

House Bill 96 Construction Law Changes, Cooperative Purchasing, and Public Meeting Requirements for Evaluation Committees

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House Bill 96 Overview

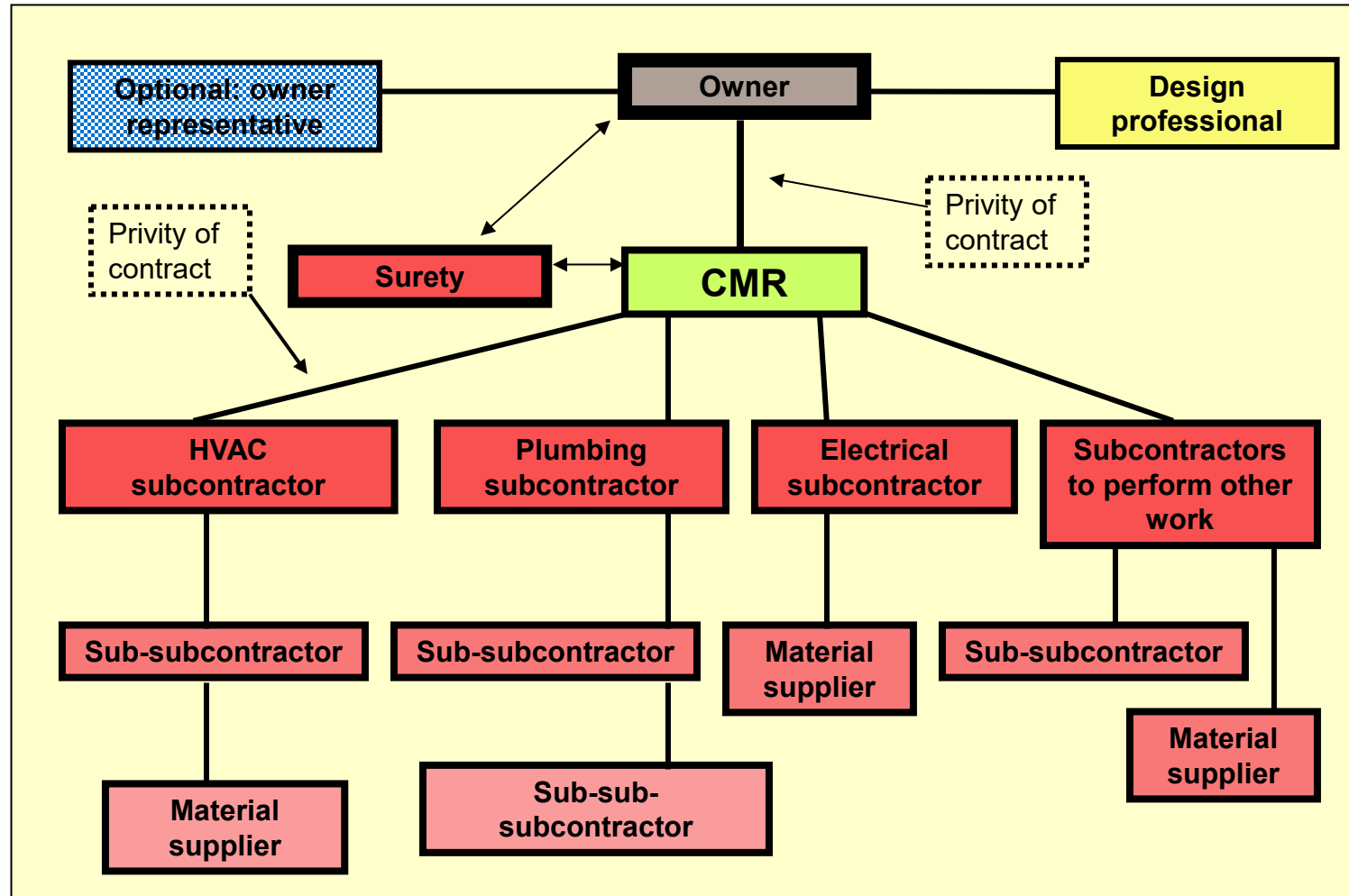
- House Bill 96 = Ohio's biennial operating budget
- Significant updates for public construction projects
- Effective September 30, 2025
- Key areas:
 - CMR & Design-Build processes
 - Public notice requirements
 - Retainage
 - Notice of Commencement
 - Affirmative action rules
 - Self-performance rules
 - Bid guaranties
 - BIM adoption
 - Public records access
 - School construction bidding

Standard CMR

OCR 9.33 (CMR)

- Construction Manager at Risk (“CMR”)
 - Defined in Ohio Revised Code Section 9.33 as “a person with a substantial discretion and authority to plan, coordinate, manage, direct and construct 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 [to perform the work].”
 - Functions similar to a General Contractor by holding all of the subcontracts and being a single point of responsibility to the owner.
 - Main differences is that the CMR joins the project during the design phase and provides preconstruction services such as estimating, constructability review, phasing, and scheduling.

CMR



Standard CMR

OCR 9.33 (CMR)

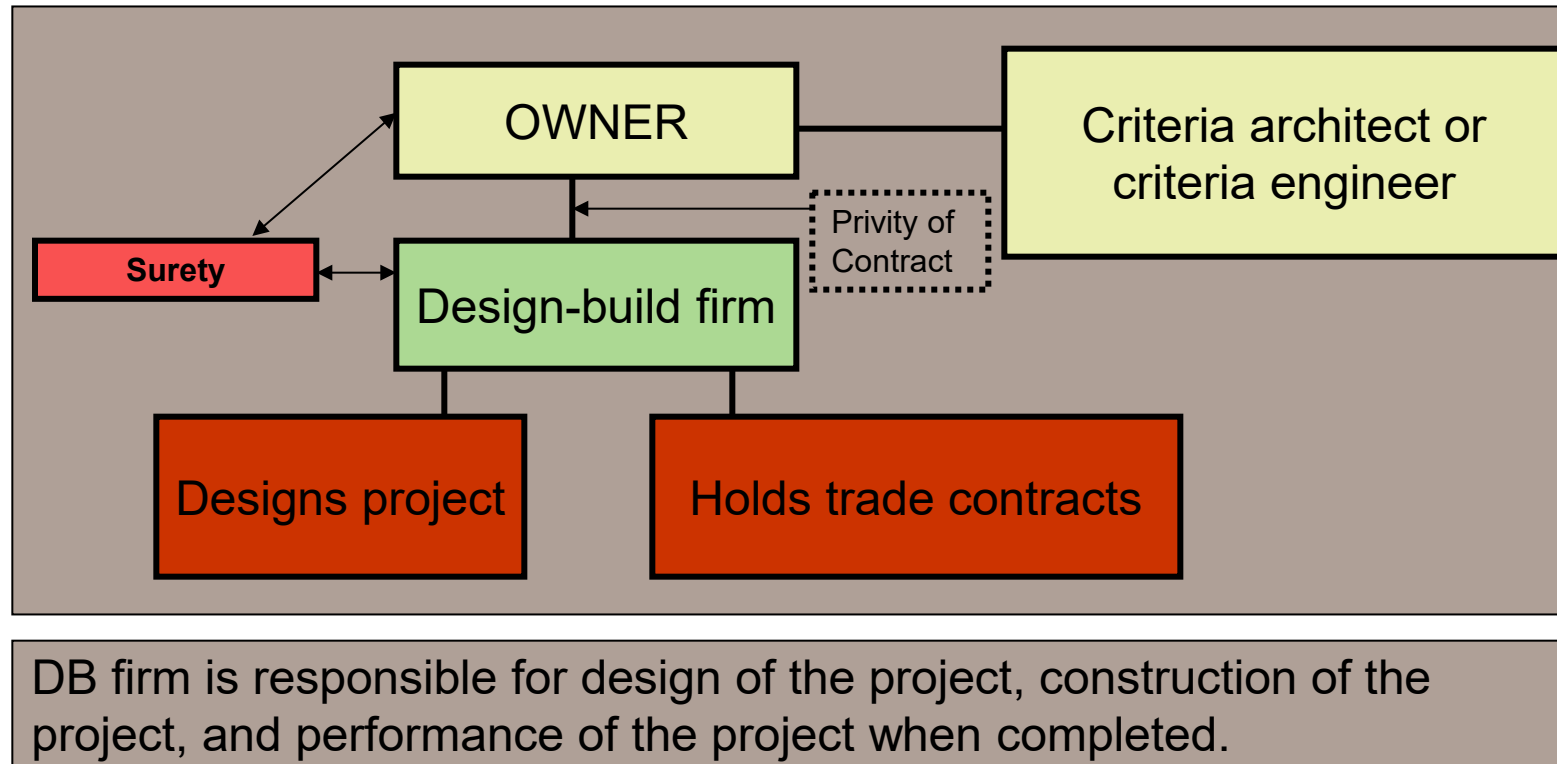
- Public authority requests:
 - Qualifications (RFQ) – first step
 - Pricing (RFP) – second step
- Pre-proposal meeting
- Ranking process:
 1. Rank firms on qualifications
 2. Shortlist selected
 3. Evaluate pricing and conduct interviews
 4. Best value selection

Standard Design-Build

ORC 153.65(G) (DB)

- Design-Build Services are defined in Ohio Revised Code Section 153.65(G) as “services that form an integrated delivery system for which a person is responsible to a public authority for both the design and construction, demolition, alteration, repair, or reconstruction or a public improvement.”
- Similar to the CMR delivery model with the exception that the builder also serves as the design professional
- Must also have a criteria architect or engineer, which can not be the same design professional working with the builder, develop the criteria for the procurement
- Best value selection standard like CMR

Design-Build



Streamlined CMR & Design-Build (Under \$4M)

ORC 9.334 (CMR) & ORC 153.693 (DB)

- Applies to projects under \$4 million
- Public authority requests:
 - Qualifications + Pricing proposals in a combined RFQ / RFP
- Mandatory pre-proposal meeting
- Ranking process:
 1. Rank firms on qualifications
 2. Shortlist selected
 3. Evaluate pricing and conduct interviews
 4. Best value selection
- Public authority can still use the standard process for project under \$4 million

Public Notice Requirements

- **ORC 9.331** – CM/CMR:
 - Electronic notice now mandatory
 - Optional: other news media in county
 - Minimum notice: 14 days (was 30)
- **ORC 153.07** – State/OFCC:
 - Mandatory electronic notice
 - Minimum of 14 days before bid opening
 - Replaced prior 3-week newspaper rule
 - Plans , details, estimates, and specs must be available electronically

Bidder Notifications – ORC 9.312

- Applies where contracts are awarded on a “**lowest responsive and responsible**” standard (except Department of Administrative Services contracts under ORC 125.11)
- If apparent low bidder is determined **not responsive and responsible**:
 - Notice must be *primarily* by an internet identifier (e-mail) associated with the bidder
 - Certified mail is only required if there is no internet identifier of record available

Retainage & Escrow

- **ORC 153.12**
 - Contractors must be paid $\geq 96\%$ of labor estimates throughout project (was 92% through the first 50% of completed work, then 100% thereafter)
 - Subcontractors cannot be paid at lower rate than contractor
 - Retainage on material is unchanged (Paid 92% when delivered on site or other approved area and 100% once incorporated)
- **ORC 153.13**
 - Must release retainage within 30 days of “substantial completion of, occupation of, use of, or acceptance of the project”
 - Reasonable amounts may be withheld to assure final completion
 - Any remaining withheld funds/accrued interest must be paid to primary contractor within 30 days of final completion
- **ORC 153.13 & 153.14**
 - Escrow requirements in retainage provisions removed

Affirmative Action

- **ORC 153.08**
 - Bidders are no longer required to possess a valid certificate of compliance with affirmative action programs pursuant to ORC Section 9.47
- **ORC 153.59**
 - Removed requirement that capital improvement funds be spent only on projects with an affirmative action plan for hiring disadvantaged persons

Affirmative Action

- **ORC 153.502**
 - Cannot eliminate CMR/BD subcontractor bidder as unqualified for failure to participate in an affirmative action or DEI program unless permitted under ORC 307.921
 - Does not affect existing set-aside programs for minority-owned or EDGE-certified business enterprises (ORC 122.921 & 122.922)

Self-Performance by CMR/DB

- **ORC 153.501** amended
- If CM/DB plans to self-perform work:
 - Must submit a sealed bid to the public authority prior to accepting and opening any bids for that portion of work
 - Exception: When public authority requests a GMP due at time of CMR/DB selection

Electronic Bid Guaranty Option Added to ORC 153.54

- A new option for bid guaranties was added to ORC 153.54
- Contractors may now submit an electronic verification through a recognized electronic verification and security system
- This new option is available **only if** the state or a political subdivision accepts bids electronically pursuant to ORC 153.08

BIM Option for State and OFCC Projects

- **ORC 153.01** now allows the state and the OFCC to require their architects or engineers to use a BIM system when preparing plans, specs, cost estimates, analyses, or any other project data
- Building Information Model (“BIM”)
- The BIM system must follow a nationally recognized standard

Public Records Access – ORC 9.28

- All materials relating to a solicitation through a competitive selection are not public records until after the award of the contract
- Where a public authority rejects all bids/proposals and re-issues the competitive solicitation, the original submittals and submissions are not considered public records until the award of a contract

Public School Construction Bidding

ORC 3313.46

- Competitive bidding applies not just to a “school building,” but to “any building or other property” a board of education of a school district seeks “to build, repair, enlarge, improve, or demolish”
- If project cost exceeds the ORC 9.17 threshold (\$79,568 for 2026 calendar year*), then competitive bidding is required
 - *subject to annual adjustments
- Still subject to statutory exceptions (e.g., urgent necessity)

Key Takeaways

- The changes in HB 96 for public entities undertaking construction projects are likely the most significant updates to construction law since the major construction reform legislation in 2011 and 2012.
- HB 96 changes became effective September 30, 2025
- Public entities and vendors should consult with legal counsel to ensure compliance with the new requirements.

Purchasing Programs

- State and National Purchasing Consortia (ORC 9.48)
- Councils of Governments (ORC 167.08)
- Ohio Cooperative Purchasing Program (ORC 125.03)
- Federal General Service Administration (ORC 9.48)
- Other Political Subdivision Contracts (ORC 9.48)

State and National Purchasing Consortiums

- ORC 9.48:
- (B) A political subdivision may do any of the following:
 - ...
 - (2) Participate in a joint purchasing program operated by or through a national or state association of political subdivisions in which the purchasing political subdivision is eligible for membership.
- (C)

Acquisition by a political subdivision of . . . **services**, through participation in a contract of another political subdivision or participation in an association program under division **(B)(1) or (2)** of this section, is exempt from any competitive selection requirements otherwise required by law, if the contract in which it is participating was awarded pursuant to a publicly solicited request for a proposal or a competitive selection procedure of **another political subdivision within this state or in another state.**

OAG Opinion No. 2024-003

- The term ‘services’ as used in R.C. 9.48 does not include ‘construction’ or ‘construction services.’ 2019 Att’y Gen. No. 2019-028, followed.
- However, the term ‘services’ may cover the **installation, maintenance, repair, and the like of items acquired under R.C. 9.48 provided such services do not constitute nor cross into construction or construction services.**
- Whether any particular service to be acquired under R.C. 9.48, including any repair, maintenance, replacement, installation, or upgrade constitutes ‘construction’ or ‘construction services’ is a question of fact beyond the opinion-rendering function of the Attorney General.

Types of Services Relevant Under OAG Opinion No. 2024-003

- Asphalt and Concrete Improvements
- HVAC Upgrades
- Roofing Repair and Replacement
- Installation of Playground Equipment
- Turf Replacement and Installation
- Flooring Removal and Installation
- Plumbing Improvements
- Electrical Improvements
- And more. . . .

Cooperative Purchasing OAG

Opinion No. 2019-028

- 2019 Att’y Gen. No. 2019-028 did opine that R.C. Section 167.081 permits contracts for services on a per **unit basis** for the repair, enlargement, improvement, or demolition of existing buildings or structures.

Councils of Governments (COGs)

- Ohio Revised Code Section 167.01
- “That governing bodies of any two or more counties, municipal corporations, townships, special districts, school districts, or other political subdivisions may enter into an agreement with each other, or with the governing bodies of any counties, municipal corporations, townships, special districts, school districts or other political subdivisions of any other state to the extent that laws of such other state permit, for establishment of a regional council consisting of such political subdivisions.”

Councils of Governments (COGs)

- **Type of Contracts:** COG's can enter into unit price contracts.
- **Scope of the Projects:** Repair, enlargement, improvement, or demolition of a building or structure. Cannot be used for new construction.
- **Procurement Process:** The contract is awarded pursuant to the competitive bidding procedure of: a council member; OR a statewide consortium of which the council is a member; OR a multistate consortium of which the council is a member.
- **Participation in the Contracts:** Council members may participate in such contracts without the application of additional competitive selection or bidding requirements.
- ORC 167.081, OAG Opinion No. 2019-028

Ohio Cooperative Purchasing Program

- The Ohio Department of Administrative Services (“ODAS”) has authority under ORC 125.02 to establish contracts for supplies and services for the use of state agencies.
- ORC 125.04(B)(2) provides that political subdivisions may also participate in these state contracts.

Ohio Cooperative Purchasing Program Membership

- Pass an ordinance for participation. The governing council or board must pass legislation authorizing participation in the program.
- Complete an enrollment form. This form can be found on the ODAS website. There is no fee for participation.
- Issue a quarterly usage report. ORC 125.04(B) requires quarterly summary reports on use of the program.

Can You Beat the Pricing?

- ORC 125.04(C) and ORC 9.48(D)
- If you can purchase supplies or services upon equivalent terms, conditions, and specifications but at a lower price than procurements provided through a national or state consortium or ODAS, then the purchase is exempt from any competitive selection procedures otherwise required by law.

Federal GSA

- ORC 9.48(B)(3):
- Participate in contract offerings from the federal government that are available to a political subdivision including, but not limited to, contract offerings from the general services administration.
- <https://www.gsa.gov/buy-through-us>

Create Your Own Program

- ORC 9.48(B)(1)
- Permit one or more other political subdivisions to participate in contracts into which it has entered for the acquisition of equipment, materials, supplies, or services, and may charge such participating political subdivisions a reasonable fee to cover any additional costs incurred as a result of their participation.

Validation of Proper Procurement

- Ensure your public entity is a member
- Validate procurement process is lawful
 - If a COG, ensure unit prices are consistent
- Document in the resolution and agreement with Vendor the procurement process.

Evaluation Committees and Public Meeting Requirements

- Ohio Attorney General Opinion 2025-021
 - Opined that “[c]ounty contracting authorities and their designated selection committees are subject to R.C. 121.22 of the Open Meetings Law when evaluating, ranking, discussing, and negotiating proposals submitted pursuant to R.C. 307.862.”

Evaluation Committees and Public Meeting Requirements

- Ohio Attorney General Opinion 2025-021...continued
 - “Such evaluations, rankings, discussions, negotiations and award decisions may be lawfully conducted in a properly called executive session pursuant R.C. 121.22(G)(2) and (5).”

Evaluation Committees and Public Meeting Requirements

- Ohio Attorney General Opinion 2025-021...continued
 - “Documents and information generated as a result of executive session or other meeting to evaluate, rank, discuss, or negotiate the proposals submitted under R.C. 307.862 and the eventual contract awards are public records. However, the sealed proposals and records related to a subsequent negotiation for a final contract, including ranking sheets or documents, are not subject to public inspection and copying under 149.43 until after the contract is awarded.”

Questions?



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