

## Multi-Prime Contracting and Public Construction in Ohio: A Thing of the Past?

December 28, 2009

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Public construction in Ohio accounts for nearly \$3 billion a year in state spending. These projects include everything from renovations to state government buildings to local school buildings through the Ohio School Facilities Commission, to building and renovation projects on Ohio's public university and college campuses. Construction in Ohio is a major economic driver and job creator, and public construction is a significant share.

For more than 132 years, there has been no fundamental change in the method of project delivery for the state's public construction projects. The multiple-prime contracting system used in Ohio for well over a century includes separate contractors for general trades, plumbing, electrical and mechanical, all of whom submit independent bids.

But following months of debate, state lawmakers and Governor Strickland finally reached an agreement on the state budget for fiscal year 2010. A key component of the Bill is the overhaul of Ohio's 132 year-old bidding requirements for public construction projects on a limited, 3-project test basis. Attempts to permanently revamp public construction were rejected in exchange for a pilot program aimed at gauging the success and cost savings of the reforms. One of the 3 pilot projects is the \$1 billion medical center project at The Ohio State University. Proponents of the measure argue that the changes will save up to 30% on the cost of public construction, while opponents express concern that construction changes will hurt minority contractors and prime contractors.

During fiscal year 2010, the Chancellor of the Ohio Board of Regents, in consultation with representatives of state institutions of higher education and with Controlling Board approval, is required to designate 1 construction project at each of 3 different institutions as a "Construction Reform Demonstration Project". These 3 test projects will be permitted to utilize alternative methods of construction delivery.

To be eligible for designation under this program, the project must be amenable to the use of alternative methods of construction delivery. Specifically, the projects must utilize one or more of the following alternative delivery methods:

1. **Construction Manager at Risk** (a person with substantial discretion and authority to plan, coordinate, manage, direct and construct all phases of a project, who provides a guaranteed maximum price and utilizes an open book pricing method);
2. **Design-Build** (integrated delivery system by which a person is responsible for both the design and construction);
3. **General Contracting** (contracting that is exempt from the requirement of Ohio Revised Code Chapter 153 to award multiple prime contracts for a project up to \$600,000 in total value); and

4. **Design-Assist** (procurement method by which, prior to completion of a design, a construction contract may be awarded on a best value basis pursuant to which a contractor provides design assistance to the designer through a design professional separately retained by the contractor).

The 3 reform projects must satisfy all internal requirements of the institution in order to allow bidding on the projects to begin before the end of fiscal year 2010. The projects also must comply with EDGE requirements<sup>[1]</sup> and be LEED certified<sup>[2]</sup>. During construction, the institutions are required to provide information necessary to allow study of the cost-effectiveness and efficiencies associated with the use of alternative construction delivery methods.

The Chancellor of the Ohio Board of Regents is required to prepare semi-annual reports, as well as a final report, to be submitted to the Governor, the House of Representatives, and the Ohio Senate. The construction reform provisions expire on the date that all 3 projects have been completed, or on January 1, 2014, whichever is later.

This latest legislation, coming on the heels of the recommendations of the Ohio Construction Reform Panel from earlier this year, could be a precursor to permanent changes for public construction in Ohio.

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[1] Encouraging Diversity, Growth and Equity (state program designed to assist economically and socially disadvantaged business enterprises).

[2] Leadership and Energy Efficient Design.