funds and accounts. *(Note: the OSFC recommends using the Transfer-Out appropriation and Transfer-In receipt accounts to record this activity).*

**Surplus Balance:**

If a surplus remained after project completion, inspect the district's records supporting the distribution of the surplus. Determine whether the proper amounts were returned to the Commission and transferred to the district's respective funds.

**Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):**

said School District on MM/DD/YYYY to transfer \$xx,xxx from the General Fund to the OSFC Facility Maintenance Special Revenue Fund.

**2-13 Compliance Requirement:** Ohio Rev. Code Section 3318; Permissible expenditures for the **Big 8 School Districts** participating in the **School Building Program Assistance Limited Fund**, the required funds to account for the related activity, and the required match. The big eight school districts are as follows: Cleveland CSD, Columbus CSD, Cincinnati CSD, Toledo CSD, Youngstown CSD, Dayton CSD, Canton CSD, and Akron CSD.

### Summary of Requirements:

#### Background:

Big 8 districts can only use these funds for major renovations and repairs of school facilities. Funds are allocated to the school districts on a per-pupil basis, based on the total average daily membership of a base fiscal year. To be eligible to receive these funds, each school district must provide a 100 per cent match (i.e., the school district provides 50% of the total project cost) \* from funds the Ohio School Facilities Commission approves and develop and submit a capital renovations plan for the use of state and local funds subject to approval by the Ohio School Facilities Commission. To account for grant and matching money received under this provision, recipient school districts should establish a School Building Assistance Limited Fund. This fund should be classified as a governmental fund type, capital projects fund. The fund code within the Uniform School Accounting System is 496. A special cost center should be used for each separate grant or award of money.

\* Except, for ~~any funds OSFC paid after June 28, 2002~~ to the following four city school districts, the state/local split should be as follows:

- Cleveland: 68%state/32% local
- Akron 59% state/41% local
- Dayton 61% state/39% local
- Toledo 77% state/23% local.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> <li>• Policies and Procedures Manuals</li> <li>• Knowledge and Training of personnel</li> <li>• Tickler Files/Checklists</li> <li>• Legislative and Management Monitoring</li> <li>• Management's identification of changes in laws and regulations</li> <li>• Management's communication of changes in laws and regulations to employees</li> </ul>		

#### Suggested Audit Procedures - Compliance (Substantive) Tests:

Vouch a representative number of expenditures from fund 496 for allowable cost as defined above. (If the District did not account for the related activity in fund 496 select the transactions from the applicable fund.)

Read the minutes of the Board of Education and trace the required match into fund 496.

**Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):**



## Section E: Community Schools

**2-14 Compliance Requirement:** Although the competitive bidding procedures applicable to boards of education in ORC §3313.46 (and related sections in Chapter 153) do not apply to community schools, the sponsor (through its contract) may mandate a community school comply with these or other competitive bidding procedures. Auditors must read the contract to identify applicable competitive bidding procedures, and applicable grant requirements, if any.

Ohio Rev. Code Section 3313.33(B) - Interest in contracts by elected officials.

These sections prohibit elected officials from having any pecuniary interest in a contract or to be otherwise employed by the entity. They also provide that contracts are void unless authorized at a regular or special meeting. This statute does not apply to community schools unless the sponsor mandates it through the sponsor contract.

Ohio Rev. Code Section 2921.42 - This section prohibits having an unlawful interest in a public contract. This statute applies to community schools.

(Also note that RC 9.24, regarding unresolved findings for recovery and contracts, does not apply to community schools.)

*[Insert applicable competitive bidding procedures.]*

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> <li>• Policies and Procedures Manuals</li> <li>• Knowledge and Training of personnel</li> <li>• Tickler Files/Checklists</li> <li>• Legislative and Management Monitoring</li> <li>• Management's identification of changes in laws and regulations</li> <li>• Management's communication of changes in laws and regulations to employees</li> </ul>		

### Suggested Audit Procedures - Compliance (Substantive) Tests:

*[Insert substantive audit procedures. See other Ohio Compliance Supplement Sections for example procedures related to bidding.]*

Document whether there is any apparent interest in the contract by a public official. Due to heightened public interest in these situations, we would often deem violations to be material noncompliance and could affect our assessment of the control environment and affect our fraud assessment in the FRAQ.

<b>Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant</b>
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**deficiencies/material weaknesses, and management letter comments):**

**2-15 Compliance Requirement: 3314.24(A) Internet- or computer-based community school** cannot contract with a nonpublic school for instructional facility space.

Notes:

(1) Violations require ODE to withhold foundation payments for any students using nonpublic school facilities.

(2) ORC 3314.02(A)(7) defines Internet- or computer-based community schools as those in which the enrolled students work primarily from their residences on assignments in nonclassroom-based learning opportunities provided via an internet- or other computer-based instructional method that does not rely on regular classroom instruction or via comprehensive instructional methods including internet-based, other computer-based, and noncomputer-based learning opportunities.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> <li>• Policies and Procedures Manuals</li> <li>• Knowledge and Training of personnel</li> <li>• Tickler Files/Checklists</li> <li>• Legislative and Management Monitoring</li> <li>• Management's identification of changes in laws and regulations</li> <li>• Management's communication of changes in laws and regulations to employees</li> </ul>		

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

Read internet schools' contracts for instructional space. Determine if contracts for instructional space were with nonpublic schools.

**Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):**

## Section F: Hospitals

**2-16 Compliance Requirement:** Ohio Rev. Code Sections 9.48, 153.65-.71, and 339.05 - Bidding procedures and purchasing policies for supplies and equipment (**County Hospitals**).

**Summary of Requirement:** A board of county hospital trustees may adopt, annually, bidding procedures and purchasing policies for supplies and equipment that are routinely used in operating the hospital and that cost in excess of the amount specified in Ohio Rev. Code Section 307.86, which is \$25,000 as the threshold above which purchases must be competitively bid.

If a board of county hospital trustees adopts such policies and procedures, and the board of county commissioners approves them, the board of county hospital trustees may follow these policies and procedures in lieu of following the competitive bidding procedures of Ohio Rev. Code Sections 307.86 to 307.92.

Ohio Rev. Code Section 2921.42 - This section prohibits having an unlawful interest in a public contract.

County hospitals that participate in a joint purchasing contract are exempt from using competitive bidding. [R.C. Section 9.48(C)-(D)]

County hospitals procuring professional design services, over \$25,000, do not need to follow the competitive bidding process. However, contracts for professional design services must adhere to the provisions of R.C. Section 153.65-.71 which require county hospitals to publically announce and provide notice of the contract, rank firms on the basis of qualifications, and award the contract to the most qualified firm. "Professional design services" are defined as services within the scope of practice of an architect or landscape architect registered under Chapter 4703 of the Revised Code or a professional engineer or surveyor registered under Chapter 4733 of the Revised Code. [R.C. Sections 153.65-.71]

(Note that RC 9.24 regarding unresolved findings for recovery and contracts does not apply to hospitals.)

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> <li>• Policies and Procedures Manuals</li> <li>• Knowledge and Training of personnel</li> <li>• Tickler Files/Checklists</li> <li>• Legislative and Management Monitoring</li> <li>• Management's identification of changes in laws and regulations</li> <li>• Management's communication of changes in laws and regulations to employees</li> </ul>		

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

By inquiry or reading the minutes, determine if the board of hospital trustees has adopted its own policies and procedures for competitive bidding. If so, trace approval of those policies by the board of county commissioners to an approval letter or to a notation in the minutes.

For a few expenditures over the policy limit, inspect bid files to determine if the policies and procedures were being followed as required. In selecting payments to test, consider selecting from higher-dollar payments and perhaps one or two smaller payments (i.e. payments slightly over the competitive bidding threshold).

If the board of hospital trustees has not adopted its own policies and procedures, see Ohio Compliance Supplement Section 2-5 for suggested audit procedures regarding competitive bidding procedures for county hospitals.

Document whether there is any apparent interest in the contract by a public official. Due to heightened public interest in these situations, we would often deem violations to be material noncompliance and could affect our assessment of the control environment and affect our fraud assessment in the FRAQ.

**Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):**

**2-17 Compliance Requirement:** Ohio Rev. Code Sections 749.26, 749.27, 749.28, 749.29, 749.30 and 749.31- Contract procedures; bids; bonds; bid openings (**Municipal Hospitals**).

**Summary of Requirements:** The board of hospital trustees, before contracting to erect a hospital building, or to rebuild or repair a hospital building, the cost of which exceeds \$10,000, must have plans, specifications, detailed drawings, and forms of bids prepared. These must be printed for distribution among the bidders. [Section 749.26].

All contracts must be made in the name of the board of hospital trustees. Contractors may not execute any extra work or make any modifications or alterations in the specifications and plans, unless ordered in writing by the board. Contractors may not claim any additional compensation unless such written order is given, and the additional compensation fixed and agreed upon. Copies of the plans and drawings, attested by the contractor, and the original bids, specifications, and contracts are required to be deposited in the office of the clerk of the municipal corporation. [Section 749.27].

The board of hospital trustees cannot enter into a contract for work or supplies where the estimated cost exceeds \$10,000, without first giving 30 days notice in one newspaper of general circulation in the municipal corporation that sealed proposals will be received for doing the work or furnishing the materials and supplies. [Section 749.28].

Each bid submitted under Ohio Rev. Code Section 749.28 for a contract for the construction, demolition, alteration, repair, or reconstruction of an improvement is required to meet the requirements of Ohio Rev. Code Section 153.54 regarding bid guaranty. Each bid submitted under Ohio Rev. Code Section 749.28 for any other contract must be accompanied with a bond, signed by sufficient sureties, for acceptance of the contract if awarded by the board of hospital trustees, to fully secure any difference between the amount of such bid and the next higher bid. That amount is to be collected by the board and paid into the hospital fund in case of the refusal by the bidder to enter into a contract according to its bid within such reasonable time as the board determines. [Section 749.29].

Each bid submitted under Ohio Rev. Code Section 749.28 is required to be enclosed in a sealed envelope and deposited with the clerk of the board of hospital trustees. The envelope should indicate the nature of the bid. All bids are required to be opened at the time, date, and place specified in the notice to bidders or specifications. The time, date, and place of the bid openings may be extended to a later date by the board of hospital trustees, provided that written or oral notice of the change is given to all persons who have received or requested specifications no later than 96 hours prior to the original time and date fixed for the opening. [Section 749.30].

Ohio Rev. Code Section 2921.42 - Having an unlawful interest in a public contract. This section generally prohibits unlawful interests.

(Note that RC 9.24 regarding unresolved findings for recovery and contracts does not apply to hospitals.)

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> <li>• Policies and Procedures Manuals</li> <li>• Knowledge and Training of personnel</li> <li>• Tickler Files/Checklists</li> </ul>		

<ul style="list-style-type: none"> <li>• Legislative and Management Monitoring</li> <li>• Management's identification of changes in laws and regulations</li> <li>• Management's communication of changes in laws and regulations to employees</li> </ul>		
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### **Suggested Audit Procedures - Compliance (Substantive) Tests:**

Inquire or determine from reading the minutes or other means whether the hospital paid for work or supplies or for rebuilding or repairs exceeding \$10,000. Inspect a few bid files (in selecting payments to test, consider selecting from higher-dollar payments and perhaps one or two smaller payments (i.e. payments slightly over the competitive bidding threshold) and other related documentation to determine that:

- Plans, specifications, and detailed drawings are printed and distributed to bidders for the erection, rebuilding or repair of a hospital building.
- The contracts are made in the name of the board of hospital trustees and stipulate in the contract that the contractor will not execute any extra work or make any modifications or alterations in the work specifications and plans unless ordered in writing by the board.
- Copies of plans and drawings and the original bids, specifications and contracts are on file in the office of the clerk.
- Thirty days' notice was given in one newspaper of general circulation in the municipal corporation that sealed proposals will be received.
- Bid guaranties and/or bonds were received with the proposals from contractors.
- Bids were enclosed in sealed envelopes and opened by the municipal clerk at the time, date, and place specified in the notice to bidders.
- The lowest and best bid was accepted (unless bond is considered inadequate by the board).

Document whether there is any apparent interest in the contract by a public official. Due to heightened public interest in these situations, we would often deem violations to be material noncompliance and could affect our assessment of the control environment and affect our fraud assessment in the FRAQ.

**Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):**

## Section G: Colleges and Universities

**2-18 Compliance Requirement:** Ohio Rev. Code Sections 9.312, 153.65-.71, 3354.16, 3355.12, 3357.16, and 3358.10 - Bidding required on improvement contracts.

**Summary of Requirements:** When the board of trustees of a community college [Section 3354.16(A), university branch [Section 3355.12(A)], technical college [Section 3357.16(A)], or state community college district [Section 3358.10] resolves to contract for improvements exceeding \$50,000<sup>14</sup>, the college must advertise for bids once a week for three consecutive weeks, in at least one newspaper of general circulation within the college district where the work is to be done.

The board of trustees of the college district may contract with the lowest responsive and responsible bidder.

On January 1, of every even-numbered year, the chancellor of the Board of Regents must adjust the contract limit as provided for in Sections 3354.16(B) for community college districts, 3355.12(B) for university branch districts, 3357.16(B) for technical colleges and 3358.10 for state community colleges. The new limits are stated above.

These types of colleges may solicit separate or combined bids and award separate or combined contracts for each distinct branch or class of work. These contracts do not require bidding if the estimated cost is less than \$5,000.

A bidder on the contract is considered responsive if his proposal responds to bid specifications in all material respects and contains no irregularities or deviations from the specifications which would affect the amount of the bid or otherwise give the bidder a competitive advantage. The factors that the college must consider in determining whether a bidder on the contract is responsible include the experience of the bidder, and its financial condition, conduct and performance on previous contracts, facilities, management skills, and ability to execute the contract properly.

An apparent low bidder found not to be responsive and responsible is to be notified by the college of the finding and the reasons for it. The notification is given in writing and by certified mail. [Section 9.312(A)].

When the contract is awarded to a bidder other than the apparent low bidder or bidders, the institution is required to meet with the apparent low bidder or bidders upon filing of a timely written protest. The protest must be received within five days of the notification required above. No final award can be made until the institution either affirms or reverses its earlier determination. [Section 9.312(B)].

Ohio Rev. Code Section 2921.42 - Having an unlawful interest in a public contract. This section generally prohibits unlawful interests.

Colleges and universities procuring professional design services, over \$25,000, do not need to follow the competitive bidding process. However, contracts for professional design services must adhere to the provisions of R.C. Section 153.65-.71 which require colleges and universities to publically announce and provide notice of the contract, rank firms on the basis of qualifications, and award the contract to the most

<sup>14</sup> Each of these statutes requires the Board of Regents to increase this amount every other January 1 based on increases in the U.S. Bureau of Census price deflator for construction. The Board of Regents informed us that because the Bureau of Census no longer issues this information, the Board of Regents has not increased this threshold. The Board is proposing a legislative revision to this statute.



qualified firm. "Professional design services" are defined as services within the scope of practice of an architect or landscape architect registered under Chapter 4703 of the Revised Code or a professional engineer or surveyor registered under Chapter 4733 of the Revised Code. [R.C. Sections 153.65-.71]

(Note that RC 9.24 regarding unresolved findings for recovery and contracts applies to state colleges and universities, but does not apply to technical colleges.)

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> <li>• Policies and Procedures Manuals</li> <li>• Knowledge and Training of personnel</li> <li>• Tickler Files/Checklists</li> <li>• Legislative and Management Monitoring</li> <li>• Management's identification of changes in laws and regulations</li> <li>• Management's communication of changes in laws and regulations to employees</li> </ul>		

#### **Suggested Audit Procedures - Compliance (Substantive) Tests:**

Inquire or determine through other means such as reading the minutes or performing analytical procedures whether improvements exceeding \$50,000 occurred during the fiscal period. Inspect a few contracts (in selecting improvement payments to test, consider selecting from higher-dollar payments and perhaps one or two smaller payments (i.e. payments slightly over the competitive bidding threshold), bid files, and related documentation to determine whether:

- Contracts over the amounts indicated above were awarded using competitive bidding procedures.
- Advertisements of the proposals for bids were made.
- Documentation indicates the lowest and best bid was accepted, or documents why the low bidder was not selected.

Document whether there is any apparent interest in the contract by a public official. Due to heightened public interest in these situations, we would often deem violations to be material noncompliance and could affect our assessment of the control environment and affect our fraud assessment in the FRAQ.

**Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):**

## Section H: Libraries

**Revised: SB 185**  
**Effective: 6/20/2008**

**2-19 Compliance Requirements:** Ohio Rev. Code Sections 153.65-.71 and 3375.41 - Procedure for bidding and letting of contracts over \$25,000.

**Summary of Requirements:** When a board of library trustees appointed pursuant to Ohio Rev. Code Sections 3375.06 (county free library), 3375.10 (township library), 3375.12 (municipal free library), 3375.15 (school library), 3375.22 (county library district), or 3375.30 (regional library district) determines to construct, demolish, alter, repair, or reconstruct a library or make any improvements or repairs which will exceed \$25,000 except in cases of urgent necessity or for the security and protection of library property, it must advertise for ~~four~~ two weeks for sealed bids in some newspaper of general circulation in the district. If there are two such papers, the board advertises in both of them. If no newspaper has a general circulation in the district, the board advertises by posting the advertisement in three public places in the district.

Sealed bids are filed with the fiscal officer (~~renamed pursuant to SB 185, 127<sup>th</sup> General Assembly, effective 6/20/2008~~) by 12:00 noon of the last day stated in the advertisement.

The sealed bids are:

- opened at the next meeting of the board,
- publicly read by the fiscal officer, and
- entered into the board's records.

By resolution, the board may provide for the public opening and reading of the bids by the fiscal officer, immediately after the time for filing such bids has expired, at the usual place of meeting of the board, and for tabulating the bids. A report of the tabulation of the bids is presented to the board at its next meeting.

When both labor and materials are embraced in the work that is being bid for, the board may require that each be separately stated in the sealed bid, with each being priced, or it may require that bids be submitted without being separated.

None but the lowest responsible bid shall be accepted. The board may reject all the bids or accept any bid for both labor and material which is the lowest in total.

The contract is between the board and the bidders. The board is required to pay the contract price for the work by the times and in the amounts indicated.

When two or more bids are equal, in whole or in part, and are lower than any others, either may be accepted. However, the work is not required to be divided between these bidders.

When there is reason to believe there is collusion or combination among the bidders, the bids of those concerned in collusion or combination are required to be rejected.

Ohio Rev. Code Section 2921.42 - Having an unlawful interest in a public contract. This section generally prohibits unlawful interests.

Libraries procuring professional design services, over \$25,000, do not need to follow the competitive bidding process. However, contracts for professional design services must adhere to the provisions of R.C. Section 153.65-.71 which require libraries to publically announce and provide notice of the contract, rank firms on the basis of qualifications, and award the contract to the most qualified firm. "Professional design services" are defined as services within the scope of practice of an architect or landscape architect registered under Chapter 4703 of the Revised Code or a professional engineer or surveyor registered under Chapter 4733 of the Revised Code. [R.C. Sections 153.65-.71]

(Note that ORC 9.24 regarding unresolved findings for recovery and contracts, does not apply to libraries.)

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> <li>• Policies and Procedures Manuals</li> <li>• Knowledge and Training of personnel</li> <li>• Tickler Files/Checklists</li> <li>• Legislative and Management Monitoring</li> <li>• Management's identification of changes in laws and regulations</li> <li>• Management's communication of changes in laws and regulations to employees</li> </ul>		

#### **Suggested Audit Procedures - Compliance (Substantive) Tests:**

Inquire or determine through other means, such as analytical procedures or reading the minutes, if payments for repairs, improvements, etc. exceeding \$25,000 were made during the period. If so, inspect a few related bid files (in selecting payments to test, consider selecting from higher-dollar payments and perhaps one or two smaller payments (i.e. payments slightly over the competitive bidding threshold) and associated documentation that:

- Expenditures over \$25,000 were supported by contracts awarded in compliance with competitive bidding requirements (except in emergencies).
- Advertisements of the proposals for bids were made.
- Procedures used for opening bids were in agreement with those required (i.e., opened at the next meeting of the board, publicly read by the fiscal officer, and entered into the board's records).
- Adequate documentation is on file to support the board's decisions to select the lowest responsible bid as well as reject any bids.

Document whether there is any apparent interest in the contract by a public official. Due to heightened public interest in these situations, we would often deem violations to be material noncompliance and could affect our assessment of the control environment and affect our fraud assessment in the FRAQ.

**Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):**

## Section I: General

**2-20 Compliance Requirement:** Ohio Rev. Code Section 9.48 - Joint contracting and purchasing programs for **counties** and **townships**.

**Summary of Requirements:** A county or township may permit one or more other counties or townships to participate in contracts into which it has entered to acquire equipment, materials, supplies, or services, and may charge such participant(s) a reasonable fee to cover any additional costs incurred as a result of their participation. [RC 9.48 (B)(1)]

A county or township may participate in a joint purchasing program operated by or through a national or state association of political subdivisions for which they are eligible for membership. HB 268 also allows counties or townships to purchase supplies or services from another party, including another political subdivision, instead of through the association if the county or township can purchase the supplies or services from the other party upon equivalent terms, conditions, and specifications but at a lower price than it can through the joint purchasing program. [RC 9.48 (B)(2)]

A county or township may also participate in a contract the Federal government offers, including those the Federal General Services Administration offers.<sup>15</sup> [9.48 (B)(3)]

Purchases under another entity's contract are exempt from a county or township's competitive bidding procedures if the other entity awarded the contract pursuant to a publicly-solicited request for proposals or competitive selection procedure. No county or township shall participate in a joint purchasing contract if it has already received bids for such acquisition unless participation enables it to make the acquisition at a lower price. [RC 9.48 (C)]

A county or township eligible to participate in a national or state association's joint purchasing program may acquire supplies and services from another entity or subdivision without competitive bidding, if (1) the county or township can purchase those supplies and services from the other party upon equivalent terms and specifications and (2) if acquired at a lower price than the association's contracts. The county or township must maintain documentation it satisfied conditions (1) and (2). [9.48(D)]

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> <li>• Policies and Procedures Manuals</li> <li>• Knowledge and Training of personnel</li> <li>• Tickler Files/Checklists</li> <li>• Legislative and Management Monitoring</li> <li>• Management's identification of changes in laws and regulations</li> <li>• Management's communication of changes in laws and regulations to employees</li> </ul>		

<sup>15</sup> For information about the General Services Administration, see [www.gsa.gov](http://www.gsa.gov).

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

By reading the minutes, scanning disbursements, and inquiry, determine if the county or township has entered into joint contracting or purchasing programs.

For joint contracts, based on your reading of the minutes, determine if the entity did not competitively bid the project, or documented that the joint acquisition price was lower than the bids received.

<p><b>Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):</b></p>
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**2-21 Compliance Requirements:** Ohio Rev. Code Sections 153.50, 153.51, and 153.52 - Separate bids and contracts required for each class of work on buildings and other structures (e.g., institutions, bridges, culverts, or improvements).

**Summary of Requirements:** When a project is to be contracted out, the entity required to bid such project shall group the work to be done into the specifically listed classes below before drawing up the bid specifications. The entity is not required to solicit separate bids for the specifically listed classes below if the estimated cost is less than five thousand dollars. Allowing them to group certain types of work into one bid streamlines the bidding procedure.

The separate classes are: plumbing and gas fitting; steam and hot water heating; ventilating apparatus; steam power plant; and electrical equipment; if the estimated cost of such branch or class of work exceeds \$5,000 [153.50].

In the situation, however, where an entity is able to bid the entire project in one bid and that bid is lower than the bids are if separately bid by branches or classes, the entity may then bid the project as one single bid. The entity may also bid groups or branches together, but not encompassing the whole project, if the aggregate of the bids is lower than the total sum of the individual bids for the classes or branches included in the single bid. Finally, if bidding the project by classes or groups does not allow the entity to include all the work required into the bids, and grouping classes or groups together would allow the entity to do so, the entity may then aggregate the classes or branches together into a single bid that would allow them to bid out the work required by the project but not otherwise included in the bidding process.

The contract must be awarded to the lowest and best separate bidder.

The contract must be made directly with the bidder(s) upon the terms, conditions, and limitations of the bid.

The above requirements do not apply to the erection of buildings and other structures which cost less than \$50,000. When an entity is to bid ~~a project work on buildings and other structures~~, the cost of which is greater than \$50,000, it shall require separate and distinct bids to be made for each of the following branches or classes of work to be performed if the estimated cost for that branch or class is \$5,000 or more: (1) plumbing and gas fitting; (2) steam and hot-water heating, ventilating apparatus and steam-power plant; (3) electrical equipment.

Multiple branches or classes may not be combined unless the separate bids do not cover all the work and materials required or the bids are lower than the separate bids in the aggregate. Also, the public authority to whom a contract is awarded may assign any or all of its interest in the contract as long as it is agreed to in the award of the contract.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> <li>• Policies and Procedures Manuals</li> <li>• Knowledge and Training of personnel</li> <li>• Tickler Files/Checklists</li> <li>• Legislative and Management Monitoring</li> <li>• Management's identification of changes</li> </ul>		

in laws and regulations <ul style="list-style-type: none"> <li>• Management's communication of changes in laws and regulations to employees</li> </ul>		
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### **Suggested Audit Procedures - Compliance (Substantive) Tests:**

Read a few bids and contracts (in selecting payments to test, consider selecting from higher-dollar payments and perhaps one or two smaller payments (i.e. payments slightly over the competitive bidding threshold) for erection, repair, alteration, improvement, and rebuilding of public buildings, bridges, and culverts and determine that:

- The government documented the classification structure for the bid requests in a manner that supports that the government was likely to receive the lowest possible combined or separate bids for the work;
- The contract was awarded to the lowest and best separate bidder;
- The contract was made directly with the contractor(s) upon the terms, conditions, and limitations of the bid.

**Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):**



**2-22 Compliance Requirements:** Ohio Rev. Code Sections 4115.04 and 4115.05 - Prevailing wage rates in public works contracts.<sup>16</sup>

**Summary of Requirements:** The prevailing wage laws essentially require an entity to obtain the prevailing wages in their area for the types of labor required to complete the project, prior to bidding and again when the contract is awarded, if the award is made more than 90 days after the original prevailing wage is determined. They then need to make sure that the contractors who are awarded the contracts agree, in the contract, to pay the prevailing wage.

Every public authority authorized to contract for or construct with its own forces a public improvement, before advertising for bids or undertaking such construction with its own forces, shall have the State director of Commerce determine the prevailing rates of wages of mechanics and laborers in accordance with section 4115.05 of the Rev. Code for the class of work called for by the public improvement, in the locality where the work is to be performed. Such schedule of wages shall be attached to and made part of the specifications for the work, and shall be printed on the bidding blanks where the work is done by contract. [4115.04(A)]

“Construction” means either of the following:

1. Any new construction of any public improvement, the total overall project cost of which is fairly estimated to be more than fifty thousand dollars adjusted biennially by the director of commerce pursuant to section 4115.034 of the Rev. Code and performed by other than full-time employees who have completed their probationary periods in the classified service of a public authority; [4115.03(B)(1)]<sup>17</sup>
2. Any reconstruction, enlargement, alteration, repair, remodeling, renovation, or painting of any public improvement, the total overall project cost of which is fairly estimated to be more than fifteen thousand dollars adjusted biennially by the administrator pursuant to section 4115.034 of the Rev. Code and performed by other than full-time employees who have completed their probationary period in the classified civil service of a public authority. [4115.03(B)(2)]<sup>5</sup>

The State prevailing wage requirements (Ohio Rev. Code Sections 4115.03 – 4115.16) do not apply to:

- Public improvements partially or wholly funded by the Federal government or any of its agencies (whether by grant or loan), if Federal minimum wage requirements (i.e. Davis Bacon) apply to mechanics or laborers.
- A participant in a work activity, developmental activity or an alternative work activity under ORC 5107.40 to 5107.69, when a public authority directly uses the labor of the participant to

<sup>16</sup> Bidding and prevailing wage requirements are independent of each other. A threshold dollar amount must first be met before prevailing wage requirements apply. It is possible to meet the bidding threshold without meeting the prevailing wage threshold.

<sup>17</sup> There are separate thresholds for new construction and reconstruction.

- Effective January 1, 2006 through December 31, 2007, the thresholds are \$69,853 (new) and \$20,955 (reconstruction).
- Effective January 1, 2008 through December 31, 2009, the thresholds were \$73,891 (new) and \$22,166 (reconstruction).
- Effective January 1, 2010 through December 31, 2011, the thresholds are \$78,258 (new) and \$23,447 (reconstruction).

construct a public improvement if the participant is not engaged in paid employment or subsidized employment pursuant to the activity.

- For public improvements undertaken by boards of education or educational service centers.
- The State prevailing wage law does not apply to county hospitals if none of the construction funds, including funds to repay any amounts borrowed, have been secured by obligations pledging the full faith and credit of the State, the county, a township, or a municipal corporation, or are funds that have been generated by the levy of a tax by the State, the county, a township, or a municipal corporation [4115.04(B)].

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> <li>• Policies and Procedures Manuals</li> <li>• Knowledge and Training of personnel</li> <li>• Tickler Files/Checklists</li> <li>• Legislative and Management Monitoring</li> <li>• Management's identification of changes in laws and regulations</li> <li>• Management's communication of changes in laws and regulations to employees</li> </ul>		

#### **Suggested Audit Procedures - Compliance (Substantive) Tests:**

Select a few contracts subject to prevailing wages and perform the following:

Inquire if the contract is funded in whole or part by federal grant or contract. If so, determine whether Federal prevailing wage laws (the Davis Bacon Act) apply.

Inspect contracts exceeding the threshold amounts for the required "prevailing wage" language.

Inquire if any projects were sublet. If so, inspect the contractor's contract for language authorizing the subletting.

Compare the date of prevailing wage establishment with the contract date. If more than 90 days elapsed between the two dates, determine that a prevailing wage redetermination was obtained by inspecting that document.

If a county hospital has claimed the exception provided by Section 4115.04 (B), review project documents and legislation authorizing the project, make inquiries, and perform such other procedures to determine whether financing sources meet the criteria of Section 4115.04(B).

<b>Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):</b>
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**New: HB 1, 128<sup>th</sup> GA**  
**Effective: 10/16/09**

**2-23 Compliance Requirements:** Ohio Rev. Code Section 9.314 – Reverse Internet auction.

**Summary of Requirements:**

Any political subdivision purchasing services or supplies<sup>18</sup> subject to competitive bidding requirements may purchase the services or supplies by reverse auction in lieu of written proposals. [Section 9.314(B)]

A political subdivision shall solicit proposals through a request for proposals. The request for proposals shall state the relative importance of price and other evaluation factors. The political subdivision shall give notice of the request for proposals in accordance with the rules it adopts. [Section 9.314( C )]

A political subdivision may award a contract to the offeror whose proposal the political subdivision determines to be the most advantageous to the political subdivision, taking into consideration factors such as price and the evaluation criteria set forth in the request for proposals. The contract file shall contain the basis on which the award is made. [Section 9.314(E)]

The rules that a political subdivision adopts under this section may require the provision of a performance bond, or another similar form of financial security, in the amount and in the form specified in the rules. [Section 9.314(F)]

As used in this Ohio Rev. Code Section 9.314:

- **“Contracting authority”** has the same meaning as in section 307.92 of the Rev. Code.
- **“Political subdivision”** means a municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities only in geographic areas smaller than that of the state and also includes a contracting authority.
- **“Reverse auction”** means a purchasing process in which offerors submit proposals in competing to sell services or supplies in an open environment via the internet.
- **“Services”** means the furnishing of labor, time, or effort by a person, not involving the delivery of a specific end product other than a report which, if provided, is merely incidental to the required performance. “Services” does not include services furnished pursuant to employment agreements or collective bargaining agreements.
- **“Supplies”** means all property, including, but not limited to, equipment, materials, other tangible assets, and insurance, but excluding real property or interests in real property.

<sup>18</sup> Effective 10/16/09, Amended Substitute House Bill 1 amended R.C. § 9.314 to prohibit a political subdivision from purchasing 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. [Section 9.314(B)(2)]

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> <li>• Policies and Procedures Manuals</li> <li>• Knowledge and Training of personnel</li> <li>• Tickler Files/Checklists</li> <li>• Legislative and Management Monitoring</li> <li>• Management's identification of changes in laws and regulations</li> <li>• Management's communication of changes in laws and regulations to employees</li> </ul>		

### **Suggested Audit Procedures - Compliance (Substantive) Tests:**

If the local government has elected to use reverse internet auction in lieu of sealed competitive bidding as may be otherwise required, review the minutes and obtain related contract files and review the documentation for a few auctions to determine whether:

- The entity adopted rules governing the use of reverse internet auction and whether the entity followed significant provisions in those rules, including giving notice of the Request For Proposal (RFP) and required submission of financial security (if any). (Retain a copy of the rules (or relevant excerpts) in the working papers).
- Proposals were made using RFPs and the RFPs included an indication of the relative importance of price and other proposal evaluation factors.
- The contract file documents the basis on which the selected proposal was awarded. Be alert for obvious departures from the evaluation factors and related importance as stated in the RFP.

**Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):**

**Note: To enhance efficiency, consider including the tests described at the end of this step with the OCS Chapter 2 steps referenced at the end of this step. Noncompliance findings resulting from testing this would not normally be deemed material noncompliance.**

**2-24 Compliance Requirements:** Ohio Rev. Code Section 9.24(A), (B), (D), (E), and (G); and AG Opinion 2004-014 – Unresolved findings for recovery

**Summary of Requirements:** No state agency and no political subdivision<sup>19</sup> receiving more than \$50,000 in state funds in a fiscal year (per OAG 2004-014) shall award a contract for goods, services, or construction, paid for in whole or in part with state funds, to a person [this section defines “person” as an individual, corporation,<sup>20</sup> business trust, partnership, and association; see Ohio Rev. Code Section 1.59] against whom a finding for recovery has been issued by the auditor of state, if the finding for recovery is unresolved. (Ohio Rev. Code Section 9.24(A))

AG Opinion 2004-014 and Ohio Rev. Code Section 9.24 provided the following definitions which are further discussed in AOS Bulletin 2004-006:

Per OAG 2004-014, the term “contract” only applies to contracts requiring a competitive contracting process. This does not include employment contracts, ODAS state term purchases, or transactions made via other means such as purchase orders, credit cards, debit cards, etc. Senate Bill 189 also indicated that a contract is considered to be awarded when it is entered into or executed, irrespective of whether the parties to the contract have exchanged money.

Ohio Rev. Code Section 9.24 (G)(1)(a) states that the only contracts subject to the provisions of the statute are those contracts in which the cost for the goods, services, or construction exceeds \$25,000. Division (G)(1)(b) provides an exception to this rule and applies the statute to a contract awarded to any person who, in the previous fiscal year, received contracts from the state agency or political subdivision, the aggregate of which exceeded \$50,000.

Per OAG 2004-014, the term “state funds” means moneys, other than federal funds, that are held in the state treasury and appropriated by the General Assembly in accordance with Ohio Constitution Article II, § 22 for expenditure by a state agency or political subdivision. If state funds are commingled with local funds, a contract paid with those funds would be presumed to include both state and local funds. In contrast, if a political subdivision segregates its funds and pays for a contract with only local funds, the contract would not be subject to Ohio Rev. Code 9.24.

For the purposes of Ohio Rev. Code Section 9.24(B), 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 state agency or political subdivision to whom the money was owed;
2. The debtor has entered into a repayment plan that is approved by the attorney general and the state agency or political subdivision to which the money identified in the finding for recovery is

<sup>19</sup> The term “political subdivision” refers to any county, city, village, township, park district, or school district as defined in Ohio Rev. Code Section 9.82.

<sup>20</sup> It was unclear in the initial version of Ohio Rev. Code Section 9.24 whether a finding for recovery issued against a corporation also applied to individuals within the corporations, and vice versa. Ohio Rev. Code Section 9.24 (H)(5) now clarifies that the term “person” applies only to the person actually named in the finding for recovery.

owed. A repayment plan may include a provision permitting a state agency or political subdivision to withhold payment to a debtor for goods, services, or construction provided to or for the state agency or political subdivision pursuant to a contract that is entered into with the debtor after the date the finding for recovery was issued.

3. The attorney general waives a repayment plan described in division 9.24(B)(2) of this section for good cause;
4. The debtor and state agency or political subdivision 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 state agency or political subdivision desiring to enter into a contract with a debtor certifies, and the attorney general concurs, that all of the following are true:
  - a. Essential services the state agency or political subdivision is seeking to obtain from the debtor cannot be provided by any other person besides the debtor;
  - b. Awarding a contract to the debtor for the essential services described in division 9.24(B)(5)(a) is in the best interest of the state;
  - c. Good faith efforts have been made to collect the money identified in the finding of recovery.
6. The debtor has commenced an action to contest the finding for recovery and a final determination on the action has not yet been reached.

The Auditor of State shall maintain a database, accessible to the public, listing persons against whom an unresolved finding for recovery has been issued, and the amount of the money identified in the unresolved finding for recovery. The Auditor of State currently has this database operational and the database will be updated periodically in accordance with Ohio Rev. Code Section 9.24(D). The database is available at the Auditor of State's website: [www.auditor.state.oh.us](http://www.auditor.state.oh.us)

Before awarding a contract for goods, services, or construction, paid for in whole or in part with state funds, a state agency or political subdivision shall verify that the person to whom the state agency or political subdivision plans to award the contract does not appear in this Auditor of State database.

Under Ohio Rev. Code Section 9.24, bonding companies, insurance companies, self-insurance pools, joint self-insurance pools, risk management programs, or joint risk management programs are exempt from the provisions of this statute unless a court has entered a final judgment against the company and the judgment has not yet been satisfied. Medicaid provider agreements (see Ohio Rev. Code Chapter 5111) or payments or provider agreements under disability assistance medical assistance (Ohio Rev. Code Chapter 5115) are also exempted. Lastly, if federal law dictates that a specified entity provide the goods, services, or construction for which a contract is being awarded, the entity is exempt, regardless of whether that entity has an unresolved finding for recovery.

Also, ORC 9.24 (G)(1)(a) states that the only contracts subject to the provisions of the statute are those contracts in which the cost for the goods, services, or construction exceeds \$25,000. Division (G)(1)(b) provides an exception to this rule and applies the statute to a contract awarded to any person who, in the previous fiscal year, received contracts from the state agency or political subdivision, the aggregate of which exceeded \$50,000. Consequently, state agencies and political subdivisions should immediately review their contracts awarded in the previous fiscal year in order to identify persons to whom this aggregating provision applies. *In summary, ORC 9.24 applies only to contracts which are the subject of a*

*competitive contracting process and which either exceed \$25,000 or meet the aggregating criteria described above.*

### Sample Questions and Procedures

You should test this in conjunction with tests of procurements subject to competitive bidding. See the related RC 9.24 step in OCS steps:

- 2-1 Municipalities
- 2-5 Counties
- 2-7 Townships
- 2-10 School districts
- 2-11 School districts

Note: R.C. 9.24 applies to state colleges and universities, and the two state medical colleges. ***R.C. 9.24 does not apply to community schools.***

R.C. 9.24 does not apply to community colleges, libraries (except for the State Library of Ohio), or hospitals.

<p><b>Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):</b></p>
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