



Construction E-Alert

JUNE 2011

Ohio Construction Reform

Today the Governor is expected to sign Ohio's budget bill. The bill includes substantial and important changes to the way public construction projects will be built in the future. This alert provides a quick overview of key provisions; and once the bill is signed and we know that it will become law, we will provide a complete analysis of those parts of the bill that will impact public works in Ohio. Look for our complete analysis in the next edition of the BrickerConstructionLaw newsletter.

Bidding/Project Delivery

1. Eliminates the requirement that multiple-prime contracting be used for public improvements, except for Ohio Turnpike Commission Projects. Public authorities will be able to enter into contracts with construction managers at risk ("CMAR") and design-build firms ("D/B firms").
2. Prior to selecting a D/B firm, a Public Authority is required to obtain the services of an engineer or architect through either qualification based selection or through an engineer or architect that is an employee of the Public Authority. This engineer or architect will assist the Public Authority in the selection of the D/B firm. However, this engineer or architect is prohibited from providing design-build services on the same project.
3. Process for selecting a CMAR and D/B firm includes:
 - a. Public authority shall evaluate proposals from no fewer than three CMARs or D/B firms;
 - b. Public authority shall evaluate the proposals and may meet to discuss proposals with CMARs or D/B firms;
 - c. Rank the CMARs or D/B firms based on value (pricing and qualifications);
 - d. Enter into negotiations with the highest ranked CMAR or D/B firm; and
 - e. If negotiations fail with the highest ranked CMAR or D/B firm, the Public Authority can begin negotiations with the next highest ranked CMAR or D/B firm.
4. Requires DAS to prescribe the form for contracts to be used by a public authority when entering into a contract with a CMAR or D/B firm.
5. When subcontracting work, CMARs and D/B firms will be required to:
 - a. Establish prequalification criteria for prospective bidders on subcontracts;
 - b. Have the prequalification criteria approved by the public authority;
 - c. Identify at least three prospective bidders on subcontracts;
 - d. Conduct the solicitation and selection of subcontracts as performed under an open book pricing method; and,
 - e. DAS will adopt rules for establishing prequalification procedures.
6. Requires DAS to adopt rules establishing the proper forms that must be used by CMARs and D/B firms with subcontractors.
7. Guidelines for surety bonds for CMARs and D/B firms are to be established by DAS. The changes required by the bill will not be applicable until DAS adopts the surety bond guidelines.
8. Increases from \$50,000 to \$200,000 the minimum project cost threshold for competitive bidding for state projects (CMARs and D/B firms are exempted from this requirement).
9. Increases from \$25,000 to \$50,000 the professional design fee cost threshold, under which public authorities are exempt from bidding, evaluation, and ranking requirements, if:
 - a. The public authority selects a single design professional or firm:
 - i. From those firms that have submitted a current statement of qualifications; and,

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- ii. The selected firm is based on the public authority's determination that the firm is the most qualified
 - b. The public authority complies with ORC 153.69 regarding the negotiation of a contract.
10. Allow the Risk Management Fund to be used for the payment of any liability claim that is filed against the state rather than only liability claims that are filed in the court of claims.

Prevailing Wage

1. Sets the monetary threshold for the application of the prevailing wage requirements on new public improvement projects (other than roads, sewers, ditches, and other related projects) at \$125,000 for the first year after the effective date of the amendment, at \$200,000 for the second year, and at \$250,000 thereafter with no biennial adjustments.
2. Sets the monetary threshold for the application of the prevailing wage requirements on reconstruction of public improvement projects (other than roads, sewers, ditches, and other related projects) at \$38,000 for the first year after the effective date of the amendment, at \$60,000 for the second year, and at \$75,000 thereafter with no biennial adjustments.
3. Exempts public improvement projects undertaken by a port authority created by a municipal corporation, township, or county under R.C. 4582.02 or 4582.22 after 1964 from the prevailing wage requirements.
4. Prohibits schools districts and education services centers from applying the prevailing wage law to public improvements.
5. Increases the time in which the Director of Commerce must conclude an investigation

- concerning alleged violations of the prevailing wage law to 120 days after a complaint is filed.
6. Limits the definition of the term "interested party" to include the contractors, subcontractors, labor organizations, and trade organizations involved in the particular public improvement contract.
 7. Requires that all complaints allege a specific violation by a specific contractor or subcontractor, in writing, on a form furnished by the Director of Commerce and sufficient evidence to justify the complaint.
 8. Prohibits the Director of Commerce from investigating any complaint that does not satisfy the new requirements.
 9. Requires labor organizations to file with the Director of Commerce the relevant portions of any applicable collective bargaining agreement, contract, or understanding within 90 days after executing the agreement for purposes of determining the prevailing wage rate.
 10. Specifies that any change in the prevailing wage on an ongoing project takes effect two weeks after the Director of Commerce receives the relevant portion of any agreement, contract, or understanding showing that the prevailing wage rate has changed.
 11. Provides that no contractor or subcontractor is responsible for paying the penalties under the prevailing wage law for its subcontractor's violation of the law, if the contractor or subcontractor made a good faith effort to ensure that its subcontractors complied with the law.
 12. Exempts contractors and subcontractors whose underpayment to an employee is less than \$1,000 from further liability if the contractor or subcontractor makes full restitution to the employee.

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