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ODOT Defers Two Major New Construction Projects to FY 2021 Following Ohio Governor's Latest COVID-19 Order

On March 25, 2020, the Ohio Department of Transportation ("ODOT") announced the deferment of two projects from FY 2020 Major New Construction Program to the first two quarters of FY 2021 due to COVID-19. This deferment follows less than 48 hours after Ohio Governor Mike DeWine urged state departments to make up to 20% budget cuts where they can to curb spending at the state level. In his media release on Monday, March 23, 2020, Gov. DeWine stated "Commercial activity is slowing down across Ohio, and as a result, state revenues will also go down dramatically. It is important, as Governor, that I take action now. The earlier we start slowing down the spending, the more impact it will have."

The Governor went on to order an immediate hiring freeze for all agencies, boards, and commissions under the control of the Governor, with the only exceptions being for positions that provide a direct response to the COVID-19 pandemic, safety and security, and direct care of institutional services. The Governor further ordered:

- A freeze on pay increases and promotions for state of Ohio unclassified and exempt staff;
- A freeze on new contract services for the state of Ohio, except for those services that are necessary for the emergency response;
- That state agencies work to cut unnecessary spending up to 20 percent for the remainder of this fiscal year and next fiscal year.

Governor DeWine kicked off this spending cut by pulling back spending requests for a variety of projects that needed legislative spending authority, but ODOT followed close behind with its statement cutting at least two projects for the year. While ODOT is

monitoring the potential impacts from this pandemic and are being proactive to mitigate a slow-down in revenue generation while keeping the vast majority of the projects on their current schedule for start and completion, they are the first of many project deferments and cuts contractors can expect through the remainder of this fiscal year and next.

As agencies throughout the state follow ODOT's lead and begin to implement the budget cuts under Governor DeWine's order, deferment of contracts presents the potential to impact a company's performance of its contract. Shifting resources away from the current fiscal year, for example, may impact a contractor's performance by reducing a contracting officer's availability. This may result in a suspension of performance in extreme cases. Conversely, other agencies may elect to cut projects completely to comply with the Governor's order. Contractors are advised to maintain open and constant communication with contracting officers as these project deferments and cuts are made.

[ODOT's statement can be found here.](#)

For more information, please contact [Steve Withee](#) or any attorney in Frost Brown Todd's [Construction practice group](#).

*To provide guidance and support to clients as this global public-health crisis unfolds, Frost Brown Todd has created a **Coronavirus Response Team**. Our attorneys are on hand to answer your questions and provide guidance on how to proactively prepare for and manage any coronavirus-related threats to your business operations and workforce.*

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