**The Ohio Compliance Supplement Optional Procedure Manual (OPM)**

***The Auditor of State selects a few audits randomly each year, to test requirements listed in this OCS Optional Procedures Manual. These requirements represent additional tests of compliance which are not included in Chapters 1 through 3 of the Ohio Compliance Supplement. However, the omission of these requirements from the Supplement does not lessen a government’s responsibility for compliance and for instituting controls it believes are necessary to assure compliance with any laws and regulations that apply to the government. See the OCS Implementation Guide for more information about the Auditor of State’s compliance testing requirements.***

***Tests of the compliance requirements included in this OPM will help ensure public officials entrusted with public resources are meeting their responsibility for complying with these laws and regulations.***

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***Section A: Budgetary Requirements***

**General Budgetary Requirements**

**O-1 Compliance Requirement:** Ohio Rev. Code Section 5705.36 Certification of available revenue.

**Summary of Requirement:**  On or about the first day of each fiscal year, the fiscal officers of subdivisions and other taxing units are to certify to the county auditor the total amount from all sources available for expenditures from each fund in the tax budget along with any unencumbered balances existing at the end of the preceding year.

Except, a taxing authority shall *exclude* the following from unencumbered fund balances:

* Budget stabilization reserves [§ 5705.13, 5705.29(G)]
* Nonexpendable trust principal balances and any additions to principal not from the fund’s reinvested earnings [§ 5705.131]
* The balance in a township reserve balance account established under section 5705.132 of the Ohio Rev. Code.

The certification for a school district must separately show the amount of any notes and unpaid outstanding expenses that were due prior to June 30 which are to be paid from advancements of property tax settlement money.

**5705.28(B)(2)Requirements for entities that do not levy taxes**

If an entity levies taxes, the sections above apply. However, some entities with taxing authority do not levy taxes. When they do not levy taxes, Ohio Rev. Code §5705.28 (B)(2) permits a comparable, but somewhat streamlined budget process. Ohio Rev. Code §5705.28(B)(2) requires entities to follow §5705.36.

**Suggested Audit Procedures:**

Inspect the copy of the certificate retained by the subdivision showing the total amount from all sources which is available for expenditures and the balances existing at the end of the preceding year.

Through inquiry, knowledge of the client, and review of documents (such as the record of minutes and accounting ledgers), determine whether the client has established any of the reserve balance accounts, or nonexpendable trust funds described.

If reserve balance accounts or nonexpendable trust funds have been established, calculate or inspect the client’s or budget commission’s calculations that the certification excludes balances in those accounts/funds. (That is, these amounts are not available for appropriation.)

For school districts, calculate or inspect the client’s or budget commission’s calculations that the certification includes any spending reserve available for appropriation during the current fiscal year.

For school districts receiving an advance on the August property tax settlement, determine through inquiry, inspection of ledgers, vouching, or other such means, whether significant payments were made on notes or outstanding expenses which were due prior to June 30 (since some school districts routinely request advances to take advantage of short-term investment opportunities, you should consider whether these payments could have been made in the absence of the advance, without placing undue distress on the school district).

If such notes or outstanding expenses have been identified, compare the amounts to the amounts separately identified on the school district’s copy of the certificate.

**Audit Procedures, Government Personnel Interviewed and Dates:**

**Conclusion (management letter comments):**

**O-2 Compliance Requirement:** Ohio Rev. Code Section 5705.36 – Amended Certificates; 5705.39 - Appropriations limited by estimated resources.

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| ***Note:*** Auditors should not cite entities in Fiscal Emergency for violating ORC 5705.10, 5705.36, 5705.39 or ORC 5705.41 (A), (B) or (C) for funds that were already in a deficit at the time a Fiscal Emergency was declared.  Auditors should continue to cite entities for healthy funds (those with positive cash balances at the time of declaration) that experience a deficit after declaration[[1]](#footnote-1). Therefore, auditors should compare fund deficits during the audit period to the funds that were in deficit at the point when the Fiscal Emergency was originally declared to determine whether any new funds have incurred a deficit balance.  **IMPORTANT: In order to determine which funds were in a deficit at the time of the declaration auditors should review the declaration of Fiscal Emergency available on the Auditor of State website audit search. The Financial Supervisor (LGS) can assist auditors determining which funds were originally part of the Fiscal Emergency deficit declaration, if needed.** |

**Summary of Requirements:** Ohio Revised Code Section 5705.39 provides in part that total appropriations from each fund shall not exceed the total estimated resources. No appropriation measure is effective until the county auditor files a certificate that the total appropriations from each fund do not exceed the total official estimate or amended official estimate.

Note: If a government fails to receive the county auditor’s certifications that appropriations do not exceed estimated resources, governments may present the appropriations passed by the legislative authority on the financial statements. A noncompliance citation is still appropriate if the violation is material. However, no citation should be made if the government requested the county auditor’s certificate and the county auditor failed to respond.

As discussed in Auditor of State Bulletin 97- 012, if a local government is participating in a grant or loan program whereby proceeds will be received after the expenditures are incurred, it is possible that if properly budgeted, appropriations for one fiscal year will exceed the available amount on the certificate of estimated resources. As discussed in OPM section O-3, Ohio Rev. Code §5705.42 makes formal legislative appropriation for certain grants and loans unnecessary. As such, we believe it is equally unnecessary to require a subdivision to seek certification of the amended appropriation measure for purposes of Ohio Rev. Code §5705.39. However, the fiscal officer should record the appropriation amount in the accounting system and include the appropriated amounts on the (amended) certificate to properly monitor budget versus actual activity. An advance should be used to prevent a negative fund balance. *(School districts are permitted to incur deficit fund balances in their special funds* ***under certain circumstances****. Refer to OCS section 1-5 for additional guidance.)*

**Project-Length Budgeting**

As described in AOS Bulletin 97-12, once a grant is awarded or a loan is approved by the Federal or State government, the fiscal officer must obtain an Official Certificate of Estimated Resources or an Amended Certificate of Estimated Resources for all or part of the grant or loan, based on what is to be received in the fiscal year. Any money expected to be received in the next year should be reflected on the next year’s certificate. However, if the local government, with the exception of a school district, has budgeted on a project-length basis pursuant to Ohio Rev. Code § 9.34(B), the fiscal officer must obtain an Official Certificate of Estimated Resources for the entire project-length fiscal period.

The fiscal officer shall record the appropriations in accordance with the terms and conditions of the grant or loan agreement. In addition, prior to recording the appropriations, the legislative authority must pass a resolution amending its appropriation measure (Ohio Rev. Code § 5705.40). If the grant or loan will be expended over a period longer than the current fiscal year, only the amount estimated to be obligated during the current fiscal year should be recorded as appropriated. The remainder of the project should be appropriated in the subsequent year(s).

In situations where the grant or loan proceeds will be received after the expenditures are incurred (i.e., on a reimbursement basis), it is possible that the local government will have appropriated an amount for one fiscal year that is in excess of the amount reflected as available on the Amended Certificate of Estimated Resources. This situation will NOT constitute a noncompliance citation during an audit.

As discussed in bulletin 1997-010, Ohio Rev. Code § 5705.36 provides, in part, that upon the determination by a municipal fiscal officer, school district treasurer or by a county auditor that the revenue to be collected by the municipality, school district or county, respectively, will be greater or less than the amount included in the current official certificate, the fiscal officer shall

[In the case of a school district] certify the amount of the deficiency or excess to the commission, and the commission shall certify an amended official certificate reflecting the deficiency or excess.

[In the case of a county or municipal corporation] certify the amount of the deficiency or excess to the [budget] commission, and if the commission determines that the [fiscal officer’s] certification is reasonable, the commission shall certify an amended official certificate reflecting the deficiency or excess.

The total appropriations made during the fiscal year from any fund shall not exceed

the amount set forth as available for expenditure from such fund in the official

certificate of estimated resources, or any amendment thereof, certified prior to the

making of the appropriation or supplemental appropriation.

The intent of this statutory requirement is to require the fiscal officer to obtain such a “reduction”

certificate when it appears that budgetary resources will fall short of earlier estimates, reducing

the possibility that deficit spending will occur.

Ohio Rev. Code § 5705.36 ***does not*** require that municipal fiscal officers, school district treasurers and county auditors certify changes to the budget commission so as to obtain an amended certificate of estimated resources which matches actual resources for the year to the penny (a “zero variance”). Citations for noncompliance with this provision will not be issued by

the Auditor of State’s Office for circumstances outlined in OPM Appendix 5705.36 at the end of this Manual. Additionally, citations for noncompliance with this provision will not be issued by the Auditor of State’s Office unless other budgetary violations are present under Ohio Rev. Code § 5705.39 or Ohio Rev. Code § 5705.41(B) (See OPM section O-3).

**5705.28(B)(2)Requirements for entities that do not levy taxes**

If an entity levies taxes, the sections above apply. However, some entities with taxing authority do not levy taxes. When they do not levy taxes, Ohio Rev. Code §5705.28 (B)(2) permits a comparable, but somewhat streamlined budget process. Ohio Rev. Code §5705.28(B)(2) requires entities to follow §5705.36. While Ohio Rev. Code §5705.39 does not apply, §5705.28(B)(2)(c) prohibits appropriations from exceeding estimated revenue (i.e. receipts + beginning unencumbered cash).

**Suggested Audit Procedures:**

Compare the appropriation measures for selected funds and determine that the appropriations do not exceed the official or amended estimate of resources (estimated revenues plus unencumbered fund balances) as of the fiscal year end. You should base the extent of this testing on your evaluation of controls and the control environment. Audit documentation should describe your reasons for the extent of this test.

Except: if the government is in fiscal emergency, and you are testing a fund with a beginning unencumbered deficit, compare appropriations to estimated receipts instead of to estimated resources.

If the government is not in fiscal emergency, for funds in violation of 5705.39, compare actual resources (i.e. beginning unencumbered fund balance + actual receipts) to appropriations as of the fiscal year end. If actual resources are less than appropriations and do not meet any of the exceptions listed in OPM Appendix 5705.36 at the end of this Manual, also cite 5705.36 for not requesting a reduced certificate.

For grants or loans awarded by the Federal or State government, determine whether the entity implemented project-length budgeting pursuant to Ohio Rev. Code § 9.34(B). If so, determine whether the fiscal officer obtained an Official Certificate of Estimated Resources for the entire project-length fiscal period and that only the amount estimated to be obligated during the current fiscal year was recorded as appropriated for advance-funded grants and loans. If the local government appropriated amounts beyond fiscal year end, determine whether the exception above was met (i.e. reimbursable grants or loans).

Determine whether the county auditor sent a “does not exceed” certificate to the government. A noncompliance citation is appropriate if the violation is material; however, the government may present the appropriations passed by the legislative authority in the budgetary financial statements.

*Auditors should not cite the government if a certificate was requested and the county auditor failed to respond.*

**Audit Procedures, Government Personnel Interviewed and Dates:**

**Conclusion (management letter comments):**

**O-3 Compliance Requirements:** Ohio Rev. Code Sections 5705.36; 5705.41 (A) and (B); and 5705.42 Restrictions on appropriating and expending money.

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| ***Note:*** Auditors should not cite entities in Fiscal Emergency for violating ORC 5705.10, 5705.36, 5705.39 or ORC 5705.41 (A), (B) or (C) for funds that were already in a deficit at the time a Fiscal Emergency was declared.  Auditors should continue to cite entities for healthy funds (those with positive cash balances at the time of declaration) that experience a deficit after declaration[[2]](#footnote-2). Therefore, auditors should compare fund deficits during the audit period to the funds that were in deficit at the point when the Fiscal Emergency was originally declared to determine whether any new funds have incurred a deficit balance.  **IMPORTANT: In order to determine which funds were in a deficit at the time of the declaration auditors should review the declaration of Fiscal Emergency available on the Auditor of State website audit search. The Financial Supervisor (LGS) can assist auditors determining which funds were originally part of the Fiscal Emergency deficit declaration, if needed.** |

**Summary of Requirements:**

The authorization of a bond issue is ***deemed an appropriation***[[3]](#footnote-3) of the proceeds of the bond issue for the purpose for which such bonds were issued. No expenditure shall be made from any bond fund until first authorized by the taxing authority. [Section 5705.41(A)].

Similarly, Federal and State grants or loans are “***deemed appropriated*** for such purpose by the taxing authority” as provided by law and shall be recorded as such by the fiscal officer of the subdivision, and is deemed in process of collection [5705.42].

No subdivision or taxing unit is to expend money unless it has been appropriated. [Section 5705.41(B)].

As discussed in bulletin 1997-010, Ohio Rev. Code § 5705.36 provides, in part, that upon the determination by a municipal fiscal officer, school district treasurer or by a county auditor that the revenue to be collected by the municipality, school district or county, respectively, will be greater or less than the amount included in the current official certificate, the fiscal officer shall

[In the case of a school district] certify the amount of the deficiency or excess to the commission, and the commission shall certify an amended official certificate reflecting the deficiency or excess.

[In the case of a county or municipal corporation] certify the amount of the deficiency or excess to the [budget] commission, and if the commission determines that the [fiscal officer’s] certification is reasonable, the commission shall certify an amended official certificate reflecting the deficiency or excess.

The total appropriations made during the fiscal year from any fund shall not exceed

the amount set forth as available for expenditure from such fund in the official

certificate of estimated resources, or any amendment thereof, certified prior to the

making of the appropriation or supplemental appropriation.

The intent of this statutory requirement is to require the fiscal officer to obtain such a “reduction”

certificate when it appears that budgetary resources will fall short of earlier estimates, reducing

the possibility that deficit spending will occur.

Ohio Rev. Code § 5705.36 ***does not*** require that municipal fiscal officers, school district treasurers and county auditors certify changes to the budget commission so as to obtain an amended certificate of estimated resources which matches actual resources for the year to the penny (a “zero variance”). Citations for noncompliance with this provision will not be issued by

the Auditor of State’s Office for circumstances outlined in OPM Appendix 5705.36 at the end of this Manual. Additionally, citations for noncompliance with this provision will not be issued by the Auditor of State’s Office unless other budgetary violations are present under Ohio Rev. Code § 5705.39 (See OPM Section 1-2) or Ohio Rev. Code § 5705.41(B).

**5705.28(B)(2)Requirements for entities that do not levy taxes**

If an entity levies taxes, the sections above apply. However, some entities with taxing authority do not levy taxes. When they do not levy taxes, Ohio Rev. Code §5705.28 (B)(2) permits a comparable, but somewhat streamlined budget process. Ohio Rev. Code §5705.28(B)(2) requires these entities to follow §5705.41(B) and so they cannot disburse more than appropriated.

**Suggested Audit Procedures:**

For selected funds compare total expenditures plus contract commitments (including outstanding encumbrances) from each fund versus appropriations and determine if the expenditures and commitments are within the appropriations for the tested funds.

For selected “line items,” compare total expenditures and contract commitments (including outstanding encumbrances) at the legal level of control within selected funds with appropriations. Determine if the expenditures and commitments are within selected appropriated funds at the legal level of control.

For funds in violation of 5705.41(B), compare actual resources (i.e. beginning unencumbered fund balance + actual receipts) to appropriations as of the fiscal year end. If actual resources are less than appropriations and do not meet any of the exceptions listed in OPM Appendix 5705.36 at the end of this Manual, also cite 5705.36 for not requesting a reduced certificate. *This may be performed in conjunction with OPM step O-2 above.*

**Audit Procedures, Government Personnel Interviewed and Dates:**

**Conclusion (management letter comments):**

**Budgetary Requirements for Revenues, Funds, and Transfers**

**O-4 Compliance Requirements:** Ohio Rev. Code Sections 5705.02, 5705.07 and 5705.18 and Article XII, Section 2 of the Constitution of the State of Ohio - Ten mill limitation. (These tests apply only to years in which inside or outside millage increases. That is, you need not test this requirement for years in which there have been no new levies as long as there is documentation in the permanent file of voter approval for all outside millage.)

**Summary of Requirements:** Generally, the aggregate amount of taxes that may be levied on any taxable property in any one year is not to exceed ten mills on each dollar of tax valuation. (Charter governments may use a different limit authorized in their charter.) This limitation is known as the *ten mill limitation*, or *inside millage*. The ten mill limitation may only be exceeded (a) by a vote of the people, or (b) by a charter that provides for a higher limitation which may be levied without a vote of the people.

**POSSIBLE NONCOMPLIANCE RISK FACTORS:**

**Note: In assessing the risk of noncompliance, auditors should consider whether the government has obtained bond counsel for recent debt issuances. Typically, bond counsel will evaluate (and possibly opine) on a government’s compliance with the ten-mill limitation laws. A recent opinion or evaluation by bond counsel (especially during or near the current audit period) may lower the risk of noncompliance.**

**However, governments that can issue general obligation bonds without a vote of the people may be at a greater risk for noncompliance if they are already nearing the ten-mill limitation. For example, assume a subdivision within a county is at 90% of the ten-mill limitation and the county auditor subsequently reappraises and lowers property values within the subdivision by 11%. The reappraisal would cause the subdivision to exceed the ten-mill limitation.**

**Suggested Audit Procedures:**

Inspect the tax budget for the year and determine if the ten mill limitation was exceeded.

If the ten mill limitation was exceeded, inspect the document entitled *Resolution Accepting Amounts and Rates as Determined by the Budget Commission and Authorizing the Necessary Tax Levies and Certifying Them to the County Auditor*, indicating outside millage was authorized by a vote of the people or was authorized by appropriate charter provisions. Secure copies for the permanent files, if appropriate. (These tests apply only to years in which inside or outside millage increases. That is, you need not test this requirement for years in which there have been no new levies as long as there is documentation in the permanent file of voter approval for all outside millage.)

**Audit Procedures, Government Personnel Interviewed and Dates:**

**Conclusion (management letter comments):**

**O-5 Compliance Requirement:**  Ohio Rev. Code Section 5705.12 Permission to establish funds.

**Summary of Requirement:** Taxing authorities should establish the funds described in Ohio Rev. Code Sections 5705.09, 5705.121, 5705.13, 5705.131, 5709.43, 5709.75, and 5709.80 when applicable. Establishing these funds (or other funds statutes mandate) does ***not*** require Auditor of State authorization.

However, should a taxing authority desire to establish other funds not authorized in the ORC, they must obtain ***approval of the Auditor of State***. The subdivision may provide by ordinance or resolution that money derived from special sources other than the general property tax shall be paid directly into such funds.

It is necessary to request the Auditor of State’s permission to establish any fund not specifically authorized by statute or when the purpose of the fund is not identified in the Ohio Rev. Code, such as (but not limited to) §5705.09 (A) - (H). Situations requiring Auditor of State approval include:

* When management wishes to create a new fund in order to capture additional financial information about a specific source of revenue or a specific activity;
* When the fund will account for restricted gifts or bequests that will not be held in trust; and
* When management wants to impose internal restrictions on the use of otherwise unrestricted resources.

In some circumstances, the AOS deems the use of additional funds unnecessary and will not approve the request. See AOS Bulletin 99-006 for additional information.

**Suggested Audit Procedures:**

If there is evidence new funds were established during the audit period, trace funds' establishments to the minutes. Determine code section under which established.

If not established under State statute, inspect Auditor of State approval letters for funds created during the current audit period.

(As noted in step 1-4 of the OCS, if a fund is not authorized under Ohio Rev. Code Section 5705.09 or another Ohio Rev. Code section and the entity did not receive Auditor of State approval to establish the fund, propose the necessary findings for adjustment to remove the unauthorized fund(s) and place the activity in the General Fund or other appropriate fund. *(We will not apply this retroactively to funds existing from prior audit periods.))*

Read ordinances and resolutions regarding how monies derived from special sources are to be used. Trace a representative number of receipts into the funds or accounts required by the ordinances or resolutions.

**Audit Procedures, Government Personnel Interviewed and Dates:**

**Conclusion (management letter comments):**

**Additional School Budgetary Requirements**

**O-6 Compliance Requirement:** Ohio Rev. Code Section 5705.391 and Ohio Admin. Code Section 3301-92-04: School districts (and community schools per ORC Section 3314.03(A)(11)(d)) must prepare 5 year projections.

**Summary of requirements for public school districts and community schools:**

*Ohio Rev. Code section 5705.391(A)*

School boards must prepare 5 year projections of revenues and expenditures. Most of the guidance on how to prepare these projections is found in Ohio Admin. Code § 3301-92-04. The plan must be approved by resolution and submitted to the Department of Education upon the adoption of an annual appropriation measure, but no later than October 31 of any fiscal year.

A board of education must update its five year projection between April 1 and May 31 of each fiscal year and submit it to the department of education. (Ohio Admin. Code Section 3301-92-04(F)). In addition, a board of education notified under division (A) of section 5705.391 of the Ohio Rev. Code shall submit a school district approved written plan in a timely manner as required to the department of education to eliminate any current deficits and avoid the projected future deficits. [Ohio Admin. Code 3301-92-04(E)]

The board of education of a school district that is in fiscal watch status, or the financial planning and supervision commission for a school district in fiscal emergency status, must revise the school district's five year projection of revenues and expenditures so that the projection is consistent with the financial plan or financial recovery plan upon the approval of the respective plan by the Superintendent of Public Instruction. (R.C. 3316.043)

The rules allow the Auditor of State and the Ohio Department of Education to prescribe the format and content of the five year projection. These guidelines are fairly complex (see Auditor of State Bulletin 98-015 for more information). The Auditor of State and the Ohio Department of Education generally are responsible for reviewing these projections (and related assumptions) for conformity with the requirements. The independent auditor is expected to evaluate whether the data in the projections for the current period are reasonably supported by the client’s documentation.

**Summary of requirements for community schools:**

To meet this requirement, community schools must submit the document available at:

<http://www.ode.state.oh.us/GD/Templates/Pages/ODE/ODEPrimary.aspx?Page=2&TopicID=11&TopicRelationID=1437>

NOTE: Community school five-year projections are only available for the most recent fiscal year. For prior periods, auditors should contact Ohio Department of Education ([community.schools@ode.state.oh.us](mailto:community.schools@ode.state.oh.us)) to confirm a forecast was filed only if the school district cannot provide proof of submission.

You can view the projection a public school district submitted at:

<http://www.ode.state.oh.us/GD/Templates/Pages/ODE/ODEPrimary.aspx?Page=2&TopicID=11&TopicRelationID=1437>

The School’s board should approve this plan.

**POSSIBLE NONCOMPLIANCE RISK FACTORS:**

**Note: In assessing the risk of noncompliance, auditors should consider whether the school district has factored in recent changes in Ohio School Funding and Taxation laws into their projections.**

**Suggested Audit Procedures:**

Determine that the five year projection under Ohio Rev. Code Section 5705.391(A) was filed with the Department of Education by viewing the web link described above. (For prior periods, auditors should contact Ohio Department of Education to confirm a forecast was filed only if the school district cannot provide proof of submission.)

Compare actual revenues and expenditures to projections. Inspect documentation that the board updated its projections between April 1 and May 31.

If contracts, etc., subject to §5705.412 were entered into during the period, inspect documentation indicating the related five year projections were updated. (This step will be sufficiently covered by reading the assumptions and performing the steps below.)

If in fiscal watch or fiscal emergency status, determine whether the school district updated its five year projection consistent with the terms outlined in the financial plan or financial recovery plan.

Read the client’s assumptions. Perform analytical procedures and evaluate whether the assumptions are reasonable and the resulting projections are in accordance with those assumptions.

Consider if the projections indicate any possible “going concern” conditions [AU-C 570] or fiscal distress conditions.

**Audit Procedures, Government Personnel Interviewed and Dates:**

**Conclusion (management letter comments):**

**O-7 Compliance Requirement:** Ohio Rev. Code Section 5705.412 Restriction upon **school district expenditures** and certifying adequate revenues. Application: City, local, exempted village and joint vocational school districts.

**Summary of Requirements:** Ohio Rev. Code Section 5705.412 requires the **treasurer, superintendent and president of the board of education** to certify that adequate revenues will be available to maintain all personnel and programs for the current fiscal year and for a number of days in the succeeding fiscal years equal to the number of days instruction was held or is scheduled for the current fiscal year. For a school district in fiscal emergency under Ohio Rev. Code chapter 3316, the certificate shall be signed by a member of the school district’s financial planning and supervision commission (Ohio Rev. Code Section 5705.412 (B) (1) & (2)).

*Term of certificate:*

* The certificate attached to an appropriation measure covers only the fiscal year in which the appropriation measure is effective.
* The certification must be attached to all appropriation measures *except* for temporary measures when the temporary measure (1) does not appropriate more than 25 percent of the total resources available last year for any fund, (2) the measure will not be in effect for more than thirty days after the earliest date the school district could pass an annual appropriation measure, and (3) an amended certificate of available revenues has not been certified to the school district under Ohio Rev. Code §5705.36.
* The certificate attached to a **qualifying contract** covers the term of the contract.
* The certificate attached to a wage or salary schedule covers the term of the schedule.
* A “*qualifying contract”* is “. . . any agreement for the expenditure of money under which aggregate payments from the funds included in the school district’s five-year projection under section 5705.391 of the revised code [see OPM Section O-6] will exceed the lesser of the following amounts . . . ”:
  + $500,000;
  + 1% of the general fund’s total estimated revenues as certified in the school district’s most recent certificate of estimated resources under Ohio Rev. Code § 5705.36 [see OPM Section O-1]

Tax levies: The certification of an appropriation measure may not anticipate the renewal or replacement of an existing property tax levy nor the approval to extend an existing income tax levy beyond its current expiration. All other certifications may anticipate the renewal or replacement of existing property tax levies and the approval to extend an existing income tax levy beyond its current expiration (OAC 3301-92-05).

A school district must include the additional certification under Section 5705.412 along with the certification required under Section 5705.41 *except* under the following circumstances:

* for current payrolls of, or contracts of employment with, any employees or officers of the school district.[[4]](#footnote-4)
* when increasing the wages or salaries enabling the school board to comply with division (B) of Ohio Rev. Code Section 3317.13, which addresses the minimum salary schedule for teachers.

Section 5705.412 certificates *should* be executed for:

* appropriation measures (except certain temporary measures; see above)[[5]](#footnote-5);
* increased salary or wage schedules[[6]](#footnote-6) and
* any other “qualifying contracts”, including, but not limited to: 1) negotiated agreements (e.g. professional association [“union”] contracts) and, 2) contracts for benefits (e.g., major health insurance contracts)

Qualifying contracts or wage or salary schedules that have not been certified as required are considered void[[7]](#footnote-7). No payments may be made on void obligations.

Penalties: Anyone who knowingly does any of the following, is liable for the full amount paid on the obligation, up to $10,000:

* executing an obligation contrary to §5705.412,
* expending or authorizing the expenditure of public funds contrary to §5705.412, or
* authorizing or making payment of public funds on a void obligation

The Auditor of State is required to refer instances of noncompliance with any qualifying contract or wage or salary schedule to the school district’s statutory legal counsel. (ORC 5705.412(E))

School districts should maintain a continuing record of contracts which have been certified and adequate documentation to substantiate the certifications (OAC 3301-92-05(E)).

The rules for 5705.412 (Ohio Admin Code section 3301-92-05 (B) - (D)) provide guidance on projecting revenues to future periods for purposes of the certifications.

5705.412 (B)(2) authorizes a school district to enter into certain multi-year contracts without attaching the certificate of adequate resources otherwise required by law, if an “alternative” certificate authorized by the act is attached certifying the following:

(a) The contract is a multi-year contract for materials, equipment, or non-payroll services "essential to the education program of the district"; and

(b) The multi-year contract demonstrates savings over the duration of the contract as compared to costs that otherwise would have been demonstrated in a single year contract and the terms will allow the district to reduce the deficit it is currently facing in future years as demonstrated in its five-year forecast.

The alternative certificate must be signed by the treasurer and president of the board of education and the school district's superintendent; or, if the district is in a state of fiscal emergency, the alternative certificate instead must be signed by a member of the district's Financial Planning and Supervision Commission designated by the Commission.

**Suggested Audit Procedures:**

Scan minutes, contracts files, etc., to identify appropriation measures (except certain temporary measures), increased salary or wage schedules, and qualifying contracts.

Select a few appropriation measures, increased salary or wage schedules, and a few qualifying contracts for which “412" or “alternative” certificates were not executed during the fiscal year.

If a qualifying contract, etc., should have been certified and the auditor cannot obtain documentation that it was, the auditor must issue a noncompliance citation. Also, the noncompliance matter must be referred to the prosecuting attorney for the county, or the city law director in the case of a city school district, or other chief law officer of the school district (Including the statutory legal counsel on the audit report recipient spreadsheet satisfies this requirement).[[8]](#footnote-8)

Select a few qualifying contracts, etc., entered into during the fiscal year(s) under audit. Inspect the “412" or “alternative” certificates and the supporting documentation, including the five year projections that were available to school district officials at the time of the execution of the qualifying contracts, etc. Evaluate for reasonableness and conformity with the rules.

Compare qualifying contract, etc., dates with related certification dates and note any differences.

**Audit Procedures, Government Personnel Interviewed and Dates:**

**Conclusion (management letter comments):**

***Section B: Contracts and Expenditures***

**Statutory Municipalities**

**Revised: HB 509, 129th GA**

**Effective: 9/28/12**

**O-8 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 city for material and labor which exceed $~~25,000~~50,000 (increased effective for Cities September 28, 2012) are subject to competitive bidding procedures. (NOTE: This limit may not apply to some charter municipalities.) [735.05 Cities]

The competitive bidding threshold for expenditures of a village is $50,000, ~~except for Villages that have established a village administrator under R.C. 735.271.~~ [731.14 – Villages] ~~In those villages that have an established village administrator, the competitive bidding threshold is twenty-five thousand dollars.~~ [731.141 Villages with village administrator] (The $50,000 threshold was effective for Villages with a village administrator on September 28, 2012. For other Villages the $50,000 threshold went into effect in September 2011 - see the 2012 OCS.)

Competitive bidding procedures require that a contract be entered into in writing with the lowest and best bidder[[9]](#footnote-9) after advertisement of the proposal for bids for not less than two nor more than four consecutive weeks[[10]](#footnote-10) in a newspaper of general circulation within the municipality or as provided in R.C. 7.16[[11]](#footnote-11). (Article XVIII, Sec. 3 of the Ohio Constitution allows municipalities to deviate from these requirements by charter.)[735.05]

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 Doria v. Ferguson, 145 Ohio St. 12. (1945)]

Municipalities (both cities and villages) procuring professional design services 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 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.

**Suggested Audit Procedures:**

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 $50,000(cities or villages ~~with a village administrator~~) ~~or $50,000 (villages without a village administrator)~~ 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.
* 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 Procedures, Government Personnel Interviewed and Dates:**

**Conclusion (management letter comments):**

**O-9 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.

**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 Procedures, Government Personnel Interviewed and Dates:**

**Conclusion (management letter comments):**

**Counties**

**Revised: HB 509, 129th GA**

**Effective: 9/28/12**

**O-10 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~~50,000 (effective September 28, 2012) 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~~100,000 [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
* Counties procuring professional design services, over the competitive bidding threshold, 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]
* ORC 307.86(M) authorizes the use of competitive sealed proposals 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 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 ≥ $~~25,000~~50,000). [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 the bidding threshold. 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[[12]](#footnote-12) bids be opened and tabulated (i.e., summarized).

**Suggested Audit Procedures:**

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 $50,000 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 $50,000 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.

**Audit Procedures, Government Personnel Interviewed and Dates:**

**Conclusion (management letter comments):**

**O-11 Compliance Requirement:** Ohio Rev. Code §301.27 (county credit cards) and §301.29 (county procurement cards or “p-cards.”) These statutes require counties to establish policies and controls governing the use of county credit cards and p-cards.[[13]](#footnote-13)

**Summary of Requirements: 301.27 (credit cards) requirements include the following:**

Note: Ohio Rev. Code §113.40(A)(1) defines credit cards as *financial transaction devices*, which Ohio Rev. Code §301.27 defines to include credit cards, charge cards, debit cards, or prepaid or stored value cards the commissioners do ***not*** deem to be procurement cards.

1. County employees, including commissioners and appointing authorities (i.e. other elected officials), can charge *only the following* work-related expenses to credit cards:

* Food
* Transportation
* Gas & oil (only for vehicles the county owns or leases)
* Telephone
* Lodging
* Internet service providers
* Expenses for children temporarily in the care of a public children services agency

2. Appointing authorities must receive the commissioners’ approval to have credit cards.

3. The county must charge credit card expenses to appropriations established for the costs described in (1.) above. That is, the county cannot appropriate money for “credit card expenses.”

4. Unless the commissioners resolve otherwise:

* Every card holder must submit a monthly estimate of credit card charges by appropriation code. (Note: commissioners may authorize periods exceeding one month for submitting estimates.)
* The commissioners may amend the estimates, and then must “pre-certify” them, by appropriation line item total, to the auditor, who then must certify that amounts are available and appropriated under 5705.41(D) to pay these costs.

The resolution can exempt all credit cards from requirement (4), or can exempt specified cards.

5. Regardless of whether the county estimates and “pre- certifies” expenses, credit card expenses cannot exceed appropriations.

6. Commissioners can approve payments exceeding authorized card policy limits after the fact.

7. If commissioners do not waive over expenditure, the cardholder or office holder and surety are liable.

8. Institutions issuing cards can impose finance or late charges, but only if the commissioners authorize these charges.

**301.29 p-card requirements include the following:**

Note: Ohio Rev. Code §301.29 defines procurement cards as any *financial transaction device* as defined in Ohio Rev. Code §301.28 including credit cards,[[14]](#footnote-14) charge cards, debit cards, or prepaid or stored value cards the commissioners deem to be procurement cards. P-card requirements are similar to credit card requirements above, **except**:

1. The Commissioners must competitively bid with companies offering the card services.

2. Commissioners must approve, by resolution involving advice of the county auditor:

* The expenditure classes (i.e. object codes) for which employees can use these cards. (P-cards are not limited to the expense types listed for credit cards in step 1 above.).
* Limitations on the number of transactions chargeable each day, month or other period.
* Procedures for revoking the card.

3. The county auditor shall **consult with the Auditor of State** in developing controls to implement p-cards. Note: The AOS reviewed and commented on a draft p-card policy the County Auditors Association of Ohio (CAAO) prepared. If counties adopt policies consistent with the CAAO policy, we can accept it without additional consultation. Note that our comments to CAAO included recommending that each county consult with its prosecutor to assure the policy includes any county-specific modifications to conform with applicable laws.

**Suggested Audit Procedures:**

The steps below apply to both credit and p-cards, unless otherwise stated.

Obtain and review copies of existing policies for county credit cards and purchasing cards.

Compare it with the CCAO sample policy. (The policies need not be identical, but auditors should check for omissions of important elements the CCAO example includes.)

Determine who is responsible for monitoring the usage of these items. Document how they review card users and charges.

Obtain and scan the list of authorized users. Determine how the county assures only authorized personnel use the cards.

Scan a selection of credit or p-card transactions and determine whether use was by an authorized user and within the guidelines established in the policy. Include usage by the chief executive officer, chief financial officer, and elected officials in the review.

If we note unauthorized use, did the entity’s monitoring procedures identify the misuse? Was the employee notified of the improper use or was the matter otherwise appropriately corrected?

**Audit Procedures, Government Personnel Interviewed and Dates:**

**Conclusion (management letter comments):**

**Townships**

**O-12 Compliance Requirements:** Ohio Rev. Code Sections 9.48, 505.08, 505.101, 505.267, 505.37, 505.376, 505.42, 505.46, 511.12, 511.13, 515.01, 515.07, 5549.21, and 5575.01 - **Township’s** expenditures.

**Summary of Requirements**

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]

Since 2009, RC 5705.05 and .06 permits townships are to use general levy money for road and bridge purposes. 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 $50,000. [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 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. 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 $50,000. [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. 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 where the cost exceeds $50,000. 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].
* Contracts for street lighting improvements where the cost exceeds $50,000. 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 $50,000, 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 $50,000pursuant to Ohio Rev. Code Section 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 the competitive bidding threshold, 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 [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[[15]](#footnote-15) 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).

**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. 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 $50,000, 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 ≥ 15%. Determine that the township selected the lowest responsive and responsible bidder.

**Audit Procedures, Government Personnel Interviewed and Dates:**

**Conclusion (management letter comments):**

**Schools**

**O-13 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, or as provided in R.C. 7.16[[16]](#footnote-16), 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:

* an urgent necessity[[17]](#footnote-17) [Section 3313.46 (A)]
* 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, or as provided in R.C 7.16[[18]](#footnote-18), 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)]

**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.

**Audit Procedures, Government Personnel Interviewed and Dates:**

**Conclusion (management letter comments):**

**Community Schools**

**O-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.]*

**Suggested Audit Procedures:**

*[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.

**Audit Procedures, Government Personnel Interviewed and Dates:**

**Conclusion (management letter comments):**

**Hospitals**

**Revised: HB 509, 129th GA**

**Effective: 9/28/12**

**O-15 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~~50,000 (effective September 29, 2012) 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 the competitive bidding threshold, 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.)

**Suggested Audit Procedures:**

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 OPM Section for Counties 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 Procedures, Government Personnel Interviewed and Dates:**

**Conclusion (management letter comments):**

**Revised: HB 509, 129th GA**

**Effective: 9/28/12**

**O-16 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~~50,000 (effective September 28, 2012), 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~~50,000, 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.)

**Suggested Audit Procedures:**

Inquire or determine from reading the minutes or other means whether the hospital paid for work or supplies or for rebuilding or repairs exceeding the bidding threshold. 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 Procedures, Government Personnel Interviewed and Dates:**

**Conclusion (management letter comments):**

**Colleges and Universities**

**O-17 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 university branch [Section 3355.12(A)] resolves to contract for improvements exceeding $50,00019, 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.

When the board of trustees of a community college [Section 3354.16(A)], technical college [Section 3357.16(A)], or state community college district [Section 3358.10] resolves to contract for improvements exceeding $200,000[[19]](#footnote-19), 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, as provided in R.C. 7.16[[20]](#footnote-20).

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 the competitive bidding threshold, 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 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.)

**Suggested Audit Procedures:**

Inquire or determine through other means such as reading the minutes or performing analytical procedures whether improvements exceeding the bidding threshold ($50,000 for a university branch or $200,000 for a community college, state community college district, or technical college) 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 Procedures, Government Personnel Interviewed and Dates:**

**Conclusion (management letter comments):**

**Libraries**

**Revised: SB 321, 129th GA**

**Effective: 6/26/12**

**O-18 Compliance Requirements:**  Ohio Rev. Code Sections 153.65-.71 and 3375.41 - Procedure for bidding and letting of contracts over $~~25,000~~50,000 (effective June 26, 2012).

**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~~ 50,000 except in cases of urgent necessity or for the security and protection of library property, it must advertise for two weeks for sealed bids in some newspaper of general circulation in the district, as provided in R.C. 7.16[[21]](#footnote-21). 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 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 the competitive bidding threshold, 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.)

**Suggested Audit Procedures:**

Inquire or determine through other means, such as analytical procedures or reading the minutes, if payments for repairs, improvements, etc. exceeding the bidding threshold 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 the bidding threshold 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 Procedures, Government Personnel Interviewed and Dates:**

**Conclusion (management letter comments):**

**General Expenditures and Contracting**

**O-19 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:**  Except for contracts made with a construction manager at risk[[22]](#footnote-22), with a design-build firm, or with a general contracting firm, 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 separate classes are: plumbing and gas fitting; steam and hot water heating; ventilating apparatus; steam power plant; and electrical equipment [153.50].

If 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. [153.51]

The contract must be awarded to the lowest and best separate bidder if it is for a county, township, or municipal corporation or any public institution belonging thereto. If it is for the state, a school district, or any public institution belonging thereto, it must be awarded to the lowest responsive and responsible bidder. [153.52]

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

When an entity is to bid 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, except for contracts made with a construction manager at risk, with a design-build firm, or with a general contracting firm: (1) plumbing and gas fitting; (2) steam and hot-water heating, ventilating apparatus and steam-power plant; (3) electrical equipment.

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. [153.51(B)(2)]

**Suggested Audit Procedures:**

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 (county, township, or municipal corporation or any public institution belonging thereto) or the lowest responsive and responsible bidder (state, a school district, or any public institution belonging thereto);
* The contract was made directly with the contractor(s) upon the terms, conditions, and limitations of the bid.

**Audit Procedures, Government Personnel Interviewed and Dates:**

**Conclusion (management letter comments):**

**O-20 Compliance Requirements:** Ohio Rev. Code Sections 4115.04 and 4115.05 - Prevailing wage rates in public works contracts.[[23]](#footnote-23)

**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)][[24]](#footnote-24)
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 thirty-eight 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)]**Error! Bookmark not defined.**

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 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[[25]](#footnote-25).
* 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
* Any project described in divisions (D)(1)(a) to (D)(1)(e) of section 176.05 of the Revised Code;
* Public improvements undertaken by, or under contract for, a port authority as defined in section 4582.01 or 4582.21 of the Revised Code;
* Any portion of a public improvement undertaken and completed solely with labor donated by the individuals performing the labor, by a labor organization and its members, or by a contractor or subcontractor that donates all labor and materials for that portion of the public improvement project. [4115.04(B)].

**Suggested Audit Procedures:**

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).

**Audit Procedures, Government Personnel Interviewed and Dates:**

**Conclusion (management letter comments):**

**O-21 Compliance Requirements:**  Ohio Rev. Code Section 9.314 – Reverse Internet auction.

**Summary of Requirements:**

Any political subdivision purchasing services or supplies[[26]](#footnote-26) 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.

**Suggested Audit Procedures:**

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 Procedures, Government Personnel Interviewed and Dates:**

**Conclusion (management letter comments):**

**O-22 All Local Governments Compliance Requirement:** Misc. local legislative body policies; charter requirements – Establishment of policies, restrictions on use, prohibitions for government credit cards and purchasing cards.

*►Also, see Step O-11 regarding Ohio Rev. Code requirements for county credit and purchasing cards.*

**Summary of Requirements:** Most governmental entities have the authority to provide credit cards and purchasing cards for use by authorized employees. For example, the Ohio Rev. Code authorized counties, townships, park districts and agricultural societies to use credit cards.[[27]](#footnote-27) The use of these items should be specified in a policy the government’s legislative body adopts. These policies should, at a minimum, identify authorized users, guidelines for allowable use/ purchases, method of reimbursement (if personal use is allowed), specific unallowable uses, reporting, monitoring of use by appropriate levels of management, and other guidelines the legislative body deems appropriate.[[28]](#footnote-28)

Note: Effective Jan. 8, 2004, Ohio Rev. Code §3375.392(A) permits a library’s trustees to authorize its employees to use credit cards.

**Suggested Audit Procedures:**

Obtain copies of existing policies for government credit cards and purchasing cards.

Who is responsible for monitoring the usage of these items?

Review the established policies. Obtain and scan the list of authorized users.

Scan several credit card / purchasing card transactions to determine whether use was by an authorized user and within the guidelines established in the policy (include a few transactions from the chief executive officer, chief fiscal officer, and elected officials in this review).

**Audit Procedures, Government Personnel Interviewed and Dates:**

**Conclusion (management letter comments):**

***Section C: Debt***

**Section A: Entities Other Than Community Schools**

**O-23 Compliance Requirement:** 17 C.F.R. 240.15c2-12

**Summary of Requirement**: Underwriters contracting subsequent to July 3, 1995 to issue municipal securities (bonds, notes, or other secured debt instruments issued by any state or local government regardless of whether the government is a municipality) will be subject to the amended disclosure requirements of the Rule. The SEC has imposed certain requirements on underwriters (such as brokers and dealers) selling securities. The Rule prohibits underwriters from selling municipal securities unless they have performed due diligence procedures. Other requirements:

1. The underwriter must review and agree to provide a copy of the official statement to any requesting party ***when issuing / marketing securities***. (That is, this step only applies when securities are issued.) The official statement must include:
   * The terms of the proposed issue.
   * Financial and/or operating data from each person material to potential investors, including information from all obligated persons.
   * A description of the secondary market disclosure undertaking.
   * Disclosure of any past failures to make required disclosures within the past five years.
2. Annual and material event information is to be filed with the Municipal Securities Rulemaking Board (MSRB) under its Electronic Municipal Market Access (EMMA) system. "Small issuers" that enter into such agreements are required to make certain annual filings in the EMMA system. The MSRB has published a notice detailing its requirements for such filings in the EMMA system including that all submissions are to be electronic; all documents submitted must be in PDF and configured to permit documents to be saved, viewed, printed and retransmitted by electronic means (any PDF documents submitted after January 1, 2010 must also be word searchable); and all submissions must be accompanied by identifying information as prescribed by the MSRB.  Further information is available at the SEC's website and the MSRB's website: <http://emma.msrb.org/>
3. The issuer and/or obligated persons (i.e., entities directly or contingently responsible for repaying the securities) must agree in writing, to provide to all approved to the State Information Depository (SID): See the note immediately following this section for the name and address of the SID[[29]](#footnote-29).

* **Annual** financial information and operating data.
* Timely material event notices.\* Underwriters must also establish procedures to assure they receive these notices. (“Timely” is now defined as within 10 days.)
* Audited financial statements, when and if available.
* Timely notice of failure to provide required financial information.

\* Material Events defined:

* 1. Principal and interest payment delinquencies;
  2. Non-payment related defaults;
  3. Unscheduled draws on debt service reserves reflecting financial difficulties;
  4. Unscheduled draws on credit enhancements reflecting financial difficulties;
  5. Substitution of credit or liquidity providers, or their failure to perform;
  6. Adverse tax opinions, the issuance by the IRS of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security.
  7. Modifications to rights of security holders;
  8. Bond calls;
  9. Defeasances;
  10. Release, substitution, or sale of property securing repayment of the securities;
  11. Debt ratings changes[[30]](#footnote-30);
  12. Failure to provide required annual financial information on or before the date specified;
  13. Tender offers;
  14. Bankruptcy, insolvency, receivership or similar event of the issuer or obligated person;
  15. The consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, and
  16. Appointment of a successor or additional trustee, or the change of name of a trustee.

Additionally, all material events are required to be disclosed no later than 10 business days after the event.

Exemptions: Certain municipal security issues are exempted from the Rule such as:

* + - 1. Security issues of less than $1 million.
      2. Securities with maturities of 18 months or less.
      3. Securities sold in denominations of at least $100,000.

AND

* + - * + have 35 or fewer "sophisticated investors" and no re-offering of the securities; OR
        + have a maturity of nine months or less.

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

Scan copies of **annual** information submitted to the MSRB and the State Information Depository (SID). Document that such information was:

(1) filed with the MSRB/SID and

(2) whether the auditor noted any material errors or omissions to the information.(*We do not expect auditors to make time-consuming examinations of data. Instead, scan for obvious errors, such as omission of financial statements or footnotes, omission of a debt rating change~~[[31]](#footnote-31)~~, whether the contractually agreed basis of accounting was followed, whether information requiring* *audit includes an opinion, etc.)*

In conjunction with other procedures related to debt issued subsequent to July 3, 1995, document whether any material events (as defined in amended SEC Rule 15c2-12) came to the auditor’s attention. Document whether such material events were promptly disclosed to MSRB/SID.

Auditors should obtain written representations that management has transmitted all required information to MSRB/SID and underwriters required by SEC Rule 15c2-12.

Note: 17 C.F.R. 240.15c2-12 no longer requires filing with the SID. However, if no filings were made to the SID, scan the continuing disclosure agreement to confirm there was no requirement to file with the SID. If the continuing disclosure agreement required filing with the SID and no filing was made, auditors should cite the government for failing to meet the continuing disclosure agreement. Ohio State Information Depository information is as follows:

Ohio Municipal Advisory Council

9321 Ravenna Road, Unit K

Twinsburg, Ohio 44087-2445

Ph. (800) 969-6622 or (330) 963-7444

Fax (330) 963-7553

Website: <http://www.ohiomac.com> or <http://www.ohiosid.com>

E-mail: [sid\_filings@ohiomac.com](mailto:sid_filings@ohiomac.com)

**Audit Procedures, Government Personnel Interviewed and Dates:**

**Conclusion (management letter comments):**

***Section D: Accounting and Reporting***

**Courts**

**O-24 Compliance Requirement:** Ohio Rev. Code §2303.12 - Books to be kept by clerk of the court of common pleas.

**Summary of Requirements:** The clerk of the court of common pleas shall keep at least the following books: They shall be called the appearance docket, trial docket and printed duplicates of the trial docket for the use of the court and the officers thereof, journal, and execution docket.

**POSSIBLE NONCOMPLIANCE RISK FACTORS:**

**Note: Due to the large volume of over the counter cash receipts and the complexity of statutory fines and fees, the risk of noncompliance in courts is inherently higher. In assessing the risk of noncompliance, auditors should consider whether courts have historically demonstrated effective internal controls and compliance with applicable requirements. Additionally, adequate training of court personnel, segregation of duties, and supervisory monitoring controls can help mitigate the risk of noncompliance with court requirements.**

**Suggested Audit Procedures:**

1. Are the aforementioned records maintained? (Note: We will normally know this from performing financially-related audit procedures.)

2. Describe procedures used to assure that these records are complete and accurate (e.g., supervisory reviews).

**Audit Procedures, Government Personnel Interviewed and Dates:**

**Conclusion (management letter comments):**

**O-25 Compliance Requirement:** Ohio Rev. Code §2101.12 - Records to be kept by the probate court.

**Summary of Requirement:** Probate courts must maintain:

(A) Administration docket

(B) Guardian docket

(C) Civil docket

(D) Minutes journal

(E) Record of wills[[32]](#footnote-32)

(F) Execution dockets

**POSSIBLE NONCOMPLIANCE RISK FACTORS:**

**Note: Due to the large volume of over the counter cash receipts and the complexity of statutory fines and fees, the risk of noncompliance in courts is inherently higher. In assessing the risk of noncompliance, auditors should consider whether courts have historically demonstrated effective internal controls and compliance with applicable requirements. Additionally, adequate training of court personnel, segregation of duties, and supervisory monitoring controls can help mitigate the risk of noncompliance with court requirements.**

**Suggested Audit Procedures:**

1. Are the aforementioned records maintained? (Note: We will normally know most of this from performing financially-related audit procedures.)

2. Describe procedures used to assure that these records are complete and accurate (e.g., supervisory reviews).

**Audit Procedures, Government Personnel Interviewed and Dates:**

**Conclusion (management letter comments):**

**O-26 Compliance Requirements:** Ohio Rev. Code §2151.18 - Records; annual report; distribution (**juvenile court**).

**Summary of Requirement:** Juvenile courts must maintain an appearance docket and a journal related to actions on cases before the court. (Note: This journal is not an accounting record.)

An annual report must be prepared, showing the number and types of cases heard and their disposition. Copies of this report must be filed with the county commissioners. (Note: Since this report is not a financial report, we do not require testing information in it.)

**POSSIBLE NONCOMPLIANCE RISK FACTORS:**

**Note: Due to the large volume of over the counter cash receipts and the complexity of statutory fines and fees, the risk of noncompliance in courts is inherently higher. In assessing the risk of noncompliance, auditors should consider whether courts have historically demonstrated effective internal controls and compliance with applicable requirements. Additionally, adequate training of court personnel, segregation of duties, and supervisory monitoring controls can help mitigate the risk of noncompliance with court requirements.**

**Sample Questions and Procedures:**

Are the aforementioned records maintained?

Describe procedures used to assure that these records are complete and accurate (e.g., supervisory reviews).

**Audit Procedures, Government Personnel Interviewed and Dates:**

**Conclusion (management letter comments):**

**O-27 Compliance Requirement:** Ohio Rev. Code §307.515 - Fines and penalties for violation of liquor control laws and state traffic laws paid to the **county** **law library resources fund** (various courts).

Ohio Rev. Code §307.515(C) - Court of **common pleas** and **probate court** to pay fines and penalties to the county law library resources fund.

Ohio Rev. Code §307.515(A) - Allowance to the county law library resources fund from fines and penalties of **municipal courts**.

**Summary of Requirement:** These sections provide for distributing certain fines and penalties to county law library resources fund.

**POSSIBLE NONCOMPLIANCE RISK FACTORS:**

**Note: Due to the large volume of over the counter cash receipts and the complexity of statutory fines and fees, the risk of noncompliance in courts is inherently higher. In assessing the risk of noncompliance, auditors should consider whether courts have historically demonstrated effective internal controls and compliance with applicable requirements. Additionally, adequate training of court personnel, segregation of duties, and supervisory monitoring controls can help mitigate the risk of noncompliance with court requirements.**

**Suggested Audit Procedures:**

Note: The Ohio Rev. Code sections listed in this step are provided for your reference. When testing the collection and distributions of fines, auditors must refer to the applicable statutes governing the amounts to collect and amounts and methods of distribution, regardless of whether listed here. These tests should also be part of the ***financial*** audit of courts.

Inquire and examine how the court identifies fines and penalties collected under the statutes above and ensures they are properly distributed to the county law library resources fund. Ask the court to show you a few fines and penalties for violation of liquor control laws and state traffic laws. Determine these collections were properly distributed to the county law library resources fund. *(Typically, we only require a low degree of assurance over compliance with this requirement. However, where courts are a material audit cycle and where courts are relying on general IT controls to identify and accumulate fines and penalties subject to distribution to the law library resources fund, auditors should evaluate general IT controls (AOS staff should complete the RCEC) for automated court systems.)*

**Audit Procedures, Government Personnel Interviewed and Dates:**

**Conclusion (management letter comments):**

OPM APPENDIX 5705.36

**Conditions not requiring a citation under Ohio Rev. Code Section 5705.36**

**Adopted from AOS Bulletin 97-10**

The following examples illustrate circumstances under which a variance between the amended certificate of estimated resources and the actual resources is not indicative of a deleterious budgetary effect.

1. Additional revenue is estimated by the entity, but the entity does not obtain an amended official certificate of estimated resources as it does not anticipate appropriating the resources or incurring any obligations until the next fiscal year. For example, if an auditee determines six weeks before fiscal year end that it will receive an additional $50,000 in a state grant fund, but it does not anticipate that this money will be appropriated, expended, or obligated until the next fiscal year and, therefore, does not obtain an amended official certificate of estimated resources, a variance between the amount of the most recent amended official certificate of estimated resources and a higher amount of actual resources attributable to this increase would not warrant a citation in the audit report.
2. Additional revenue is estimated by the entity, which obtains an amended official certificate of estimated resources, appropriates the additional revenue, and incurs obligations. The entity elects, however, to defer receipt of the additional revenue until the next fiscal year, when the related cash disbursements will be made. For example, a school district may obtain a new certificate due to an anticipated state loan and appropriate and obligate the resources in question. As payment will not, however, be due until the next fiscal year, it defers actual receipt of the loan proceeds. The result is a variance between the amount of the most recent amended official certificate of estimated resources and the lower amount of actual resources. A citation would not, however, be appropriate.
3. Actual revenue falls below the amount of the amended official certificate of estimated resources, but is sufficient to cover actual expenditures and encumbrances for the fiscal year. For example, an entity may have an amended official certificate of estimated resources in the amount of $100,000, actual revenues of $90,000, and expenditures and encumbrances of $85,000. Under such circumstances, the failure to obtain an amended certification reflecting the lowered revenue level would not be required.
4. Actual revenue falls below the amount of the amended official certificate of estimated resources, but appropriations and expenditures plus obligations incurred prior to the point at which a revised estimate could have been made exceed the amended estimate. For example, an entity may have an amended certificate of estimated resources in the amount of $100,000, in reliance upon which it adopts appropriations of $95,000 and incur obligations of $95,000. When it thereafter estimates that actual resources will be $90,000, should it obtain an amended official certificate of estimated resources? And, if so, in what amount? Where expenditures are made or obligations incurred within the limits of an existing certificate and an amended certificate is subsequently obtained pursuant to Ohio Rev. Code § 5705.36 in an amount below the amount of expenditures and outstanding obligations, Ohio Rev. Code § 5705.36 prohibits the reduction of appropriations below that amount necessary to cover "obligations certified from or against the obligation." Thus, appropriations and expenditures and obligations incurred may exceed the year-end amount of the amended official certificate of estimated resources although no statutory violation has occurred. Under the circumstances set forth above, a reduced certificate in the amount of $95,000, the lowest lawful amount to which appropriations can be reduced, should be obtained. This satisfies the control objective of the statute by preventing unlawful expenditures and obligations in excess of the estimated amount, but recognizes the legal prohibition upon any further reduction in appropriations.
5. The determination of compliance should be made on the basis of the currently estimable legal resources. For example, a subdivision has estimated proceeds of $100,000, appropriates and expends or obligates $100,000, but determines that actual resources for the fiscal year will be only $80,000. It may, however, by transfer or borrowing, obtain the extra $20,000. In determining whether a "reduction" certificate should have been obtained, look to what actions have been formally taken by the taxing authority of the subdivision. If no action was taken to transfer or borrow the $20,000, a citation may be appropriate. If the money was transferred or borrowed so as to increase total actual resources to $100,000, no citation would be necessary.

***LEGAL MATRICES***

This appendix contains three matrices. Each matrix matches the applicability of OCS steps to various entity types. The information in the matrices does not necessarily encompass every item requiring testing for these entities. Additionally, when footnotes in the matrices reference specific sections of the Ohio Rev. Code, you should read those sections when planning and/or conducting the audit.

|  |  |
| --- | --- |
| Matrix 1 lists the following entities:   * Joint mental health districts * Joint juvenile detention facilities * Regional planning commissions * Solid waste districts * Joint Township cemeteries * Union cemeteries * Union cemetery districts * Airport authorities * Family and children first councils * Soil and water districts * Educational service centers * Regional Student Education District * Conservancy districts | Matrix 3 includes a discussion of Home Rule Powers and lists the following entities:   * County * Township * City * Village * Public school districts and STEM schools * Community schools   **NOTE:** Generally, the same laws applicable to city, local, exempted village, and joint vocational school districts are also applicable to STEM schools [ORC §3326.11]. |
| Matrix 2 lists the following entities:   * Libraries * Regional water & sewer districts * General health districts * Joint recreation districts * Park districts * Community and technical colleges * State colleges and universities * Joint ambulance districts * Port Authorities * Community Improvement and Development Corporations * Joint Fire Districts * Joint Police Districts * Councils of Government * Agricultural Societies[[33]](#footnote-33) |  |

**Matrix 1**

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Step No.** | **Requirement** | | **Joint Mental Health District** | **Jt. Juv. Detention Facility** | **Regional Planning Comm’n** | **Solid Waste District** | **Joint Township Cemetery or Union Cemetery** | | **Union Cem-etery District** | **Airport Authority** | **FCFC** | **Soil and Water District** | **ESC** | | **Regional Student Education District** | **Conser-vancy District** |
|  | **General Budgetary Requirements** | |  |  |  | [[34]](#footnote-34) | [[35]](#footnote-35) | | 34, 35 |  | [[36]](#footnote-36) | 34 |  | | 34 | 34 |
| O-1 | 5705.36 Cert. of revenue | |  |  |  |  |  | |  |  |  |  |  | | ✓ |  |
| O-2 | 5705.36 & 5705.39 Amended certificates and Limitation of appropriations | |  |  |  |  |  | |  |  |  |  |  | | ✓ |  |
| O-3 | 5705.36; 5705.38; 5705.41(A), (B); and 5705.42 Restrictions on appropriating/expending money |  | |  |  |  |  |  | |  |  |  | |  | ✓ |  |
| O-4 | 5705.02, .07, .18, and Art. XII Sec 2 of Const. of Ohio Ten Mill limitations |  | |  |  |  |  |  | |  |  |  | |  | ✓ |  |
| O-5 | 5705.12 Permission to establish funds |  | |  |  |  |  |  | |  |  |  | |  | ✓ |  |

**Matrix 1**

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Step No.** | **Requirement** | **Jt. Ment. Health Dist.** | **Jt. Juv. Detention Facility** | **Regional Planning Comm’n** | **Solid Waste Dist.** | **Joint Town-ship or Union Cem.** | **Union Cem-etery District** | **Airport Authority** | **FCFC** | **Soil and Water District** | **ESC** | **Regional Student Education District** | **Conser-vancy District** |
| O-13 | 125.04(C), 3313.46, and 3313.533: Procedures for bidding and letting of contracts |  |  |  |  |  |  |  |  |  |  | ✓ |  |
| O-14 | 3313.33(B), .37, .375, .40, and .41: Acquisition of school real estate, building, equipment |  |  |  |  |  |  |  |  |  | [[37]](#footnote-37) |  |  |
| O-19 | 153.50, 153.51, 153.52 Bids and contracts for buildings/structures [[38]](#footnote-38) |  |  |  |  |  |  | ✓ |  | ✓ |  |  | ✓ |
| O-20 | 4115.04, 4115.05 Prevailing wage |  | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |  | ✓ | ✓ | ✓ | ✓ |
| O-21 | 9.314 Reverse Internet auction in lieu of sealed bids | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Not in OCS | **Other** **bidding requirements[[39]](#footnote-39)** |  |  |  |  |  |  |  |  |  |  |  |  |
| Not in OCS | 340.03 Jt. Mental Health District [[40]](#footnote-40) | ✓ |  |  |  |  |  |  |  |  |  |  |  |
| Not in OCS | 713.23 Regional Planning Comm. [[41]](#footnote-41) |  |  | ✓ |  |  |  |  |  |  |  |  |  |

**Matrix 1**

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Step No.** | **Requirement** | **Joint Mental Health District** | **Jt. Juv. Detention Facility** | **Regional Planning Comm’n** | **Solid Waste District** | **Joint Township or Union Cemetery** | **Union Cem-etery District** | **Airport Authority** | **FCFC** | **Soil and Water District** | **ESC** | **Regional Student Education District** | **Conser-vancy District** | |
| Not in OCS | 308.13 Airport competitive bidding |  |  |  |  |  |  | ✓ |  |  |  |  |  | |
| Not in OCS | 121.37(B) (5)(a)(i)FCFC competitive bidding [[42]](#footnote-42) |  |  |  |  |  |  |  | ✓ |  |  |  |  | |
| Not in OCS | 1515.08(H) Soil & Water District competitive bidding |  |  |  |  |  |  |  |  | ✓ |  |  |  | |
| Not in OCS | 6101.16 Conservancy district competitive bidding |  |  |  |  |  |  |  |  |  |  |  | ✓ | |
| O-22 | Various – use of government credit/ purchasing cards | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| O-23 | 17 CFR § 240.15c2-12 Municipal securities [[43]](#footnote-43) | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |  | ✓ |

**Matrix 2**

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Step No.** | **Requirement** | **Library** | **Council of Gov’t** | **Regional Water & Sewer** | **General Health District** | **Joint Rec. District** | **Park District** | **Comm. & Technical College** | **State Colg./ Univ.** | **Joint Amb. Dist.** | **Joint Fire Dist.** | **Joint**  **Police**  **Dist.** | **Port Auth.** | **Ag. Soc.** | **DC & CIC** |
|  | **Gen Budgetary Requirements** | [[44]](#footnote-44) |  | [[45]](#footnote-45) | [[46]](#footnote-46) |  | 45 |  |  |  |  |  | 45 | [[47]](#footnote-47) | [[48]](#footnote-48) |

**Matrix 2**

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Step No.** | **Requirement** | **Library** | **Council of Gov’t** | **Reg Water & Sewer** | **General Health District** | **Joint Rec. District** | **Park Dist.** | **Comm. & Technical College** | **State Colg./ Univ.** | **Joint Amb. Dist.** | **Joint Fire Dist** | **Joint**  **Police**  **Dist.** | **Port Auth** | **Ag**  **Soc** | **DC & CIC** |
| O-1 | 5705.36 Cert. of revenue |  |  | ✓ |  | ✓ | ✓ | ✓ |  | ✓ | ✓ | ✓ | ✓ |  |  |
| O-2 | 5705.36 & 5705.39 Amended Certificates and Limitation of appropriations |  |  | ✓ |  | ✓ | ✓ | ✓ |  | ✓ | ✓ | ✓ | ✓ |  |  |
| O-3 | 5705.36; 5705.41(A), (B); and 5705.42 Restrictions on appropriating/expending money | [[49]](#footnote-49) |  | ✓ | [[50]](#footnote-50) | ✓ | ✓ | ✓ |  | ✓ | ✓ | ✓ | ✓ |  |  |
| O-4 | 5705.02, .07, .18, and Art. XII Sec 2 of the Const. of Ohio Ten mill limitations |  |  | ✓ |  | ✓ | ✓ | ✓ |  | ✓ | ✓ | ✓ | ✓ |  |  |
| O-5 | 5705.12 Approval to establish funds |  |  | ✓ |  | ✓ | ✓ | ✓ |  | ✓ | ✓ | ✓ | ✓ |  |  |
| O-17 | 9.312, 3354.16, 3355.12, 3357.16, 3358.10 Bidding on improvement contracts - Colleges and Universities |  |  |  |  |  |  | ✓ |  |  |  |  |  |  |  |
| O-18 | 3375.41 Library Bidding | ✓ |  |  |  |  |  |  |  |  |  |  |  |  |  |
| O-19 | 153.50, 153.51, 153.52 Bids and contracts for buildings/structures [[51]](#footnote-51) | ✓ |  | ✓ |  |  |  | ✓ | ✓ | ✓ | ✓ | ✓ |  |  |  |
| O-20 | 4115.04, 4115.05 Prevailing wage | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |  | ✓ |  |
| O-22 | 9.314 Reverse Internet auction in lieu of sealed bids | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |  | ✓ |

**Matrix 2**

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Step No.** | **Requirement** | **Library** | **Council of Gov’t** | **Reg Water & Sewer** | **General Health District** | **Joint Rec. District** | **Park Dist.** | **Comm. & Technical College** | **State Colg./ Univ.** | **Joint Amb. Dist.** | **Joint Fire Dist** | **Joint**  **Police**  **Dist.** | **Port Auth** | **Ag**  **Soc** | **DC & CIC** |
|  | **Other Bidding Requirement [[52]](#footnote-52)** |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| Not in OCS | 167.08 Councils of government: contracts for services to political subdivisions |  | ✓ |  |  |  |  |  |  |  |  |  |  |  |  |
| Not in OCS | 6119.10 Regional water and sewer district: competitive bidding |  |  | ✓ |  |  |  |  |  |  |  |  |  |  |  |
| Not in OCS | 3709.08, 3709.081, 3709.085 General health district contracting provisions |  |  |  | ✓ |  |  |  |  |  |  |  |  |  |  |
| Not in OCS | 1545.09 Park district: contracting procedures required in bylaws |  |  |  |  |  | ✓ |  |  |  |  |  |  |  |  |
| Not in OCS | 505.72 Gen. contracting procedures, 505.376 Bidding |  |  |  |  |  |  |  |  | ✓ |  |  |  |  |  |
| Not in OCS | 505.42 Contracts |  |  |  |  |  |  |  |  |  | ✓[[53]](#footnote-53) | ✓ |  |  |  |
| Not in OCS | 4582.12 Competitive Bidding |  |  |  |  |  |  |  |  |  |  |  | ✓[[54]](#footnote-54) |  |  |
| O-22 | Various – use of government credit/ purchasing cards | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| O-23 | 17 CFR § 240.15c2-12 Municipal securities [[55]](#footnote-55) | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |  | ✓ |

**Matrix 3**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Step No.** | **Requirement** | **County** | **Township** | **City** | **Village** | **Public & STEM Schools** | **Community School** |
| O-1 | 5705.36: Certification of available revenue |  |  |  |  |  |  |
| O-2 | 5705.36 & 5705.39: Amended certificates and appropriations limited by estimated resources |  |  |  |  |  |  |
| O-3 | 5705.36; 5705.41 (A)(B); 5705.42:Restrictions on the appropriation/expd. of money |  |  |  |  |  |  |
| O-4 | 5705.02: Ten-mill limitation |  |  |  |  |  |  |
| O-5 | 5705.12: Permission to establish funds |  |  |  |  |  |  |
| O-6 | 5705.391 and OAC 3301-92-04: School districts and community schools prepare 5-year projections |  |  |  |  |  |  |
| O-7 | 5705.412: Restriction upon school district expenditures |  |  |  |  |  |  |
| O-8 | 715.18, 731.02, 731.14, 731.141, 735.05, 735.051, 735.052, 735.053, 737.03 and 2921.42: Municipal contracts |  |  |  |  |  |  |
| O-9 | 731.16, 735.07: Altering or modifying municipal contracts |  |  |  |  |  |  |
| O-10 | 305.27, 319.16, 307.86, 307.87, 307.88, 307.91, and 9.37 County payments to be by auditor's warrant; Competitive bidding |  |  |  |  |  |  |
| O-11 | 301.27, 301.29 County credit and procurement cards |  |  |  |  |  |  |
| O-12 | 505.08, 505.101, 505.42, 505.267, 505.37, 505.42, 505.46, 507.11(B), 511.12, 515.01, 5549.21, and 5575.01: Township expenditures |  |  |  |  |  |  |
| O-13 | 125.04(C), 3313.46, and 3313.533: Procedures for bidding and letting of contracts |  |  |  |  |  |  |

**Matrix 3**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Step No.** | **Requirement** | **County** | **Township** | **City** | **Village** | **Public & STEM Schools** | **Community School** |
| O-14 | Community School Bidding Requirements |  |  |  |  |  |  |
| O-15 | 339.05: County hospital bidding procedures and purchasing policies for supplies/equipment |  |  |  |  |  |  |
| O-16 | 749.26, 749.27, 749.28, 749.29, 749.30, and 749.31: Municipal hospital contract procedures |  |  |  |  |  |  |
| O-19 | 153.50, 153.51, 153.52: Bids and contracts for buildings/structures |  |  |  |  |  |  |
| O-20 | 4115.04, 4115.05: Prevailing wage rates[[56]](#footnote-56) |  |  |  |  |  |  |
| O-21 | 9.314: Reverse Internet auction in lieu of sealed bids (all political subdivisions) |  |  |  |  |  |  |
| O-22 | Misc. local legislative body policies; charter requirements (for use of cell phones, government credit cards and purchasing cards, and government-owned vehicles and equipment) |  |  |  |  |  |  |
| O-23 | 135.18, 135.37, 135.181; 12 CFR 330: Security for repayment of public deposits | ✓ |  |  |  |  |  |
| O-24 | 2303.12: Books to be kept by clerk of the court of common pleas |  |  |  |  |  |  |
| O-25 | 2101.12: Records to be kept by the probate courts |  |  |  |  |  |  |
| O-26 | 2151.18: Records; annual report; distribution (juvenile court) |  |  |  |  |  |  |
| O-27 | 307.515: Fines and penalties to be paid to law libraries |  |  |  |  |  |  |

1. In rare instances, complying with the recovery plan can cause violations of the 5705. In these instances, auditors should not cite violations of 5705 if they were necessary in order to comply with the recovery plan. [↑](#footnote-ref-1)
2. In rare instances, complying with the recovery plan can cause violations of the 5705. In these instances, auditors should not cite violations of 5705 if they were necessary in order to comply with the recovery plan. [↑](#footnote-ref-2)
3. “Deemed an appropriation” under this section means the Federal or State government has already appropriated and established the purpose(s) for which a government can spend monies received from Federal or State grants and loans.  The taxing authority cannot deviate from this purpose; the taxing authority can only resolve to spend the money for a purpose already prescribed in a contract, grant agreement, loan agreement, etc.  Therefore, Federal and State grants and loans received under Ohio Rev. Code Section 5705.42 ***do not*** require formal appropriation by the legislative body.  In other words, Ohio Rev. Code Section 5705.42 effectively eliminates an unnecessary appropriation action by the taxing authority.  However, Ohio Rev. Code Section 5705.42 directs the fiscal officer to ***record*** the appropriation amount in the accounting system. The fiscal officer should also include the appropriated amounts on the (amended) certificate to properly monitor budget versus actual activity. Note: Amounts “deemed appropriated” are subject to inclusion in GAAP budgetary presentations (GASB Cod. 2400.102). The government has no legal authority to spend these resources unless they were either appropriated by the legislative authority or deemed appropriated by the Federal or State government. (GASB Comprehensive Implementation Guide Q&A 7.91.14.). [↑](#footnote-ref-3)
4. For example, contracts with individual teachers do not require a “412" certificate, though the negotiated agreement and/or teaching staff salary schedule generally would. Similarly, an employment contract with an individual administrator, who is not covered by a board adopted salary schedule would not require “412" certification. [↑](#footnote-ref-4)
5. The Auditor of State’s Office interprets this requirement to mean any and all appropriation measures for any and all funds of the school district. Ohio Rev. Code § 5705.412 requires that no district shall adopt “any appropriation measure … unless there is attached thereto a certificate, signed as required by this section, that the school district has in effect the authorization to levy taxes including the renewal or replacement of existing levies which, when combined with the estimated revenue from all other sources available to the district at the time of certification, are sufficient to provide the operating revenues necessary to enable the district to maintain all personnel and programs … .” (emphasis added). Likewise, the Ohio School Law Guide also states that “[c]learly all appropriation measures must be certified pursuant to Ohio Rev. Code § 5705.412”.  [↑](#footnote-ref-5)
6. Increased salary schedules that are part of a contract previously lawfully certified under section 5705.412 need not be re-certified before they take effect. However, the school district may have to adjust revenues and expenditures, in the section 5705.391 (A) five-year projection, in the year the increased salary or wage schedule takes effect in order to properly certify its annual appropriation measure. [↑](#footnote-ref-6)
7. Occasionally, school districts amend appropriations during the year without properly obtaining 412 certifications. AOS will not consider these appropriations to be “void”. However, auditors should still cite school districts under ORC 5705.412 when a school does not prepare these certificates [↑](#footnote-ref-7)
8. In the past, the Auditor of State has issued a Notice of Potential Ohio Rev. Code §5705.412 Violation to the governing board of the school district. The Notice gave the school district 30 days to retroactively comply with the provisions of Ohio Rev. Code §5705.412. However, it has come to our attention that retroactive correction by the governing authority does not absolve the school district of noncompliance actions (i.e., referral to the prosecuting attorney, etc.) under the statute. Therefore, the Auditor of State will no longer send 30-day Notices for Ohio Rev. Code §5705.412 violations. [↑](#footnote-ref-8)
9. *“Lowest and best bidder”* There are no guidelines in either the statute and case law as to what constitutes “best.” Factors that may be appropriate to consider are brand name reliability, serviceability,

   proximity of service provider and past experience with bidder . [↑](#footnote-ref-9)
10. 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. [↑](#footnote-ref-10)
11. Ohio Revised Code § 7.16 allows the second publication to be in an abbreviated form and provides that that any further publications can be eliminated if the second notice meets all of the requirements of Ohio Revised Code § 7.16. [↑](#footnote-ref-11)
12. HB 225, effective 3/22/2012, requires that bids be submitted pursuant to sections 307.86 to 307.92 and filed in the manner mentioned in the notice. [↑](#footnote-ref-12)
13. Auditors and governments may wish to refer to the Auditor of State’s Best Practices for discussions about and examples of procurement cards. You can read Best Practices at [www.ohioauditor.gov](http://www.ohioauditor.gov) under *Publications/Best Practices 2004 - 2011*. [↑](#footnote-ref-13)
14. Credit cards the commissioners deem to be “credit cards” follow the credit card provisions of Ohio Rev. Code §301.27. Credit cards the commissioners deem to be “p-cards” follow the procurement card provisions of Ohio Rev. Code §301.29. [↑](#footnote-ref-14)
15. *Lowest responsive and responsible bidder.* A bidder on the contract shall be considered responsive if the bidder’s 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. To determine if a bidder on the contract is responsible consider the experience of the bidder, the bidder’s financial condition, conduct and performance on previous contracts, facilities, management skills, and ability to execute the contract properly. (Ohio Rev. Code Section 9.312) [↑](#footnote-ref-15)
16. Ohio Revised Code § 7.16 allows the second publication to be in an abbreviated form and provides that that any further publications can be eliminated if the second notice meets all of the requirements of Ohio Revised Code § 7.16. [↑](#footnote-ref-16)
17. Defined in Mueller v. Board of Education 25 Ohio Dec. 195,1911 WL 1730 Ohio Com.Pl. 1911.

    “[‘Urgent necessity’] means more than convenience and more than ordinary necessity. It is something that requires immediate action. Something that cannot wait. When pleaded as an excuse for failure to comply with any statutory requirement it must be decided by the circumstances of the particular case in which it arises.” “Whether or not a case of urgent necessity exists so that a board of education may be enabled to build, alter or repair a school house or make other improvements without complying with the provisions of this section, as to competitive bidding is dependent upon the determination and declaration of the board itself and cannot be questioned for any reason other than fraud, collusion, absence of good faith or abuse of discretion. "1927 OAG 908. [↑](#footnote-ref-17)
18. Ohio Revised Code § 7.16 allows the second publication to be in an abbreviated form and provides that that any further publications can be eliminated if the second notice meets all of the requirements of Ohio Revised Code § 7.16. [↑](#footnote-ref-18)
19. 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. [↑](#footnote-ref-19)
20. Ohio Revised Code § 7.16 allows the second publication to be in an abbreviated form and provides that that any further publications can be eliminated if the second notice meets all of the requirements of Ohio Revised Code § 7.16. [↑](#footnote-ref-20)
21. Ohio Revised Code § 7.16 allows the second publication to be in an abbreviated form and provides that that any further publications can be eliminated if the second notice meets all of the requirements of Ohio Revised Code § 7.16. [↑](#footnote-ref-21)
22. Ohio Revised Code Section 9.833 defines “construction manager at risk” as “a person with substantial discretion and authority to plan, coordinate, manage, and direct all phases of a project for the construction, demolition, alteration, repair, or reconstruction of any public building, structure, or other improvement, but does not mean the person who provides the professional design services or who actually performs the construction, demolition, alteration, repair, or reconstruction work on the project.” [↑](#footnote-ref-22)
23. 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. [↑](#footnote-ref-23)
24. There are separate thresholds for new construction and reconstruction. These thresholds are categorized by vertical and horizontal construction types.

    Horizontal construction (new construction and reconstruction on public improvements that involve roads, streets, alleys, sewers, ditches, and other works connected to road or bridge construction):

    Effective 1/1/ 2010 through 12/31/2011, the thresholds are $78,258 (new) and $23,447 (reconstruction).

    Effective 1/1/2012 through 12/31/2013, the thresholds are $82,137 (new) and $24,609 (reconstruction). (See <http://www.com.ohio.gov/laws/PrevailingWageThresholdLevels.aspx>)

    Vertical construction (all other new construction and reconstruction):

    Effective 9/29/2011 through 9/28/2012, the thresholds are $125,000 (new) and $38,000 (reconstruction).

    Effective 9/29/2012 through 9/28/2013, the thresholds are $200,000 (new) and $60,000 (reconstruction).

    Effective 9/29/2013 and later, the thresholds are $250,000 (new) and $75,000 (reconstruction). [↑](#footnote-ref-24)
25. Under no circumstances shall a public authority apply the prevailing wage requirements of chapter 4115 to an exempt public improvement of a board of education of any School District or the governing board of any Educational Service Center. (Ohio Revised Code §4115.04(C)) [↑](#footnote-ref-25)
26. R.C. § 9.314 prohibits 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)] [↑](#footnote-ref-26)
27. If there is doubt about an entity’s authorization to use credit cards, the government should consult with its legal counsel. [↑](#footnote-ref-27)
28. Auditors and governments may wish to refer to the Auditor of State’s Best Practices for discussions about and examples of cell phone policies; and procurement card and vehicle policies. You can read Best Practices at [www.ohioauditor.gov](http://www.ohioauditor.gov) under *Publications/2004-2011 Best Practices*. [↑](#footnote-ref-28)
29. Although 17 C.F.R. 240.15c2-12 no longer requires filing with the SID, continuing disclosure agreements may include a requirement to file with the SID. [↑](#footnote-ref-29)
30. We have been informed that ratings downgrades to bond insurance companies constitute a material event, requiring disclosure. (A number of such downgrades occurred early in 2008.) Should the bond’s insurer receive a downgraded rating, the entity should file a Material Event Notice with MSRB referencing the relevant transaction and rating downgrade. [↑](#footnote-ref-30)
31. ~~Municipal issuers and/or obligated persons whose bonds (1) are insured by~~ *~~Assured Guaranty~~*~~, (2) have been assigned an S&P rating based upon the credit strength of~~ *~~Assured Guaranty~~* ~~and (3) are subject to a contractual continuing disclosure undertaking pursuant to SEC Rule 15c2-12, should have filed an event notice with the MSRB by December 14, 2011, because S&P downgraded Assured Guaranty’s credit rating.~~

    ~~Debt notes should disclose this downgrade for fiscal years ending December 31, 2011 and June 30, 2012.~~

    ~~We should report management letter noncompliance for governments that failed to file an event notice regarding Assured Guaranty’s downgrade.~~ [↑](#footnote-ref-31)
32. The record of wills may serve as a source of obtaining missing trust documents to support trust fund obligations for some of our governments. [↑](#footnote-ref-32)
33. Auditors use OCS Chapter 1 Appendix A in conjunction with this Appendix when determining the applicability of certain compliance requirements to Agricultural Societies. [↑](#footnote-ref-33)
34. If these entities levy taxes, the checkmarks noted above apply. However, often they do not levy taxes. When they do not levy taxes, Ohio Rev. Code §5705.28 (B)(2) requires a comparable, but somewhat streamlined budget process. Ohio Rev. Code §5705.28(B)(2) requires entities to follow §5705.36, .38, .40, .41, .43, .44, and .45. However, documents prepared in accordance with these sections need not be filed with the county auditor or county budget commission. Finally, while Ohio Rev. Code §5705.39 does not apply, §5705.28(B)(2)(c) prohibits appropriations from exceeding estimated revenue (i.e. receipts + beginning unencumbered cash). For conservancy districts, auditors should additionally review the requirements of Ohio Rev. Code §6101.44 and tailor their compliance testing procedures accordingly, if necessary. For conservancy districts that levy taxes, we should cite to the budgetary requirements contained in Ohio Rev. Code § 6101.44 where they are similar to requirements contained in Ohio Rev. Code Chapter 5705. The more specific requirements contained in Ohio Rev. Code Chapter 6101 trump those contained in Chapter 5705. Auditors should apply the provisions of Ohio Rev. Code Chapter 5705 when Chapter 6101 does not address budgetary restrictions applicable to conservancy districts. [↑](#footnote-ref-34)
35. Joint Township Cemeteries and Union Cemeteries are not subject to Ohio Rev. Code Chapter 5705 because they are not taxing authorities as defined in Ohio Rev. Code §5705.01. Unlike Joint Township Cemeteries and Union Cemeteries, Union Cemetery Districts are subject to Ohio Rev. Code Chapter 5705. In a Union Cemetery District, the legislative authority of each municipal corporation and the board of township trustees of each township, jointly, is the taxing authority. However, this distinction does not affect the application of Ohio Rev. Code §5705.01 on a union cemetery district, which is specifically noted as a “subdivision.” [↑](#footnote-ref-35)
36. Ohio Rev. Code Chapter 5705 does not apply. However, §121.37(B)(5)(a) requires the council to file an annual budget with its administrative agent. [↑](#footnote-ref-36)
37. Only ORC 3313.37 and 3313.375 apply to ESCs. [↑](#footnote-ref-37)
38. These sections apply if the entity is required to bid in the circumstances listed under footnote 39, **Other bidding requirements.** [↑](#footnote-ref-38)
39. The OCS does not include descriptions or recommended tests for the **Other bidding requirements** listed, but auditors should refer to these Ohio Rev. Code sections and test them if material procurement occurred. [↑](#footnote-ref-39)
40. For joint mental health districts, bidding is not required, but the board should establish a contract review process. See Ohio Rev. Code §340.03(A)(8)(a). [↑](#footnote-ref-40)
41. When a regional planning commission enters into a purchase contract on behalf of a political subdivision, it shall follow the competitive bidding procedures in Ohio Rev. Code §307.86-.92. (OCS step 2-5 includes a summary of Ohio Rev. Code §307.86.) [↑](#footnote-ref-41)
42. Agreements and contracts a council’s administrative agent enters into for the purchase of family and child welfare or child protection services or other social or human services for families and children are exempt from the competitive bidding requirements of §307.86, if the FCFC council approved them. Please see §121.37(B)(5)(a) for further details. [↑](#footnote-ref-42)
43. The term *Municipal Security* refers to any local government security, not just those municipalities issue, pursuant to 15 U.S.C. §78c(a)(29). [↑](#footnote-ref-43)
44. An association library organized and operating prior to January 1, 1968 may participate in the proceeds of a county library and local government support fund ONLY where there are rules in place guaranteeing the benefit of the library to all inhabitants [Ohio Rev. Code §5705.28(D)]. ORC §5705.28(D) applies to association libraries and provides that to participate in the local government support fund, they must (1) demonstrate that their laws allow access to all people and (2) submit an estimate of revenue/expenditures to the taxing authority. (Association libraries receiving monies from the library and local government support fund must also follow the depositing and investing requirements of Chapter 135. See OCS Chapter 5 for Chapter 135 requirements.) [↑](#footnote-ref-44)
45. If these entities levy taxes, the checkmarks apply. However, often they do not levy taxes. When they do not levy taxes, Ohio Rev. Code §5705.28 (B)(2) requires a comparable, but somewhat streamlined budget process. Ohio Rev. Code §5705.28(B)(2) requires entities to follow §5705.36, .38, .40, .41, .43, .44, and .45. However, documents prepared in accordance with these sections need not be filed with the county auditor or county budget commission. Also, while Ohio Rev. Code §5705.39 does not apply, §5705.28(B)(2)(c) prohibits appropriations from exceeding estimated revenue (i.e. receipts + beginning unencumbered cash). Ohio Rev. Code §4582.13 requires re-appropriation of surplus funds for Port Authorities. [↑](#footnote-ref-45)
46. Ohio Rev. Code §3709.28 establishes budgetary requirements for General Health Districts, which are similar to certain Ohio Rev. Code Chapter 5705 budgetary requirements. On or about the first Monday of April the district must adopt an itemized appropriation measure. The appropriation measure, together with an itemized estimate of revenues to be collected during the next fiscal year, shall be certified to the county budget commission. Subject to estimated resources, the board of health may, by resolution, transfer funds from one appropriation item to another, reduce or increase any item, create new items, and make additional appropriations or reduce the total appropriation. Such appropriation modifications shall be certified to the county budget commission for approval.

    You should cite Ohio Rev. Code § 3709.28 if a General Health District: (1) does not adopt an itemized appropriation; (2) does not itemize estimated resources; or (3) appropriates more than its estimated resources as submitted to the county budget commission. Cite Ohio Rev. Code §5705.41(B) & (D)if a general health district: (1) disburses or encumbers more than appropriations at the legal level of control, or (2) obligates district moneys without the certification that section requires. Ohio Rev. Code §5705.28(C)(1) requires general health districts to file an estimate of contemplated revenue and expenses with the municipalities and townships within the district. They must file this by about June 1 (forty-five days prior to July 15). The county auditor cannot allocate property taxes from the municipalities and townships within the district if such filing has not been made (1984 Op. Atty. Gen. No. 84-013). [↑](#footnote-ref-46)
47. This column indicates which general compliance requirements are applicable to agricultural societies. However, auditors must also test the compliance requirements specific to agricultural societies that are described within OCS Appendix H. [↑](#footnote-ref-47)
48. Ohio Rev. Code Chapters 1724 and 1726 apply to community improvement corporations (CICs) and development corporations (DCs), respectively. Other than financial reporting (see OCS Chapter 4) the OCS does not include requirements generally considered to be direct and material. When auditing these entities, auditors should review the entity’s articles of incorporation, by-laws, and contract, grant and debt agreements, to determine whether potentially direct and material requirements apply. [↑](#footnote-ref-48)
49. The majority of ORC Chapter 5705 applies to “subdivision”, “taxing units”, and “taxing authorities”. However, R.C. 5705.41 also applies to “district authorities”. Public library boards do not fall under any of these definitions, except, under certain circumstances, they can be considered district authorities. OAG 82-056 concluded that a board of public library trustees deriving funds from two or more subdivisions is therefore a district authority, subject to Ohio Rev. Code §5705.41. The Opinion provides that library funds derived from property tax proceeds are actually funds derived from the state, rather than funds derived from two or more subdivisions. The Opinion also provides that a special tax levied pursuant to R.C. 5705.23 would similarly not be considered “funds derived from two or more subdivisions” since the taxing authority’s role would be strictly ministerial. The Opinion concludes by offering some examples of what could meet this definition, including the following levies: R.C. 5705.06(B), 5705.19(D), 3375.07, 3375.23, 3375.09, 3375.18, 3375.31, 3375.31 and 3375.42. [↑](#footnote-ref-49)
50. The only part of Ohio Rev. Code §5705.41 that does not apply to a general health district is §5705.41(A). Instead, Ohio Rev. Code §3709.28 applies to health districts. See related footnote on preceding page. [↑](#footnote-ref-50)
51. These sections are applicable if the entity is required to bid. [↑](#footnote-ref-51)
52. These sections are not included in the OCS, but auditors should test if material activity occurred. [↑](#footnote-ref-52)
53. Joint fire districts are subject to contracting provisions in Ohio Rev. Code §731.14 (50,000 bidding threshold) to §731.16. [↑](#footnote-ref-53)
54. In addition to Ohio Rev. Code §4582.12 bidding requirements, note that port authorities need not bid for the lease, sale or lease with an option to purchase certain land and equipment. See Ohio Rev. Code §4582.06(F)(1). [↑](#footnote-ref-54)
55. The term *Municipal Security* refers to any local government security, not just those municipalities issue. [↑](#footnote-ref-55)
56. This step cannot be superseded by home rule powers. [↑](#footnote-ref-56)