

Planning, Funding, and Building Your Community Initiatives: How to Access and Manage \$2.4B in New State Funds

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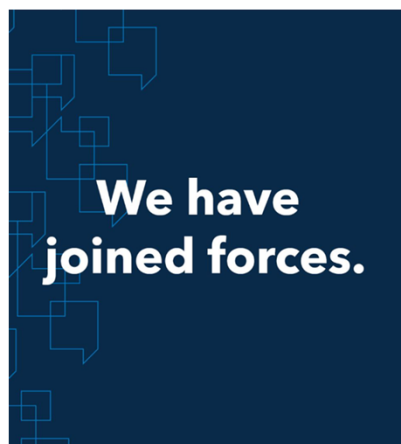
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New Ohio State Programs

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All Ohio Future Fund (AOFF) Purpose

- “To make strategic investments across the state of Ohio to increase the state’s inventory of project-ready economic development sites”
- Grounded in the facts:
 - A trend of increased large site selection projects nationally
 - Ohio has proven to be a desirable and winning location for such projects
 - Ohio lacks a large inventory of “ready” sites capable of winning more projects
- Administered by the Ohio Department of Development (ODOD)

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AOFF Assistance



- Up to \$750 million for low interest for deferable and “partially” forgivable loans
- Loans can fund infrastructure and site work
- Up to 75% of project costs; no loan maximum amount
- 0% interest rate; Expected term of 20 years, with 5-year repayment deferral
- Forgiveness will be partial. Variables determining how much will be forgiven include:
 - End user on site within 5 years
 - Locating company is within one of the 10 JobsOhio target sectors
 - Wages are 125% of county median wage
- ODOD can recapture funds after 5 years if no end user is found

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AOFF Eligibility



- Applicants: Counties, cities, villages, townships, port authorities, CICs, TIDs, conservancy and park districts, landbanks, non-profits, and “organizations for-profit willing to develop project-ready sites to improve the economic welfare of the people” of Ohio.
- The county and local government must provide evidence of their support for the project.
- Non-governmental applicants must have entered into an agreement with a unit of local government to substantively support the project, and the private owner must financially contribute to the project

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One-Time Strategic Community Investment Fund



- Up to \$700 million in legislatively directed funds in last budget (HB 33)
- Similar to and parallel process to the Capital Budget.
- OTSCIF can be more flexible than Capital Budget projects.
- Designed to be one-time use funds.
- House of Representatives has already produced its list. Senate submittals are due in early April.

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Appalachian Community Grants



- \$500 million (from ARPA funds) made available in Ohio's 32 Appalachian counties for "transformational" projects
 - Healthcare
 - Work force development
 - Arts, Tourism & Recreation
 - Downtown redevelopment
- Administered by the Governor's Office of Appalachia within ODOD
- Currently in the second round
- Applicants were encouraged to group together under a lead applicant with subrecipient agreements to participants

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ODOD Brownfield & Demolition Programs



- Until July 4, 2024, funds will be set aside for each county. Thereafter, funds will be allocated to a statewide pool.
- Land banks or a lead entity recommended by the county and approved by ODOD apply for the funds. Municipalities can partner with the lead applicant through a subrecipient agreement to receive funds.
- Brownfield funds are for “industrial, commercial or institutional sites” contaminated or believed contaminated with hazardous or petroleum substances.
- Demolition funds are intended for “blighted, vacant or abandoned” commercial and residential buildings that are not brownfields.

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ODOD Brownfield & Demolition Programs



	Brownfield	Demolition
FY 2024 Funding	\$175 million (another \$175 budgeted for FY25)	\$150 million
Per county set aside	\$1 million	\$500,000
Eligible expenses (partial list)	Environmental assessments, asbestos survey, site remediation under VAP, BUSTR or RCRA; engineering controls, limited infrastructure; certified professional fees, up to 10% admin costs	Environmental assessments; asbestos surveys; inspections; no more than 10% toward acquisition; debris removal; asbestos removal; removal of underground utilities and storage tanks; utility relocations; site restoration and “greening”
Match requirement	0% for first \$1M; at least 25% above the \$1M set aside	0% for first \$500k; at least 25% above the \$500k set aside
Max award	\$10 million	None listed

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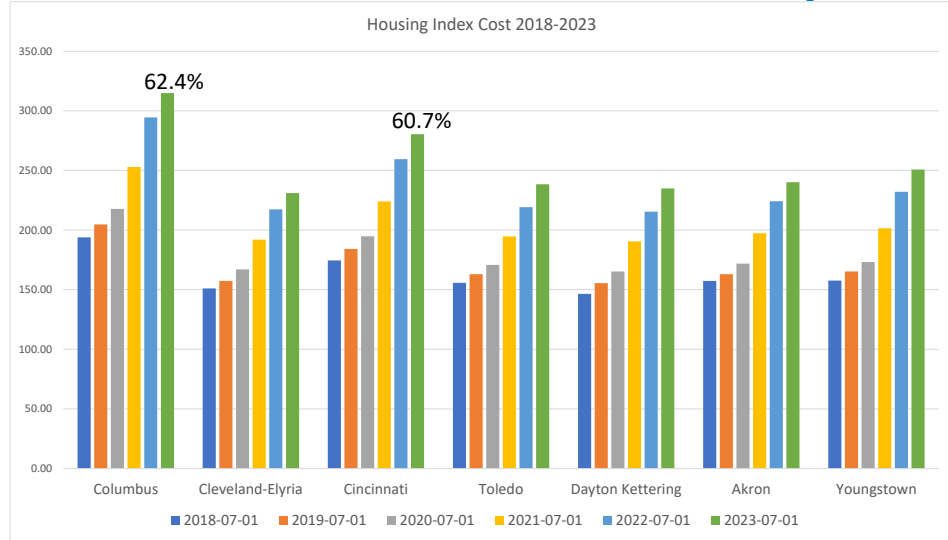
Metro Housing Cost Index (2018-2023)



Housing Cost Index measures cost increases, indexed to Q1 1995

Columbus MSA leads Ohio

All metros have seen at least 52% growth in the last 5 years



Source: U.S. Federal Housing Finance Agency, All-Transactions House Price Index, retrieved from FRED, Federal Reserve Bank of St. Louis

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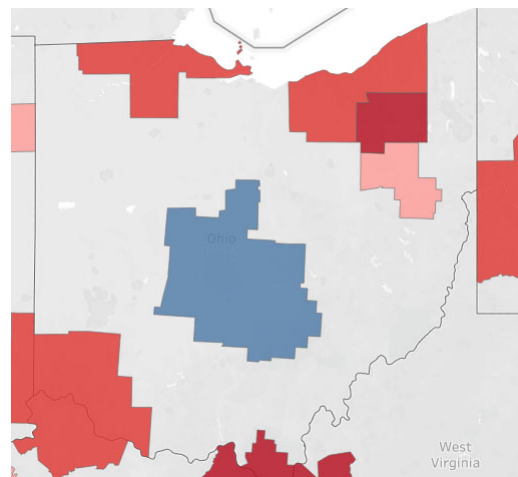
NAR Housing Shortage Tracker



The National Assoc. of Realtors Housing Shortage Tracker computes how many new housing unit permits are issued for every new job in 174 metro areas. Data below shows new jobs per new permitted housing unit as of the 12-month period ending Q3 2023 for single-family units.

Columbus	0.45
Cinci-NKY	7.89
Toledo	5.21
Cleveland-Elyria	6.25
Akron	11.36
Canton-Mass.	3.71
Hunt.-Ironton-Ash.	15.95

- High Housing Shortage
- Housing Shortage
- Need for More Permits
- Sufficient Supply
- No New Jobs
- No creation



Source: Copyright ©2024 "Housing Shortage Tracker" NATIONAL ASSOCIATION OF REALTORS®. All rights reserved. Reprinted with permission. January 22, 2024, <https://www.nar.realtor/research-and-statistics/housing-statistics/housing-shortage-tracker>.

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OLD Tools to Promote Housing	NEW-ISH Tools to Promote Housing	NEW! Tools for Housing
<ul style="list-style-type: none"> • Community Reinvestment Area • Tax Increment Financing • New Community Authority • Low Income Housing Tax Credit • Bonds for infrastructure 	<ul style="list-style-type: none"> • Downtown Redevelopment District • PACE Financing • State Historic Tax Credits • Port Authority Sales Tax Exemptions • ODOD Brownfield and Demolition Grants • Transformational Mixed Use Development tax credits 	<ul style="list-style-type: none"> • Welcome Home Ohio • OHFA Single Family Housing Tax Credit • Federal programs to support office conversions

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Welcome Home Ohio Program



Dual-track grant / tax credit program:

- NEW! R.C. 122.631 - R.C. 122.633
- ODOD to implement, w/ grant funds exclusively available to land banks & tax credits available to a limited set of eligible entities
- Public financing tool available for development of single-family residential units comprising at least 1,000 sq ft. living space

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Welcome Home Ohio Program



Purchase grants:

- Land banks may receive **grants** for purchase of single-family residential units
- Acquired properties become part of those land banks' **land reutilization programs** under R.C. Chapter 5722
- General Assembly appropriated \$25MM/state fiscal year ('24 & '25)
 - Per-housing unit grant amount: *No cap*

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Welcome Home Ohio Program



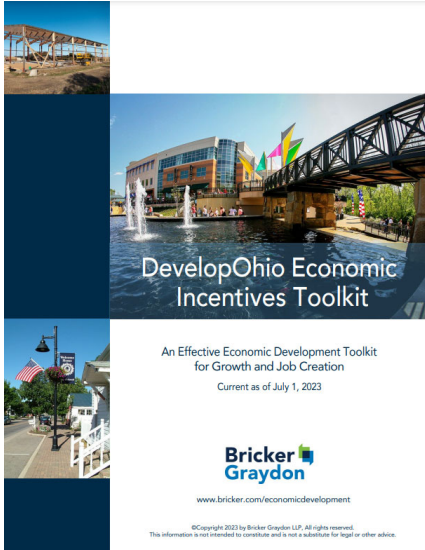
Rehabilitation / Construction Grant Track:

- Land banks may receive **additional grants** to offset costs of rehabilitation or construction of single-family residential units
- General Assembly appropriated \$25MM/state fiscal year ('24 & '25)
 - Per-housing unit grant amount: \$30,000
 - To receive **grant** of funds for such rehab / construction work, land banks **cannot also seek a tax credit** for the same work on the subject property

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Free resource: *DevelopOhio* Toolkit



- Updated Summer 2023
- *DevelopOhio* blog’s free resource:
 - Economic Incentives Toolkit
 - State & local public finance tools
- Since 2011
- User-friendly by design
 - Desk reference guide for “greenhorns” to experienced economic developers



Planning & Zoning Considerations

Housing Shortage Considerations



- [T]here has been a net loss of affordable rental housing for the lowest income Ohioans. There are 447,717 extremely low-income renters in Ohio, but only 177,318 rental homes are affordable and available to them – leaving a shortage of 270,399 units.
 - OHFA 2023 Ohio Housing Needs Assessment
- University of Maryland researcher found that cities with more restrictive zoning rules experienced higher rates of homelessness

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Possible Zoning Changes to Help Housing Shortage

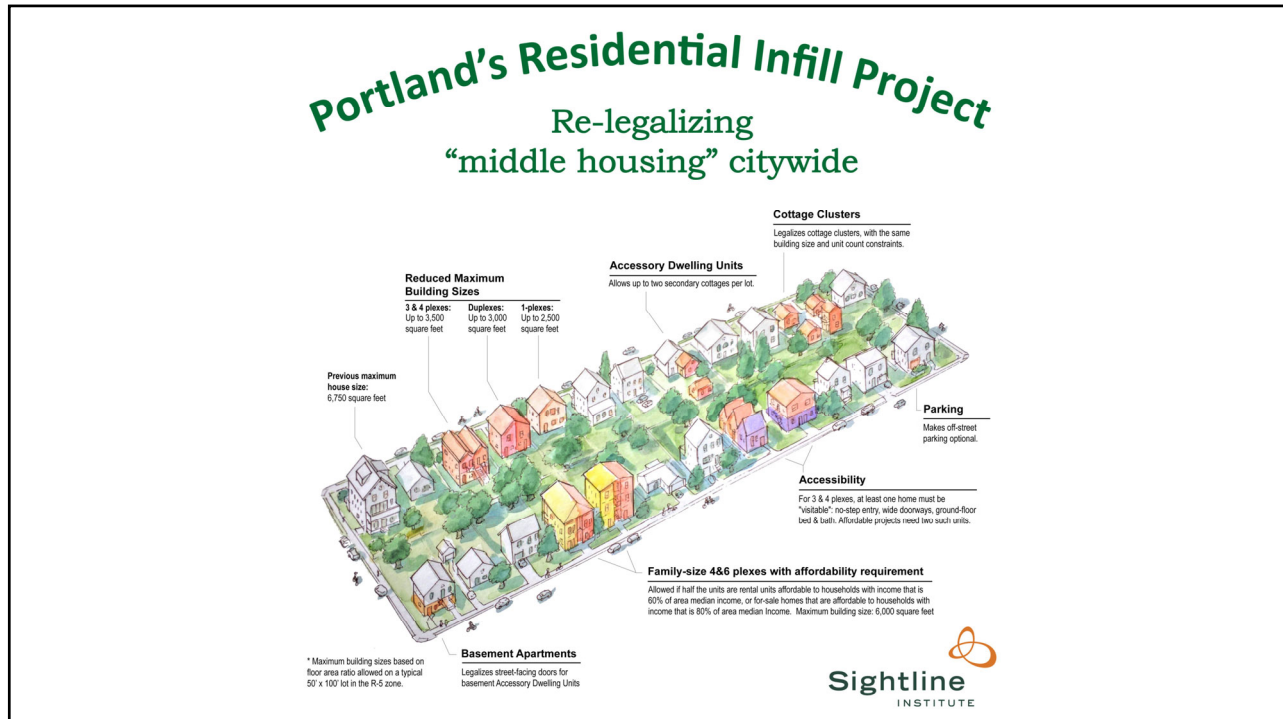


- Suggested zoning changes by NAHB to encourage affordable housing:
 - Minimum-density requirements
 - Zoning for multifamily housing, accessory dwelling units, and live/work units
 - Rezoning underutilized industrial and/or commercial areas for residential use
 - Eliminating or reducing minimum lot sizes, buffer requirements, square footage and setback requirements, and restrictions of the number of units in a single building
 - Reducing parking requirements for affordable housing developments, particularly those near public transportation

National Association of Home Builders

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Ohio Senate Housing Panel



- A Senate committee formed to address housing issues is expected to issue a report in March with legislation expected to follow in April
- Sen. Michele Reynolds (R-Canal Winchester), who leads the Senate Select Committee on Housing Track, said she expects the legislation to be an omnibus measure touching on a host of issues, including zoning, property taxes, density, transparency, accessibility and affordability.

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Columbus “Zone-In” Initiative



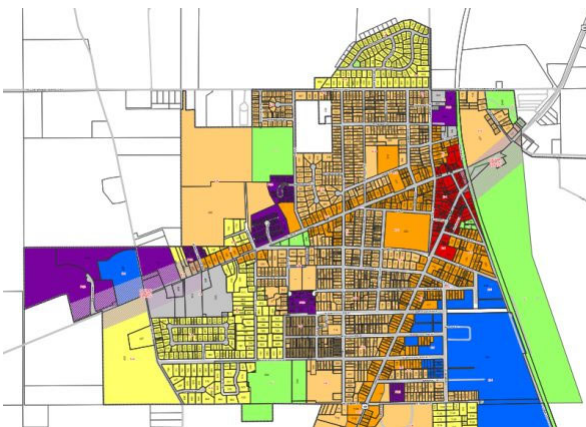
- Address challenges of existing zoning code
- Projected regional population by 2050 – 3M
- Region needs to double the number of new units built each year
- City officials said at a public meeting that the proposed zoning changes under its ‘Zone In’ effort are meant to streamline the process, making it easier for developers to gain city approval without the need to obtain variances

<https://zone-in-columbus.hub.arcgis.com/>

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Yellow Springs



- Neighbors for More Neighbors
 - Multifamily, two-family and attached single-family dwellings as a conditional use in R-A
 - Newly annexed land automatically zoned R-B
- Lawson Place Apartments
- Pocket Neighborhoods

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Lakewood



- Faced barriers involving prohibitions against enlargement of a primary structure to accommodate more than one family and a restriction on primary structure lot coverage
- Solutions:
 - increasing the primary lot coverage in the R-1 and R-2 districts from 25% to 35%
 - Existing structure in R-2 can add another unit

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Cuyahoga County NEO First Suburbs



- The Single-Family Zoning Analysis is a project of the Northeast Ohio First Suburbs Consortium and the Cuyahoga County Land Bank, facilitated by the Cuyahoga County Planning Commission
- Study of Infill Development and related obstacles
- Among existing single-family lots, 48% do not meet zoning requirements for minimum lot width and 41% do not meet minimum lot size requirements.

<https://www.countyplanning.us/projects/first-suburbs-single-family-zoning/>

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Cuyahoga County NEO First Suburbs- Pilot Program

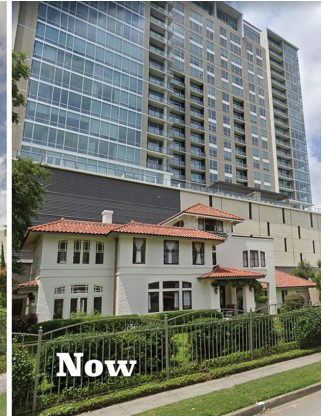
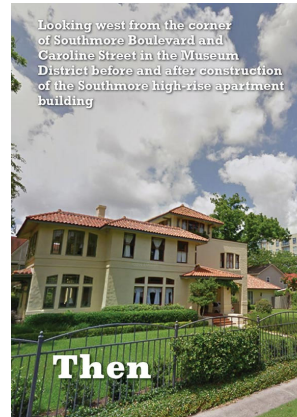
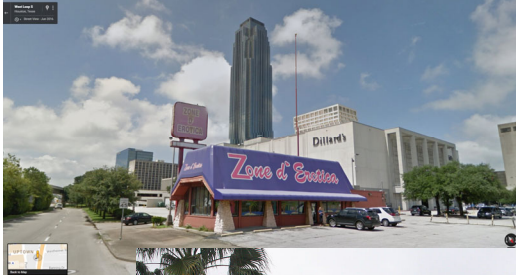


- Pilot program for zoning updates- Euclid and South Euclid
- Common goals: more housing while preserving the character of existing neighborhoods
- Different zoning methods to help facilitate residential infill
 - South Euclid - residential infill overlay
 - Euclid - alterations of existing residential districts.
- Similar changes: expansion of permitted principal and accessory uses, right-sizing of lot area and lot width requirements, right-sizing of building dimensions, and simplified approval processes for smaller-scale residential infill projects

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Don't Mess with Texas



Looking west from the corner of Southmore Boulevard and Caroline Street in the Museum District before and after construction of the Southmore high-rise apartment building

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Additional Considerations



- Infrastructure concerns
- Litigation
 - City of Alexandria eliminated SF zoning to increase affordable housing
 - Sued by local civic group alleging city violated its charter and Virginia Constitution by loosening zoning rules but failing to adequately study how those changes would the impact the real estate market or the city's infrastructure

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OCMA Procurement for Design & Construction



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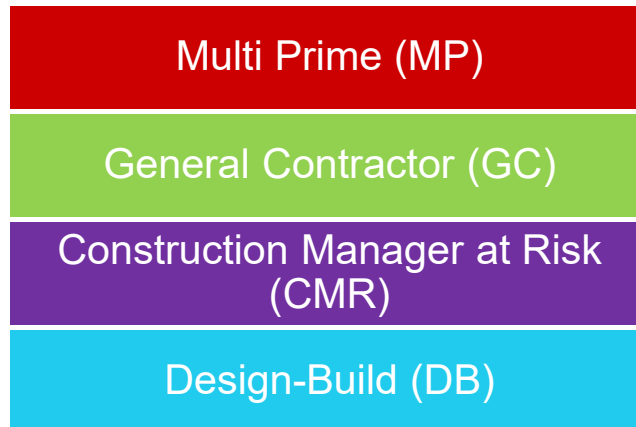
Caveat

Charter municipalities may have
different requirements for procurement

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Preparing for Construction Project



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Which delivery model to use?



- Consider project cost, size, complexity
- Bidding vs. Procurement
- Standard of Award
- Preconstruction options
- Pricing Structures



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Preparing for Construction Project



Understand the role of construction counsel + Law Director or County Prosecutor and design professional

- Construction counsel working with the City/County and design professional should prepare the procurement and contract documents and guide City/County through the process

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Design Professional Procurement

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What is a “Design Professional?”



NOT ONLY ARCHITECTS!

- Architect or Engineer
(General Contracting &
Construction Manager at Risk)
- Criteria A/E
(Design-Build)
- Specialty Services
 - Surveyor
 - Geotechnical Engineer
 - Environmental Impact Studies
 - Traffic Study
 - OBC Testing & Inspections
 - Hazardous Materials Abatement
Inspection and Design
 - Commissioning
 - Storm Shelter Peer Review

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Selecting a Design Professional



- Public announcement of Request for Qualifications (RFQ) and available contract is issued
- RFQ must focus on qualifications - minimum criteria per ORC 153.65(D)
 - no solicitation of pricing or cost information for services
- Rank 3 firms/selection of “Most Qualified” Firm
- Most-qualified firm proposes fee and agreement for design services is negotiated per ORC 153.69

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Selecting a Design Professional



“Full” statutory QBS is required unless:

1. NEW(ish)! Estimated cost of design professional services for the project is \$25,000 or less
2. Prequalified per ORC 153.68 & 153.71(B)(2)
 - Owner maintains a file with current qualifications (no more than 1 year old); and
 - The estimated design professional fee(s) for the project is \$25,001 to \$50,000
3. Emergency requiring immediate action (as determined in writing by Board)

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General Contractor Competitive Bidding

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GC Competitive Bidding



- For **cities** and **counties**, competitive bidding to the **lowest and best bidder** is generally required when a construction expenditure exceeds \$75,000 (See ORC 735.05 for cities/ORC 307.86 for counties)
- For **villages**, bidding threshold is currently \$50,000 but will increase to \$75,000 April 30, 2024 (ORC 731.14 and ORC 731.141)

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GC Competitive Bidding Exceptions



- ORC contains exceptions to competitive bidding
- But note joint-purchasing programs generally may not be used for construction or construction services
 - A recent Ohio Attorney General Opinion indicated that neither “construction” nor “construction services” may be the subject of a joint purchasing program under ORC 9.48. (OAG 2019-028)
 - Under ORC 167.081, a public entity can enter into a unit price contract “for the purpose of acquiring services related to the repair, enlargement, improvement, or demolition of existing buildings or structures.” (OAG 2019-028)

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GC Competitive Bidding



Preparing the Bid Documents

- Bid Documents = Project Manual + Design (Plans and Specifications)
 - Legal/Contract Documents should be prepared by legal counsel (Div. 00)
 - Technical Requirements: Design Professional prepares the drawings and specifications that define the required work to be performed (Div. 01)

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GC Competitive Bidding



Preparing the Bid Documents

- Public notice in a newspaper of general circulation within the city, village or county is required
 - For **Cities**, see ORC 735.05 not less than two but for no more than four consecutive weeks
 - For **Villages**, see ORC 731.14 and 731.141 not less than two consecutive weeks
 - For **Counties**, see ORC 307.87 once a week for not less than two consecutive weeks

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GC Competitive Bidding



Other Key Statutory Requirements

- Bid Documents must include the estimated construction cost (ORC 153.12)
- If an addendum is issued within 72 hours prior to bid opening, the bid opening is automatically extended 1 week (no additional ad required) (ORC 153.12)
- Bid guaranty/contract bond in statutory form required (ORC 153.54)

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GC Competitive Bidding



- Municipalities and counties cannot enter into a contract if the contract is 20% over the published estimated construction cost for the work (ORC 153.12)
- The contract shall be awarded to the “**lowest and best bidder**” that is responsive (ORC 735.05/ORC 731.14 and 731.141/ORC 307.90(A))
- Must award and execute the contract “within sixty days after the date on which the bids are opened” unless it is agreed with the accepted bidder to extend this time (ORC 153.12)
- Municipalities and counties have the power to reject any and all bids (ORC 735.06 and 731.15 and 307.91)

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Construction Manager at Risk or Design-Builder Procurement

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Construction Manager at Risk



- Design professional procured separately but CMR can (and should) be procured around the same time or very early in design process
- The CMR is selected through a two-phase statutory procurement process:
 1. RFQ
 2. RFP



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Construction Manager at Risk



Evaluation Committee per OAC 153:1-6-01(C)(2): composition of committee is at discretion of the public authority with certain exceptions

- The committee cannot have enough Board/Council members to constitute a quorum
- The professional design firm or independent advisors may support the evaluation committee but shall not participate as voting members

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Construction Manager at Risk



RFQ soliciting qualifications

- Must advertise the RFQ in newspaper at least 30 days before proposals are due (ORC 9.331)
- OAC 153:1-6-01 sets forth required criteria
- Evaluate based upon announced criteria and short list 3-4 firms

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Construction Manager at Risk



RFP requesting technical and pricing proposals from the short-listed firms

- OAC 153:1-6-01 sets forth required technical and pricing criteria
- Attach Contract Documents
- After receiving proposals, must interview firms but interviews not directly scored
- Evaluate to select the firm providing the “best value”

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Construction Manager at Risk



- A Guaranteed Maximum Price (GMP) is negotiated and added to the contract when the design is nearly complete (or when the parties agree)
- CMR's Subcontractor Selection:
 - Prequalification criteria is subject to Owner approval
 - CMR must identify at least 3 prequalified subs to bid on each subcontract
 - Solicitation and selection of subs is open book and subject to Owner consent
 - Subcontract terms per OAC 153:1-3-02

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Design-Build



Two main differences compared to CMR procurement :

1. Criteria A/E
 - Must be hired before DB using statutory process for design professionals in ORC 153.65, et seq., or use an employee of the public authority who is a licensed design professional
 - Criteria A/E prepares the preliminary Design Criteria (not the full design) to attach to DB RFP
 - Can provide construction administration services
 - Not permitted to provide any design-build services for the same Project
2. There is no time period required for advertising the RFQ, unlike CMR

See OAC 153:1-6-02 for RFQ/RFP criteria

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CMR & DB for Charter Cities



- Consider 1-step procurement qualifications + technical + pricing
 - More efficient and potentially more cost effective procurement than statutory
- Carefully follow all steps of any required process!
 - If Charter does not have process for CMR or DB, follow the statutory process

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And finally...

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No Local Hire



A municipality/county may not require that a certain percentage of the construction workers for a project reside within its service area

- ORC 9.75 prohibits public authorities from requiring that a certain number or percentage of workers reside within the defined geographic area or service area of the public authority.
- However, keep in mind with CMR and DB, familiarity with local area and working relationships with local subs is something you can take into account

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Prevailing Wage



- Prevailing Wages apply to all construction projects unless:
 - Below the PW threshold amount
 - Federally Funded Project – Federal Prevailing Wage may apply instead (Davis-Bacon)
- City charter cannot eliminate Prevailing Wage requirement

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Learn more at our Construction Procurement Seminar & Workshop!



Join us in-person or virtually!

Agenda and registration available at:
<https://www.brickergraydon.com/insights/events/bricker-graydons-16th-annual-construction-procurement-for-public-entities-in-ohio>



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