FACILITIES CONSTRUCTION COMMISSION

School facilities programs

Classroom Facilities Assistance Program

- Requires the calculation of a school district's share for a Classroom Facilities Assistance Program project to be based solely on the required percentage based on the district's equity ranking.
- Requires a district that segments its classroom facilities needs to calculate the required percentage based on equity ranking on the date the Controlling Board approves the first segment for both that segment and future segments.

Vocational School Facilities Assistance Program

- Permits the Facilities Construction Commission (FCC) to set aside a portion of its school facilities funds each biennium to assist at least two joint vocational school districts.

Public improvements contracts

Electronic notices, advertisements, and filings

- Requires several types of notices or advertisements to be sent via electronic media.
- Requires FCC to make copies of the plans, details, estimates of cost, and specifications available electronically.
- Removes the requirement that a public authority file a notice of commencement of a public improvement in affidavit form.
- Permits a bidder for most contracts with the state or a political subdivision to file a bid guaranty by electronic verification through an electronic verification and security system, if the state or political subdivision accepts bids electronically.

Declaration of exigency

- Requires that, when the FCC Executive Director issues a declaration of public exigency at the request of a state agency, the director of the state agency, at the determination of the FCC Executive Director, must enter into a contract with the proper persons to address the exigency.

Building information modeling systems

- For public works contracts of $200,000 or more, permits a public authority to require an architect or engineer, in preparing plans, details, specifications, estimates, analyses, or other data, to use a building information model system, if the system is based on a nationally recognized standard for building information models.
- Defines "building information model" as a digital representation of physical and functional characteristics of a facility, and electronic files used to design and coordinate the project, whether it is a single model or multiple models used in the aggregate.

Public improvements contracts retainage and escrow

- For partial payments on a public improvements contract, decreases the public authority's required retainage amount from 8% of the contractor's estimate to 4% or less, but repeals a requirement that the public authority retain 0% after the job is 50% completed.
- Prohibits contractors from paying subcontractors at a retainage rate lower than the rate being paid to the contractor by the public authority.
- Repeals law requiring the public authority to deposit the retained amount in an escrow account.
- Clarifies that retained funds and the interest accrued on them is property of the contractor, and must be paid to the contractor within 30 days after the substantial completion of the work, withholding only funds reasonably necessary to ensure final completion of the work.
- Requires the remaining funds, and interest, to be released to the contractor within 30 days of final completion of the work.

Expedited processes for design-build firms and managers at risk

- For contracts between public authorities and construction managers at risk or design-build firms, creates an expedited proposal and selection process for projects under $4 million.
- Permits construction managers at risk or design-build firms, for contracts under $4 million, to submit both an initial qualification proposal or statement along with a pricing proposal, instead of sending them in separate rounds.
- Requires the public authority to have a pre-proposal meeting with any such contractors who desire to jointly submit a statement or proposal and pricing proposal.
- Exempts these contractors from the requirement to submit a sealed bid to self-perform a portion of work before accepting opening any bids for the same work when the public authority requests a guaranteed maximum price proposal due at the time of selection.

School facilities programs

Classroom Facilities Assistance Program

(R.C. 3318.032)

The act revises the calculation of a school district's share for its Classroom Facilities Assistance Program (CFAP) project. It requires that the district's portion be calculated solely using the percentage based on its equity ranking. Under former law, the district's portion was the greater of either the required percentage based on its equity ranking or an amount necessary to raise the school district's net bonded indebtedness to a prescribed level.

It also requires that, for a district that segments its classroom facilities needs, the district's portion for each segment be determined using the required percentage based on its equity ranking on the date the Controlling Board approves its first segment.

Vocational school facilities assistance program

(R.C. 3318.40 and 3318.12)

The act changes how the Facilities Construction Commission (FCC) allocates funding for the Vocational School Facilities Assistance Program. Specifically, it eliminates FCC's authority to annually set aside up to 2% of its aggregate funds to provide school facilities assistance to joint vocational school districts (JVSDs). Instead, the act permits FCC to set aside "a portion" of its aggregate school facilities assistance funds each biennium to assist at least two JVSDs.

Public improvements contracts

Electronic notices, advertisements, and filings

(R.C. 9.312, 9.331, 153.07, 153.09, 153.54, and 1311.252)

The act requires certain notices, advertisements, and filings to be made via electronic media, rather than through various physical media like newspapers.

Competitive bidding notices

For contracts let by competitive bidding, when a state agency or political subdivision finds that a low bidder is not responsive or responsible, the act requires the state agency or political subdivision to send the bidder a notice in writing by an internet identifier of record associated with the bidder (such as an email address), and by certified mail only if an electronic method is not available. Former law permitted either method.

Public improvements notices and advertisements

For contracts to employ a construction manager or a construction manager at risk, the act requires a public authority to advertise its intended contract by electronic means, and permits advertising in news media available in the county. Former law was the opposite: it required advertisement in a newspaper and permitted electronic advertisement.

The act reduces the required advance publication of the notice from 30 days to 14 days.

For public improvements contracts, the act requires the public authority to give notice of the time and place where bids will be received by electronic means at least 14 days in advance, and permits the authority to publish the notice in other news media in the county where the work is to occur. Former law required publication in a newspaper at least eight days in advance.

The act also requires plans, details, estimates of cost, and specifications to be available electronically, as well for physical inspection at the FCC's office under continuing law.

When the public authority rejects all bids and re-advertises, the advertisement must be in electronic media, rather than newspaper, as FCC directs.

Notices of commencement

The act removes the requirement that the notice of commencement be in affidavit form. A notice of commencement contains details about the work to be performed, the contractor, the public authority, and the bid guaranty.

Bid guaranties

The act permits a bidder for most contracts with the state or a political subdivision to file a bid guaranty in the form of an electronic verification through an electronic verification and security system, if the state or political subdivision accepts bids electronically. Continuing law also permits the bidder to file it in the form of a bond, certified check, cashier's check, or letter of credit. Under continuing law, this requirement does not apply to contracts with construction managers at risk and design build firms.

Declaration of exigency

(R.C. 123.10)

The act requires the director of a state agency, when the FCC Executive Director issues a declaration of public exigency at the state agency's request, and at the determination of the FCC Executive Director, to enter into a contract with the proper persons to address the exigency.

Continuing law permits the FCC Executive Director, upon the Director's own initiative or at the request of a state agency director, state institution of higher education, or state instrumentality, to issue a declaration of public exigency in the event of one of the following:

- An injury or obstruction that occurs in any public works of the state and that materially impairs its immediate use or places in jeopardy property adjacent to it;
- An immediate danger of such an injury or obstruction; or
- An injury or obstruction, or an immediate danger of an injury or obstruction, that occurs in any public works of the state and that materially impairs its immediate use or places in jeopardy property adjacent to it.

Former law required only the FCC Executive Director to contract with proper persons to alleviate or respond to the exigency.

The act continues to require the FCC Executive Director to enter into these contracts when the Executive Director issued the declaration of exigency at the Executive Director's own initiative. But it permits the Executive Director, when the Executive Director issued the declaration at the request of one of the state bodies listed above, to require the state body to enter into the contract instead.

Building information modeling systems

(R.C. 153.01)

The act permits a public authority, for public improvements contracts worth $200,000 or more, to require an architect or engineer, in preparing plans, details, specifications, estimates,

analyses, or other data, to use a building information model system, if the system is based on a nationally recognized standard for building information models.

The act defines a "building information model" as a digital representation of physical and functional characteristics of a facility, and electronic files used to design and coordinate the project, whether it is a single model or multiple models used together.

Public improvements contracts retainage and escrow

(R.C. 153.12, 153.13, 153.14, and 153.63)

The act makes changes to the process by which contractors are paid for completing public improvements contracts.

Under former law, the public authority had to pay 92% of the contract price for labor performed before and up to the point when the job was 50% completed. After it was 50% completed, the public entity had to pay 100% of the contract price during the remaining 50% of the project, and deposit the 8% that had been collected into an escrow account. When the major portion of the project was substantially completed and occupied, or in use, or otherwise accepted, the retained amount, with accumulated interest, was released from escrow and paid to the contractor within 30 days of completion of the contract.

The act changes this process in the following ways: first, instead of 8% being retained for the first half of the contract, 4% or less is retained for the entirety of the contract. The total amount being retained is the same, and perhaps less if the public authority so chooses.

Second, the act removes the escrow account requirement, instead merely specifying that the public authority must release the amount to the primary contractor upon, and within 30 days of, substantial completion of the work, retaining a portion of the funds as reasonably necessary for final completion of the project. These remaining withheld funds, and any interest, must then be released to the primary contractor within 30 days of final completion. The act clarifies that the retained funds and the accrued interest are the property of the contractor.

Finally, the act prohibits contractors from paying subcontractors at a retainage rate lower than the rate paid to the contractor by the public authority. For instance, if FCC is paying a contractor at a retainage rate of 97% (withholding 3%), the contractor is not permitted to pay a subcontractor at a retainage rate of 96% (withholding 4%). In other words, the contractor may not retain more from a subcontract than is being retained from the contractor's contract.

Expedited processes for design-build firms and managers at risk

(R.C. 9.334, 153.501, and 153.693)

The act creates an expedited proposal and selection process for contracts between public authorities and construction managers at risk or design-build firms, for projects under $4 million.

Under the expedited process, the construction managers at risk or design-build firms may submit both an initial qualification proposal or statement, respectively, and a pricing proposal in the same submission. Former law required, and continuing law requires, in the case of contracts worth more than $4 million, the manager or firm to submit a proposal or statement, then for the public authority to rank and select at least three firms from the submissions, who then must

submit a pricing proposal. After the proposal is submitted, the public authority must hold discussions with each applicant before making a final selection.

The act permits these contractors to submit both proposal or statement and a pricing proposal at once for contracts under $4 million, and also requires a public authority to provide each such contractor using the expedited process with a pre-proposal meeting to explore the proposals further, in which the public authority provides the manager or firm with a description of the project, including the scope and nature of the proposed services and potential technical approaches.

Under the standard process, the manager or firm submits a proposal or statement of qualifications, is selected to move on, has a meeting with the public authority, and then submits a pricing proposal for final approval.

Under the expedited process, an interested manager or firm has a pre-proposal meeting with the public authority, then submits a proposal or statement of qualifications along with a pricing proposal. The public authority reviews the initial qualification proposal or statement, selects a certain number of managers or firms for the next round, reviews the pricing proposals only of those selected, and then continues the negotiation and selection process from there.

The act also exempts these contractors from the requirement to submit a sealed bid to self-perform a portion of the work if the public authority requests a guaranteed maximum price proposal due at the time of selection. This essentially means that a manager or firm may more easily subcontract with themselves if they have agreed to a certain price cap.