



DAVE YOST
Ohio Auditor of State

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BIDDING
(How to Prepare and Advertise Bids)



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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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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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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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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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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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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 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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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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UNRESOLVED FINDING FOR RECOVERY

Section 9.24

- Contract involving state funds
- Unresolved
 - Unpaid
 - No repayment plan
 - Attorney General has not waived
- Exceptions



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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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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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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



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**DISCRIMINATION-ALL
CONSTRUCTION CONTRACTS**

Section 153.59

- Contract provide
 - > Hiring by contractor or subcontractor
 - > No discrimination
 - Race, creed, sex, disability, military status, or color




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

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

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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

AWARD AND EXECUTION OF CONTRACT

ORC Section 153.12

- Political subdivision
- Construction/public improvement contract
- Enter within 60 days of opening
 - Unless extended
 - Agreement owner and successful bidder
- Open bids at time specified
 - Unless owner extends
 - Unless modification within 72 hours prior
 - Excluding weekends and holidays
 - Extend one week
- Payment schedule agreed to by parties
 - Unit or lump sum



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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

ORC Section 153.693

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

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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, 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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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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ABBREVIATED NOTICES POSTING ON WEBSITE

Section 7.16

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



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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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AWARD AND EXECUTION OF CONTRACT

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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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GROUP LIFE AND HEALTH INSURANCE FOR PUBLIC EMPLOYEES JOINTLY ADMINISTERED TRUST FUND

Section 124.81

- Collective bargaining agreement
 - Provision of insurance fringe benefit
 - Jointly administered trust
- Competitive bidding not required

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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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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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MUNICIPAL FORCE ACCOUNT

Section 723.52

- Construction, reconstruction, widening, resurfacing, or repair
- Street or public way
- \$30,000 or less total cost
 - Force Account
 - AOS estimate sheet
- Over \$30,000
 - Competitive bids
- Maintain record (RC 723.53)



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CONTRACTS BY VILLAGE COUNCIL

Section 731.14

- Over \$50,000
 - In writing
 - Lowest and best bidder
 - Advertise
 - Once a week
 - Two consecutive weeks
 - Dispense with second if internet notice



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CONTRACTS BY VILLAGE ADMINISTRATOR

Section 731.141

- Village with administrator
 - Contracts for supplies, materials, labor
 - Under administrator's control
 - \$50,000 or less-Administrator enter into
 - Over \$50,000-Administrator enter into
 - Prior approval of council
 - Competitive bidding
 - Lowest and best
 - Public notice
 - Section 735.05
 - Similar provision
 - City director of public service



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CONTRACTS, MATERIAL, LABOR

Section 735.05

- Contract to purchase supplies, material, or labor
 - \$50,000 or less
 - Director or public service may award
 - Over \$50,000
 - Authorized by legislative body
 - Written contract
 - Lowest and best bidder
 - Advertise once a week for two consecutive
 - Or 7.16 notice

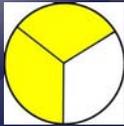


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MUNICIPAL EMERGENCY CONTRACTS

Section 735.051

- Real and present emergency
- Legislative authority authorize - 2/3 vote all members
- No bidding or notice



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PURCHASE OF USED EQUIPMENT OR SUPPLIES AT AUCTION

Section 735.052

- Municipal legislative authority may authorize
 - Maximum price
 - Describe items
 - Appropriate funds
- Public sale
 - Verbal or written bids



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PURCHASES FROM POLITICAL SUBDIVISIONS

Section 735.053

- Municipal legislative authority may authorize
 - Ordinance
 - Political subdivision, state, or regional planning
 - Purchase material, equipment, supplies
- No advertising or bidding

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