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Ohio Modernizes and Simplifies Public Construction Contractor Selection and Project Administration

[Ohio's House Bill 96 \(H.B. 96\)](#) took effect on September 30, incorporating several significant provisions that will impact public construction projects around the state. The legislature's revisions to Ohio's public construction law are largely intended to streamline the contractor selection process and modernize project administration.

Changes to Project Selection Process

Ohio has modified its "Best Value Selection" procurement process to require that public authorities hold a meeting setting forth a project's scope and expectations before it will be allowed to solicit requests for proposal. Ohio has also imposed additional obligations on public authorities to ensure that contractor qualifications are considered when determining the most advantageous offer. Now, public authorities are expressly required to first rank all responding contractors by their qualifications before their pricing proposals can be considered.

Ohio has also simplified this procurement process for qualifying projects. Now, for construction manager at-risk (CMR) and design-build (DB) projects whose total cost is less than \$4 million, public authorities may now elect to solicit requests for qualifications (RFQs) and requests for proposals (RFPs) simultaneously. This is a shift from the previously required two-step request process.

In addition, construction managers at-risk or design-builders who intend to self-perform at least part of a public project are no longer required to submit their bids under seal before bidding is open, provided the owner has requested a guaranteed maximum price during the Best Value Selection process.

Subcontractors can no longer be disqualified from a public project for failure to comply with an affirmative action or DEI program. This change is part of a broader state shift in affirmative action

participation requirements for public construction projects. State contractors are also no longer required to possess a certification of compliance with an affirmative action program. Note, however, that state contractors and public authorities must still comply with state and federal employment anti-discrimination laws.

Ohio has also modernized its public project notice requirements. Before, public authorities were required to publish notice of public construction projects in print, although they were entitled to publish additional notices electronically, if desired. As of September 30, however, these requirements are flipped: Ohio law now requires that public notice be published electronically, but additional print-based notice may be published at a public authority's election. Ohio has also shortened the notice period. Now, public authorities must post notice a minimum of 14 days before bids open, down from 30.

Changes to Project Administration

Ohio no longer requires that retainage on public construction projects be held in escrow. If, however, an owner elects to hold retainage in escrow, it must still pay any earned interest on those funds to the contractor. In addition, required retainage for public projects has been modified. Namely, a public owner now should retain 4% throughout the project instead of holding 8% through 50% completion of the work.

Also beginning on September 30, owners of public land are no longer required to notarize Notices of Commencement (although all other requirements for these notices remain the same), and the Ohio Facilities Construction Commission has been authorized to create universal Building Information Modeling (BIM) standards that are consistent with a nationally recognized standard.

If you would like to discuss how these changes may impact your business, please contact the author or any member of the firm's [Construction Practice Group](#).

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