



DAVE YOST
Ohio Auditor of State

2017 Local Government Officials' Conference
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BIDDING
(How to Prepare and Advertise Bids)



Presented by:
Mark Altier
Chief Legal Counsel

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LEGAL PUBLICATION

Section 7.12

- Newspaper of general circulation
 - Requirements except daily law journals in existence on July 1, 2011, and in operation for last three years
 - Printed in English
 - Standard printing method
 - 8 pages broadsheet or 16 pages tabloid
 - 25% or more editorial content
 - Local news, sports, political
 - Continuously operated last three years
 - Ability to add to subscriber or distribution list
 - Generally circulated in area



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IN RE BROTHERS PUBLISHING CO. v. THE EARLY BIRD

2014 WL 294620 (Ohio App., 2nd Dist.)

- Newspaper publisher sued
 - Claimed Early Bird weekly not general circulation
- Section 7.12 amended in 2011
 - Eliminated 50% paid subscription requirement
 - Requires amendable distribution lists




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COSHOCTON TRIBUNE MEDIA V. GOOD FORTUNE ADVERTISING

2013 WL 3326180 (Ohio App., 5th Dist.)

- Weekly newspaper
 - Once a week for three years
 - Prior to public notice publication
- General circulation



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UNRESOLVED FINDING FOR RECOVERY (FFR)

ORC Section 9.24

- State or political subdivision
- All or some state funding
- No contract
 - Goods, services, or construction
 - Unresolved FFR post 1-1-01
- Resolved
 - Paid in full, or
 - Repayment plan approved by AG or via settlement, or
 - AG waives repayment for good cause, or
 - FFR being contested via legal action



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EXCEPTIONS

- Exception-Certified with AG concurrence
 - Essential services no other
 - Best interest of entity
 - Good faith efforts made to collect
 - Unless over \$25,000
 - Unless over \$75,000 aggregate preceding year
 - Renewal
 - Employment contracts



Auditor Database of FFRs
Verify
Exceptions
Bonding or insurance
Medicaid provider
Federal mandate

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PURCHASE OF SURPLUS COMMODITIES

ORC Section 9.25

- State purchase or lease
 - Personal property
 - From Feds
 - Less than via bidding
- No competitive bidding Political subdivisions
 - Participate in state program
 - Directly from Feds.
 - Political subdivisions
 - Participate in state program
 - Directly from Feds.



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MODERN OFFICE METHODS v. OSU

975 N.E. 2d 523 (Ohio App., 10th Dist.)

- Essential elements of contract
 - Offer
 - Acceptance
 - Contractual capacity
 - Consideration
 - Bargained for legal benefit or detriment
 - Manifestation of mutual consent
 - Legality of object and consideration

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LOWEST RESPONSIVE AND RESPONSIBLE BIDDER STANDARD

ORC Section 9.312

- Materially responsive to all bid specifications No material irregularities or deviations
- Responsible-Consider
 - Experience
 - Financial condition
 - Previous contract conduct and performance
 - Facilities
 - Management skills
 - Ability to execute contract



Provision of 153.54 bid guarantee

Evidence of financial responsibility

May request more from apparent low bidder

Confidential

Apparent low found not to be responsive or responsible

Certified mail notice

Written protest

Meeting

Affirm or reverse

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**STATE EX REL. GLIDEPATH V. COLUMBUS
AIRPORT AUTHORITY**

2012 WL 19715 (Ohio App., 10th Dist., 2012)

- Public entity not required to announce specific standards
 - Demonstrating financial responsibility
- Qualitative determinations
 - Supported by logic and reason
 - Considerable discretion
 - Presumption of legality and regularity
 - Courts not substitute judgment
 - Abuse of discretion standard

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**CONTRACTS FOR PUBLIC UTILITIES
WITHOUT BIDDING**

ORC Section 9.30

- State, county, municipality, township, school, other
- Service, product or commodity of public utility at PUCO rates

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**REVERSE AUCTION PURCHASES
ORC SECTION 9.314**

- Reverse Auction
 - Offerors submit proposals
 - Competing to sell services or supplies
 - Open internet environment
- Whenever advantageous
- Rules adopted by entity
- Not permitted for most construction
- State relative importance of price and other factors
- Discussions permitted
 - Fair and equal treatment
- May require bond or other financial guarantee

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NOTICE TO SURETY OF AWARD OF CONTRACT

ORC Section 9.32

- Upon award of construction contract
- State or political subdivision notify surety of contractor

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ADVERTISING CONSTRUCTION MANAGER

ORC Section 9.331

- Contract construction manager and at risk
- Advertise newspaper of general circulation in county
- May advertise electronically
- Request proposals
- At least 30 days before submission date
- May advertise in journals
- May contact individuals interested

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CONSTRUCTION MANAGER FINANCIAL ASSURANCE

Section 9.333

- Amount of contract value
- Letter of credit
- Surety bond
- Certified check
- Cashier's check, or
- Other reasonable financial assurance



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SELECTION OF CONSTRUCTION MANAGER AT RISK NEGOTIATION OF PRICE AND TERMS

Section 9.334

- Evaluate proposals
- Rank no fewer than three unless fewer qualify
- Negotiate in order



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PARTICIPATION IN CONTRACTS OR JOINT PURCHASING



ORC Section 9.48

- Political subdivision contracts
 - May permit other subdivisions to participate
 - May charge reasonable fee
- Subdivision may participate in joint purchasing program
 - National or state association
 - Federal contract offerings
- No bidding if original contract bid
- Prohibited if already solicited bids unless same terms
- Can purchase from other if lower price

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SELF-INSURANCE AND HEALTH SAVINGS ACCOUNTS

ORC Section 9.833

Political subdivision health care benefits

1. Self-insurance program
2. Health savings accounts
 - a) Public moneys
 - i. Pay high deductible plans or
 - ii. Contribute to HAS
3. Jointly administered plans
4. Joint self-insurance programs
5. Joint policies including HSAs



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FORCE ACCOUNT AUDITS

Section 117.16

- Auditor of State prepare force account assessment form
- Complaint—AOS may audit
- If county, municipality, or township is found in violation
 - Reduce force account limits

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FORCE ACCOUNT PROJECTS: AUDITS

ORC Section 117.16(A)

- Force Account Project Assessment Form
 - Employees' salaries and benefits
 - Any other labor costs
 - Materials
 - Freight
 - Fuel
 - Hauling
- Overhead expenses
- Workers' Comp premiums
- All other costs and expenses
- Allowance for use of tools and equipment
- Audit by sampling



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FORCE ACCOUNT COMPLAINTS

ORC Section 117.16(B)



- Complaint of force account violation
 - Auditor conduct audit
- Violation
 - First-Reduce for one year
 - County-\$10,000/mile road, \$40,000 bridge
 - Township-\$15,000 maintenance or repair of road
 - \$,5,000/mile construct or reconstruct
 - Municipality-\$10,000 street project
- Second in same or subsequent audit-Reduce for 2 years
- Third and subsequent-20% of total cost forfeiture
 - Tax commissioner withhold

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AUDITOR OF STATE BULLETIN 2003-13

- Labor
 - Base labor plus mark up for fringe and overhead
 - Hourly rate and expected hours
 - Overhead Safe Harbor-30%
- Materials
 - Actual cost
 - Overhead Safe Harbor-15%
- Equipment
 - All used in project
 - Assign rate
 - Purchase price
 - Maintenance costs
 - Time in service
 - Depreciation
 - Use ODOT assigned rates

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GROUP LIFE AND HEALTH INSURANCE



ORC Section 124.81

- Any political subdivision
- Collective bargaining agreement
- Health and related insurance and life insurance
 - Jointly administered trust fund
 - Agreed contribution
 - Direct and indirect costs
 - Board of trustees oversee

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STATE PURCHASING

ORC Section 125.04(B)(2)

- DAS supply and services contracts
 - Same terms
 - Direct payment
- Reasonable fee
- Certified copy of resolution or ordinance
- Purchase other entity including political subdivision
 - Equivalent terms
 - Exempt from bidding



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LONG TERM CARE INSURANCE

Section 124.841

- Political Subdivision may acquire
 - Long term care insurance
 - Elected officials and employees
- No competitive bidding required



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CHAPTER 125 COMPETITIVE BIDDING DEFINITION

Section 125.01(I)



- Competitive sealed bidding under 125.07
- Competitive sealed proposals under Section 125.071
- Reverse auction under 125.072

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SUBDIVISION PARTICIPATION IN STATE PURCHASING

Section 125.04

- DAS may permit subdivision to participate in state purchasing
- Ordinance or resolution
- Reasonable fee
- Exempt from competitive bidding
- Cannot use if already bid unless same terms



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AWARD AND EXECUTION OF CONSTRUCTION CONTRACT - ALL POLITICAL SUBDIVISIONS

Section 153.12

- Award contract within 60 days after bid opening
 - If not, whole process invalid
- Open bids at time set unless owner extends
- Modifications of plans or estimate of costs
 - 72 hour notice (Sat., Sun, holidays excluded)
 - Extend opening one week
- 10% over estimate-Reject all



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SEPARATE BIDS FOR WORK AND MATERIALS

Section 153.50

- County, township, municipality, school district
- Erection, repair, alteration, or rebuilding structure
 - Covered by competitive bidding
- Separate and distinct bids for
 - Plumbing and gas fitting
 - Steam and hot water heating, ventilating, and steam power
 - Electrical equipment

- Exceptions for contracts with

- Construction manager at risk
- Design-build firm
- General contracting firm



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CONTRACT AWARD FOR ENTIRE PROJECT

Section 153.51

- May award contract for entire project
 - If overall costs lower than aggregate of 153.50 bids
 - Lowest and best bidder or
 - Lowest responsive and responsible
- May assign portions of contract per specifications
 - Including scheduling, coordinating, and administration



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BID GUARANTY
ALL CONSTRUCTION CONTRACTS
(EXCEPT ODOT)

Section 153.54

- Bond-Full amount of bid
- Certified check, cashier's check or letter of credit
 - > 10% of bid



Bid Bond

The DATE OF BIDDING, and BIDDER enters...

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FORM OF PERFORMANCE BOND **Performance Bond**
 ORC SECTION 153.57

FORM OF BID GUARANTY BOND
 ORC SECTION 153.571 **Bid Guaranty Bond**

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BID GUARANTY
ORC Section 153.54

Any political subdivision or agency

- Exceptions
 - Design build
 - Construction manager at risk
- Bond-Amount of Bid, or
- Certified check, cashier's check, or letter of credit
 - Letter of credit revocable only by subdivision

- Conditions
 - If accepted enter into contract
 - > Penalty-If awarded to other bidder
 - ✦ Difference in cost or 10% of bond
 - ✦ Whichever is less
 - If rebid
 - > Costs of rebidding or 10%
 - ✦ Whichever is less
 - Indemnify against claims of subs, materialmen, laborers

DISCRIMINATION AND INTIMIDATION

ORC Section 153.59

- Every contract
 - State, township, county, municipal corporation
 - Construction, alteration, or repair
 - Public building or work
- Contractor agree
 1. No discrimination on race, creed, sex, disability, or military status in hiring
 - a) Contractor, sub or any designee
 2. No discrimination or intimidation
 - a) Any person hired



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PROFESSIONAL DESIGN CONTRACT

Section 153.65

- Professional design
 - Architect
 - Landscape architect
 - Professional engineer
 - Surveyor
- Over \$25,000
- Requests for proposals
- Rank based on qualification criteria
- Negotiate price in descending order of rankings



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PUBLIC ANNOUNCEMENT OF AVAILABLE CONTRACTS

- Professional design or design build
- ORC 153.67
- Announcements if planning to use
 - Uniform and consistent method of notice
 - Sufficiently in advance
 - General description
 - How submit proposal
- Send to firms, news media, Publications (including electronic)
- May require prequalification submission
 - ORC 153.68



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DESIGN BUILD CONTRACT, EVALUATION AND SELECTION

BEST
VALUE

ORC Section 153.693

- Process similar to Professional Design Services
- Extensive listing of requirements
- Best value test

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EVALUATION, RANKING, SELECTION, NEGOTIATION

ORC Section 153.69

- Over \$25,000.00
- Evaluate
 - May discuss with firm or firms
 - May not require fee estimate (ORC 153.691)
- Select and rank top three
- Negotiate a contract (price) with top one
 - If fail move down to next and so on
- If exhaust three may rank others



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CRITERIA FOR DESIGN BUILD

ORC Section 153.692

- Design Build
 - Integrated system
 - Both design, construction, demolition, alteration, repair or reconstruction (ORC 153.65 [G])
- Architect or engineer

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EVALUATION AND SELECTION ALL DESIGN BUILD CONTRACTS



Section 153.693

- Criteria from architect or engineer
- Evaluation statements of qualifications
- Three entity selection and negotiation process

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ABBREVIATED NOTICES POSTING ON WEBSITE

Section 7.16

- Eliminate second and subsequent publications
- Abbreviated form and inclusion on website.



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SUCCESSFUL BIDDER DELINQUENT PERSONAL PROPERTY TAX

Section 5719.042

- Contract with any taxing authority
- After announcement of successful bidder but before entering into contract
 - Certification to fiscal officer
 - Convey to treasurer



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EMERGENCY PURCHASES – TOWNSHIP

Section 505.08

- Resolution
- Unanimous approval
- Real and present emergency
- Township services or duties
- Purchase services, materials, equipment, supplies
 - Under \$50,000
- No bidding



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TOWNSHIP PURCHASE FROM PUBLIC ENTITY

Section 505.101

- Resolution
 - No bid contract to purchase
 - Materials, equipment, or supplies
 - From any department, agency, subdivision of state
 - From soil and water conservation district
 - From regional planning commission
 - From ESC
 - Maximum amount to be paid
 - Type of materials, equipment, or supplies
 - Appropriate sufficient funds



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FIRE AND AMBULANCE DISTRICT CONTRACTS

Section 505.376

- Contracts in excess of \$50,000
 - In writing
 - Lowest and best bidder
 - Advertise once a week for two consecutive weeks
- Dispense with second of internet notice



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LEASE-PURCHASE AGREEMENTS

Section 505.267

- Township trustees
- Joint police district
- Joint fire district
- Joint fire and ambulance district
- May by resolution enter lease-purchase
- Series terms
 - No term beyond current fiscal year
- Obligations satisfied-Ownership to public entity



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TOWNSHIP FIRE PROTECTION PURCHASES



Section 505.37

- Fire apparatus, equipment, appliances, etc.
- In excess of \$50,000
- Competitive bidding
 - Publish notice once a week for two consecutive weeks
 - Eliminate second publication-Internet posting

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TOWNSHIP EMERGENCY POWERS

Section 505.82

- Resolution
 - Emergency threatening life or property
 - Unincorporated area
 - Exists or imminent
 - Unanimous vote
 - Vote of two if third unavoidably absent
 - Up to six month period
 - Immediate no-bid contracts
 - Equipment
 - Acquisition, replacement, or repair



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TOWNSHIP MEMORIAL CONTRACTS

Section 511.12

- Contracts
 - Memorial building, monument, statue, memorial
- Over \$50,000
 - Competitive bidding
 - Detailed plans, specifications, estimates
- Publish notice once a week for two consecutive weeks
 - Dispense with second if internet notice
- Lowest and best bidder

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INTEREST IN TOWNSHIP CONTRACT PROHIBITED

Section 511.13

- Township trustee, officer or employee
- No interest in township contract
- Exception
 - Shareholder
 - Less than 5% of stock
 - Value of \$500 or less
 - Affidavit
 - Filed with commissioners' clerk
 - Status and connection to corporation
 - Before contract entered into



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TOWNSHIP LIGHTING

Section 515.01

- Contract to procure lighting
 - Unincorporated area of township
 - Plans and specifications
 - Competitive bidding
 - Publish
 - Once a week for two consecutive weeks
 - Dispense with second if internet

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TOWNSHIP IMPROVEMENT OF PRIVATE SEWAGE COLLECTION TILE

Section 521.05

- Competitive bidding
 - Over \$50,000
- Post notice
 - Three conspicuous places in township
 - Specify improvement
 - Specify time for improvement
 - At least 30 days notice
- Lowest and best bid
- Section 153.54 requirements apply



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TOWNSHIP PURCHASE MACHINERY, MATERIALS, SUPPLIES

Section 5549.21

- Purchase or lease
 - Machinery or tools
 - Road or culvert work
 - Trade-ins permissible
- Purchase materials or supplies
- Excess of \$50,000
 - Lowest responsible bidder



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TOWNSHIP FORCE ACCOUNT

Section 5575.01

- Contract for road repair or maintenance
 - Excess of \$45,000
 - Competitive bidding
 - Publish one not less than two weeks before opening
 - \$45,000 or less
 - Contract or force account
- Construction or reconstruction of road
 - County engineer estimate
 - Over \$15,000 per mile
 - Contract-Competitive bidding
- AOS force account estimate form
 - Not required
 - Maintenance and repair less than \$15,000.00
 - Construction or reconstruction less than \$5,000 per mile



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REGIONAL PLANNING COMMISSION PURCHASING

Section 713.23

- Regional Planning Commission
 - Contract
 - Perform purchasing services for subdivisions
- Ordinance or resolution
- Reasonable fee
- Commission follow 307 bidding
- Subdivision need not bid
- Not allowed if bids already received



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PUBLICATION OF NOTICE TOWNSHIP ROAD IMPROVEMENT

Section 5575.02

- Advertise
 - At least two weeks before opening
 - Newspaper of general circulation
 - Let work as whole or convenient sections
- Lowest and best bidder
- Lump sum unless trustees order unit price
- No award in excess of 10% over estimate (5575.03)



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Legal Division
88 East Broad Street
Columbus, Ohio 43215

Mark W. Altier
Chief Legal Counsel

Presenter Phone: (800) 282-0370
Presenter Fax: (614) 466-4333
E-mail: contactus@ohioauditor.gov

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The seal of the Auditor of State of Ohio is circular, featuring a landscape with a sun rising over a field and a river. The text "THE SEAL OF THE AUDITOR OF STATE OF OHIO" is written around the perimeter of the seal.

Ohio Auditor of State
Dave Yost

88 E. Broad St.
Columbus, Ohio 43215
Phone: (800) 282-0370 Fax: (614) 466-4490
Email: ContactUs@OhioAuditor.gov
www.OhioAuditor.gov
