**The Ohio Compliance Supplement Optional Procedure Manual (OPM)**

*The Auditor of State selects a few audits randomly each year, to test requirements listed in this OCS Optional Procedures Manual. These requirements represent additional tests of compliance which are not included in Chapters 1 through 3 of the Ohio Compliance Supplement. However, the omission of these requirements from the Supplement does not lessen a government’s responsibility for compliance and for instituting controls it believes are necessary to assure compliance with any laws and regulations that apply to the government. See the OCS Implementation Guide for more information about the Auditor of State’s compliance testing requirements.*

*Tests of the compliance requirements included in this OPM will help ensure public officials entrusted with public resources are meeting their responsibility for complying with these laws and regulations.*

Compliance Requirements Page

[Section A: Budgetary Requirements 4](#_Toc30003023)

[General Budgetary Requirements 4](#_Toc30003024)

[O-1 Compliance Requirement: Ohio Rev. Code §§ 5705.28(B)(2), 5705.36, 5705.39 and 5705.41 Certification of available revenue. 4](#_Toc30003025)

[Budgetary Requirements for Revenues, Funds, and Transfers 7](#_Toc30003026)

[O-2 Compliance Requirements: Ohio Rev. Code §§ 5705.02, 5705.07 and 5705.18 and Ohio Const. Art. XII, Section 2 - Ten mill limitation. 7](#_Toc30003027)

[O-3 Compliance Requirements: Ohio Const. Art. XII, Section 5a; Ohio Rev. Code §§ 135.21, 5705.10, 3315.01, 3318.12, 3375.391 and 5705.131; and 1982 Op. Att’y. Gen. No. 82-031; and 2 C.F.R. § 200, and 7 C.F.R. § 210.2 and 210.14(a) – Allocating interest among funds for *subdivisions other than counties.* 9](#_Toc30003028)

[Additional County Requirements 12](#_Toc30003029)

[O-4 Compliance Requirements: Ohio Const. Art. XII, Section 5a; Ohio Rev. Code §§ 135.351-.352 and § 5705.10 & .131; and 1982 Op. Att’y. Gen. No. 82-031, – Allocating interest among county funds. 12](#_Toc30003030)

[Additional School Budgetary Requirements 14](#_Toc30003031)

[O-5 Compliance Requirement: Ohio Rev. Code §§ 3316.043, 5705.391 and Ohio Admin. Code 3301-92-04: School districts and community schools per Ohio Rev. Code § 3314.03(A)(11)(d) must prepare five-year projections. 14](#_Toc30003032)

[O-6 Compliance Requirement: Ohio Rev. Code § 5705.412 and Ohio Admin. Code 3301-92-05 - Restriction upon school district expenditures and certifying adequate revenues. Application: City, local, exempted village and joint vocational school districts. 16](#_Toc30003033)

[O-7 Compliance Requirements: Ohio Rev. Code §§ 3315.18 and .181 (capital); 3317.02 (defines formula amount) – Capital and maintenance reserve account. 20](#_Toc30003034)

[O-8 Compliance Requirements: Ohio Rev. Code § 3314.032 - Community school budget requirements. 30](#_Toc30003035)

[Section B: Contracts and Expenditures 31](#_Toc30003036)

[Statutory Municipalities 31](#_Toc30003037)

[O-9 Compliance Requirements: Ohio Rev. Code §§ 9.48, 125.04, 153.65-.71, 731.02, 731.12, 731.14, 731.141, 735.05 and 2921.42 - Municipal contracts. 31](#_Toc30003038)

[O-10 Compliance Requirements: Ohio Rev. Code § 731.16 (villages) and 735.07 (cities) - Altering or modifying municipal contracts. 34](#_Toc30003039)

[Counties 35](#_Toc30003040)

[O-11 Compliance Requirements: Ohio Rev. Code §§ 9.37, 125.04, 153.65-.71, 305.27, 307.041, 307.86-.87, 319.16 and 2921.42 - County payments to be by auditor’s warrant; competitive bidding. Ohio Rev. Code § 307.87 - County notice and other bid procedures. 35](#_Toc30003041)

[O-12 Compliance Requirement: Ohio Rev. Code §§ 301.27 (county credit cards) and 301.29 (county procurement cards or “p-cards.”) - County credit and procurement cards. 39](#_Toc30003042)

[Townships 43](#_Toc30003043)

[O-13 Compliance Requirements: Ohio Rev. Code §§ 9.48, 125.04, 153.64-.71, 505.08, 505.101, 505.267, 505.37, 505.46, 511.12, 511.13, 515.01, 515.07, 521.05, 2921.42, 5549.21, and 5575.01 - Township’s expenditures and competitive bidding. 43](#_Toc30003044)

[Schools 48](#_Toc30003045)

[O-14 Compliance Requirement: Ohio Rev. Code §§ 9.48, 125.04(C), 153.65-.71, 3313.46, 3313.533 and 3327.08 - Board of Education procedures for bidding and letting of contracts. 48](#_Toc30003046)

[Hospitals 52](#_Toc30003047)

[O-15 Compliance Requirement: Ohio Rev. Code §§ 9.48, 153.65-.71, 307.86 and 2921.42 - Bidding procedures and purchasing policies for supplies and equipment (County Hospitals). 52](#_Toc30003048)

[O-16 Compliance Requirement: Ohio Rev. Code §§ 749.26, 749.27, 749.28, 749.29, 749.30 and 2921.42 - Contract procedures; bids; bonds; bid openings (Municipal Hospitals). 54](#_Toc30003049)

[Colleges and Universities 56](#_Toc30003050)

[O-17 Compliance Requirement: Ohio Rev. Code §§ 9.312, 153.65-.71, 2921.42, 3354.16, 3355.12, and 3358.10 - Bidding required on improvement contracts. 56](#_Toc30003051)

[Libraries 59](#_Toc30003052)

[O-18 Compliance Requirements: Ohio Rev. Code §§ 153.65-.71, 2921.42, 3375.06, 3375.10, 3375.12, 3375.15, 3375.22, 3375.30 and 3375.41 - Procedure for bidding and letting of contracts over $50,000. 59](#_Toc30003053)

[O-19 Compliance Requirements: Ohio Rev. Code §§ 153.50, 153.51, and 153.52 - Separate bids and contracts required for each class of work on buildings and other structures (e.g., institutions, bridges, culverts, or improvements). 61](#_Toc30003054)

[O-20 Compliance Requirements: Ohio Rev. Code §§ 4115.04 and 4115.03 - Prevailing wage rates in public works contracts. 63](#_Toc30003055)

[O-21 Compliance Requirements: Ohio Rev. Code § 9.314 – Reverse Internet auction. 66](#_Toc30003056)

[O-22 All Local Governments Compliance Requirement: Misc. local legislative body policies; charter requirements – Establishment of policies, restrictions on use, prohibitions for government credit cards and purchasing cards. 68](#_Toc30003057)

[Section C: Debt 76](#_Toc30003058)

[Entities Other Than Community Schools 76](#_Toc30003059)

[O-23 Compliance Requirement: 17 C.F.R. § 240.15c2-12 - Issuing municipal securities 76](#_Toc30003060)

[Section D: Accounting and Reporting 79](#_Toc30003061)

[Courts 79](#_Toc30003062)

[O-24 Compliance Requirement: Ohio Rev. Code § 2303.12 - Books to be kept by clerk of the court of common pleas. 79](#_Toc30003063)

[O-25 Compliance Requirement: Ohio Rev. Code § 2101.12 - Records to be kept by the probate court. 80](#_Toc30003064)

[O-26 Compliance Requirement: Ohio Rev. Code § 307.515 - Fines and penalties for violation of liquor control laws and state traffic laws paid to the county law library resources fund (various courts). 81](#_Toc30003065)

[Section E: Deposits and Investments 82](#_Toc30003066)

[Section F: Other Laws and Regulations 83](#_Toc30003067)

[Various Entity Types 83](#_Toc30003068)

[O-27 Compliance Requirement: Ohio Rev. Code § 117.13(C)(3) and 2 C.F.R. § 200.425 – Allocating Audit Costs (MOVED from Chapter 1). 83](#_Toc30003069)

[Community Schools 85](#_Toc30003070)

[O-28 Compliance Requirement: Ohio Rev. Code § 3314.50- Community School Audit Fee Bond *(MOVED from 2-13. Additional guidance has been added to the requirements / procedures previously included in OCS Section 2-13.)* 85](#_Toc30003071)

[OPM APPENDIX 5705.36 87](#_Toc30003072)

[LEGAL MATRIX 89](#_Toc30003073)

# Section A: Budgetary Requirements

## General Budgetary Requirements

### O-1 Compliance Requirement: Ohio Rev. Code §§ 5705.28(B)(2), 5705.36, 5705.39 and 5705.41 Certification of available revenue.

**Summary of Requirement:**  On or about the first day of each fiscal year, the fiscal officers of subdivisions and other taxing units are to certify to the county auditor the total amount from all sources available for expenditures from each fund in the tax budget along with any unencumbered balances existing at the end of the preceding year.

Except, a taxing authority shall *exclude* the following from unencumbered fund balances:

* Budget stabilization reserves [§§ 5705.13, 5705.29(G)]
* Nonexpendable trust principal balances and any additions to principal not from the fund’s reinvested earnings [§ 5705.131]
* The balance in a township reserve balance account established under § 5705.132

The certification for a school district must separately show the amount of any notes and unpaid outstanding expenses that were due prior to June 30 which are to be paid from advancements of property tax settlement money.

Ohio Rev. Code § 5705.36(A)(2) provides that subject to divisions (A)(3) and (4), upon a determination by the fiscal officer of a subdivision that the revenue to be collected by the subdivision will be greater or less than the amount included in an official certificate, the fiscal officer **may** **certify** the amount of the deficiency or excess to the commission, and if the commission determines that the fiscal officer's certification is reasonable, the commission shall certify an amended official certificate reflecting the deficiency or excess.

In comparison, subsections (A)(3) and (A)(4) indicate when a fiscal officer **shall certify** excesses/deficiencies to the commission.

* Upon a determination by the fiscal officer of a subdivision that the revenue to be collected by the subdivision will be greater than the amount included in an official certificate and the legislative authority intends to appropriate and expend the excess revenue, the fiscal officer shall certify the amount of the excess to the commission, and if the commission determines that the fiscal officer's certification is reasonable, the commission shall certify an amended official certificate reflecting the excess. [§ 5705.36(A)(3)]
* Upon a determination by the fiscal officer of a subdivision that the revenue to be collected by the subdivision will be less than the amount included in an official certificate and that the amount of the deficiency will reduce available resources below the level of current appropriations, the fiscal officer shall certify the amount of the deficiency to the commission, and the commission shall certify an amended certificate reflecting the deficiency. [§ 5705.36(A)(4)]

The total appropriations made during the fiscal year from any fund shall not exceed the amount set forth as available for expenditure from such fund in the official certificate of estimated resources, or any amendment thereof, certified prior to the making of the appropriation or supplemental appropriation.

The intent of this statutory requirement is to require the fiscal officer to obtain such a “reduction” certificate when it appears that budgetary resources will fall short of earlier estimates, reducing the possibility that deficit spending will occur.

Ohio Rev. Code § 5705.36 ***does not*** require that subdivision fiscal officers certify changes to the budget commission so as to obtain an amended certificate of estimated resources which matches actual resources for the year to the penny (a “zero variance”). Citations for noncompliance with this provision will not be issued by the Auditor of State’s Office for circumstances outlined in OPM Appendix 5705.36 at the end of this Manual. Additionally, citations for noncompliance with this provision will not be issued by the Auditor of State’s Office unless other budgetary violations are present under Ohio Rev. Code § 5705.39 or 5705.41(B) (See OCS Chapter 2).

**5705.28(B)(2) Requirements for entities that do not levy taxes**

If an entity levies taxes, the sections above apply. However, some entities with taxing authority do not levy taxes. When they do not levy taxes, Ohio Rev. Code § 5705.28 (B)(2) permits a comparable, but somewhat streamlined budget process. Ohio Rev. Code § 5705.28(B)(2) requires entities to follow Ohio Rev. Code § 5705.36.

**Suggested Audit Procedures:**

1. Inspect the copy of the certificate retained by the subdivision showing the total amount from all sources which is available for expenditures and the balances existing at the end of the preceding year.
2. Through inquiry, knowledge of the client, and review of documents (such as the record of minutes and accounting ledgers), determine whether the client has established any of the reserve balance accounts, or nonexpendable trust funds described.
3. If reserve balance accounts or nonexpendable trust funds have been established, calculate or inspect the client’s or budget commission’s calculations that the certification excludes balances in those accounts/funds. (That is, these amounts are not available for appropriation.)
4. For school districts, calculate or inspect the client’s or budget commission’s calculations that the certification includes any spending reserve available for appropriation during the current fiscal year.
5. For school districts receiving an advance on the August property tax settlement, determine through inquiry, inspection of ledgers, vouching, or other such means, whether significant payments were made on notes or outstanding expenses which were due prior to June 30 (since some school districts routinely request advances to take advantage of short-term investment opportunities, you should consider whether these payments could have been made in the absence of the advance, without placing undue distress on the school district).
6. If such notes or outstanding expenses have been identified, compare the amounts to the amounts separately identified on the school district’s copy of the certificate.

***Only test if Ohio Rev. Code § 5705.39 or 5705.41(B) violations were noted in OCS Chapter 2 testing:***

1. If the government is not in fiscal emergency, and has funds in violation of 5705.39 or 5705.41(B), compare actual resources (i.e. beginning unencumbered fund balance + actual receipts) to appropriations as of the fiscal year end. If actual resources are less than appropriations and do not meet any of the exceptions listed in ***OPM Appendix 5705.36*** at the end of this Manual, also cite 5705.36 for not requesting a reduced certificate.

**Audit Procedures, Government Personnel Interviewed and Dates:**

**Conclusion (management letter comments):**

## Budgetary Requirements for Revenues, Funds, and Transfers

### O-2 Compliance Requirements: Ohio Rev. Code §§ 5705.02, 5705.07 and 5705.18 and Ohio Const. Art. XII, Section 2 - Ten mill limitation. (These tests apply only to years in which inside or outside millage increases. That is, you need not test this requirement for years in which there have been no new levies as long as there is documentation in the permanent file of voter approval for all outside millage.)

**Summary of Requirements:** Generally, the aggregate amount of taxes that may be levied on any taxable property in any one year is not to exceed ten mills on each dollar of tax valuation. (Charter governments may use a different limit authorized in their charter.) This limitation is known as the *ten mill limitation*, or *inside millage*. The ten mill limitation may only be exceeded (a) by a vote of the people, or (b) by a charter that provides for a higher limitation which may be levied without a vote of the people.

**POSSIBLE NONCOMPLIANCE RISK FACTORS:**

***Note*: In assessing the risk of noncompliance, auditors should consider whether the government has obtained bond counsel for recent debt issuances. Typically, bond counsel will evaluate (and possibly opine) on a government’s compliance with the ten-mill limitation laws. A recent opinion or evaluation by bond counsel (especially during or near the current audit period) may lower the risk of noncompliance.**

**However, governments that can issue general obligation bonds without a vote of the people may be at a greater risk for noncompliance if they are already nearing the ten-mill limitation. For example, assume a subdivision within a county is at 90% of the ten-mill limitation and the county auditor subsequently reappraises and lowers property values within the subdivision by 11%. The reappraisal would cause the subdivision to exceed the ten-mill limitation.**

**Suggested Audit Procedures:**

1. Inspect the tax budget for the year and determine if the ten mill limitation was exceeded.
2. If the ten mill limitation was exceeded, inspect the document entitled *Resolution Accepting Amounts and Rates as Determined by the Budget Commission and Authorizing the Necessary Tax Levies and Certifying Them to the County Auditor*, indicating outside millage was authorized by a vote of the people or was authorized by appropriate charter provisions. Secure copies for the permanent files, if appropriate. (These tests apply only to years in which inside or outside millage increases. That is, you need not test this requirement for years in which there have been no new levies as long as there is documentation in the permanent file of voter approval for all outside millage.)

**Audit Procedures, Government Personnel Interviewed and Dates:**

**Conclusion (management letter comments):**

### O-3 Compliance Requirements: Ohio Const. Art. XII, Section 5a; Ohio Rev. Code §§ 135.21, 5705.10, 3315.01, 3318.12, 3375.391 and 5705.131; and 1982 Op. Att’y. Gen. No. 82-031; and 2 C.F.R. § 200, and 7 C.F.R. § 210.2 and 210.14(a) – Allocating interest among funds for *subdivisions other than counties.*

**Summary of Requirements**: The distribution of interest earned on monies held for the treasuries of other subdivisions (i.e. as fiscal agent or custodian) is generally subject to Ohio Rev. Code § 135.21 and § 5705.10, although specific exceptions may exist. As a general rule:

* Interest earned on monies deposited by a treasurer which do not belong in the treasury of the subdivision, due to their status as custodial funds,[[1]](#footnote-1) because he is acting as ex officio treasurer, or otherwise, generally must be apportioned to the funds to which the principal belongs. [Ohio Rev. Code § 135.21]
* All other interest earned must be credited to the general fund of the subdivision [Ohio Rev. Code § 135.21], with the **following exceptions:**
  + Interest earned on money derived from a motor vehicle license or fuel tax must follow the principal[[2]](#footnote-2). [Ohio Const. Art. XII, Section 5a, and 1982 Op. Att’y. Gen. No. 82-031]
  + Federal regulations may require local governments to credit interest earned on federal money to the fund to which the principal belongs. Most Federal agencies have codified the Uniform Guidance (2 C.F.R. § 200) that describe the accounting for interest earnings.[[3]](#footnote-3) In some situations, interest earnings on Federal money must follow the fund to which the principal belongs (such as interest earned on revolving loans). Conversely, local governments must generally refund interest earned in excess of $500 if the grant falls under the Uniform Guidance annually to the Federal agency if the grant is advance funded. Auditors should refer to the applicable Federal program regulations and grant agreements to determine whether interest earned on federal money must be credited to the fund where the principal belongs.
  + Interest earned on principal of a non-expendable trust fund[[4]](#footnote-4) established to receive donations or contributions that the donor or contributor requires to be maintained intact must be credited to the non-expendable trust fund to which the principal belongs. [Ohio Rev. Code § 5705.131].
  + Interest earned on debt proceeds from debt issued under Ohio Rev. Code Chapter 133 may be used for purposes for which the debt was issued, or, as authorized by the taxing authority, or another fund or account and used for the purposes of that fund or account. The premium and accrued interest from such a sale shall be paid into the sinking fund or the bond retirement fund of the subdivision. [Ohio Rev. Code § 5705.10(E)] (***Note***: *Proceeds* exclude accrued interest and premiums, which the entity must credit to the sinking or bond retirement fund.)

**School District Exceptions:**

* Notwithstanding Ohio Rev. Code §§ 3315.12 and 3315.14, the board of education of any school district may adopt a resolution requiring the treasurer of the district to credit the earnings made on the investment of the principal of the moneys specified in the resolution to the fund from which the earnings arose, or any other fund of the district as the board specifies in its resolution. [Ohio Rev. Code § 3315.01(A)].

This procedure does not apply to the earnings made on the investment of a school district’s bond retirement fund, the sinking fund, a project construction fund established pursuant to Ohio Rev. Code § 3318.01 to § 3318.20 (see school Classroom Facilities Assistance Program requirements described earlier in OCS Chapter 1), or the payments districts receive from the school foundation program. [Ohio Rev. Code § 3315.01(B)]

* All investment earnings of a school district project construction fund shall be credited to the fund.[[5]](#footnote-5) After a certificate of completion has been issued for a project under § 3318.48 (Ohio Facilities Construction Commission) of the Revised Code:

(A). At the discretion of the school district board, any investment earnings remaining in the project construction fund that are attributable to the school district’s contribution to the fund shall be: (a) retained in the project construction fund for future projects; (b) transferred to the district’s maintenance fund required by division (B) of Ohio Rev. Code § 3318.05 or § 3318.43, and the money so transferred shall be used solely for maintaining the classroom facilities included in the project; (c) transferred to the district’s permanent improvement fund. [Ohio Rev. Code § 3318.12(C)(1)]

1. Any investment earnings remaining in the project construction fund that are attributable to the state’s contribution to the fund shall be transferred to the state commission for expenditure pursuant to Ohio Rev. Code §§ 3318.01 to 3318.20 or §§ 3318.40 to 3318.45. [Ohio Rev. Code § 3318.12(C)(2)]

* All revenue, as defined in 7 C.F.R. § 210.2, received by or accruing to the food service fund of any school district or community schools including but not limited to, children’s payments, earnings on investments, and other local revenues should be credited to and used by those funds. (7 C.F.R. § 210.2 and 210.14(a)).

**Cemetery Exception:**

Interest earned on a cemetery bequest fund that is attributable to an individual bequest is credited to that fund. That is, interest attributable to an endowment for the benefit of individual cemetery lots should follow the principal of the endowment (i.e., typically classified as a Permanent Fund under GASB Statement No. 54) [Ohio Rev. Code § 759.36, § 759.14, and § 517.15[[6]](#footnote-6)]. However, interest attributable to endowments generally benefitting the cemetery as a whole may be allocated to a cemetery fund (i.e., typically classified as a Special Revenue Fund under GASB Statement No. 54) to be used for general cemetery purposes.

**Library Exception**:

* The board of library trustees of any free public library district may adopt a resolution requiring the treasurer of the district to credit the earnings made on the investment of the principal of the moneys specified in the resolution to the fund from which the earnings arose or any other fund of the district as the board specifies in its resolution. [Ohio Rev. Code § 3375.391]
* This does not apply to the earnings made on the investment of any library bond retirement fund or any sinking fund. [Ohio Rev. Code § 3375.391]

**Suggested Audit Procedures – Compliance (Substantive) Tests:**

Trace a representative selection of interest earned during the fiscal year and determine that it was paid into the proper funds.

**Audit Procedures, Government Personnel Interviewed and Dates:**

**Conclusion (management letter comments):**

## Additional County Requirements

### O-4 Compliance Requirements: Ohio Const. Art. XII, Section 5a; Ohio Rev. Code §§ 135.351-.352 and § 5705.10 & .131; and 1982 Op. Att’y. Gen. No. 82-031, – Allocating interest among county funds.

**Summary of Requirements**: Ohio Rev. Code § 135.351(A) and § 5705.10 govern the distribution of interest earned on money in the county treasury. Generally, all interest must be credited to the county general fund. The following are exceptions to this general rule:

Ohio Rev. Code § 135.351(B) establishes requirements for distributing monies belonging to other subdivisions which are invested or deposited by the county. If such monies are not distributed as required in divisions (B) (1), (2), or (3), Ohio Rev. Code § 135.351(C) requires that all interest accruing after the required distribution date be paid to the subdivisions.

Interest earned on money derived from a motor vehicle license or fuel tax (including local motor vehicle license tax imposed under Ohio Rev. Code Chapter 4504, motor vehicle license tax imposed under Ohio Rev. Code § 4503.02, highway use tax and gasoline tax imposed under Ohio Rev. Code Chapter 5728, and motor vehicle fuel tax imposed under Ohio Rev. Code Chapter 5735 [1982 Op. Att’y. Gen. No. 82-031]) must be paid into the fund to which the principal belongs, not to the general fund. Ohio Const. Art. XII, Section 5a, Ohio Constitution; 1982 Op. Att’y. Gen. No. 82-031.

Federal statutory or regulatory requirements may require that interest earned on monies received from the federal government be paid into the fund to which the principal belongs. This must be determined on an individual basis with each federal program.

Interest earned on all funds under the control of the board of park commissioners shall be credited to such funds. [Ohio Rev. Code § 1545.22(B)(1), as referenced from Ohio Rev. Code § 135.351(A)].

Interest earned on the investment of monies in the county library and local government support fund (now legally known as: “county public library funds”) must be credited to that fund [Ohio Rev. Code § 135.352].

Interest earned on debt proceeds from debt issued under Ohio Rev. Code Chapter 133 must be used for purposes for which the debt was issued or credited to the general fund. [Ohio Rev. Code § 5705.10(E)] (***Note***: *Proceeds* exclude accrued interest and premiums, which the entity must credit to the sinking or bond retirement fund.)

Interest earned on principal of a non-expendable trust fund[[7]](#footnote-7) established to receive donations or contributions that the donor or contributor requires to be maintained intact must be credited to the non-expendable trust fund to which the principal belongs. [Ohio Rev. Code § 5705.131]

**Suggested Audit Procedures – Compliance (Substantive) Tests:**

Trace a representative selection of interest earned during the fiscal year and determine that it was paid into the proper funds.

**Audit Procedures, Government Personnel Interviewed and Dates:**

**Conclusion (management letter comments):**

## Additional School Budgetary Requirements

### O-5 Compliance Requirement: Ohio Rev. Code §§ 3316.043, 5705.391 and Ohio Admin. Code 3301-92-04: School districts and community schools per Ohio Rev. Code § 3314.03(A)(11)(d) must prepare five-year projections.

**Summary of Requirements:**

***Traditional School Districts and Community Schools:***

School boards must prepare five-year projections of revenues and expenditures. Most of the guidance on how to prepare these projections is found in Ohio Admin. Code 3301-92-04. A board of education must update its five-year projection between April 1 and May 31 of each fiscal year and submit it to the department of education. [Ohio Admin. Code 3301-92-04(F)]

The plan must be approved by resolution and submitted to the Department of Education upon the adoption of an annual appropriation measure. The Department of Education and Auditor of State shall not require a board of education to submit its five-year projection of operational revenues and expenditures prior to November 30th of any fiscal year. [Ohio Rev. Code § 5705.391(A) and (C)] [Ohio Admin. Code 3301-92-04]

In addition, a board of education notified under division (A) of section 5705.391 of the Ohio Rev. Code shall submit a school district approved written plan in a timely manner as required to the department of education to eliminate any current deficits and avoid the projected future deficits. [Ohio Admin. Code 3301-92-04(E)]

The rules allow the Auditor of State and the Ohio Department of Education to jointly prescribe the format and content of the five-year projection. See the ODE site for guidance: <http://education.ohio.gov/Topics/Finance-and-Funding/Five-Year-Forecasts/Five-Year-Forecast-Traditional-Districts/Helpful-Links-for-Treasurers-Five-Year-Forecast>. The Auditor of State and the Ohio Department of Education generally are responsible for reviewing these projections (and related assumptions) for conformity with the requirements. The independent auditor is expected to evaluate whether the data in the projections for the current period are reasonably supported by the client’s documentation.

***Traditional School Districts:***

The board of education of a school district that is in fiscal watch must have the respective plan approved by the Superintendent of Public Instruction. The board of education of the school district for which the plan was approved shall revise the district’s five-year projection of revenues and expenditures so that the five-year project is consistent with the financial recovery plan. The financial planning and supervision commission for a school district in fiscal emergency must revise the school district's five-year projection of revenues and expenditures so that the projection is consistent with the financial plan or financial recovery plan. [Ohio Rev. Code § 3316.043]

The following web-site contains the five-year projections for City, Local, Exempted Village and Joint Vocational School Districts filed with ODE: <http://fyf.oecn.k12.oh.us/>.

***Community Schools [Ohio Rev. Code § 3314.03(A)(11)(d)]:***

Five-year forecasts[[8]](#footnote-8) for community schools can be found at the following site: <http://education.ohio.gov/Topics/Finance-and-Funding/School-Payment-Reports/State-Funding-For-Schools/Community-School-Funding/Five-Year-Forecasts>.

**POSSIBLE NONCOMPLIANCE RISK FACTORS:**

***Note*: In assessing the risk of noncompliance, auditors should consider whether the school district has factored in recent changes in Ohio School Funding and Taxation laws into their projections.**

**Suggested Audit Procedures:**

1. Determine that the five year projection under Ohio Rev. Code § 5705.391(A) was filed with the Department of Education by viewing the web link described above. (For prior periods, auditors should contact Ohio Department of Education to confirm a forecast was filed only if the school district cannot provide proof of submission.)
2. Compare actual revenues and expenditures to projections. Inspect documentation to determine if ~~that~~ the board updated its projections in accordance with the requirements in Ohio Admin. Code § 3301-92-04(F) ~~since the prior forecast~~.
3. If traditional school contracts, etc., subject to § 5705.412 were entered into during the period, inspect documentation indicating the related five-year projections were updated. (This step will be sufficiently covered by reading the assumptions and performing the steps below.)
4. Read the client’s assumptions. Perform analytical procedures and evaluate whether the assumptions are reasonable and the resulting projections are in accordance with those assumptions.
5. Consider if the projections indicate any possible “going concern” conditions [AU-C 570] or fiscal distress conditions.
6. If in fiscal watch or fiscal emergency status, determine whether the school district updated its five year projection consistent with the terms outlined in the financial plan or financial recovery plan.

**Audit Procedures, Government Personnel Interviewed and Dates:**

**Conclusion (management letter comments):**

### O-6 Compliance Requirement: Ohio Rev. Code § 5705.412 and Ohio Admin. Code 3301-92-05 - Restriction upon school district expenditures and certifying adequate revenues. Application: City, local, exempted village and joint vocational school districts.

**Summary of Requirements:** Ohio Rev. Code § 5705.412 requires the **treasurer, superintendent and president of the board of education** to certify that adequate revenues will be available to maintain all personnel and programs for the current fiscal year and for a number of days in the succeeding fiscal years equal to the number of days instruction was held or is scheduled for the current fiscal year. For a school district in fiscal emergency under Ohio Rev. Code chapter 3316, the certificate shall be signed by a member of the school district’s financial planning and supervision commission. [Ohio Rev. Code § 5705.412(B)(1)]

*Term of certificate:*

* The certificate attached to an appropriation measure covers only the fiscal year in which the appropriation measure is effective.
* The certification must be attached to all appropriation measures *except* for temporary measures when the temporary measure (1) does not appropriate more than 25 percent of the total resources available last year for any fund, (2) the measure will not be in effect for more than thirty days after the earliest date the school district could pass an annual appropriation measure, and (3) an amended certificate of available revenues has not been certified to the school district under Ohio Rev. Code § 5705.36.
* The certificate attached to a **qualifying contract** covers the term of the contract.
* The certificate attached to a wage or salary schedule covers the term of the schedule.
* A “*qualifying contract”* is “. . . any agreement for the expenditure of money under which aggregate payments from the funds included in the school district’s five-year projection under section 5705.391 of the Ohio Rev. Code [see OPM Section O-5 ] will exceed the lesser of the following amounts . . . ”:
  + $500,000;
  + 1% of the general fund’s total estimated revenues as certified in the school district’s most recent certificate of estimated resources under Ohio Rev. Code § 5705.36 [see OPM Section O-1]

Tax levies: The certification of an appropriation measure may not anticipate the renewal or replacement of an existing property tax levy nor the approval to extend an existing income tax levy beyond its current expiration. All other certifications may anticipate the renewal or replacement of existing property tax levies and the approval to extend an existing income tax levy beyond its current expiration. [Ohio Admin. Code 3301-92-05]

A school district must include the additional certification under Ohio Rev. Code § 5705.412 along with the certification required under Section 5705.41 *except* under the following circumstances:

* for current payrolls of, or contracts of employment with, any employees or officers of the school district.[[9]](#footnote-9)
* when increasing the wages or salaries enabling the school board to comply with division (B) of Ohio Rev. Code § 3317.13, which addresses the minimum salary schedule for teachers.

Section 5705.412 certificates *should* be executed for:

* appropriation measures (except certain temporary measures; see above)[[10]](#footnote-10);
* increased salary or wage schedules[[11]](#footnote-11) and
* any other “qualifying contracts”, including, but not limited to: 1) negotiated agreements (e.g. professional association [“union”] contracts) and, 2) contracts for benefits (e.g., major health insurance contracts)

Qualifying contracts or wage or salary schedules that have not been certified as required are considered void.[[12]](#footnote-12) No payments may be made on void obligations.

Penalties: Anyone who does any of the following is liable for the full amount paid on the obligation, up to $10,000:

* executing an obligation contrary to § 5705.412,
* expending or authorizing the expenditure of public funds contrary to § 5705.412, or
* authorizing or making payment of public funds on a void obligation

The Auditor of State is required to refer instances of noncompliance with any qualifying contract or wage or salary schedule to the school district’s statutory legal counsel. [Ohio Rev. Code § 5705.412(E)]

School districts should maintain a continuing record of contracts which have been certified and adequate documentation to substantiate the certifications. [Ohio Admin. Code 3301-92-05(F)]

The rules for Ohio Rev. Code § 5705.412 (Ohio Admin. Code 3301-92-05(B)-(E)) provide guidance on projecting revenues to future periods for purposes of the certifications.

Ohio Rev. Code § 5705.412 (B)(2) authorizes a school district to enter into certain multi-year contracts without attaching the certificate of adequate resources otherwise required by law, if an “alternative” certificate authorized by the act is attached certifying the following:

(a) The contract is a multi-year contract for materials, equipment, or non-payroll services "essential to the education program of the district"; and

(b) The multi-year contract demonstrates savings over the duration of the contract as compared to costs that otherwise would have been demonstrated in a single year contract, and the terms will allow the district to reduce the deficit it is currently facing in future years as demonstrated in its five-year forecast.

The alternative certificate must be signed by the treasurer and president of the board of education and the school district's superintendent; or, if the district is in a state of fiscal emergency, the alternative certificate instead must be signed by a member of the district's Financial Planning and Supervision Commission designated by the Commission.

**Suggested Audit Procedures:**

1. Scan minutes, contracts files, etc., to identify appropriation measures (except certain temporary measures), increased salary or wage schedules, and qualifying contracts.
2. Select a few appropriation measures, increased salary or wage schedules, and a few qualifying contracts for which “412” or “alternative” certificates were not executed during the fiscal year.
3. If a qualifying contract, etc., should have been certified and the auditor cannot obtain documentation that it was, the auditor must issue a noncompliance citation. Also, the noncompliance matter must be referred to the prosecuting attorney for the county, or the city law director in the case of a city school district, or other chief law officer of the school district (the statutory legal counsel on the audit report recipient spreadsheet satisfies this requirement).
4. Select a few qualifying contracts, etc., entered into during the fiscal year(s) under audit. Inspect the “412” or “alternative” certificates and the supporting documentation, including the five year projections that were available to school district officials at the time of the execution of the qualifying contracts, etc. Evaluate for reasonableness and conformity with the rules.
5. Compare qualifying contract, etc., dates with related certification dates and note any differences.

**Audit Procedures, Government Personnel Interviewed and Dates:**

**Conclusion (management letter comments):**

### O-7 Compliance Requirements: Ohio Rev. Code §§ 3315.18 and .181 (capital); 3317.02 (defines formula amount) – Capital and maintenance reserve account.

**Summary of Requirements:** These laws and regulations require every city, local, exempted village and joint vocational school district, to establish a capital (acquisition) and maintenance reserve.

The reserve is to be accounted for in the school district’s general fund using any reasonable accounting method.

* The reserve must be calculated and set-aside annually.
* If the set-aside amount is not spent in one year it is carried forward to the next year.
* The reserve must be represented by (restricted) cash at year-end.
* The reserve is calculated by multiplying the base amount by a percentage.
* The base represents three percent of the State base-cost formula amount for the preceding year multiplied by the school district’s student population or the sum of certain specific prior fiscal year receipts. (Ohio Rev. Code § 3315.18(A))
* The amount of the required reserve may be reduced (offset)[[13]](#footnote-13) by resources received during the fiscal year whose use is restricted to the purpose of one of the reserves.
* School districts must be able to provide a list of qualified expenditures for audit purposes.
* School districts must be able to document calculation of fiscal year-end reserve balances.
* Each school district’s annual report must include a schedule showing the balance of the set-aside carried forward from the previous year, the current year set-aside, contributions in excess of the current year set aside,[[14]](#footnote-14) qualifying expenditures,[[15]](#footnote-15) any reductions (offsets) to the required amount from receipts similarly restricted, any reductions from certain debt proceeds, and the fiscal year-end balance of the set aside, the amount to be reserved, and the balance that may be carried forward to the next fiscal year.

**Annual Set-Aside Calculation:**

* The annual set aside is calculated by multiplying a percentage of the “**formula amount****”**[[16]](#footnote-16) by the school district’s “**student population**”.[[17]](#footnote-17) The **preceding year’s** “formula amount” and “student population” are used for the calculation. The percentage is set at 3% by statute, though the Auditor of State has been given some discretion to establish alternative percentages.[[18]](#footnote-18) The formula is:

[(% x Formula Amount) x Student Population]

* A school district may annually elect under Ohio Rev. Code § 3315.19 to follow the former provisions of law existing prior to July 1, 2001 for capital set-aside. In lieu of following the amended requirements, the board of education *annually* may elect (by resolution) to follow the capital set-aside requirements (from the Ohio Rev. Code provisions) as they existed prior to July 1, 2001. (Audit programs D and E follow this OCS Section, and describe both options.) This election must be made within 90 days after the beginning of the fiscal year for which the election is to apply.

**Waivers of the Annual Set Aside Requirements:**

School districts in fiscal emergency may deposit an amount less than the required annual set aside, or make no deposit into the school district capital and maintenance funds. As good practice, while not specifically included in statute, the school district board of education should document this decision annually in a separate resolution. A board of education’s approval of a five-year projection including the waiver of the set aside is not considered approval of the set aside waiver.

School districts in fiscal watch or caution may apply to the superintendent of public instruction for a waiver[[19]](#footnote-19) from the annual set aside requirement. The waiver may permit the school district to deposit an amount less than the annual set aside requirement or make no deposit into the school district capital and maintenance funds for that year. The superintendent may grant a waiver, if the school district demonstrates to the satisfaction of the superintendent of public instruction that compliance with the annual set aside requirement for that year will create an undue financial hardship on the school district.

School districts, not more often than one fiscal year in every three consecutive fiscal years, may apply to the superintendent of public instruction for a waiver from the annual set aside requirements of Ohio Rev. Code § 3315.18, subject to conditions stated in section (D). The waiver would permit a school district to deposit an amount less than the annual set aside requirement or make no deposit into the school district capital and maintenance fund for that year. The superintendent of public instruction may grant a waiver if the school district demonstrates to the satisfaction of the superintendent that compliance with the annual set aside requirement for that fiscal year will necessitate the reduction or elimination of a program currently offered by the school district that is critical to the academic success of students of the school district and that no reasonable alternatives exist for spending reductions in other areas of operation within the school district that negate the necessity of the reduction or elimination of that program.

A waiver is granted for only the requirement to set aside current year revenue for capital and maintenance. A waiver does not eliminate the set aside reserve or any accumulated/existing balance carried over from prior years. The annual set asides waived need not be made up in future years.

**Other capital and maintenance provisions established July 1, 2001:**

* Funds deposited into the separate account and interest on those funds may only be used for the school district’s share of basic project costs for any project undertaken in accordance with Ohio Rev. Code Chapter 3318 (School Facilities). (See OCS Chapter 2 for a discussion of certain Ohio Rev. Code Chapter 3318 programs.)

**Sample Note Disclosure Table**

Below is a current sample table for the set aside disclosure and the order in which items should be presented:

|  |  |  |
| --- | --- | --- |
|  |  | Capital  Improvements |
| Set Aside Reserve Balance June 30, 20XX-1 |  | $0 |
| Current Year Set Aside Requirement |  | 500,000 |
| Contributions in Excess of the Current Fiscal Year Set Aside Requirement |  | 0 |
| Current Year Qualifying Expenditures |  | (50,000) |
| Excess Qualified Expenditures from Prior Years |  | 0 |
| Current Year Offsets |  | (100,000) |
| Waiver Granted by the Department of Education |  |  |
| Prior Year Offset from Bond Proceeds |  | (350,000) |
| Total |  | $0 |
|  |  |  |
| Balance Carried Forward to Fiscal Year 20XX |  | 0 |
|  |  |  |
| Set Aside Reserve Balance June 30, 20XX |  | $0 |

Excess qualified expenditures for capital improvements do not carry forward.

The amount presented for Prior Year Offset from Bond Proceeds is limited to an amount needed to reduce the reserve for capital improvements to $0. The school district is responsible for tracking the amount of the bond proceeds that may be used as an offset in future periods.

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

Special programs for auditing these reserves immediately follow. If the school district has not elected to follow the pre-July 1, 2001 base calculation, use **Audit Program A**. If the school district has elected to follow the pre-July 1, 2001 base calculation, use **Audit Program B**.

**Audit Procedures, Government Personnel Interviewed and Dates:**

**Conclusion (management letter comments):**

***Audit Program – A***

**AUDITING THE CAPITAL IMPROVEMENTS AND MAINTENANCE RESERVE**

**If the school district elected to apply the pre-July 1, 2001 base calculation, use Audit Program B.**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Step**  **No.** | **Procedure for Consideration** | **Done By or N/A** | **Date**  **Comp** | **X-Ref** |
| **1.** | Testing note accuracy. |  | | |
| **a.** | Obtain the school district’s draft set aside note and supporting documentation. |  |  |  |
| **b.** | Foot and crossfoot the note |  |  |  |
| **c.** | Foot and crossfoot the client’s underlying calculations (if any). |  |  |  |
| **2.** | Trace beginning of the year balance to prior audited financial statements or working papers. |  |  |  |
| **3.** | Test the annual reserve calculation by multiplying the **percentage**[[20]](#footnote-20)by the “**formula amount**”16 and multiplying the result by the school district’s “**student population**”.17 The **preceding year’s** “formula amount” and “student population” should be used for this calculation:  [(% x Formula Amount) x Student Population] |  | | |
| **a.** | This information is available for each school district and joint vocational school district on the Ohio Department of Education’s website:  <http://www.ode.state.oh.us/GD/Templates/Pages/ODE/ODEPrimary.aspx?Page=2&TopicID=990&TopicRelationID=1353> |  |  |  |
| **4.** | Vouch selected qualifying15 expenditures charged to the Reserve during the year for compliance with Ohio Admin. Code 3301-92-02 (G): |  | | |
| **a.** | Allowable: acquisition price; direct materials; labor and overhead for a qualifying project; project professional fees; site prep; demolition\removal of existing assets; freight and handling; capital lease principal. |  |  |  |
| **b.** | Unallowable: expenditures not for acquisition, replacement, enhancement, maintenance and repair of permanent improvements (property, asset, or improvements with a useful life of 5 years or more). |  |  |  |
| **5.** | Trace “offsets” 13 to appropriate documentation supporting the client’s calculations and assertions and to and from the current year’s working papers (excess offsets do not carry forward): |  | | |

***Audit Program – A***

**AUDITING THE CAPITAL IMPROVEMENTS AND MAINTENANCE RESERVE**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **a.** | Permanent improvement levy authorized by Ohio Rev. Code § 5705.21 to the extent the proceeds are restricted by the school district Board to expenditure for the acquisition, replacement, enhancement, maintenance, or repair of permanent improvements.[[21]](#footnote-21) |  |  |  |
| **b.** | Proceeds of securities whose use is restricted to expenditures for the acquisition, replacement, enhancement, maintenance, or repair of permanent improvements.[[22]](#footnote-22) |  |  |  |
| **c.** | Insurance proceeds received as a result of the damage to or theft or destruction of a permanent improvement to the extent a Board of Education places the proceeds in a separate fund for the acquisition, replacement, enhancement, maintenance, or repair of permanent improvements. |  |  |  |
| **d.** | Proceeds received from the sale of a permanent improvement to the extent the proceeds are paid into a separate fund for the construction or acquisition of permanent improvements. |  |  |  |
| **e.** | Proceeds received from a tax levy authorized by Ohio Rev. Code § 3318.06 to the extent the proceeds are available to be used for the maintenance of capital facilities. (Classroom facilities fund 034).[[23]](#footnote-23) |  |  |  |
| **f.** | Proceeds of certificates of participation issued as a part of a lease-purchase agreement entered into under Ohio Rev. Code § 3313.375. |  |  |  |

***Audit Program – A***

**AUDITING THE CAPITAL IMPROVEMENTS AND MAINTENANCE RESERVE**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **g.** | Proceeds received from the sale of a permanent improvement to the extent the proceeds are paid into a separate fund for the construction or acquisition of permanent improvements. |  |  |  |
| **h.** | Proceeds of any school district income tax levied under Ohio Rev. Code Chapter 5748 to the extent the proceeds are available for the acquisition, replacement, enhancement, maintenance, or repair of permanent improvements. |  |  |  |
| **i.** | Money transferred from the general fund (USAS 001) to the permanent improvement fund (USAS 003) is an offset for the current year. If the amount transferred is returned to the general fund, the set aside reserve should be recalculated, taking into account the amount of the transfers returned to the general fund. The amounts transferred required a court order. **This should be reported as a change in the set aside for the current year and not a restatement.** |  |  |  |
| **j.** | Other revenue sources identified by the Auditor of State, in consultation with the Department of Education, in rules adopted by the Auditor of State.[[24]](#footnote-24) |  |  |  |
| **6.** | Read any other information included in the report (e.g., the introductory and statistical sections of a CAFR), and determine whether it is consistent with the note. If the information is materially inconsistent or misstated, consult with Center for Audit Excellence if the client refuses to make necessary changes. |  |  |  |
| **7.** | Prepare a brief narrative for the working papers that describes the nature, timing, and extent of our tests of the note. |  |  |  |

***Audit Program – B***

**AUDITING THE CAPITAL IMPROVEMENTS AND MAINTENANCE RESERVE**

**Use this audit program if the school district has elected to apply the pre-July 1, 2001 base calculation as discussed previously in this section.**

| **Step**  **No.** | **Procedure for Consideration** | **Done By or N/A** | **Date**  **Comp** | **X-Ref** |
| --- | --- | --- | --- | --- |
| **1.** | Testing note accuracy. |  | | |
| **a.** | Obtain set school district’s draft aside note and supporting documentation. |  |  |  |
| **b.** | Foot and crossfoot the note. |  |  |  |
| **c.** | Foot and crossfoot the client’s underlying calculations, including the current year required set-aside percentage (3%) times the base. |  |  |  |
| **2.** | Trace beginning of the year balance to prior audited financial statements or working papers. |  |  |  |
| **3.** | Trace cash-basis property tax revenue (Ohio Rev. Code Chapter 5705 amounts) to the client’s calculations and to and from the prior year’s working papers (determine that all audit adjustments and reclassification entries which the auditee agreed to post are properly reflected in the papers) or other acceptable documentation, such as County Auditor Tax Settlement sheets: |  | | |
| **a.** | General fund property tax amounts |  |  |  |
| **b.** | Emergency levy fund property tax amounts |  |  |  |
| **c.** | Operating revenue from a multi-purpose property tax levy |  |  |  |
| **d.** | Inside millage allocated to a capital projects fund |  |  |  |
| **e.** | Property tax receipts allocated to a debt service fund for general fund tax and revenue anticipation debt |  |  |  |
| **f.** | Payments received in lieu of property taxes |  |  |  |
| **g.** | Proceeds from the sale of delinquent property tax liens |  |  |  |
| **4.** | Trace cash-basis income tax revenue (Ohio Rev. Code Chapter 5748 amounts) to the client’s calculations and to and from the prior year’s working papers or other acceptable documentation, such as State remittance advices: |  | | |
| **a.** | General fund income tax amounts |  |  |  |
| **b.** | Income tax receipts allocated to a debt service fund for general fund tax and revenue anticipation debt |  |  |  |
| **c.** | School district’s share of city income tax based upon a development agreement |  |  |  |
| **5.** | Trace cash-basis formula aid (school foundation) revenue (Ohio Rev. Code § 3317.022(A) [non-vocational schools] or § 3317.06 [nonpublic schools]) to the client’s calculations and to and from the prior year’s working papers or other acceptable documentation: |  | | |

***Audit Program – B***

**AUDITING THE CAPITAL IMPROVEMENTS AND MAINTENANCE RESERVE**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **a.** | This information is available for each school district and joint vocational school district on the Ohio Department of Education’s website:  <http://education.ohio.gov/Topics/Finance-and-Funding/State-Funding-For-Schools/Traditional-Public-School-Funding> |  |  |  |
| **b.** | For “guarantee” school districts, use the amount from the School Finance Payment Report Summary.[[25]](#footnote-25)  <http://webapp2.ode.state.oh.us/school_finance/data/2016/foundation/FY2016-SFPR-REPORT.asp> |  |  |  |
| **6.** | Vouch selected expenditures charged to the Reserve during the year for compliance with Ohio Admin. Code 3301-92-02(G): |  | | |
| **a.** | Allowable: acquisition price; direct materials; labor and overhead for a qualifying project; project professional fees; site prep; demolition or removal of existing assets; freight and handling; capital lease principal. |  |  |  |
| **b.** | Unallowable: expenditures not for acquisition, replacement, enhancement, maintenance and repair of permanent improvements (property, asset, or improvements with a useful life of 5 years or more). |  |  |  |
| **7.** | Trace “offsets”13 to appropriate documentation supporting the client’s calculations and assertions and to and from the current year’s working papers: |  | | |
| **a.** | Permanent improvement levy authorized by Ohio Rev. Code § 5705.21 to the extent the proceeds are restricted by the school district Board to expenditure for the acquisition, replacement, enhancement, maintenance, or repair of permanent improvements.22 |  |  |  |
| **b.** | Proceeds of securities whose use is restricted to expenditures for the acquisition, replacement, enhancement, maintenance, or repair of permanent improvements.22 |  |  |  |
| **c.** | Insurance proceeds received as a result of the damage to or theft or destruction of a permanent improvement to the extent a Board of Education places the proceeds in a separate fund for the acquisition, replacement, enhancement, maintenance, or repair of permanent improvements |  |  |  |
| **d.** | Proceeds received from the sale of a permanent improvement to the extent the proceeds are paid into a separate fund for the construction or acquisition of permanent improvements |  |  |  |

***Audit Program – B***

**AUDITING THE CAPITAL IMPROVEMENTS AND MAINTENANCE RESERVE**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **e.** | Proceeds received from a tax levy authorized by Ohio Rev. Code § 3318.06 to the extent the proceeds are available to be used for the maintenance of capital facilities. (Classroom facilities) |  |  |  |
| **f.** | Proceeds of certificates of participation issued as a part of a lease-purchase agreement entered into under Ohio Rev. Code § 3313.375. |  |  |  |
| **g.** | Proceeds received from the sale of a permanent improvement to the extent the proceeds are paid into a separate fund for the construction or acquisition of permanent improvements. |  |  |  |
| **h.** | Proceeds of any school district income tax levied under Ohio Rev. Code Chapter 5748 to the extent the proceeds are available for the acquisition, replacement, enhancement, maintenance, or repair of permanent improvements. |  |  |  |
| **i.** | Money transferred from the general fund (USAS 001) to the permanent improvement fund (USAS 003) is an offset for the current year. If the amount transferred is returned to the general fund, the set aside reserve should be recalculated, taking into account the amount of the transfers returned to the general fund. The amounts transferred required a court order. **This should be reported as a change in the set aside for the current year and not a restatement.** |  |  |  |
| **j.** | Other revenue source identified by the Auditor of State, in consultation with the Department of Education, in rules adopted by the Auditor of State.[[26]](#footnote-26) |  |  |  |
| **8.** | Read any other information included in the report (e.g., the introductory and statistical sections of a CAFR), and determine whether it is consistent with the note. If the information is materially inconsistent or misstated, consult with the Center for Audit Excellence if the client refuses to make necessary changes. |  |  |  |
| **9.** | Prepare a brief narrative for the working papers that describes the nature, timing, and extent of our tests of the note. |  |  |  |

### O-8 Compliance Requirements: Ohio Rev. Code § 3314.032 - Community school budget requirements.

**Summary of Requirements:[[27]](#footnote-27)**

Each community school governing authority is required to adopt an annual budget by October 31st. ODE is required to develop a format for annual budgets of community schools and must include at least: [Ohio Rev. Code § 3314.032(C)]

* Administrative costs for the community school as a whole;
* Instructional services costs for each category of service provided directly to students, compiled and reported in terms of average expenditure per pupil receiving the service;
* The cost of instructional support services, such as services provided by a speech-language pathologist, classroom aide, multimedia aide or librarian, provided directly to students;
* The cost of administrative support services, such as the cost of personnel that develop the curriculum and the cost of personnel supervising or coordinating the delivery of the instructional services;
* The cost of support or extracurricular services costs for services directly provided to students;
* The cost of services provided directly to students by a non-licensed employee related to support or extracurricular services, such as janitorial services, cafeteria services or services of a sports trainer;
* The cost of administrative services related to support or extracurricular services, such as the cost of any licensed or unlicensed employees that develop, supervise, coordinate or otherwise are involved in administrating or aiding the delivery of services.

Although the budget is developed with the fiscal officer's assistance, the statute specifies that the governing authority is the sole entity responsible for the adoption of the budget.

ODE’s community school budget guidelines and Microsoft Excel template are available at: <http://education.ohio.gov/getattachment/Topics/Community-Schools/Sections/Schools/Community-School-Annual-Budget.pdf.aspx>.

**Suggested Audit Procedures:**

Obtain and review the annual budget to confirm the required costs are included.

**Audit Procedures, Government Personnel Interviewed and Dates:**

**Conclusion (management letter comments):**

# Section B: Contracts and Expenditures

## Statutory Municipalities

### O-9 Compliance Requirements: Ohio Rev. Code §§ 9.48, 125.04, 153.65-.71, 731.02, 731.12, 731.14, 731.141, 735.05 and 2921.42 - Municipal contracts.

**Summary of Requirements:** Generally, all contracts made by the legislative authority of a city for material and labor which exceed $50,000 are subject to competitive bidding procedures. (***Note***: This limit may not apply to some charter municipalities.) [Ohio Rev. Code § 735.05 Cities]

The competitive bidding threshold for expenditures of a village is $50,000, [Ohio Rev. Code § 731.14 – Villages] [Ohio Rev. Code § 731.141 Villages with village administrator]

Competitive bidding procedures require that a contract be entered into in writing with the lowest and best bidder[[28]](#footnote-28) after advertisement of the proposal for bids for not less than two nor more than four consecutive weeks[[29]](#footnote-29) in a newspaper of general circulation within the municipality or as provided in Ohio Rev. Code § 7.16.[[30]](#footnote-30) (Ohio Const. Art. XVIII, Section 3 allows municipalities to deviate from these requirements by charter.) [Ohio Rev. Code § 735.05]

Contracts for used equipment or supplies at a public auction or emergencies can be entered into without following competitive bidding procedures.

Contracts with qualified non-profit agencies and contracts with state departments, political subdivisions, or a regional planning commission may be authorized without bidding and advertising.

Municipalities that participate in a joint purchasing contract are exempt from using competitive bidding. [Ohio Rev. Code § 9.48(C)-(D)]

Municipalities also need not follow the bidding process where the contract involves specialized services, requiring particular skills and aptitudes, such as engineering or legal services. [*State ex rel Doria v. Ferguson*, 145 Ohio St. 12 (1945)]

Municipalities (both cities and villages) procuring professional design services do not need to follow the competitive bidding process. However, contracts for professional design services must adhere to the provisions of Ohio Rev. Code §§ 153.65 through 153.71 which require municipalities to publically announce and provide notice of the contract, rank firms on the basis of qualifications, and award the contract to the most qualified firm. "Professional design services" are defined as services within the scope of practice of an architect or landscape architect registered under Chapter 4703 of the Revised Code or a professional engineer or surveyor registered under Chapter 4733 of the Revised Code. [Ohio Rev. Code §§ 153.65 through 153.71]

A political subdivision or a county board of elections may purchase supplies or services from another party, including a political subdivision, if the political subdivision or county board of elections can purchase those supplies or services from the other party upon equivalent terms, conditions, and specifications but at a lower price than it can through those contracts. Purchases that a political subdivision or county board of elections makes under his division are exempt from any competitive selection procedures otherwise required by law. [Ohio Rev. Code § 125.04]

Ohio Rev. Code §§ 731.02 (cities) and 731.12 (villages) - Interest in contracts by elected officials.

These sections prohibit elected officials from having any pecuniary interest in a contract or to be otherwise employed by the entity. They also provide that contracts are void unless authorized at a regular or special meeting.

Ohio Rev. Code § 2921.42 - This section prohibits having an unlawful interest in a public contract.

**Note: Any contract paid for in whole or in part by Federal funds would be subject to the Federal Procurement rules in the Uniform Guidance.**

**Suggested Audit Procedures:**

1. Identify a few expenditures that should have been subject to competitive bidding while reading the minutes, by inquiry of government personnel, and/or by scanning the disbursement records. In selecting payments to test, consider selecting from higher-dollar payments and perhaps one or two smaller payments (i.e. payments slightly over the competitive bidding threshold). Determine through inspection, vouching, or other such means that:
2. Contracts over $50,000 (cities or villages) or any other local limitations were awarded using competitive bidding procedures. Be alert for indications of bid splitting or deliberate attempts to evade bid limitations, such as successive contracts just under the bid amount.
3. Advertisements of the proposals for bids were made as indicated (or posted to the municipality’s website, as described above).
4. Documentation indicates that the lowest and best bid was accepted.
5. Contracts and expenditures were approved by the legislative authority in accordance with local requirements.
6. Document whether there is any apparent interest in the contract by a public official. Due to heightened public interest in these situations, we would often deem violations to be material noncompliance and could affect our assessment of the control environment and affect our fraud assessment.
7. Select a representative number of purchases made through another subdivision or by “piggy backing” onto a DAS contract. Determine through inspection, vouching, comparison, or other such means whether the client is required to maintain records to demonstrate the following:
8. The purchase conditions and specifications were substantially equivalent to those through the DAS Cooperative Purchasing Program.
9. The purchase price was less than that available through the DAS Cooperative Purchasing Program.

**Audit Procedures, Government Personnel Interviewed and Dates:**

**Conclusion (management letter comments):**

### O-10 Compliance Requirements: Ohio Rev. Code § 731.16 (villages) and 735.07 (cities) - Altering or modifying municipal contracts.

**Summary of Requirements:** When in the opinion of: (a) the legislative officers of a village, (b) the village administrator, or (c) the director of public service, it becomes necessary, in the prosecution of any work or improvement under contract, to alter or modify a contract, such alterations or modifications can only be made upon the order of these individuals.

A change order is not effective until the price to be paid for the work and material or both, under the altered or modified contract, has been agreed upon in writing and signed by these individuals and by the contractor.

Where a board of control exists, the board must approve contract modifications. [Ohio Rev. Code § 735.07]

No contractor may recover anything for work or material because of any such alteration or modification unless the contract is modified as required.

**Note: Any contract paid for in whole or in part by Federal funds would be subject to the Federal Procurement rules in the Uniform Guidance.**

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

1. For a few selected contracts, compare cumulative contract expenditures with the original bid price. If these expenditures exceed the bid price, inspect the modified contract documents for signatures of the contractor and the appropriate officials (i.e., the legislative officers of a village, the village administrator, or the director of public service).
2. If a board of control exists, determine that the board documented their approval of any modifications.

**Audit Procedures, Government Personnel Interviewed and Dates:**

**Conclusion (management letter comments):**

## Counties

**Revised: HB 62, 133 GA**

**Effective: July 1, 2019**

### O-11 Compliance Requirements: Ohio Rev. Code §§ 9.37, 125.04, 153.65-.71, 305.27, 307.041, 307.86-.87, 319.16 and 2921.42 - County payments to be by auditor’s warrant; competitive bidding. Ohio Rev. Code § 307.87 - County notice and other bid procedures.

**Summary of Requirements:** Generally, expenditures of county funds must be paid with warrants issued by the county auditor, with the approval of the county commissioners [Ohio Rev. Code § 319.16]. The warrant and all information related to the presentment of the warrant may be provided electronically [Ohio Rev. Code § 9.37(F)].

Ohio Rev. Code § 319.16 expressly includes county boards of mental health and county boards of developmental disabilities as agencies authorized to approve the issuance of warrants.

Competitive bidding is required for procurements exceeding $50,000 except where otherwise provided by law [Ohio Rev. Code § 307.86].

The commissioners, by unanimous vote (defined as all three commissioners when all three are present, or two commissioners if only two are present and they constitute a quorum), can declare an emergency and waive the competitive bidding when:

1. the estimated cost is less than $100,000 [Ohio Rev. Code § 307.86(A)(1)], or
2. there is physical disaster to structures, radio communications equipment, or computers. [Ohio Rev. Code § 307.86(A)(2)]

A county may purchase supplies or services from another party, including another political subdivision, instead of through a contract that the Ohio Department of Administrative Services has entered into on behalf of the county, if the county can prove that it can purchase those same supplies or services from the other party upon equivalent terms, conditions or specifications but at a lower price. If so, the county need not competitively bid those supplies or services. [Ohio Rev. Code § 125.04(C)]

Ohio Rev. Code § 305.27 - Interest in contracts by elected officials.

This section prohibits commissioners from having any pecuniary interest in a contract or to be otherwise employed by the entity. Ohio Rev. Code § 305.25 also provides that contracts are void unless authorized at a regular or special meeting.

Ohio Rev. Code § 2921.42 - This section prohibits having an unlawful interest in a public contract.

Other exceptions to the competitive bidding requirement are made for:

* the purchase of supplies, or replacement parts, or information technology, for which there is a single supplier or source [Ohio Rev. Code § 307.86(B)(1)-(2)];
* purchases from other government agencies [Ohio Rev. Code § 307.86(C)];
* purchases of family services duties or workforce development activities by the county department of jobs and family services or of program services by a county board of developmental disabilities [Ohio Rev. Code § 307.86(D)];
* purchases of criminal justice services, social services programs, family services, or workforce development activities from nonprofit corporations or associations under programs funded by the federal government or by state grants [Ohio Rev. Code § 307.86(E)];
* purchases of insurance or contracts negotiated under Ohio Rev. Code § 307.86(F) (subject to certain conditions);
* purchases of computer hardware, software or consulting services that are necessary to implement a computerized case management automation project administered by the Ohio prosecuting attorneys association and funded by a grant from the federal government. [Ohio Rev. Code § 307.86(G)];
* purchases of child care services for county employees [Ohio Rev. Code § 307.86(H)];
* acquisition of property, including land, buildings, and other real property leased for offices, storage, parking, or other purposes, pursuant to § 307.86(I) (subject to certain conditions);
* purchase of programs or services under § 307.86(J) for a felony or misdemeanant delinquent, unruly youth, or status offender under the supervision of the juvenile court; and
* purchase of family services, programs, or certain ancillary services by a public children services agency for children at risk or alleged to be abused, neglected, or dependent children [Ohio Rev. Code § 307.86(K)]; and
* purchase of emergency medical services by a contract made by the board of county commissioners with a joint emergency medical services district [Ohio Rev. Code § 307.86(L)].
* The purchase consists of used supplies and is made at a public auction [Ohio Rev. Code § 307.86(N)]
* Excluded from competitive bidding are expenditures for the services of an accountant, architect, attorney, physician, professional engineer, construction project manager, consultant, surveyor, or appraiser. [Ohio Rev. Code § 307.86].
* Certain acquisitions made through another entity’s purchasing program pursuant to Ohio Rev. Code § 9.48. [Ohio Rev. Code § 307.86]
* Counties procuring professional design services, over the competitive bidding threshold, do not need to follow the competitive bidding process. However, contracts for professional design services must adhere to the provisions of Ohio Rev. Code §§ 153.65 through 153.71 which require counties to publically announce and provide notice of the contract, rank firms on the basis of qualifications, and award the contract to the most qualified firm. "Professional design services" are defined as services within the scope of practice of an architect or landscape architect registered under Chapter 4703 of the Revised Code or a professional engineer or surveyor registered under Chapter 4733 of the Revised Code. [Ohio Rev. Code §§ 153.65 through 153.71]
* Ohio Rev. Code § 307.86(M) authorizes the use of competitive sealed proposals instead of competitive bidding when the county determines the use of competitive sealed proposals would be advantageous to the county and the county contracting authority complies with the proposal requirements outlined in Ohio Rev. Code § 307.862. Ohio Rev. Code § 307.862(G) precludes a county contracting authority from using competitive sealed proposals for contracts for construction, design, demolition, alteration, repair, or reconstruction of a building, highway, drainage system, water system, road, street, alley, sewer, ditch, sewage disposal plant, waterworks, and all other structures or works of any nature. Therefore, the competitive sealed proposal method may be used only for purchases of non-construction related products and supplies and to the acquisition of services other than those services already exempted from the continuing competitive bidding procedure. For example, it might be used to acquire janitorial services or to purchase office supplies and equipment.
* A county may contract for energy conservation savings pursuant to Ohio Rev. Code § 307.041. This section provides two procurement options:
  1. To follow Ohio Rev. Code §§ 307.86 to 307.92 (i.e. competitively bid contracts ≥ $50,000). [Ohio Rev. Code § 307.041(C)(1)(a)]
  2. Request proposals from at least 3 vendors, after advertising the project. [Ohio Rev. Code § 307.041(C)(1)(b)]
* Ohio Rev. Code § 307.87 requires a county to advertise once per week for at least two consecutive weeks of its intent to seek competitive bids for purchases or leases with an estimated cost exceeding the bidding threshold. If the contracting authority posts the notice on its internet site, it may eliminate the second notice otherwise required to be published in a newspaper of general circulation within the county, provided that the first notice published in such a newspaper meets all of the following requirements: (1) It is published at least two weeks before the opening of bids; (2) It includes a statement that the notice is posted on the contracting authority’s internet site on the world wide web; (3) It includes the internet address of the contracting authority’s internet site on the world wide web; and (4) It includes instructions describing how the notice may be accessed on the contracting authority’s internet site on the world wide web. The county should also maintain a copy of the bid. Ohio Rev. Code § 307.88 requires that sealed[[31]](#footnote-31) bids be opened and tabulated (i.e., summarized).

**Note: Any contract paid for in whole or in part by Federal funds would be subject to the Federal Procurement rules in the Uniform Guidance.**

**Suggested Audit Procedures:**

1. When testing expenditures, determine that disbursements were made only by county warrant (or electronic transaction via the county auditor).
2. Identify a few expenditures that should have been subject to competitive bidding while reading the minutes, by inquiry of government personnel, and/or by scanning the disbursement records. Determine through inspection, vouching, or other such means that contracts over $50,000 were awarded using competitive bidding procedures. Be alert for indications of “bid-splitting” or deliberate attempts to evade bid limitations36, such as successive contracts just under the bid amount. In selecting payments to test, consider selecting from higher-dollar payments and perhaps one or two smaller payments (i.e. payments slightly over the competitive bidding threshold).
3. For contracts selected above, determine whether advertisements of the proposals for bids were made at least once per week for two consecutive weeks (the notice may be posted to the county’s website in lieu of a second newspaper publication, as described above), and whether bids were tabulated.
4. For contracts exceeding $50,000 meeting one or more of the exceptions indicated above, determine documentation exists to support expenditures as meeting those exceptions.
5. Document whether there is any apparent interest in the contract by a public official. Due to heightened public interest in these situations, we would often deem violations to be material noncompliance and could affect our assessment of the control environment and affect our fraud assessment.

**Audit Procedures, Government Personnel Interviewed and Dates:**

**Conclusion (management letter comments):**

### O-12 Compliance Requirement: Ohio Rev. Code §§ 301.27 (county credit cards) and 301.29 (county procurement cards or “p-cards.”) - County credit and procurement cards.[[32]](#footnote-32)

**Summary of Requirements:**

**§ 301.27 (credit cards) requirements include the following:**

***Note***: Ohio Rev. Code § 113.40(A)(1) includes credit cards as *financial transaction devices.* Under Ohio Rev. Code § 301.27, a credit card includes gasoline and telephone credit cards but excludes any procurement card authorized under Ohio Rev. Code 301.29.

1. County employees, including commissioners and appointing authorities (i.e. other elected officials), can charge *only the following* work-related expenses to credit cards:

* Food
* Transportation
* Gas & oil (only for vehicles the county owns or leases)
* Motor vehicle repair and maintenance
* Telephone
* Lodging
* Internet service providers
* Expenses for children temporarily in the care of a public children services agency
* Webinar expenses
* Purchase of automatic or electronic data processing or record-keeping equipment, software, or services if the county has established an automatic data processing board. The purchases must comply with Ohio Rev. Code §§ 307.84 to 307.847 and shall not exceed ten thousand dollars per quarter, unless approved by county resolution.

2. Appointing authorities must receive the commissioners’ approval to have credit cards.

3. The county must charge credit card expenses to appropriations established for the costs described in (1.) above. That is, the county cannot appropriate money for “credit card expenses.”

4. Unless the commissioners resolve otherwise:

* Every card holder must submit a monthly estimate of credit card charges by appropriation code. (***Note***: commissioners may authorize periods exceeding one month for submitting estimates.)
* The commissioners may amend the estimates, and then must “pre-certify” them, by appropriation line item total, to the auditor, who then must certify that amounts are available and appropriated under § 5705.41(D) to pay these costs.

The resolution can exempt all credit cards from requirement (4), or can exempt specified cards.

5. Regardless of whether the county estimates and “pre-certifies” expenses, credit card expenses cannot exceed appropriations.

6. Commissioners can approve payments exceeding authorized card policy limits after the fact.

7. If commissioners do not waive over expenditure, the cardholder or office holder and surety are liable.

8. Institutions issuing cards can impose finance or late charges, but only if the commissioners authorize these charges.

9. Counties, with approval from the board of commissioners, are authorized to incur late fees, penalties, or interest/finance charges as a result of credit card use. [Ohio Rev. Code §§ 301.27(B)(2) and 301.29(B)]

**Credit Card Balances**

Counties with board of commissioner’s approval, are authorized to carry credit card balances past the due date.

**§ 301.29 p-card requirements include the following:**

***Note***: Ohio Rev. Code § 301.29 defines procurement cards as any *financial transaction device* as defined in Ohio Rev. Code § 301.28 ~~including credit cards,[[33]](#footnote-33)~~ charge cards, debit cards, or prepaid or stored value cards the commissioners deem to be procurement cards. P-card requirements are similar to credit card requirements above, **except**:

1. The Commissioners must competitively bid with companies offering the card services.

2. Commissioners must approve, by resolution involving advice of the county auditor:

* The expenditure classes (i.e. object codes) for which employees can use these cards. (P-cards are not limited to the expense types listed for credit cards in step 1 above.).
* Limitations on the number of transactions chargeable each day, month or other period.
* Procedures for revoking the card.

3. The county auditor shall **consult with the Auditor of State** in developing controls to implement p-cards.

**Cash withdrawal Considerations** (excerpted from [**Audit Bulletin 2016-004**](https://ohioauditor.gov/publications/bulletins/2016/2016-004.pdf)**):**

Cash withdrawals are a tiny subset of all credit card activity, and require specific controls. These specific controls are in addition to the controls which should govern credit card use generally.

Ohio law does NOT explicitly authorize a public entity to use a credit card to withdraw cash from a financial transaction device or automated teller machine (hereinafter, ATM), or to obtain cash (back) in a credit card transaction. However, if the governing body of the public entity determines that cash withdrawals are necessarily implied from its other powers (See *State ex rel. A. Bentley & Sons Co. v. Pierce*,96 Ohio St. 44, 47, 117 N.E. 6, 7 (1917); *City of Youngstown v. Craver*,127 Ohio St. 195, 201, 187 N.E. 715, 717 (1933)), that determination should be memorialized by specific legislative action (or where applicable, administrative action). The action should explicitly authorize the cash withdrawals and reference the entities credit card policy.

AOS will presume that a cash withdrawal which has not been properly authorized was not made for a proper public purpose. Any such unauthorized cash withdrawal transaction may result in a non-compliance citation and/or finding for recovery, including joint and several liabilities, against the person or persons responsible for such misuse. Further, each such act may constitute a violation of Ohio Rev. Code § 2913.21, “Misuse of a Credit Card”.

**Suggested Audit Procedures:**

1. The steps below apply to both credit and p-cards, unless otherwise stated.
2. Obtain and review copies of existing policies for county credit cards and purchasing cards.
3. Compare it with the CCAO sample policy: [https://ccao.org/wp-content/uploads/CAB 2005-07.pdf](https://ccao.org/wp-content/uploads/CAB%20200507.pdf). (The policies need not be identical, but auditors should check for omissions of important elements the CCAO example includes.)
4. Determine who is responsible for monitoring the usage of these items. Document how they review card users and charges.
5. Obtain and scan the list of authorized users. Determine how the county assures only authorized personnel use the cards.
6. Scan a selection of credit or p-card transactions and determine whether use was by an authorized user and within the guidelines established in the policy. Include usage by the chief executive officer, chief financial officer, and elected officials in the review.
7. Through inquiry and scan of transactions determine if any cash withdrawals were made. If so:
8. Determine if the policy explicitly allows for cash withdrawals and when related legislative or administrative action was passed.
9. Determine if appropriate and specific additional controls are implemented for cash withdrawal transactions.
10. If we note unauthorized use, did the entity’s monitoring procedures identify the misuse? Was the employee notified of the improper use or was the matter otherwise appropriately corrected?
11. For Credit Card use, determine if:[[34]](#footnote-34)
    1. Any late fees, penalties or interest/finance charges were incurred during the fiscal year regardless if due to cash withdrawals when testing Step 7, or credit or procurement card use, and if so, whether charges were authorized by the board of commissioners.
    2. Any credit card balances due remain unpaid.

**Audit Procedures, Government Personnel Interviewed and Dates:**

**Conclusion (management letter comments):**

## Townships

### O-13 Compliance Requirements: Ohio Rev. Code §§ 9.48, 125.04, 153.64-.71, 505.08, 505.101, 505.267, 505.37, 505.46, 511.12, 511.13, 515.01, 515.07, 521.05, 2921.42, 5549.21, and 5575.01 - Township’s expenditures and competitive bidding.

**Summary of Requirements**

Footbridge repair: Construction, rebuilding and repair of footbridges across rivers and streams needed to access public schools may not exceed $15,000. [Ohio Rev. Code § 505.46]

Ohio Rev. Code §§ 5705.05 and .06 permit townships to use general levy money for road and bridge purposes. All payments on account of machinery, tools, material, and labor must be made from the township road fund. [Ohio Rev. Code § 5549.21]

Ohio Rev. Code § 511.13 - This section prohibits elected officials from having any pecuniary interest in a contract.

Ohio Rev. Code § 2921.42 - This section prohibits having an unlawful interest in a public contract.

Competitive bidding is required in eight circumstances:

1. Purchase of materials, machinery and tools to be used in constructing, maintaining and repairing roads and culverts, where the amount involved exceeds $50,000. [Ohio Rev. Code § 5549.21].
2. Contracts for the maintenance or repair of roads, where the amount involved exceeds $45,000. In each case, the board must advertise once, not later than two weeks prior to the letting of the contract, in a newspaper of general circulation in the township. Award must be to the lowest responsible bidder. [Ohio Rev. Code § 5575.01].
3. Contracts for the construction and erection of a memorial building or monument. When competitive bidding is required, no contract shall be made or signed until an advertisement has been placed in a newspaper, published or of general circulation in the township, at least twice. If the board posts the notice on its web site, it may eliminate the second notice otherwise required to be published in a newspaper published or of general circulation in the township, provided that the first notice published in such newspaper meets all of the following requirements: (1) It is published at least two weeks before the opening of bids; (2) It includes a statement that the notice is posted on the Board’s internet web site; (3) It includes the internet address of the Board’s internet web site; and (4) It includes instructions describing how the notice may be accessed on the board’s internet web site. [Ohio Rev. Code § 511.12(B)]. Such contracts require competitive bidding only if the amount involved exceeds $50,000. [Ohio Rev. Code § 511.12].
4. Contracts for equipment for fire protection, mechanical resuscitation, underwater rescue and recovery, and communication estimated to exceed $50,000 pursuant to Ohio Rev. Code §§ 505.37 and 505.376. When competitive bidding is required, the board shall advertise once a week for not less than two consecutive weeks in a newspaper of general circulation within the township. The board may also cause notice to be inserted in trade papers or other publications designated by it or to be distributed by electronic means, including posting the notice on the board’s internet web site. If the board posts the notice on its web site, it may eliminate the second notice otherwise required to be published in a newspaper of general circulation within the township, provided that the first notice published in such newspaper meets all of the following requirements: (1) It is published at least two weeks before the opening of bids; (2) It includes a statement that the notice is posted on the board’s internet web site; (3) It includes the internet address of the board’s internet web site; and (4) It includes instructions describing how the notice may be accessed on the board’s internet web site. [Ohio Rev. Code § 505.37(A)].
5. Contracts for street lighting systems where the cost exceeds $50,000. The board shall prepare plans and specifications for the lighting equipment and shall, for two weeks, advertise for bids for furnishing the lighting equipment, either by posting the advertisement in three conspicuous places in the township or by publication of the advertisement once a week, for two consecutive weeks, in a newspaper of general circulation in the township. Any such contract for lighting shall be made with the lowest and best bidder. The board may also cause notice to be inserted in trade papers or other publications designated by it or to be distributed by electronic means, including posting the notice on the board’s internet web site. If the board posts the notice on its web site, it may eliminate the second notice otherwise required to be published in a newspaper of general circulation in the township, provided that the first notice published in such newspaper meets all of the following requirements: (A) It is published at least two weeks before the opening of bids; (B) It includes a statement that the notice is posted on the board’s internet web site; (C) It includes the internet address of the board’s internet web site; and (D) It includes instructions describing how the notice may be accessed on the board’s internet web site. No lighting contract awarded by the board shall be made to cover a period of more than twenty years. The cost of installing and operating any lighting system or any light furnished under contract shall be paid from the general fund of the township treasury. [Ohio Rev. Code § 515.01].
6. Contracts for street lighting improvements where the cost exceeds $50,000. When competitive bidding is required, the board of township trustees shall post, in three of the most conspicuous public places in the district, a notice specifying the number, candle power, and location of lights and the kind of supports for the lights as provided by section 515.06 of the Revised Code, as well as the time, which shall not be less than thirty days from the posting of the notices, and the place the board will receive bids to furnish the lights. The board shall accept the lowest and best bid, if the successful bidder meets the requirements of section 153.54 of the Revised Code. The board may reject all bids. [Ohio Rev. Code § 515.07]
7. Contracts for building modifications for energy savings pursuant to Ohio Rev. Code § 505.264, where the estimated cost exceeds $50,000, with certain exceptions. Award must be to the lowest and best bidder in accordance with the provisions of Sections 307.86 to 307.92.
8. Contracts for private sewage collection tiles where the cost exceeds $50,000 pursuant to Ohio Rev. Code § 521.05. The successful bidder must meet the requirements of Section 153.54.

By unanimous resolution that a real and present emergency exists, trustees may enter into a contract, without bidding or advertising, for the purchase of equipment, supplies, materials or services needed to meet the emergency if the estimated cost of the contract is less than $50,000. [Ohio Rev. Code § 505.08]

The board of township trustees of any township may, by resolution, enter into a contract, without advertising or bidding, for the purchase or sale of motor vehicles, materials, equipment, or supplies from or to any department, agency, or political subdivision of the state, for the purchase of services with a soil and water conservation district, for the purchase of supplies, services, materials, and equipment with a regional planning commission, or for the purchase of services from an educational service center. [Ohio Rev. Code § 505.101]

Townships procuring professional design services, over the competitive bidding threshold, do not need to follow the competitive bidding process. However, contracts for professional design services must adhere to the provisions of Ohio Rev. Code §§ 153.65 through 153.71 which require townships to publically announce and provide notice of the contract, rank firms on the basis of qualifications, and award the contract to the most qualified firm. "Professional design services" are defined as services within the scope of practice of an architect or landscape architect registered under Chapter 4703 of the Revised Code or a professional engineer or surveyor registered under Chapter 4733 of the Revised Code. [Ohio Rev. Code §§ 153.65 through 153.71]

Townships that participate in a joint purchasing contract are exempt from using competitive bidding. [Ohio Rev. Code § 9.48(C)-(D)]

A township may purchase supplies or services from another party, including another political subdivision, instead of through a contract that the Ohio Department of Administrative Services has entered into on behalf of the township, if the township can prove that it can purchase those same supplies or services from the other party upon equivalent conditions and specifications but at a lower price. If so, the township does not have to competitively bid those supplies or services. [Ohio Rev. Code § 125.04(C)]

Townships need not competitively bid acquisitions made through another entity’s purchasing program. [Ohio Rev. Code § 9.48]

**Note: Any contract paid for in whole or in part by Federal funds would be subject to the Federal Procurement rules in the Uniform Guidance.**

**Leasing Equipment:**

Ohio Rev. Code § 505.37 and § 505.50 permit a board of township trustees to lease or lease with an option to purchase fire and police protection and emergency police protection, respectively. Additionally, Ohio Rev. Code § 505.37(A) requires that contracts for the purchase of fire apparatus, mechanical resuscitators, underwater rescue and recovery equipment, other fire equipment, appliances, materials, fire hydrants, buildings, or fire-alarm communications equipment or services estimated to exceed $50,000 be let by competitive bidding (whether leased or purchased).

Ohio Rev. Code § 505.267 and § 5549.021 expand townships’ powers, allowing them to lease **or** lease with an option to purchase for any purpose for which it may acquire real or personal property, including machinery, tools, trucks and other equipment used in constructing, maintaining or repairing roads:

A lease with option to purchase shall do the following:

* Transfer title to the asset to the township on or before the end of the lease.
* If the leased asset relates to road repair, construction or maintenance, the township should comply with the following:
  + Make a cash down payment of at least three-twentieths (15%) of the total cost;
  + If the board sells used equipment as part of the lease with option to purchase, the cash down payment may be reduced by the amount of the selling price of the used equipment;
  + Be entered into only with the lowest responsive and responsible[[35]](#footnote-35) bidder of the equipment after advertising for bids.

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

1. Identify a few expenditures that should have been subject to competitive bidding while reading the minutes, by inquiry of government personnel, and/or by scanning the disbursement records. Determine through inspection, vouching, or other such means that contracts over the corresponding bid limits were awarded using competitive bidding procedures. Be alert for indications of “bid-splitting” or deliberate attempts to evade bid limitations[[36]](#footnote-36), such as successive contracts just under the bid amount. In selecting payments to test, consider selecting from higher-dollar payments and perhaps one or two smaller payments (i.e. payments slightly over the competitive bidding threshold).
2. For contracts exceeding $50,000, where the township did not use competitive bidding, determine if they meet any of the exceptions noted above.
3. For footbridge construction, rebuilding and repair, determine documentation exists to support the necessity of the expenditures and that the total expenditures did not exceed $15,000 for any footbridge accessing a school.
4. Document whether there is any apparent interest in the contract by a public official. Due to heightened public interest in these situations, we would often deem violations to be material noncompliance and could affect our assessment of the control environment and affect our fraud assessment.
5. Inspect lease agreements to determine whether the agreements were for permitted equipment related to fire and police protection. Determine whether the agreement is a lease with option to purchase or an installment purchase agreement. Determine that the township selected the lowest responsive and responsible bidder.
6. Inspect lease agreements to determine whether the agreements were for permitted equipment related to repair and construction of roads. Determine whether the agreement is a lease with option to purchase or an installment purchase agreement. If it is a lease with an option to purchase, determine that the township made a down payment ≥ 15%. Determine that the township selected the lowest responsive and responsible bidder.

**Audit Procedures, Government Personnel Interviewed and Dates:**

**Conclusion (management letter comments):**

## Schools

### O-14 Compliance Requirement: Ohio Rev. Code §§ 9.48, 125.04(C), 153.65-.71, 3313.46, 3313.533 and 3327.08 - Board of Education procedures for bidding and letting of contracts.

**Summary of Requirements:**

When a Board of Education determines to purchase a bus pursuant to Ohio Rev. Code § 3327.08, or build, repair, enlarge, improve or demolish any school building with a cost in excess of $50,000, the Board is required to:

* Prepare plans and specifications. [Ohio Rev. Code § 3313.46(A)(1)].
* Advertise for bids once a week for not less than two consecutive weeks, or as provided in Ohio Rev. Code § 7.16[[37]](#footnote-37), in a newspaper of general circulation in the district before the date specified by the Board for receiving bids. The board may also cause notice to be inserted in trade papers or other publications designated by it or to be distributed by electronic means, including posting the notice on the board’s internet web site. If the board posts the notice on its web site, it may eliminate the second notice otherwise required to be published in a newspaper of general circulation within the school district, provided that the first notice published in such newspaper meets all of the following requirements: (a) It is published at least two weeks before the opening of bids; (b) It includes a statement that the notice is posted on the board of education’s internet web site; (c) It includes the internet address of the board’s internet web site; and (d) It includes instructions describing how the notice may be accessed on the board’s internet web site.[ Ohio Rev. Code § 3313.46(A)(2)].
* Open the bids at the time and place specified by the Board in the advertisement for bids. [Ohio Rev. Code § 3313.46(A)(3)]
* When the work bid includes both labor and materials, the Board may require that each be separately bid or may require that they be bid as one. [Ohio Rev. Code § 3313.46(A)(5)]
* The award of the contract is to the lowest responsible bidder. [Ohio Rev. Code § 3313.46(A)(6)]
* The contract is between the board and the bidders. The board is required to approve and retain estimates and make them available to the Auditor of State upon request. [Ohio Rev. Code § 3313.46(A)(7)]
* If two or more bids are equal and are lower than any others, either may be accepted. However, the work is not to be divided among the bidders. [Ohio Rev. Code § 3313.46(A)(8)]
* When there is reason to suspect collusion among the bidders, those suspects are to be rejected. [Ohio Rev. Code § 3313.46(A)(9)]

The above requirements (Ohio Rev. Code § 3313.46(A)) do not apply to:

* an urgent necessity,[[38]](#footnote-38) [Ohio Rev. Code § 3313.46 (A)]
* acquisition of educational materials used for teaching; [Ohio Rev. Code § 3313.46(B)(1)]
* any item which the Board, by a two-thirds vote, determines is available and can be obtained only through a single source; [Ohio Rev. Code § 3313.46(B)(2)]
* energy conservation measures, with the approval of two-thirds of the Board; [Ohio Rev. Code § 3313.46(B)(3)]
* acquisition of computer software or hardware for instructional purposes; [Ohio Rev. Code § 3313.46(B)(4)] or
* School districts that participate in a joint purchasing contract are exempt from using competitive bidding. [Ohio Rev. Code § 9.48(C)-(D)]

A school district may purchase supplies or services from another party, including another political subdivision, instead of through a contract that the Department of Administrative Services has entered into on behalf of the school district, if the school district can prove that it can purchase those same supplies or services from the other party upon equivalent terms, conditions, and specifications but at a lower price. If so, the school district does not have to competitively bid those supplies or services. [Ohio Rev. Code § 125.04(C)]

School districts procuring professional design services, over $25,000, do not need to follow the competitive bidding process. However, contracts for professional design services must adhere to the provisions of Ohio Rev. Code §§ 153.65 through 153.71 which require school districts to publically announce and provide notice of the contract, rank firms on the basis of qualifications, and award the contract to the most qualified firm. "Professional design services" are defined as services within the scope of practice of an architect or landscape architect registered under Chapter 4703 of the Revised Code or a professional engineer or surveyor registered under Chapter 4733 of the Revised Code. [Ohio Rev. Code §§ 153.65 through 153.71]

Districts operating alternative schools which meet certain criteria are permitted to contract with a nonprofit or for profit entity to operate the alternative school, including the provision of personnel, supplies, equipment, or facilities. [Ohio Rev. Code § 3313.533(C)]

When a school board contracts with a nonprofit or for-profit entity to run the school, the alternative school plan under 3313.533(B) must include the additional information 3313.533(G) describes. (See statute if this occurs.)

* When a board of education determines to contract with a nonprofit or for-profit entity to operate an alternative school, the board shall:
* Publish a notice of request for proposal in a newspaper of general circulation once a week for at least two consecutive weeks, or as provided in Ohio Rev. Code § 7.16[[39]](#footnote-39), prior to the date specified by the board for receiving proposals. [Ohio Rev. Code § 3313.533(H)(1)]
* After the date specified for receiving proposals, evaluate the submitted proposals (which may include discussions with respondents) to understand the proposal and the qualifications of respondents. The evaluation shall concern the entity’s qualifications using factors the statute specifies. [Ohio Rev. Code § 3313.533(H)(2)]
* The contract shall be awarded to the respondent the board considers to have the most merit, taking into consideration the scope, complexity, and nature of the services to be performed by the respondent under the contract. [Ohio Rev. Code § 3313.533(C), (G) and (H)(4)]

**Note: Any contract paid for in whole or in part by Federal funds would be subject to the Federal Procurement rules in the Uniform Guidance.**

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

1. Identify a few expenditures subject to contracting/competitive bidding requirements while reading the minutes, by inquiry of government personnel, and/or by scanning the disbursement records. Determine through inspection, vouching, or other means that payments exceeding $50,000 and contracts for the operation of alternative schools, were awarded using competitive bidding procedures. Be alert for indications of “bid-splitting” or deliberate attempts to evade bid limitations36, such as successive contracts just under the bid amount. In selecting payments to test, consider selecting from higher-dollar payments and perhaps one or two smaller payments (i.e. payments slightly over the competitive bidding threshold).
2. Inspect bid files for documentation of:

* plans and specifications/RFP,
* bid/RFP advertising, and
* bid/proposal openings.

1. For contracts concerning the operation of alternative schools, review Ohio Rev. Code § 3313.533(H) and determine whether the district documented its evaluation of the respondent’s qualifications.
2. For contracts exceeding $50,000 purporting to meet one or more of the exceptions indicated above (i.e., acquisition of educational materials used for teaching; any item which the Board determined was available and could be obtained only through a single source; certain energy conservation measures; acquisition of computer software or hardware for instructional purposes; and acquisitions pursuant to Section 125.04), determine documentation exists to support expenditures meeting those exceptions.
3. Document whether there is any apparent interest in the contract by a public official. Due to heightened public interest in these situations, we would often deem violations to be material noncompliance and could affect our assessment of the control environment and affect our fraud assessment.

**Audit Procedures, Government Personnel Interviewed and Dates:**

**Conclusion (management letter comments):**

## Hospitals

### O-15 Compliance Requirement: Ohio Rev. Code §§ 9.48, 153.65-.71, 307.86 and 2921.42 - Bidding procedures and purchasing policies for supplies and equipment (County Hospitals).

**Summary of Requirement:** A board of county hospital trustees may adopt, annually, bidding procedures and purchasing or leasing policies for supplies and equipment that are routinely used in operating the hospital and that cost in excess of the amount specified in Ohio Rev. Code § 307.86, as the amount above which purchases must be competitively bid. (purchases in excess of $50,000). [Ohio Rev. Code § 339.05]

If a board of county hospital trustees adopts such policies and procedures, and the board of county commissioners approves them, the board of county hospital trustees may follow these policies and procedures in lieu of following the competitive bidding procedures of Ohio Rev. Code §§ 307.86 to 307.92. [Ohio Rev. Code § 339.05(A)]

Ohio Rev. Code § 2921.42 - This section prohibits having an unlawful interest in a public contract.

County hospitals that participate in a joint purchasing contract are exempt from using competitive bidding. [Ohio Rev. Code § 9.48(C)-(D)]

County hospitals procuring professional design services, over the competitive bidding threshold, do not need to follow the competitive bidding process. However, contracts for professional design services must adhere to the provisions of Ohio Rev. Code §§ 153.65 through 153.71 which require county hospitals to publically announce and provide notice of the contract, rank firms on the basis of qualifications, and award the contract to the most qualified firm. "Professional design services" are defined as services within the scope of practice of an architect or landscape architect registered under Chapter 4703 of the Revised Code or a professional engineer or surveyor registered under Chapter 4733 of the Revised Code. [Ohio Rev. Code §§ 153.65 through 153.71]

(Note that Ohio Rev. Code § 9.24 regarding unresolved findings for recovery and contracts does not apply to hospitals.)

**Note: Any contract paid for in whole or in part by Federal funds would be subject to the Federal Procurement rules in the Uniform Guidance.**

**Suggested Audit Procedures:**

1. By inquiry or reading the minutes, determine if the board of hospital trustees has adopted its own policies and procedures for competitive bidding. If so, trace approval of those policies by the board of county commissioners to an approval letter or to a notation in the minutes.
2. For a few expenditures over the policy limit, inspect bid files to determine if the policies and procedures were being followed as required36. In selecting payments to test, consider selecting from higher-dollar payments and perhaps one or two smaller payments (i.e. payments slightly over the competitive bidding threshold).
3. If the board of hospital trustees has not adopted its own policies and procedures, see OPM Section O-11 for Counties for suggested audit procedures regarding competitive bidding procedures for county hospitals.
4. Document whether there is any apparent interest in the contract by a public official. Due to heightened public interest in these situations, we would often deem violations to be material noncompliance and could affect our assessment of the control environment and affect our fraud assessment.

**Audit Procedures, Government Personnel Interviewed and Dates:**

**Conclusion (management letter comments):**

### O-16 Compliance Requirement: Ohio Rev. Code §§ 749.26, 749.27, 749.28, 749.29, 749.30 and 2921.42 - Contract procedures; bids; bonds; bid openings (Municipal Hospitals).

**Summary of Requirements:**  The board of hospital trustees, before contracting to erect a hospital building, or to rebuild or repair a hospital building, the cost of which exceeds $50,000, must have plans, specifications, detailed drawings, and forms of bids prepared. These must be printed for distribution among the bidders. [Ohio Rev. Code § 749.26]

All contracts must be made in the name of the board of hospital trustees. Contractors may not execute any extra work or make any modifications or alterations in the specifications and plans, unless ordered in writing by the board. Contractors may not claim any additional compensation unless such written order is given, and the additional compensation fixed and agreed upon. Copies of the plans and drawings, attested by the contractor, and the original bids, specifications, and contracts are required to be deposited in the office of the clerk of the municipal corporation. [Ohio Rev. Code § 749.27]

The board of hospital trustees cannot enter into a contract for work or supplies where the estimated cost exceeds $50,000, without first giving 30 days’ notice in one newspaper of general circulation in the municipal corporation that sealed proposals will be received for doing the work or furnishing the materials and supplies. [Ohio Rev. Code § 749.28]

Each bid submitted under Ohio Rev. Code § 749.28 for a contract for the construction, demolition, alteration, repair, or reconstruction of an improvement must meet the requirements of Ohio Rev. Code § 153.54 regarding bid guaranty. Each bid submitted under Ohio Rev. Code § 749.28 for any other contract must be accompanied with a bond, signed by sufficient sureties, for acceptance of the contract if awarded by the board of hospital trustees, to fully secure any difference between the amount of such bid and the next higher bid. That amount is to be collected by the board and paid into the hospital fund in case of the refusal by the bidder to enter into a contract according to its bid within such reasonable time as the board determines. [Ohio Rev. Code § 749.29]

Each bid submitted under Ohio Rev. Code § 749.28 is required to be enclosed in a sealed envelope and deposited with the clerk of the board of hospital trustees. The envelope should indicate the nature of the bid. All bids are required to be opened at the time, date, and place specified in the notice to bidders or specifications. The time, date, and place of the bid openings may be extended to a later date by the board of hospital trustees, provided that written or oral notice of the change is given to all persons who have received or requested specifications no later than 96 hours prior to the original time and date fixed for the opening. [Ohio Rev. Code § 749.30]

Ohio Rev. Code § 2921.42 - Having an unlawful interest in a public contract. This section generally prohibits unlawful interests.

(Note that Ohio Rev. Code § 9.24 regarding unresolved findings for recovery and contracts does not apply to hospitals.)

**Note: Any contract paid for in whole or in part by Federal funds would be subject to the Federal Procurement rules in the Uniform Guidance.**

**Suggested Audit Procedures:**

1. Inquire or determine from reading the minutes or other means whether the hospital paid for work or supplies or for rebuilding or repairs exceeding the bidding threshold. Inspect a few bid files (in selecting payments to test, consider selecting from higher-dollar payments and perhaps one or two smaller payments (i.e. payments slightly over the competitive bidding threshold) and other related documentation to determine that:
2. Plans, specifications, and detailed drawings are printed and distributed to bidders for the erection, rebuilding or repair of a hospital building.
3. The contracts are made in the name of the board of hospital trustees and stipulate in the contract that the contractor will not execute any extra work or make any modifications or alterations in the work specifications and plans unless ordered in writing by the board.
4. Copies of plans and drawings and the original bids, specifications and contracts are on file in the office of the clerk.
5. Thirty days’ notice was given in one newspaper of general circulation in the municipal corporation that sealed proposals will be received.
6. Bid guaranties and/or bonds were received with the proposals from contractors.
7. Bids were enclosed in sealed envelopes and opened by the municipal clerk at the time, date, and place specified in the notice to bidders.
8. The lowest and best bid was accepted (unless bond is considered inadequate by the board).36
9. Document whether there is any apparent interest in the contract by a public official. Due to heightened public interest in these situations, we would often deem violations to be material noncompliance and could affect our assessment of the control environment and affect our fraud assessment.

**Audit Procedures, Government Personnel Interviewed and Dates:**

**Conclusion (management letter comments):**

## Colleges and Universities

### O-17 Compliance Requirement: Ohio Rev. Code §§ 9.312, 153.65-.71, 2921.42, 3354.16, 3355.12, and 3358.10 - Bidding required on improvement contracts.

**Summary of Requirements:** When the board of trustees of a university branch resolves to contract for improvements exceeding $50,000[[40]](#footnote-40), the college must advertise for bids once a week for three consecutive weeks, in at least one newspaper of general circulation within the college district where the work is to be done. [Ohio Rev. Code § 3355.12(A)]

When the board of trustees of a community college [Ohio Rev. Code § 3354.16(A)], technical college [Ohio Rev. Code § 3357.16(A)], or state community college district [Ohio Rev. Code § 3358.10] resolves to contract for improvements exceeding $215,000[[41]](#footnote-41), the college must advertise for bids once a week for three consecutive weeks in at least one newspaper of general circulation within the college district where the work is to be done, as provided in Ohio Rev. Code § 7.16[[42]](#footnote-42).

The board of trustees of the college district may contract with the lowest responsive and responsible bidder.

On January 1, of every even-numbered year, the chancellor of the Board of Regents must adjust the contract limit as provided for in Ohio Rev. Code § 3354.16(B) for community college districts, § 3355.12(B) for university branch districts, § 3357.16(B) for technical colleges and § 3358.10 for state community colleges.

These types of colleges may solicit separate or combined bids and award separate or combined contracts for each distinct branch or class of work. University branch districts’ contracts do not require bidding if the estimated cost is less than $5,000.

A bidder on the contract is considered responsive if his proposal responds to bid specifications in all material respects and contains no irregularities or deviations from the specifications which would affect the amount of the bid or otherwise give the bidder a competitive advantage. The factors that the college must consider in determining whether a bidder on the contract is responsible include the experience of the bidder, the bidder’s financial condition, conduct and performance on previous contracts, facilities, management skills, and ability to execute the contract properly. [Ohio Rev. Code § 9.312(A)]

An apparent low bidder found not to be responsive and responsible is to be notified by the college of the finding and the reasons for it. The notification is given in writing and either by certified mail or, if the state agency or political subdivision has record of an internet identifier[[43]](#footnote-43) of record associated with the bidder, by ordinary mail and by that internet identifier of record. [Ohio Rev. Code § 9.312(A)]

When the contract is awarded to a bidder other than the apparent low bidder or bidders, the institution is required to meet with the apparent low bidder or bidders upon filing of a timely written protest. The protest must be received within five days of the notification required above. No final award can be made until the institution either affirms or reverses its earlier determination. [Ohio Rev. Code § 9.312(B)]

Ohio Rev. Code § 2921.42 - Having an unlawful interest in a public contract. This section generally prohibits unlawful interests.

Colleges and universities procuring professional design services, over the competitive bidding threshold, do not need to follow the competitive bidding process. However, contracts for professional design services must adhere to the provisions of Ohio Rev. Code §§ 153.65 through 153.71 which require colleges and universities to publically announce and provide notice of the contract, rank firms on the basis of qualifications, and award the contract to the most qualified firm. "Professional design services" are defined as services within the scope of practice of an architect or landscape architect registered under Chapter 4703 of the Revised Code or a professional engineer or surveyor registered under Chapter 4733 of the Revised Code. [Ohio Rev. Code §§ 153.65 through 153.71]

(Note that Ohio Rev. Code § 9.24 regarding unresolved findings for recovery and contracts applies to state colleges and universities, but does not apply to technical colleges.)

**Note: Any contract paid for in whole or in part by Federal funds would be subject to the Federal Procurement rules in the Uniform Guidance.**

**Suggested Audit Procedures:**

1. Inquire or determine through other means such as reading the minutes or performing analytical procedures whether improvements exceeding the bidding threshold ($50,000 for a university branch or $200,000 for a community college, state community college district, or technical college) occurred during the fiscal period. Inspect a few contracts (in selecting improvement payments to test, consider selecting from higher-dollar payments and perhaps one or two smaller payments (i.e. payments slightly over the competitive bidding threshold), bid files, and related documentation to determine whether:
2. Contracts over the amounts indicated above were awarded using competitive bidding procedures.
3. Advertisements of the proposals for bids were made.
4. Documentation indicates the lowest and best bid was accepted, or documents why the low bidder was not selected.36
5. Document whether there is any apparent interest in the contract by a public official. Due to heightened public interest in these situations, we would often deem violations to be material noncompliance and could affect our assessment of the control environment and affect our fraud assessment.

**Audit Procedures, Government Personnel Interviewed and Dates:**

**Conclusion (management letter comments):**

## Libraries

### O-18 Compliance Requirements: Ohio Rev. Code §§ 153.65-.71, 2921.42, 3375.06, 3375.10, 3375.12, 3375.15, 3375.22, 3375.30 and 3375.41 - Procedure for bidding and letting of contracts over $50,000.

**Summary of Requirements:**  When a board of library trustees appointed pursuant to Ohio Rev. Code §§ 3375.06 (county free library), 3375.10 (township library), 3375.12 (municipal free library), 3375.15 (school library), 3375.22 (county library district), or 3375.30 (regional library district) determines to construct, demolish, alter, repair, or reconstruct a library or make any improvements or repairs which will exceed $50,000 except in cases of urgent necessity or for the security and protection of library property, it must advertise for two weeks for sealed bids in some newspaper of general circulation in the district, or as provided in Ohio Rev. Code § 7.16[[44]](#footnote-44). If no newspaper has a general circulation in the district, the board must post the advertisement in three public places in the district. [Ohio Rev. Code § 3375.41]

Sealed bids are filed with the fiscal officer by 12:00 noon of the last day stated in the advertisement. The sealed bids are:

* opened at the next meeting of the board,
* publicly read by the fiscal officer, and
* entered in full into the board’s records.

By resolution, the board may provide for the public opening and reading of the bids by the fiscal officer, immediately after the time for filing such bids has expired, at the usual place of meeting of the board, and for tabulating the bids. A report of the tabulation of the bids is presented to the board at its next meeting. [Ohio Rev. Code § 3375.41(C)]

When both labor and materials are embraced in the work that is being bid for, the board may require that each be separately stated in the sealed bid, with each being priced, or it may require that bids be submitted without being separated. [Ohio Rev. Code § 3375.41(E)]

None but the lowest responsible bid shall be accepted. The board may reject all the bids or accept any bid for both labor and material that is the lowest in total. [Ohio Rev. Code § 3375.41(F)]

The contract is between the board and the bidders. The board is required to pay the contract price for the work by the times and in the amounts indicated. [Ohio Rev. Code § 3375.41(G)]

When two or more bids are equal, in whole or in part, and are lower than any others, either may be accepted. However, the work is not required to be divided between these bidders. [Ohio Rev. Code § 3375.41(H)]

When there is reason to believe there is collusion or combination among the bidders, the bids of those concerned in collusion or combination are required to be rejected. [Ohio Rev. Code § 3375.41(I)]

Ohio Rev. Code § 2921.42 - Having an unlawful interest in a public contract. This section generally prohibits unlawful interests.

Libraries procuring professional design services, over the competitive bidding threshold, do not need to follow the competitive bidding process. However, contracts for professional design services must adhere to the provisions of Ohio Rev. Code §§ 153.65 through 153.71 which require libraries to publically announce and provide notice of the contract, rank firms on the basis of qualifications, and award the contract to the most qualified firm. "Professional design services" are defined as services within the scope of practice of an architect or landscape architect registered under Chapter 4703 of the Revised Code or a professional engineer or surveyor registered under Chapter 4733 of the Revised Code. [Ohio Rev. Code §§ 153.65 through 153.71]

(Note that Ohio Rev. Code § 9.24 regarding unresolved findings for recovery and contracts, does not apply to libraries.)

**Note: Any contract paid for in whole or in part by Federal funds would be subject to the Federal Procurement rules in the Uniform Guidance.**

**Suggested Audit Procedures:**

1. Inquire or determine through other means, such as analytical procedures or reading the minutes, if payments for repairs, improvements, etc. exceeding the bidding threshold were made during the period. If so, inspect a few related bid files (in selecting payments to test, consider selecting from higher-dollar payments and perhaps one or two smaller payments (i.e. payments slightly over the competitive bidding threshold) and associated documentation that:
2. Expenditures over the bidding threshold were supported by contracts awarded in compliance with competitive bidding requirements (except in emergencies).
3. Advertisements of the proposals for bids were made.
4. Procedures used for opening bids were in agreement with those required (i.e., opened at the next meeting of the board, publicly read by the fiscal officer, and entered into the board’s records).
5. Adequate documentation is on file to support the board’s decisions to select the lowest responsible bid as well as reject any bids.36
6. Document whether there is any apparent interest in the contract by a public official. Due to heightened public interest in these situations, we would often deem violations to be material noncompliance and could affect our assessment of the control environment and affect our fraud assessment.

**Audit Procedures, Government Personnel Interviewed and Dates:**

**Conclusion (management letter comments):**

**General Expenditures and Contracting**

### O-19 Compliance Requirements: Ohio Rev. Code §§ 153.50, 153.51, and 153.52 - Separate bids and contracts required for each class of work on buildings and other structures (e.g., institutions, bridges, culverts, or improvements).

**Summary of Requirements:**  Except for contracts made with a construction manager at risk[[45]](#footnote-45), with a design-build firm, or with a general contracting firm, when a project is to be contracted out, the entity required to bid such project shall group the work to be done into the specifically listed classes below before drawing up the bid specifications.

The separate classes are:

* plumbing and gas fitting;
* steam and hot-water heating; ventilating apparatus; steam-power plant; and
* electrical equipment [Ohio Rev. Code § 153.50].

If an entity is able to bid the entire project in one bid and that bid is lower than the bids are if separately bid by branches or classes, the entity may then bid the project as one single bid. The entity may also bid groups or branches together, but not encompassing the whole project, if the aggregate of the bids is lower than the total sum of the individual bids for the classes or branches included in the single bid. Finally, if bidding the project by classes or groups does not allow the entity to include all the work required into the bids, and grouping classes or groups together would allow the entity to do so, the entity may then aggregate the classes or branches together into a single bid that would allow them to bid out the work required by the project but not otherwise included in the bidding process. [Ohio Rev. Code § 153.51]

The contract must be awarded to the lowest and best separate bidder if it is for a county, township, or municipal corporation or any public institution belonging thereto. If it is for the state, a school district, or any public institution belonging thereto, it must be awarded to the lowest responsive and responsible bidder. [Ohio Rev. Code § 153.52]

The contract must be made directly with the bidder(s) upon the terms, conditions, and limitations of the bid. [Ohio Rev. Code § 153.52]

When an entity is to bid work on buildings and other structures, the cost of which is greater than $50,000, it shall require separate and distinct bids to be made for each of the following branches or classes of work to be performed, except for contracts made with a construction manager at risk, with a design-build firm, or with a general contracting firm: (1) plumbing and gas fitting; (2) steam and hot-water heating, ventilating apparatus and steam-power plant; (3) electrical equipment. [Ohio Rev. Code § 153.50(B)]

The public authority may assign any or all of its interest in the contract as long as it is agreed to in the award of the contract. [Ohio Rev. Code § 153.51(B)(2)]

**Suggested Audit Procedures:**

Read a few bids and contracts (in selecting payments to test, consider selecting from higher-dollar payments and perhaps one or two smaller payments (i.e. payments slightly over the competitive bidding threshold) for erection, repair, alteration, improvement, and rebuilding of public buildings, bridges, and culverts and determine that:

1. The government documented the classification structure for the bid requests in a manner that supports that the government was likely to receive the lowest possible combined or separate bids for the work36;
2. The contract was awarded to the lowest and best separate bidder (county, township, or municipal corporation or any public institution belonging thereto) or the lowest responsive and responsible bidder (state, a school district, or any public institution belonging thereto);
3. The contract was made directly with the contractor(s) upon the terms, conditions, and limitations of the bid.

**Audit Procedures, Government Personnel Interviewed and Dates:**

**Conclusion (management letter comments):**

### O-20 Compliance Requirements: Ohio Rev. Code §§ 4115.04 and 4115.03 - Prevailing wage rates in public works contracts.[[46]](#footnote-46)

**Summary of Requirements:** The prevailing wage laws essentially require an entity to obtain the prevailing wages in their area for the types of labor required to complete the project, prior to bidding and again when the contract is awarded, if the award is made more than 90 days after the original prevailing wage is determined. They then need to make sure that the contractors who are awarded the contracts agree, in the contract, to pay the prevailing wage.

Every public authority authorized to contract for or construct with its own forces a public improvement, before advertising for bids or undertaking such construction with its own forces, shall have the State director of Commerce determine the prevailing rates of wages of mechanics and laborers in accordance with Ohio Rev. Code § 4115.05 for the class of work called for by the public improvement, in the locality where the work is to be performed. Such schedule of wages shall be attached to and made part of the specifications for the work, and shall be printed on the bidding blanks where the work is done by contract. [Ohio Rev. Code § 4115.04(A)]

Pursuant to Ohio Rev. Code § 4115.03, “Construction” means any of the following:

1. Except as provided in 3. below, any new construction of any public improvement, the total overall project cost of which is fairly estimated to be more than the following amounts and performed by other than full-time employees who have completed their probationary periods in the classified service of a public authority:[[47]](#footnote-47)
   1. One hundred twenty-five thousand dollars, beginning on September 29, 2011, and continuing for one year thereafter;
   2. Two hundred thousand dollars, beginning when the time period described in (a) expires and continuing for one year after;
   3. Two hundred and fifty thousand dollars, beginning when the time period described in (b) expires.
2. Except as provided in 4. below, any reconstruction, enlargement, alteration, repair, remodeling, renovation, or painting of a public improvement, the total overall project cost of which is fairly estimated to be more than the following amounts and performed by other than full-time employees who have completed their probationary period in the classified civil service of a public authority:[[48]](#footnote-48)
   1. Thirty-eight thousand dollars, beginning on September 29, 2011, and continuing for one year after;
   2. Sixty thousand dollars, beginning when the period above expires and continuing for one year thereafter;
   3. Seventy-five thousand dollars, beginning when the time period in (b) expires.
3. Any new construction of a public improvement that involves roads, streets, alleys, sewers, ditches, and other works connected to road or bridge construction, the total overall project cost of which is fairly estimated to be more than seventy-eight thousand two hundred fifty-eight dollars adjusted biennially by the director of commerce pursuant to Ohio Rev. Code § 4115.034 and performed by other than full-time employees who have completed their probationary periods in the classified services of a public authority; [Ohio Rev. Code § 4115.03(B)(3)]
4. Any reconstruction, enlargement, alteration, repair, remodeling, renovation, or painting of a public improvement that involves roads, streets, alleys, sewers, ditches, and other works connected to road or bridge construction, the total overall project cost of which is fairly estimated to be more than twenty-three thousand four hundred forty-seven dollars adjusted biennially by the director of commerce pursuant to Ohio Rev. Code § 4115.034 and performed by other than full-time employees who have completed their probationary periods in the classified service of a public authority. [Ohio Rev. Code § 4115.03(B)(4)]

The State prevailing wage requirements (Ohio Rev. Code §§ 4115.03 – 4115.16) do not apply to:

* Public improvements partially or wholly funded by the Federal government or any of its agencies (whether by grant or loan), if Federal minimum wage requirements (i.e. Davis Bacon) apply to mechanics or laborers.
* A participant in a work activity, developmental activity or an alternative work activity under Ohio Rev. Code §§ 5107.40 to 5107.69, when a public authority directly uses the labor of the participant to construct a public improvement if the participant is not engaged in paid employment or subsidized employment pursuant to the activity.
* For public improvements undertaken by boards of education or educational service centers[[49]](#footnote-49).
* The State prevailing wage law does not apply to county or municipal hospitals if none of the construction funds, including funds to repay any amounts borrowed, have been secured by obligations pledging the full faith and credit of the State, the county, a township, or a municipal corporation, or are funds that have been generated by the levy of a tax by the State, the county, a township, or a municipal corporation
* Any project described in divisions (D)(1)(a) to (D)(1)(e) of Ohio Rev. Code § 176.05;
* Public improvements undertaken by, or under contract for, a port authority as defined in Ohio Rev. Code §§ 4582.01 or 4582.21;
* Any portion of a public improvement undertaken and completed solely with labor donated by the individuals performing the labor, by a labor organization and its members, or by a contractor or subcontractor that donates all labor and materials for that portion of the public improvement project. [Ohio Rev. Code § 4115.04(B)(7)].

**Suggested Audit Procedures:**

1. Select a few contracts subject to prevailing wages and perform the following:
2. Inquire if the contract is funded in whole or part by federal grant or contract. If so, determine whether Federal prevailing wage laws (the Davis Bacon Act) apply.
3. Inspect contracts exceeding the threshold amounts for the required “prevailing wage” language.
4. Inquire if any projects were sublet. If so, inspect the contractor’s contract for language authorizing the subletting.
5. Compare the date of prevailing wage establishment with the contract date. If more than 90 days elapsed between the two dates, determine that a prevailing wage redetermination was obtained by inspecting that document.
6. If a county hospital has claimed the exception provided by Section 4115.04(B), review project documents and legislation authorizing the project, make inquiries, and perform such other procedures to determine whether financing sources meet the criteria of Section 4115.04(B).

**Audit Procedures, Government Personnel Interviewed and Dates:**

**Conclusion (management letter comments):**

### O-21 Compliance Requirements: Ohio Rev. Code § 9.314 – Reverse Internet auction.

**Summary of Requirements:**

Any political subdivision purchasing services or supplies[[50]](#footnote-50) subject to competitive bidding requirements may purchase the services or supplies by reverse auction in lieu of written proposals. [Ohio Rev. Code § 9.314(B)]

A political subdivision shall solicit proposals through a request for proposals. The request for proposals shall state the relative importance of price and other evaluation factors. The political subdivision shall give notice of the request for proposals in accordance with the rules it adopts. [Ohio Rev. Code § 9.314(C)]

A political subdivision may award a contract to the offeror whose proposal the political subdivision determines to be the most advantageous to the political subdivision, taking into consideration factors such as price and the evaluation criteria set forth in the request for proposals. The contract file shall contain the basis on which the award is made. [Ohio Rev. Code § 9.314(E)]

The rules that a political subdivision adopts under this section may require the provision of a performance bond, or another similar form of financial security, in the amount and in the form specified in the rules. [Ohio Rev. Code § 9.314(F)]

As used in this Ohio Rev. Code § 9.314:

* “**Contracting authority**” has the same meaning as in section 307.92 of the Ohio Rev. Code.
* “**Political subdivision**” means a municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities only in geographic areas smaller than that of the state and also includes a contracting authority.
* “**Reverse auction**” means a purchasing process in which offerors submit proposals in competing to sell services or supplies in an open environment via the internet.
* “**Services**” means the furnishing of labor, time, or effort by a person, not involving the delivery of a specific end product other than a report which, if provided, is merely incidental to the required performance. “Services” does not include services furnished pursuant to employment agreements or collective bargaining agreements.
* “**Supplies**” means all property, including, but not limited to, equipment, materials, other tangible assets, and insurance, but excluding real property or interests in real property.

**Suggested Audit Procedures:**

If the local government has elected to use reverse internet auction in lieu of sealed competitive bidding as may be otherwise required, review the minutes and obtain related contract files and review the documentation for a few auctions to determine whether:

1. The entity adopted rules governing the use of reverse internet auction and whether the entity followed significant provisions in those rules, including giving notice of the Request For Proposal (RFP) and required submission of financial security (if any). (Retain a copy of the rules (or relevant excerpts) in the working papers).
2. Proposals were made using RFPs and the RFPs included an indication of the relative importance of price and other proposal evaluation factors.
3. The contract file documents the basis on which the selected proposal was awarded. Be alert for obvious departures from the evaluation factors and related importance as stated in the RFP.

**Audit Procedures, Government Personnel Interviewed and Dates:**

**Conclusion (management letter comments):**

### O-22 All Local Governments Compliance Requirement: Misc. local legislative body policies; charter requirements – Establishment of policies, restrictions on use, prohibitions for government credit cards and purchasing cards.

*►* ***Section O-22 is not applicable to Counties[[51]](#footnote-51),******see Section*** [***O-12***](#_O-12_Compliance_Requirement:) ***regarding Ohio Rev. Code requirements for county credit and purchasing cards.***

**Summary of Requirements:** ~~Most governmental entities have the authority to provide credit cards accounts for use by authorized employees. For example, the Ohio Rev. Code authorizes counties, townships, park districts and agricultural societies to use credit cards.[[52]](#footnote-52)~~

Political subdivisions, except colleges and universities, are required to implement a credit card policy if they hold a credit card account. The following table identifies the Ohio Rev. Code provision that governs the use of credit card accounts for each government entity, as well as a catch-all provision for entities that do not have a specific statute:

|  |  |
| --- | --- |
| **Government Entity** | **Ohio Rev. Code Provision** |
| County, refer to ***Section O-12*** | § 301.27 |
| Municipal Corporation | § 717.31 |
| Board of Education of any School District | § 3313.311 |
| Governing Board of an Education Service Center | § 3313.311 |
| Governing Authority of an IT Center | § 3313.311 |
| Community School | § 3314.52 |
| College Prep Boarding Center | § 3328.52 |
| Regional Water & Sewer District | § 6119.60 |
| Township | § 505.64 |
| Township Park District | § 511.234 |
| Park District | § 1545.072 |
| Agricultural Society | § 1711.131 |
| Library | § 3375.392 |
| STEM Schools | § 3326.52 |
| Soil and Water Conservation District | § 940.11 |
| Health District | § 3709.42 |
| Any Political Subdivision not listed above | § 9.21 |

Ohio Rev. Code § 9.21 (H) says a "Credit Card Account" generally means any:

* bank-issued credit card account,
* store-issued credit card account,
* financial institution-issued credit card account,
* financial depository issued credit card account,
* affinity credit card account,
* any other card account allowing the holder to purchase goods or services on credit or to transact with the account, and
* any debit or gift card account related to the receipt of grant moneys.

Note: We also interpret credit card accounts to include online purchasing accounts (e.g., Amazon Business which include the ability for local governments to set internal controls over employee spending) ~~and store gift cards (not related to the receipt of grant monies). Store gift cards are credit cards which are preloaded with a set dollar amount and may be used only at a specific retailer~~.

"Credit card account" does not include:

* a debit card account,
  + Note: Ohio Rev. Code § 9.22 says “No political subdivision may hold or utilize a debit card account, except for law enforcement purposes. Possession or use of a debit card account by a political subdivision except for law enforcement purposes is a violation of section 2913.21 of the Revised Code. This section does not apply to debit card accounts related to the receipt of grant moneys.”
* procurement card account,
  + ~~Note: procurement card is a card issued to designated users by a political subdivision to make purchases at selected businesses. Procurement cards can be tied to either a credit card or bank account. Security measures for procurement cards include setting per-purchase and per-month dollar limits. Procurement cards may also feature spending restrictions for the types of purchases allowed and merchant category codes which define where purchases can and cannot be made. A bank that manages a procurement card will issue payments to payees within days, while providing monthly invoicing to the local government. The appropriate local government supervisor or fiscal staff must review and approve these invoices prior to payment. This differs from a credit card because use can be limited to specific businesses and dollar amounts. These accounts generate merchant invoices to local governments.~~
* gasoline credit card,
  + Note: gasoline credit card is a card utilized strictly for fuel and automotive parts or repairs purchases.
* telephone credit card account, or
  + Note: telephone credit card account is an account utilized to enable users to make long distance phone calls.
* any other card account where merchant category codes are in place as a system of control for use of the card account.

House Bill 312 (132 GA) requires political subdivisions (not including counties or colleges/universities) to follow procedures for the use of credit card accounts, including adopting a policy, conducting a periodic review, and in some cases providing itemized receipts to the political subdivision. The statute establishes two separate internal control models for credit card usage by political subdivisions: the custody and control model and the compliance officer model. Not later than February 2, 2019, the legislative authority of a political subdivision that holds a credit card account must adopt one of these written policies for the use of credit card accounts. Otherwise, a legislative authority must adopt a written policy before the use of a card account. The policy must include provisions addressing all the following:

* The appointment of a compliance officer, where applicable;
* The officers or positions authorized to use a credit card account;
* The types of expenses for which a credit card account may be used;
* The procedures for acquisition, use, and management of a credit card account and presentation instruments related to the account including cards and checks;
* The procedure for submitting itemized receipts to the fiscal officer or the fiscal officer’s designee;
* The procedure for credit card issuance, credit card reissuance, credit card cancellation and the process for reporting lost or stolen credit cards;
* The political subdivision’s credit card account’s maximum credit limit or limits; and
* The actions or omissions by an officer or employee that qualify as misuse of a credit card account.

**Custody and Control Model**

The custody and control model is a system in which the treasurer or fiscal officer maintains physical control over all credit cards of the entity and may use a system requiring the cards to be “signed out” by authorized, designated users. Entities utilizing the custody and control model should specify the following items in their written policies, approved by the governing board:

Specific statutes amended or enacted from this bill include:

* Who the authorized, designated users are,
* A reasonable length of time the card is allowed to be out of the control of the treasurer or fiscal officer for the transaction(s) to be completed, [[53]](#footnote-53) and
* The procedures that should be followed to submit itemized receipts, as well as any other entity specific requirements that would fit the needs of a political subdivision.
* An officer or employee is liable in person and upon any official bond the officer or employee has given to the political subdivision to reimburse the treasury for the amount for which the officer or employee does not provide itemized receipts in accordance with the credit card policy.

**Compliance Officer Model**

The compliance officer model is a system in which the treasurer or fiscal officer does not maintain physical control of the credit cards. In this instance, a political subdivision must appoint a compliance officer. The compliance officer should not be the treasurer or fiscal officer and should not be an authorized user of the card or authorize use of the credit card by an individual. In certain instances in which the compliance officer is authorized to use a credit card, the compliance officer must have their credit card statement reviewed by the executive or legislative body of the entity.

A quarterly review process should take place where the compliance officer reviews the number of cards the entity has, the number of active cards the entity has, and the credit limit for each card. (See the entity specific sections below for specific requirements of the compliance officer model.)

**Additional General Requirements**

The name of the political subdivision must appear on each presentation instrument related to the account including cards and checks.

The use of a credit card account for expenses beyond those authorized by the legislative authority constitutes misuse of a credit card account. An officer or employee of the political subdivision or a public servant as defined under section 2921.01 of the Revised Code who knowingly misuses a credit card account held by the legislative authority violates section 2913.21 of the Revised Code, which is a misdemeanor of the first degree.

The fiscal officer or the fiscal officer’s designee annually must file a report with the legislative authority detailing all rewards received based on the use of the political subdivision’s credit card account.

No political subdivision may hold or utilize a debit card account, except for law enforcement purposes. Possession or use of a debit card account by a political subdivision, except law enforcement, is a violation of section 2913.21 of the Revised Code.

The requirements set forth in House Bill 312 do not apply to debit card accounts related to the receipt of grant moneys.

**Late Fees, Penalties, and Interest/Finance Charges**

Political subdivisions, except counties with board of commissioner’s approval, are not authorized to incur late fees, penalties, or interest/finance charges as a result of credit card use.

**Credit Card Balances**

Political subdivisions, except counties with board of commissioner’s approval, are not authorized to carry credit card balances past the due date.

**Entity Specific Requirements:**

***Township Specific Requirements* [Ohio Rev. Code § 505.64]**

If a township fiscal officer does not retain general possession and control of the credit card and the entity must utilize the compliance officer model, the following applies:

In a township that has adopted a limited home rule government under Chapter 504 of the Revised Code, the board must appoint a compliance officer to perform the duties as outlined under the policy requirements. The compliance officer may not use a credit card account and may not authorize an officer, employee, or appointee to use a credit card account, with the exception of a board of township trustees serving in the role of compliance officer, then they may use a credit card if so authorized under the policy adopted by the township and may authorize an officer, employee, or appointee to use a credit card account as provided in the policy requirements. The fiscal officer is not eligible for appointment as compliance officer.

In a township that has not adopted a limited home rule government under Chapter 504 of the Ohio Revised Code, the fiscal officer must present credit card account transaction detail from the month previous, monthly to the board. The board must review the credit card transaction detail and the chairperson of the board must sign an attestation stating the board reviewed the credit card account transaction detail.

The compliance officer, if applicable, and the board, at least once every six months, must review the number of cards and accounts issued, the number of active cards, and accounts issued the cards’ and accounts’ expiration dates, and the cards’ and accounts’ credit limits.

The fiscal officer or the fiscal officer’s designee annually must file a report with the board detailing all rewards received based on the use of the township’s credit card account.

***Municipal Corporations (Cities and Villages) Requirements* [Ohio Rev. Code § 717.31]**

If a city auditor or village fiscal officer does not retain general possession and control of the credit card and the entity must utilize the compliance officer model, the following applies:

In a municipal corporation that has the authority to operate a mayor’s court pursuant to Chapter 1905, of the Revised Code, the chief executive officer of the municipal corporation must appoint a compliance officer to perform the duties enumerated under the policy established. The compliance officer may not use a credit card account and may not authorize an officer or employee to use a credit card account. The village clerk or city auditor is not eligible for appointment as compliance officer.

In a municipal corporation that does not have the authority to operate a mayor’s court pursuant to Chapter 1905 of the Revised Code, the village clerk or city auditor must present monthly the legislative authority credit card account transaction detail from the previous month. The legislative authority must review the credit card account transaction detail and the presiding officer of the legislative authority must sign an attestation stating the legislative authority reviewed the credit card transaction detail.

The compliance officer, if applicable and the legislative authority at least quarterly must review the number of cards and accounts issued, the number of active cards and accounts issued, the cards’ and accounts’ expiration dates, and the cards’ and accounts’ credit limits.

The village clerk or city auditor, as applicable, or the designee of that applicable officer annually must file a report with the legislative authority detailing all rewards received based on the use of the municipal corporation’s credit card account.

***School District, Educational Service Center, or Information Technology Center Requirements* [Ohio Rev. Code § 3313.311 applicable to traditional schools, ESCs, and ITCs]**

If a School District, Educational Service Center (ESC), or Information Technology Center (ITC) treasurer does not retain general possession and control of the credit card the governing authority must appoint a compliance officer.

Unless the compliance officer is a superintendent of a school district or chief administrator of an ITC, the compliance officer may not use the credit card account. The compliance officer may not authorize an officer or employee to use a credit card account. If a school district superintendent acting as compliance officer has authority to use a credit card account, the treasurer or the treasurer's designee, who must not be the school district superintendent, must review monthly the credit card account transaction detail and must sign an attestation stating the treasurer or designee reviewed the credit card account transaction detail. If the chief administrator of an ITC acting as compliance officer has authority to use a credit card account, the governing authority must review monthly the credit card account transaction detail and must sign an attestation stating the governing authority reviewed the credit card account transaction detail. The treasurer of the board of education, treasurer of the ESC, and chief fiscal officer of the ITC are not eligible for appointment as compliance officer. The superintendent of a school district or chief administrator of an ITC is eligible for appointment as compliance officer.

The compliance officer at least once every six months must review the number of cards and accounts issued, the number of active cards and accounts issued, the cards’ and accounts’ expiration dates, and the cards’ and accounts’ credit limits.

The treasurer or chief fiscal officer, as applicable, or the designee of that applicable officer annually must file a report with the board or authority detailing all rewards received based on the use of the credit card account.

***Community School and STEM School Requirements* [Ohio Rev. Code § 3314.52 applicable to community schools; Ohio Rev. Code § 3326.52 applicable to STEM schools]**

If a community or STEM school treasurer does not retain general possession and control of the credit card, the governing authority must appoint a compliance officer.

Except for a chief administrator of a community or STEM school serving as compliance officer, the compliance officer may not use a credit card account. The compliance officer may not authorize an officer or employee to use a credit card account. If a chief administrator acting as compliance officer has authority to use a credit card account, the governing authority must review the credit card account transaction detail monthly, and must sign an attestation stating the governing authority reviewed the credit card account transaction detail. The designated treasurer is not eligible for appointment as compliance officer. The chief administrator is eligible for appointment as compliance officer.

The compliance officer and the governing authority at least quarterly must review the number of cards and accounts issued, the number of active cards and accounts issued, the cards’ and accounts’ expiration dates, and the cards’ and accounts credit limits.

The designated treasurer or the designated treasurer’s designee annually must file a report with the governing authority detailing all rewards received based on the use of the community or STEM school’s credit card account.

***College Preparatory Boarding School Requirements* [Ohio Rev. Code § 3328.52]**

If the treasurer of the college-preparatory boarding school does not retain general possession and control of the cards, the board should appoint a compliance officer.

Except for a chief administrator of college-preparatory boarding school serving as compliance officer, the compliance officer may not use a credit card. If the chief administrator acting as compliance officer has authority to use a credit card account, the board must review the credit card account transaction detail monthly, and must sign an attestation stating the board reviewed the credit card account transaction detail. The treasurer is not eligible for appointment as compliance officer. The chief administrator is eligible for appointment as compliance officer.

The compliance officer and the governing body at least quarterly must review the number of cards and accounts issued, the number of active cards and accounts issued, the cards’ and accounts’ expiration dates, and the cards’ and accounts’ credit limits.

The treasurer or the treasurer’s designee annually must file a report with the board detailing all rewards received based on the use of the college-preparatory boarding school’s credit card account.

***Library Requirements* [Ohio Rev. Code § 3375.392]**

If the fiscal officer of a free public library or library district does not retain general possession and control of the credit card account, and presentation instruments related to the account include cards and checks, the board must appoint a compliance officer.

The compliance officer may use a credit card account only upon authority from the fiscal officer of the free public library or library district, except the director of a free public library or library district serving in the role of compliance officer may use a credit card if so authorized under the policy. If the compliance officer has authority to use a credit card account, the fiscal officer or the fiscal officer’s designee, who must not be the compliance officer, monthly must review the credit card account transaction detail and must sign an attestation stating the fiscal officer or designee review the credit card account transaction detail. The compliance officer may not authorize an officer, employee, or appointee to use a credit card account, except a director serving in the role of compliance officer may authorize an officer, employee, or appointee to use a credit card account. The fiscal officer of the free public library or library district is not eligible for appointment as compliance officer. The director is eligible for appointment as compliance officer.

The compliance officer must review the number of cards and accounts issued at least once every six months, the number of active cards and accounts issued, the cards’ and accounts’ expiration dates, and the cards’ and accounts’ credit limits.

The fiscal officer or the fiscal officer’s designee annually must file a report with the board detailing all rewards received based on the use of the free public library’s or library district’s credit card account.

Other entity specific information can be found at:

* Ohio Rev. Code § 9.21 applicable to political subdivisions;
* Ohio Rev. Code § 511.234 applicable to Township Park Districts;
* Ohio Rev. Code § 940.11 applicable to Soil and Water Conservation Districts;
* Ohio Rev. Code § 1545.072 applicable to Park Districts;
* Ohio Rev. Code § 1711.131 applicable to Ag Societies;
* Ohio Rev. Code § 6119.60 applicable to Regional Water & Sewer Districts;

**Cash Withdrawal Considerations** (excerpted from [**Audit Bulletin 2016-004**](https://ohioauditor.gov/publications/bulletins/2016/2016-004.pdf)**):**

Cash withdrawals are a tiny subset of all credit card activity, and require specific controls. These specific controls are in addition to the controls which should govern credit card use generally.

Ohio law does NOT explicitly authorize a public entity to use a credit card to withdraw cash from a financial transaction device or automated teller machine (hereinafter, ATM), or to obtain cash (back) in a credit card transaction. However, if the governing body of the public entity determines that cash withdrawals are “necessarily implied” from its other powers (See *State ex rel. A. Bentley & Sons Co. v. Pierce*,96 Ohio St. 44, 47, 117 N.E. 6, 7 (1917); *City of Youngstown v. Craver*,127 Ohio St. 195, 201, 187 N.E. 715, *717 (1933)*), that determination should be memorialized by specific legislative action (or where applicable, administrative action). The action should explicitly authorize the cash withdrawals and reference the entities credit card policy.

AOS will presume that a cash withdrawal which has not been properly authorized was not made for a proper public purpose. Any such unauthorized cash withdrawal transaction may result in a non-compliance citation and/or finding for recovery, including joint and several liabilities, against the person or persons responsible for such misuse. Further, each such act may constitute a violation of Ohio Rev. Code § 2913.21, “Misuse of a Credit Card”.

**Suggested Audit Procedures:**

1. Inquire with management to determine a complete listing of all credit card accounts. For all credit card accounts obtain:
   1. copies of existing internal control policies,
   2. a list(s) of authorized users, and
   3. a list of all credit card account transactions.
2. Determine if the established policy(ies) is:[[54]](#footnote-54)
   1. in compliance with the statutory requirements, and
   2. implemented by the entity (i.e. through walkthrough) including reviews performed by compliance officer and/or fiscal officer/treasurer/director/equivalent and filing of any necessary annual reports.
3. Through inquiry and scan of transactions (including a few transactions from the chief executive officer, chief fiscal officer, and elected officials in this review) determine if:
4. Use was by an authorized user within the guidelines established in the policy,

b. Each transaction is supported with original invoices and for a proper public purpose, and

1. Any cash withdrawals were made. If so determine if:
   * The policy explicitly allows for cash withdrawals and when related legislative or administrative action was passed.
   * Appropriate and specific additional controls are implemented for cash withdrawal transactions.

4. For Credit Card use, determine if:[[55]](#footnote-55)

* 1. Any late fees, penalties or interest/finance charges were incurred during the fiscal year regardless if due to cash withdrawals identified when testing Step 3.
  2. Any credit card balances due remain unpaid.

**Audit Procedures, Government Personnel Interviewed and Dates:**

**Conclusion (management letter comments):**

# Section C: Debt

## Entities Other Than Community Schools

### O-23 Compliance Requirement: 17 C.F.R. § 240.15c2-12 - Issuing municipal securities

**Summary of Requirement**: Underwriters contracting subsequent to July 3, 1995 to issue municipal securities (bonds, notes, or other secured debt instruments issued by any state or local government regardless of whether the government is a municipality) will be subject to the amended disclosure requirements of the Rule. The SEC has imposed certain requirements on underwriters (such as brokers and dealers) selling securities. The Rule prohibits underwriters from selling municipal securities unless they have performed due diligence procedures. Other requirements:

1. The underwriter must review and agree to provide a copy of the official statement to any requesting party ***when issuing / marketing securities***. (That is, this step only applies when securities are issued.) The official statement must include:
   1. The terms of the proposed issue.
   2. Financial and/or operating data from each person material to potential investors, including information from all obligated persons.
   3. A description of the secondary market disclosure undertaking.
   4. Disclosure of any past failures to make required disclosures within the past five years.
2. Annual[[56]](#footnote-56) and material event information is to be filed with the Municipal Securities Rulemaking Board (MSRB) under its Electronic Municipal Market Access (EMMA) system. "Small issuers" that enter into such agreements are required to make certain annual filings in the EMMA system. The MSRB has published a notice detailing its requirements for such filings in the EMMA system including that all submissions are to be electronic; all documents submitted must be in PDF and configured to permit documents to be saved, viewed, printed and retransmitted by electronic means (any PDF documents submitted after January 1, 2010 must also be word searchable); and all submissions must be accompanied by identifying information as prescribed by the MSRB. Further information is available at the SEC's website and the MSRB's website:  [http://www.msrb.org/EducationCenter/Issuers/Disclosing.aspx/](http://emma.msrb.org/).
3. The issuer and/or obligated persons (i.e., entities directly or contingently responsible for repaying the securities) must agree in writing, to provide to all approved to the State Information Depository (SID): See the note immediately following this section for the name and address of the SID[[57]](#footnote-57). <http://www.ohiosid.com>
4. The following requirements are applicable for both EMMA and SID.
   1. Annual financial information and operating data. [17 C.F.R. **§** 240.15c2-12(b)(5)(i)(A)]
   2. Timely material event notices. Underwriters must also establish procedures to assure they receive these notices. (“Timely” is now defined as within 10 days.) Material events include: [17 C.F.R. **§** 240.15c2-12(b)(5)(i)(C-D)]
   3. Principal and interest payment delinquencies;
   4. Non-payment related defaults;
   5. Unscheduled draws on debt service reserves reflecting financial difficulties;
   6. Unscheduled draws on credit enhancements reflecting financial difficulties;
   7. Substitution of credit or liquidity providers, or their failure to perform;
   8. Adverse tax opinions, the issuance by the IRS of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security.
   9. Modifications to rights of security holders;
   10. Bond calls;
   11. Defeasances;
   12. Release, substitution, or sale of property securing repayment of the securities;
   13. Debt ratings changes;
   14. Failure to provide required annual financial information on or before the date specified;
   15. Disclosure of asset-backed securities under SEC Rule Ga-1;
   16. Bankruptcy, insolvency, receivership or similar event of obligated person;
   17. The consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, and
   18. Appointment of a successor or additional trustee, or the change of name of a trustee.
   19. Incurrence of a financial obligation of the issuer or obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the issuer or obligated person, any of which affect security holders, if material; and[[58]](#footnote-58)
   20. Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of the financial obligation of the issuer or obligated person, any of which reflect financial difficulties.58

***Note***: All material events are required to be disclosed no later than 10 business days after the event.

1. Audited financial statements, when and if available. [17 C.F.R. **§** 240.15c2-12(b)(5)(i)(B)]
2. Timely notice of failure to provide required financial information.[17 C.F.R. **§** 240.15c2-12(b)(5)(i)(D)]
3. Exemptions: Certain municipal security issues are exempted from the Rule such as:
   * 1. Security issues of less than $1 million. [17 C.F.R. **§** 240.15c2-12(a)]
     2. Securities with maturities of 18 months or less. [17 C.F.R. **§** 240.15c2-12(d)(3)]
     3. Securities sold in denominations of at least $100,000. [17 C.F.R. **§** 240.15c2-12(d)(1)]

AND

have 35 or fewer "sophisticated investors" and no re-offering of the securities;

OR

* have a maturity of nine months or less.

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

1. Scan copies of **annual** information submitted to the MSRB and the State Information Depository (SID). Document that such information was:
2. filed with the MSRB/SID57,
   * Scan the continuing disclosure agreement to confirm there was no requirement to file with the SID. If the continuing disclosure agreement required filing with the SID and no filing was made, auditors should cite the government for failing to meet the continuing disclosure agreement.
3. whether the auditor noted any material errors or omissions to the information. (*We do not expect auditors to make time-consuming examinations of data. Instead, scan for obvious errors, such as omission of financial statements or footnotes, omission of a debt rating change, whether the contractually agreed basis of accounting was followed, whether information requiring* *audit includes an opinion, etc.)*
4. In conjunction with other procedures related to debt issued subsequent to July 3, 1995, document whether any material events (as defined in amended SEC Rule 15c2-12) came to the auditor’s attention. Document whether such material events were promptly disclosed to MSRB/SID.
5. Auditors should obtain written representations that management has transmitted all required information to MSRB/SID and underwriters required by SEC Rule 15c2-12.

**Audit Procedures, Government Personnel Interviewed and Dates:**

**Conclusion (management letter comments):**

# Section D: Accounting and Reporting

## Courts

### O-24 Compliance Requirement: Ohio Rev. Code § 2303.12 - Books to be kept by clerk of the court of common pleas.

**Summary of Requirements:** The clerk of the court of common pleas shall keep at least the following books: They shall be called the appearance docket, trial docket and printed duplicates of the trial docket for the use of the court and the officers thereof, journal, and execution docket.

**POSSIBLE NONCOMPLIANCE RISK FACTORS:**

***Note*: Due to the large volume of over the counter cash receipts and the complexity of statutory fines and fees, the risk of noncompliance in courts is inherently higher. In assessing the risk of noncompliance, auditors should consider whether courts have historically demonstrated effective internal controls and compliance with applicable requirements. Additionally, adequate training of court personnel, segregation of duties, and supervisory monitoring controls can help mitigate the risk of noncompliance with court requirements.**

**Suggested Audit Procedures:**

Determine if the aforementioned records are maintained. (***Note***: We will normally know this from performing financially-related audit procedures.)

**Audit Procedures, Government Personnel Interviewed and Dates:**

**Conclusion (management letter comments):**

### O-25 Compliance Requirement: Ohio Rev. Code § 2101.12 - Records to be kept by the probate court.

**Summary of Requirement:** In part, the law requires probate courts must maintain:

(A) Administration docket

(B) Guardian docket

(C) Civil docket

(D) Minutes journal

(E) Record of wills[[59]](#footnote-59)

(F) Execution dockets

**POSSIBLE NONCOMPLIANCE RISK FACTORS:**

***Note*: Due to the large volume of over the counter cash receipts and the complexity of statutory fines and fees, the risk of noncompliance in courts is inherently higher. In assessing the risk of noncompliance, auditors should consider whether courts have historically demonstrated effective internal controls and compliance with applicable requirements. Additionally, adequate training of court personnel, segregation of duties, and supervisory monitoring controls can help mitigate the risk of noncompliance with court requirements.**

**Suggested Audit Procedures:**

Determine if aforementioned records are maintained. (***Note***: We will normally know most of this from performing financially-related audit procedures.)

**Audit Procedures, Government Personnel Interviewed and Dates:**

**Conclusion (management letter comments):**

### O-26 Compliance Requirement: Ohio Rev. Code § 307.515 - Fines and penalties for violation of liquor control laws and state traffic laws paid to the county law library resources fund (various courts).

Ohio Rev. Code § 307.515(C) - Court of **common pleas** and **probate court** to pay fines and penalties to the county law library resources fund.

Ohio Rev. Code § 307.515(A) - Allowance to the county law library resources fund from fines and penalties of **municipal courts**.

**Summary of Requirement:** These sections provide for distributing certain fines and penalties to county law library resources fund.

**POSSIBLE NONCOMPLIANCE RISK FACTORS:**

***Note*: Due to the large volume of over the counter cash receipts and the complexity of statutory fines and fees, the risk of noncompliance in courts is inherently higher. In assessing the risk of noncompliance, auditors should consider whether courts have historically demonstrated effective internal controls and compliance with applicable requirements. Additionally, adequate training of court personnel, segregation of duties, and supervisory monitoring controls can help mitigate the risk of noncompliance with court requirements.**

**Suggested Audit Procedures:**

***Note***: The Ohio Rev. Code sections listed in this step are provided for your reference. When testing the collection and distributions of fines, auditors must refer to the applicable statutes governing the amounts to collect and amounts and methods of distribution, regardless of whether listed here. These tests should also be part of the ***financial*** audit of courts.

Inquire and examine how the court identifies fines and penalties collected under the statutes above and ensures they are properly distributed to the county law library resources fund. Ask the court to show you a few fines and penalties for violation of liquor control laws and state traffic laws. Determine these collections were properly distributed to the county law library resources fund. *(Typically, we only require a low degree of assurance over compliance with this requirement. However, where courts are a material audit cycle and where courts are relying on general IT controls to identify and accumulate fines and penalties subject to distribution to the law library resources fund, auditors should evaluate general IT controls (AOS staff should complete the RCEC) for automated court systems.)*

**Audit Procedures, Government Personnel Interviewed and Dates:**

**Conclusion (management letter comments):**

# Section E: Deposits and Investments

None.

# Section F: Other Laws and Regulations

## Various Entity Types

**Revised: HB 166, 133 GA**

**Effective: July 18, 2019**

### O-27 Compliance Requirement: Ohio Rev. Code § 117.13(C)(3) and 2 C.F.R. § 200.425 – Allocating Audit Costs (MOVED from Chapter 1).

**Summary of Requirements**: Local governments can charge audit costs to funds other than the general fund only if the charges are properly allocated to those funds.

**Ohio Rev. Code § 117.13(C)(2)~~(3)~~ provides** the fiscal officer may allocate ~~distribute such total~~ the charges billed for the cost of the audit to appropriate funds using a methodology that follows guidance provided by the auditor of state ~~each fund audited in accordance with its percentage of the total cost~~.

The fiscal officer should determine which funds should be charged a percentage of the audit costs. The Auditor of State is of the opinion that most operating funds of a local government, including utility funds (i.e., water, sewer, electric, refuse), special levy funds, funds that receive gas taxes, and motor vehicle registration fees can be charged a portion of the audit costs.

Other funds of a local government that may be charged a percentage of the audit costs include bond and grant funds. The ability to charge bond funds will depend on the allowable uses defined in the bond legislation. Trust and other funds that receive donations restricted to specific purposes will require analysis by the fiscal officer of the restrictions imposed by the donor and/or trust agreement to determine if any audit costs may be charged to those funds. Custodial funds, because of their custodial nature, should not be charged for any share of the cost of an audit for the fiscal officer’s role as the fiscal agent.

In determining a percentage of total cost that may be charged to a fund, any reasonable and rational method such as a percentage of the fund’s revenue or expenditures compared to the total revenue or expenditures for all funds, excluding custodial funds, would be acceptable. A local government’s indirect cost allocation plan may also be an acceptable method for allocating audit costs.

For grant funds, a reasonably proportionate share of the costs of audits required by, and performed in accordance with the Single Audit Act and Uniform Guidance (UG), “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards” are allowable. See 2 C.F.R. § 200.425 for further explanation of allowable and unallowable audit costs and UG FAQ 200.425-1 through -5 for guidance when the auditee charges non-single, internal, legislative or performance audit[[60]](#footnote-60) costs.[[61]](#footnote-61)

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

1. Determine if the government charges funds other than the general fund for audit costs. If so, review documentation supporting how the government determines a reasonable basis for allocating audit costs to funds other than the general fund. (Lack of formal documentation should not result in a citation or finding for adjustment if the allocation is reasonable.)
2. Determine if the government allocates audit costs to grant funds. If so, review documentation supporting the government allocated the audit costs to grant funds in accordance with Federal guidelines.

**Audit Procedures, Government Personnel Interviewed and Dates:**

**Conclusion (management letter comments):**

## Community Schools

### O-28 Compliance Requirement: Ohio Rev. Code § 3314.50- Community School Audit Fee Bond *(MOVED from 2-13. Additional guidance has been added to the requirements / procedures previously included in OCS Section 2-13.)*

**Summary of Requirements**: For community schools initiating operations on or after February 1, 2016, Ohio Rev. Code § 3314.50 requires they shall not initiate operation, unless the governing authority has posted a **bond** in the amount of $50,000 with the Auditor of State.[[62]](#footnote-62) The bond shall be used, in the event the school closes, to pay the Auditor of State any moneys owed or that become owed by the school for the costs of audits conducted by the auditor of state or a public accountant under ORC 117.

* In lieu of the bond, the governing authority of the school, the school’s sponsor or an operator that has a contract with the school may deposit with the Auditor of State, **cash** in the amount of $50,000 as guarantee of payment.
* In lieu of a bond or a cash deposit, the school’s sponsor or an operator that has a contract with the school, may provide a **written guarantee** of payment, which shall obligate the school's sponsor or the operator that provides the written guarantee to pay the cost of audits of the school under this section up to the amount of $50,000.
  + Any such written guarantee shall be binding upon any successor entity that enters into a contract to sponsor or to operate the school, and any such entity, as a condition of its undertaking shall acknowledge and accept such obligation.
    - Community schools which initiate operation on or after February 1, 2016 shall not maintain or continue its operations absent the ongoing provision of a bond, a cash deposit, or a written guarantee.

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

* + - 1. Test step 2 below if:
         1. This is the community school’s initial year of operations, or
         2. The community school filed a bond with the Auditor of State, or
         3. The community school initiated operations on or after February 1, 2016, and

had a written guarantee by the sponsor or operator, and

the guaranteeing entity changed during the audit period (i.e. the school changed sponsor or operator)

1. Verify[[63]](#footnote-63) that a bond, cash deposit or written guarantee was posted to the Auditor of State in the amount of $50,000.
   1. If the community school filed a bond with the Auditor of State, determine if it was renewed, etc. for the period under audit.
   2. If the guaranteeing entity changed, determine if the new sponsor/operator acknowledged and accepted such obligation.

**Audit Procedures, Government Personnel Interviewed and Dates:**

**Conclusion (management letter comments):**

OPM APPENDIX 5705.36

**Conditions not requiring a citation under Ohio Rev. Code** § **5705.36**

The following examples illustrate circumstances under which a variance between the amended certificate of estimated resources and the actual resources is not indicative of a deleterious budgetary effect.

1. Additional revenue is estimated by the entity, but the entity does not obtain an amended official certificate of estimated resources as it does not anticipate appropriating the resources or incurring any obligations until the next fiscal year. For example, if an auditee determines six weeks before fiscal year end that it will receive an additional $50,000 in a state grant fund, but it does not anticipate that this money will be appropriated, expended, or obligated until the next fiscal year and, therefore, does not obtain an amended official certificate of estimated resources, a variance between the amount of the most recent amended official certificate of estimated resources and a higher amount of actual resources attributable to this increase would not warrant a citation in the audit report.
2. Additional revenue is estimated by the entity, which obtains an amended official certificate of estimated resources, appropriates the additional revenue, and incurs obligations. The entity elects, however, to defer receipt of the additional revenue until the next fiscal year, when the related cash disbursements will be made. For example, a school district may obtain a new certificate due to an anticipated state loan and appropriate and obligate the resources in question. As payment will not, however, be due until the next fiscal year, it defers actual receipt of the loan proceeds. The result is a variance between the amount of the most recent amended official certificate of estimated resources and the lower amount of actual resources. A citation would not, however, be appropriate.
3. Actual revenue falls below the amount of the amended official certificate of estimated resources, but is sufficient to cover actual expenditures and encumbrances for the fiscal year. For example, an entity may have an amended official certificate of estimated resources in the amount of $100,000, actual revenues of $90,000, and expenditures and encumbrances of $85,000. Under such circumstances, the failure to obtain an amended certification reflecting the lowered revenue level would not be required.
4. Actual revenue falls below the amount of the amended official certificate of estimated resources, but appropriations and expenditures plus obligations incurred prior to the point at which a revised estimate could have been made exceed the amended estimate. For example, an entity may have an amended certificate of estimated resources in the amount of $100,000, in reliance upon which it adopts appropriations of $95,000 and incur obligations of $95,000. When it thereafter estimates that actual resources will be $90,000, should it obtain an amended official certificate of estimated resources? And, if so, in what amount? Where expenditures are made or obligations incurred within the limits of an existing certificate and an amended certificate is subsequently obtained pursuant to Ohio Rev. Code § 5705.36 in an amount below the amount of expenditures and outstanding obligations, Ohio Rev. Code § 5705.36 prohibits the reduction of appropriations below that amount necessary to cover "obligations certified from or against the obligation." Thus, appropriations and expenditures and obligations incurred may exceed the year-end amount of the amended official certificate of estimated resources although no statutory violation has occurred. Under the circumstances set forth above, a reduced certificate in the amount of $95,000, the lowest lawful amount to which appropriations can be reduced, should be obtained. This satisfies the control objective of the statute by preventing unlawful expenditures and obligations in excess of the estimated amount, but recognizes the legal prohibition upon any further reduction in appropriations.
5. The determination of compliance should be made on the basis of the currently estimable legal resources. For example, a subdivision has estimated proceeds of $100,000, appropriates and expends or obligates $100,000, but determines that actual resources for the fiscal year will be only $80,000. It may, however, by transfer or borrowing, obtain the extra $20,000. In determining whether a "reduction" certificate should have been obtained, look to what actions have been formally taken by the taxing authority of the subdivision. If no action was taken to transfer or borrow the $20,000, a citation may be appropriate. If the money was transferred or borrowed so as to increase total actual resources to $100,000, no citation would be necessary.

LEGAL MATRIX

The legal matrix matches the applicability of OPM steps to various entity types. The information in the matrix does not necessarily encompass every item requiring testing for these entities. Additionally, when footnotes in the matrix reference specific sections of the Ohio Rev. Code, you should read those sections when planning and/or conducting the audit.

The three legal matrices from the 2019 OPM have been combined into one and are now depicted in a separate Excel file: [Legal Matrix.xlsx](http://ohioauditor.gov/ocs/2019/Legal%20Matrix.xlsx). Entities are listed alphabetically across the top of the worksheet.

1. 1985 Op. Att’y. Gen. No. 85-085 defines *Custodial Funds* as those funds held in possession of the treasurer of a government body for some other entity, but are considered to be outside the treasury of the governmental body – and not available for use by that governmental body itself. This would include funds properly classified as fiduciary funds per GASB Cod. 1300.102(c). [↑](#footnote-ref-1)
2. This includes local motor vehicle license tax imposed under Ohio Rev. Code Chapter 4504, motor vehicle license tax imposed under Ohio Rev. Code 4503.02, highway use tax, and gasoline tax imposed under Ohio Rev. Code Chapter 5728, and the motor vehicle fuel tax imposed under Ohio Rev. Code Chapter 5735. [1982 Op. Att’y. Gen. No. 82-031] [↑](#footnote-ref-2)
3. On December 26, 2013, OMB issued the final OMB Uniform Guidance (2 C.F.R. § 200), implementing changes to the administrative requirements, which was effective for new awards (and certain funding increments) signed by the federal agency on or after December 26, 2014. [↑](#footnote-ref-3)
4. For accounting purposes, funds this Ohio Rev. Code section describes would now be *permanent* funds under GASB Statement No. 54 or *private purpose trust* funds under GASB Statement No. 34. [↑](#footnote-ref-4)
5. Although community schools have a single fund presentation, they are required to maintain accounting records according to USAS which necessitates compliance with these requirements. [↑](#footnote-ref-5)
6. Ohio Rev. Code § 517.15 ~~as amended by HB 64 on 9/29/2015~~ says, “Upon unanimous consent of the board of trustees, the board may use the principal of the fund if the board is unable to maintain, improve, and beautify township cemeteries using only the income from the fund.” See also OCS 1-28 – Permanent cemetery endowment fund. [↑](#footnote-ref-6)
7. For accounting purposes, funds the Ohio Rev. Code describes in this section would now be *permanent* funds under GASB Statement No. 54 or *private-purpose trust* funds under GASB Statement No. 34. [↑](#footnote-ref-7)
8. ODE refers to these as forecasts on their website. The Ohio Revised Code refers to them as projections. For this compliance requirement we consider them one in the same. [↑](#footnote-ref-8)
9. For example, contracts with individual teachers do not require a “412” certificate, though the negotiated agreement and/or teaching staff salary schedule generally would. Similarly, an employment contract with an individual administrator, who is not covered by a board adopted salary schedule would not require “412” certification. [↑](#footnote-ref-9)
10. The Auditor of State’s Office interprets this requirement to mean any and all appropriation measures for any and all funds of the school district. Ohio Rev. Code § 5705.412 requires that no district shall adopt “any appropriation measure … unless there is attached thereto a certificate, signed as required by this section, that the school district has in effect the authorization to levy taxes including the renewal or replacement of existing levies which, when combined with the estimated revenue from all other sources available to the district at the time of certification, are sufficient to provide the operating revenues necessary to enable the district to maintain all personnel and programs.” Likewise, the Ohio School Law Guide also states that “[c]learly all appropriation measures must be certified pursuant to Ohio Rev. Code § 5705.412”. [↑](#footnote-ref-10)
11. Increased salary schedules that are part of a contract previously lawfully certified under § 5705.412 need not be re-certified before they take effect. However, the school district may have to adjust revenues and expenditures, in Ohio Rev. Code § 5705.391(A) regarding a five-year projection, in the year the increased salary or wage schedule takes effect in order to properly certify its annual appropriation measure. [↑](#footnote-ref-11)
12. Occasionally, school districts amend appropriations during the year without properly obtaining 412 certifications. AOS will not consider these appropriations to be “void”. However, auditors should still cite school districts under Ohio Rev. Code § 5705.412 when a school does not prepare these certificates. [↑](#footnote-ref-12)
13. “Offsets” are certain revenues recorded to other funds as defined in Ohio Rev. Code § 3315.181. The revenue in excess of the set aside and qualified expenditures does not accumulate or carry forward to the next fiscal year. Real (homestead and rollbacks) and personal property tax replacement payments received by school districts should be considered part of the levy proceeds when calculating allowable offsets for capital reserves. See below for additional guidance. [↑](#footnote-ref-13)
14. A board may withdraw cash contributions exceeding statutory minimums from these reserves by resolution. Excess contributions may be deducted from future years’ required set aside amount. Report any excess contributions in external financial reports as *committed, assigned, or restricted* governmental fund balance as appropriate under the circumstances described in GASB 54 [GASB Statement No. 54, ¶ 13 --- 16]. [↑](#footnote-ref-14)
15. “Qualifying expenditures” are expenditures from the general fund and a capital projects fund created under Ohio Rev. Code § 5705.13(C) that meet the definitions in the Ohio Admin. Code 3301-92-02. [↑](#footnote-ref-15)
16. “Formula amount” is determined by Ohio Rev. Code § 3317.02(F). For FY 2016 the amount is $5,900, $6,000 for FY 2017, $6,010 for FY 2018, and $6,020 for FY 2019. [↑](#footnote-ref-16)
17. “Student population” is a defined term. The Ohio Department of Education is responsible for calculating the student population based on information the school district submits (Ohio Rev. Code § 3315.18(F). [↑](#footnote-ref-17)
18. No alternative percentages have been established as of the date of this document. [↑](#footnote-ref-18)
19. In any year a waiver is granted, it is assumed the resources that would have been otherwise set aside will be used to support existing education programs. Therefore, resources expended in excess of a carryover set aside balance are considered discretionary and are not to accumulate or be used to reduce future annual set aside requirements. It is the Department of Education’s intent to not approve a waiver in excess of the annual set aside less any offsets. A waiver in excess of the current year set aside less offsets does not carry forward. [↑](#footnote-ref-19)
20. The percentage is set at 3% by statute, though the Auditor of State has been given some discretion to establish alternate percentages. As of the date of this document, no alternative percentage has been established. [↑](#footnote-ref-20)
21. Revenues from the Ohio Facilities Construction Commission (OFCC), and the related expenditure of said revenues, cannot be used as offsets or qualifying expenditures. However, proceeds from the sale of securities (tax anticipation notes) issued in anticipation of a permanent improvement levy are an offset in the year of sale. The excess proceeds may be used in future years as an offset up to the amount of the levy proceeds received in that year for repayment. If the school district uses bond proceeds or bond expenditures to reduce the reserve requirement, the bond proceeds or expenditures should be identified separately from offsets and qualified expenditures in the set aside footnote presentation. For example, a school district might use the captions “Unused Bond Proceeds for Classroom Facilities” or “Expenditure of Bond Proceeds for Classroom Facilities.” Additionally, the amount presented for unused bond proceeds or expenditure of bond proceeds in the footnote calculation should be limited to the amount needed to bring the reserve to a zero balance after qualified expenditures and offsets have been applied. School districts using bond proceeds as offsets must maintain a schedule tracking the amount of the debt proceeds used each year as an offset until it adds up the amount of the original bond issue. School districts using bond levy revenues as offsets will not need to maintain a separate schedule so long as the bond levy offset is equal to the amount of principal retired on the bond issue each year. [↑](#footnote-ref-21)
22. Actual capital expenditures from bond or note proceeds - OR - the proceeds from the related permanent improvement levy or other levy to pay the debt - may be carried forward to offset future years’ capital improvements and maintenance reserve set-aside requirements (negative carry forwards are not allowable). *Do not count both the expenditures and the debt or levy proceeds. Capital expenditures from grant proceeds are excluded from qualifying expenditures for purposes of calculating the reserve.* [↑](#footnote-ref-22)
23. The annual tax levy proceeds of the annual set aside requirements do not accumulate and/or carryover as an offset in future years. [↑](#footnote-ref-23)
24. As of the date of this audit program, the AOS has identified no such revenues. [↑](#footnote-ref-24)
25. This amount is included in a separate column on ODE’s web site. [↑](#footnote-ref-25)
26. As of the date of this issuance, the AOS has identified no such revenues. [↑](#footnote-ref-26)
27. Although this is a legal requirement to enhance budgetary control, it does not impact financial reporting since the enterprise fund presentation does not require a budgetary statement (see GASB Cod. Sp20.107). Therefore, we do not anticipate noncompliance to rise to report level. [↑](#footnote-ref-27)
28. *“Lowest and best bidder”* There is no guidelines in either the statute and case law as to what constitutes “best.” Factors that may be appropriate to consider are brand name reliability, serviceability, proximity of service provider and past experience with bidder. [↑](#footnote-ref-28)
29. For Villages under Ohio Revised Code § 731.14, if the legislative authority posts the notice on its web site, it may eliminate the second notice otherwise required to be published in a newspaper of general circulation within the village, provided that the first notice published in such newspaper meets all of the following requirements: (A) It is published at least two weeks before the opening of bids; (B) It includes a statement that the notice is posted on the legislative authority’s internet web site; (C) It includes the internet address of the legislative authority’s internet web site; and (D) It includes instructions describing how the notice may be accessed on the legislative authority’s internet web site. [↑](#footnote-ref-29)
30. Ohio Revised Code § 7.16 allows the second publication to be in an abbreviated form and provides that that any further publications can be eliminated if the second notice meets all of the requirements of Ohio Revised Code § 7.16. [↑](#footnote-ref-30)
31. Ohio Rev. Code § 307.88, requires that bids be submitted pursuant to Ohio Rev. Code §§ 307.86 to 307.92 and filed in the manner mentioned in the notice. [↑](#footnote-ref-31)
32. Auditors and governments may wish to refer to the Auditor of State’s Best Practices for discussions about procurement cards at <https://ohioauditor.gov/publications/bestpractices.html>. [↑](#footnote-ref-32)
33. ~~Credit cards the commissioners deem to be “credit cards” follow the credit card provisions of Ohio Rev. Code § 301.27. Credit cards the commissioners deem to be “p-cards” follow the procurement card provisions of Ohio Rev. Code § 301.29.~~ [↑](#footnote-ref-33)
34. Staff should consult with their assistant legal counsel assigned to the region and CFAE when cash withdrawal or credit card balances remain unpaid or a pattern of late fees, penalties or interest/finance charges is occurring without board approval. [↑](#footnote-ref-34)
35. *Lowest responsive and responsible bidder.* A bidder on the contract shall be considered responsive if the bidder’s proposal responds to bid specifications in all material respects and contains no irregularities or deviations from the specifications which would affect the amount of the bid or otherwise give the bidder a competitive advantage. To determine if a bidder on the contract is responsible, consider the experience of the bidder, the bidder’s financial condition, conduct and performance on previous contracts, facilities, management skills, and ability to execute the contract properly. (Ohio Rev. Code § 9.312) [↑](#footnote-ref-35)
36. Auditors should also be aware of and look for other schemes and recommend solutions such as those highlighted by the Attorney General’s Office in this publication: <http://ohioauditor.gov/ocs/2019/PartnershipforCompetitivePurchasingBrochure.pdf>. [↑](#footnote-ref-36)
37. Ohio Revised Code § 7.16 allows the second publication to be in an abbreviated form and provides that that any further publications can be eliminated if the second notice meets all of the requirements of Ohio Revised Code § 7.16. [↑](#footnote-ref-37)
38. Defined in *Mueller v. Bd. of Educ.,* 25 Ohio Dec. 195(Com. Pl. 1911). “[‘Urgent necessity’] means more than convenience and more than ordinary necessity. It is something that requires immediate action and cannot wait. When pleaded as an excuse for failure to comply with any statutory requirement it must be decided by the circumstances of the particular case in which it arises.” “Whether or not a case of urgent necessity exists so that a board of education may be enabled to build, alter or repair a school house or make other improvements without complying with the provisions of this section, as to competitive bidding is dependent upon the determination and declaration of the board itself and cannot be questioned for any reason other than fraud, collusion, absence of good faith or abuse of discretion.” [1927 Op. Att’y. Gen. No. 27-0908] [↑](#footnote-ref-38)
39. Ohio Revised Code § 7.16 allows the second publication to be in an abbreviated form and provides that that any further publications can be eliminated if the second notice meets all of the requirements of Ohio Revised Code § 7.16. [↑](#footnote-ref-39)
40. This statute requires the Board of Regents to increase this amount every other January 1. The Board of Regents informed us they have not increased this threshold for this cycle. [↑](#footnote-ref-40)
41. This statute also requires the Board of Regents to increase this amount every other January 1. This increase is effective January 13, 2017, and coincides with the limits set by the OFCC. [Ohio Admin. Code 153:1-9-01] [↑](#footnote-ref-41)
42. Ohio Rev. Code § 7.16 allows the second publication to be in an abbreviated form and provides that that any further publications can be eliminated if the second notice meets all of the requirements of Ohio Rev. Code § 7.16. [↑](#footnote-ref-42)
43. “Internet Identifier of Record” is defined as an electronic mail address, or any other designation used for self-identification or routing in internet communication or posting, provided for the purpose of receiving communication. [Ohio Rev. Code § 9.312(D)] [↑](#footnote-ref-43)
44. Ohio Rev. Code § 7.16 allows the second publication to be in an abbreviated form and provides that that any further publications can be eliminated if the second notice meets all of the requirements of Ohio Rev. Code § 7.16. [↑](#footnote-ref-44)
45. Ohio Rev. Code § 9.33 defines “construction manager at risk” as “a person with substantial discretion and authority to plan, coordinate, manage, and direct all phases of a project for the construction, demolition, alteration, repair, or reconstruction of any public building, structure, or other improvement and who provides the public authority a guaranteed maximum price as determined in Ohio Rev. Code § 9.334.” [↑](#footnote-ref-45)
46. Bidding and prevailing wage requirements are independent of each other. A threshold dollar amount must first be met before prevailing wage requirements apply. It is possible to meet the bidding threshold without meeting the prevailing wage threshold. [↑](#footnote-ref-46)
47. There are separate thresholds for new construction and reconstruction. These thresholds are categorized by vertical and horizontal construction types. These thresholds are updated biennially.

    Horizontal construction (new construction and reconstruction on public improvements that involve roads, streets, alleys, sewers, ditches, and other works connected to road or bridge construction): (See <http://www.com.ohio.gov/documents/dico_prevailingwagethresholds.pdf>)

    ~~Effective 1/1/2016 through 12/31/2017, the thresholds are $88,495 (new) and $26,514 (reconstruction).~~

    Effective 1/1/2018 through 12/31/2019, the thresholds are $91,150 (new) and $27,309 (reconstruction).

    Vertical construction (all other new construction and reconstruction):

    Effective 9/29/2013 and later, the thresholds are $250,000 (new) and $75,000 (reconstruction). [↑](#footnote-ref-47)
48. Pursuant to 2008 Op. Att’y. Gen. No. 2008-007, any work subcontracted to private contractors should be included in the total cost of the project to determine if the project should be bid. [↑](#footnote-ref-48)
49. Under no circumstances shall a public authority apply the prevailing wage requirements of chapter 4115 to an exempt public improvement of a board of education of any School District or the governing board of any Educational Service Center. (Ohio Rev. Code § 4115.04(C)) [↑](#footnote-ref-49)
50. Ohio Rev. Code § 9.314 prohibits a political subdivision from purchasing supplies or services by reverse auction if the contract concerns the design, construction, alteration, repair, reconstruction, or demolition of a building, highway, road, street, alley, drainage system, water system, waterworks, ditch, sewer, sewage disposal plant, or any other structure or works of any kind. [Ohio Rev. Code § 9.314(B)(2)] [↑](#footnote-ref-50)
51. The testing procedures in this section are derived primarily from ~~HB 312~~ Ohio Rev. Code § 9.21 and do not apply to counties. The legal matrix for the OPM has been updated to reflect this. Counties may utilize section [O-12](#_O-12_Compliance_Requirement:) instead. [↑](#footnote-ref-51)
52. ~~If there is doubt about an entity’s authorization to use credit cards, the government should consult with its legal counsel.~~ [↑](#footnote-ref-52)
53. The policy should also include a reasonable length of time the card is allowed to be out of the control of the treasurer or fiscal officer for the transaction(s) to be completed. Auditors should evaluate the length of time a card is out of the control of the treasurer or fiscal officer for reasonableness on a case-by-case basis. [↑](#footnote-ref-53)
54. Any comments resulting from testing the ~~new~~ credit card requirement should be documented in the working papers and communicated verbally ~~in the initial year of testing~~. [↑](#footnote-ref-54)
55. Staff should consult with their assistant legal counsel assigned to the region and CFAE when cash withdrawal or credit card balances remain unpaid or a pattern of late fees, penalties or interest/finance charges is occurring. [↑](#footnote-ref-55)
56. Moody’s Investors Service issued information on May 9, 2018 noting that effective 7/1/18 (for fiscal years ending after 7/1/17), Moody’s requires audited financial statements within 12 months of year end. In certain circumstances, Moody’s may accept unaudited statements but if audited statements are not received within 18 months, they will consider withdrawing their bond rating of the entity. The audit requirement also applies to issuers with a biennial audit cycle, however, biennial issuers are required to provide unaudited financial statements during the “off-year.” For example, if an issuer is expected to complete an audit for fiscal years ending June 30, 20XX and 20XY, the issuer will be required to provide sufficient unaudited information at the end of fiscal 20XX. [↑](#footnote-ref-56)
57. Although 17 C.F.R. **§** 240.15c2-12 no longer requires filing with the SID, continuing disclosure agreements may include a requirement to file with the SID. [↑](#footnote-ref-57)
58. Added based on amendments to SEC Rule 15c2-12 effective August 20, 2018. [↑](#footnote-ref-58)
59. The record of wills may serve as a source of obtaining missing trust documents to support trust fund obligations for some of our governments. [↑](#footnote-ref-59)
60. Performance audits are not allowable costs per UG FAQ 200.425-1 through 5. [↑](#footnote-ref-60)
61. For awards made on or before 12/26/14 A-133 guidance should be followed. See this section in previous versions of the OCS for details. [↑](#footnote-ref-61)
62. A check or bond should be sent to the Auditor of State of Ohio, Attn: Finance Department at 88 E. Broad St., 4th Floor, Columbus, OH 43215. The finance department will receipt the deposit/bond and transfer to the Treasurer of State. A written guarantee should be e-mailed to [CommunitySchoolQuestions@ohioauditor.gov](mailto:CommunitySchoolQuestions@ohioauditor.gov) . [↑](#footnote-ref-62)
63. AOS employees can verify by reviewing the community school master spreadsheets located at [CFAE Community Schools.aspx](http://portal/BP/Intranet/CFAE%20Community%20Schools/CFAE%20Community%20Schools.aspx). IPA’s should contact the regional chief for the bonding information. Any questions may be directed to [CommunitySchoolQuestions@ohioauditor.gov](mailto:CommunitySchoolQuestions@ohioauditor.gov). [↑](#footnote-ref-63)