

**153.501 Subcontracts awarded by construction manager at risk, design-build firm, or general contracting firm; utilization of design-assist firm; self-performed portions of work.**

(A) A public authority may accept a subcontract awarded by a construction manager at risk, a design-build firm, or a general contracting firm, or may reject any such subcontract if the public authority determines that the bidder is not responsible.

(B) A public authority may authorize a construction manager at risk or design-build firm to utilize a design-assist firm on any public improvement project without transferring any design liability to the design-assist firm.

(C) If the construction manager at risk or design-build firm intends and is permitted by the public authority to self-perform a portion of the work to be performed, the construction manager at risk or design-build firm shall submit a sealed bid for the portion of the work prior to accepting and opening any bids for the same work.

**153.502 Construction management or design-build contracts; prequalification of bidders.**

(A) Each construction manager at risk and design-build firm shall establish criteria by which it will prequalify prospective bidders on subcontracts awarded for work to be performed under the construction management or design-build contract. The criteria established by a construction manager at risk or design-build firm shall be subject to the approval of the public authority involved in the project and shall be consistent with the rules adopted by the department of administrative services pursuant to section 153.503 of the Revised Code.

(B) For each subcontract to be awarded, the construction manager at risk or design-build firm shall identify at least three prospective bidders that are prequalified to bid on that subcontract, except that the construction manager at risk or design-build firm shall identify fewer than three if the construction manager at risk or design-build firm establishes to the satisfaction of the public authority that fewer than three prequalified bidders are available. The public authority shall verify that each prospective bidder meets the prequalification criteria and may eliminate any bidder it determines is not qualified.

(C) Once the prospective bidders are prequalified and found acceptable by the public authority, the construction manager at risk or design-build firm shall solicit proposals from each of those bidders. The solicitation and selection of a subcontractor shall be conducted under an open book pricing method. As used in this division, "open book pricing method" has the same meaning as in section 9.33 of the Revised Code, in the case of a construction manager at risk, and the same meaning as in section 153.65 of the Revised Code, in the case of a design-build firm.

(D) A construction manager at risk or design-build firm shall not be required to award a subcontract to a low bidder.

**153.503 Adoption of rules.**

The department of administrative services, pursuant to Chapter 119. of the Revised Code and not later than June 30, 2012, shall adopt rules to do all of the following:

(A) Prescribe the procedures and criteria for determining the best value selection of a construction manager at risk or design-build firm;

(B) In consultation with the state architect's office, set forth standards to be followed by construction managers at risk and design-build firms when establishing prequalification criteria pursuant to section 153.502 of the Revised Code;

(C) Prescribe the form for the contract documents to be used by a construction manager at risk, design-build firm, or general contractor when entering into a subcontract;

(D) Prescribe the form for the contract documents to be used by a public authority when entering into a contract with a construction manager at risk or design-build firm.

#### **153.51 Separate contracts - single, aggregate contract.**

(A) If separate and distinct bids are required pursuant to section 153.50 of the Revised Code , no contract for the entire job, or for a greater portion thereof than is embraced in one such branch or class of work may be awarded, unless the separate bids do not cover all the work and materials required or the bids for the whole or for two or more kinds of work or materials are lower than the separate bids in the aggregate.

(B)(1) If the public authority awards a single, aggregate contract for the entire project pursuant to division (A) of this section, the award shall be made to the bidder who is the lowest responsive and responsible bidder or the lowest and best bidder, as applicable, as specified in section 153.52 of the Revised Code.

(2) The public authority may assign all or any portion of its interest in the contract of the lowest responsive and responsible bidder or the lowest and best bidder, as applicable, to another successful bidder as an agreed condition for an award of the contract for the amount of its respective bid. Such assignment may include, but is not limited to, the duty to schedule, coordinate, and administer the contracts.

#### **153.52 Awarding of contracts to separate bidders.**

A contract for general contracting or for doing the work belonging to each separate branch or class of work specified in division (B) of section 153.50 of the Revised Code, or for the furnishing of materials therefor, shall be awarded by the public authority referred to in section 153.50 of the Revised Code, in its discretion, to the lowest responsive and responsible separate bidder therefor, in accordance with section 9.312 of the Revised Code in the case of any public authority of the state or any public institution belonging thereto, and to the lowest and best separate bidder in the case of a county, township, or municipal corporation, or any public institution belonging thereto, and to the lowest responsive and responsible bidder in the case of a school district, and shall be made directly with the bidder in the manner and upon the terms, conditions, and limitations as to giving bond or bid guaranties as prescribed by law.

#### **153.53 Adjusting threshold in section 153.01 for inflation.**

(A) As used in this section, "rate of inflation" has the same meaning as in section 107.032 of the Revised Code.

(B) Five years after the effective date of this section and every five years thereafter, the director of administrative services shall evaluate the monetary threshold specified in section 153.01 of the Revised Code and adopt rules adjusting that amount based on the average rate of inflation during each of the previous five years immediately preceding such adjustment.

#### **153.54 Bid guaranty to be filed with bid.**

(A) Except with respect to a contract described in section 9.334 or 153.693 of the Revised Code, each person bidding for a contract with the state or any political subdivision, district, institution, or other agency thereof, excluding therefrom the department of transportation, for any public improvement shall file with the bid, a bid guaranty in the form of either:

(1) A bond in accordance with division (B) of this section for the full amount of the bid;

(2) A certified check, cashier's check, or letter of credit pursuant to Chapter 1305. of the Revised Code, in accordance with division (C) of this section. Any such letter of credit is revocable only at the option of the beneficiary state, political subdivision, district, institution, or agency. The amount of the certified check, cashier's check, or letter of credit shall be equal to ten per cent of the bid.

(B) A bid guaranty filed pursuant to division (A)(1) of this section shall be conditioned to:

(1) Provide that, if the bid is accepted, the bidder, after the awarding or the recommendation for the award of the contract, whichever the contracting authority designates, will enter into a proper contract in accordance with the bid, plans, details, and specifications. If for any reason, other than as authorized by section 9.31 of the Revised Code or division (G) of this section, the bidder fails to enter into the contract, and the contracting authority awards the contract to the next lowest bidder, the bidder and the surety on the bidder's bond are liable to the state, political subdivision, district, institution, or agency for the difference between the bid and that of the next lowest bidder, or for a penal sum not to exceed ten per cent of the amount of the bond, whichever is less. If the state, political subdivision, district, institution, or agency does not award the contract to the next lowest bidder but resubmits the project for bidding, the bidder failing to enter into the contract and the surety on the bidder's bond, except as provided in division (G) of this section, are liable to the state, political subdivision, district, institution, or agency for a penal sum not to exceed ten per cent of the amount of the bid or the costs in connection with the resubmission of printing new contract documents, required advertising, and printing and mailing notices to prospective bidders, whichever is less.

(2) Indemnify the state, political subdivision, district, institution, or agency against all damage suffered by failure to perform the contract according to its provisions and in accordance with the plans, details, and specifications therefor and to pay all lawful claims of subcontractors, material suppliers, and laborers for labor performed or material furnished in carrying forward, performing, or completing the contract; and agree and assent that this undertaking is for the benefit of any subcontractor, material supplier, or laborer having a just claim, as well as for the state, political subdivision, district, institution, or agency.

(C)(1) A bid guaranty filed pursuant to division (A)(2) of this section shall be conditioned to provide that if the bid is accepted, the bidder, after the awarding or the recommendation for the award of the contract, whichever the contracting authority designates, will enter into a proper contract in accordance with the bid, plans, details, specifications, and bills of material. If for any reason, other than as authorized by section 9.31 of the Revised Code or division (G) of this section, the bidder fails to enter into the contract, and the contracting authority awards the contract to the next lowest bidder, the bidder is liable to the state, political subdivision, district, institution, or agency for the difference between the bidder's bid and that of the next lowest bidder, or for a penal sum not to exceed ten per cent of the amount of the bid, whichever is less. If the state, political subdivision, district, institution, or agency does not award the contract to the next lowest bidder but resubmits the project for bidding, the bidder failing to enter into the contract, except as provided in division (G) of this section, is liable to the state, political subdivision, district, institution, or agency for a penal sum not to exceed ten per cent of the amount of the bid or the costs in connection with the resubmission, of printing new contract documents, required advertising, and printing and mailing notices to prospective bidders, whichever is less.

If the bidder enters into the contract, the bidder, at the time the contract is entered to, shall file a bond for the amount of the contract to indemnify the state, political subdivision, district, institution, or agency against all damage suffered by failure to perform the contract according to its provisions and in accordance with the plans, details, and specifications and to pay all lawful claims of subcontractors, material suppliers, and laborers for labor performed or material furnished in carrying forward, performing, or completing the contract; and agree and assent that this undertaking is for the benefit of any subcontractor, material supplier, or laborer having a just claim, as well as for the state, political subdivision, district, institution, or agency.

(2) A construction manager who enters into a contract pursuant to sections 9.33 to 9.333 of the Revised Code, if required by the public authority at the time the construction manager enters into the contract, shall file a letter of credit pursuant to Chapter 1305. of the Revised Code, bond, certified check, or cashier's check, for the value of the construction management contract to indemnify the state, political subdivision, district, institution, or agency against all damage suffered by the construction manager's failure to perform the contract according to its provisions, and shall agree and assent that this undertaking is for the benefit of the state, political subdivision, district, institution, or agency. A letter of credit provided by the construction manager is revocable only at the option of the beneficiary state, political subdivision, district, institution, or agency.

(D) Where the state, political subdivision, district, institution, or agency accepts a bid but the bidder fails or refuses to enter into a proper contract in accordance with the bid, plans, details, and specifications within ten days after the awarding of the contract, the bidder and the surety on any bond, except as provided in division (G) of this section, are liable for the amount of the difference between the bidder's bid and that of the next lowest bidder, but not in excess of the liability specified in division (B)(1) or (C) of this section. Where the state, political subdivision, district, institution, or agency then awards the bid to such next lowest bidder and such next lowest bidder also fails or refuses to enter into a proper contract in accordance with the bid, plans, details, and specifications within ten days after the awarding of the contract, the liability of such next lowest bidder, except as provided in division (G) of this section, is the amount of the difference between the bids of such next lowest bidder and the third lowest bidder, but not in excess of the liability specified in division (B)(1) or (C) of this section. Liability on account of an award to any lowest bidder beyond the third lowest bidder shall be determined in like manner.

(E) Notwithstanding division (C) of this section, where the state, political subdivision, district, institution, or agency resubmits the project for bidding, each bidder whose bid was accepted but who failed or refused to enter into a proper contract, except as provided in division (G) of this section, is liable for an equal share of a penal sum in connection with the resubmission, of printing new contract documents, required advertising, and printing and mailing notices to prospective bidders, but no bidder's liability shall exceed the amount of the bidder's bid guaranty.

(F) All bid guaranties filed pursuant to this section shall be payable to the state, political subdivision, district, institution, or agency, be for the benefit of the state, political subdivision, district, institution, or agency or any person having a right of action thereon, and be deposited with, and held by, the board, officer, or agent contracting on behalf of the state, political subdivision, district, institution, or agency. All bonds filed pursuant to this section shall be issued by a surety company authorized to do business in this state as surety approved by the board, officer, or agent awarding the contract on behalf of the state, political subdivision, district, institution, or agency.

(G) A bidder for a contract with the state or any political subdivision, district, institution, or other agency thereof, excluding therefrom the Ohio department of transportation, for a public improvement costing less than one-half million dollars may withdraw the bid from consideration if the bidder's bid for some other contract with the state or any political subdivision, district, institution, or other agency thereof, excluding therefrom the department of transportation, for the public improvement costing less than one-half million dollars has already been accepted, if the bidder certifies in good faith that the total amount of all the bidder's current contracts is less than one-half million dollars, and if the surety certifies in good faith that the bidder is unable to perform the subsequent contract because to do so would exceed the bidder's bonding capacity. If a bid is withdrawn under authority of this division, the contracting authority may award the contract to the next lowest bidder or reject all bids and resubmit the project for bidding, and neither the bidder nor the surety on the bidder's bond are liable for the difference between the bidder's bid and that of the next lowest bidder, for a penal sum, or for the costs of printing new contract documents, required advertising, and printing and mailing notices to prospective bidders.

(H) Bid guaranties filed pursuant to division (A) of this section shall be returned to all unsuccessful bidders immediately after the contract is executed. The bid guaranty filed pursuant to division (A)(2) of this section shall be returned to the successful bidder upon filing of the bond required in division (C) of this section.

(I) For the purposes of this section, "next lowest bidder" means, in the case of a political subdivision that has adopted the model Ohio and United States preference requirements promulgated pursuant to division (E) of section 125.11 of the Revised Code, the next lowest bidder that qualifies under those preference requirements.

(J) For the purposes of this section and sections 153.56, 153.57, and 153.571 of the Revised Code, "public improvement," "subcontractor," "material supplier," "laborer," and "materials" have the same meanings as in section 1311.25 of the Revised Code.

**153.55 Dividing project into parts to avoid threshold prohibited; costs included in threshold amount.**

(A) For purposes of calculating the amount of a public improvement project to determine whether it is subject to section 153.01 of the Revised Code, no officer, board, or other authority of the state or any institution supported by the state shall subdivide a public improvement project into component parts or separate projects in order to avoid the threshold of that section, unless the component parts or separate projects thus created are conceptually separate and unrelated to each other, or encompass independent or unrelated needs.

(B) In calculating the project amount for purposes of the threshold in section 153.01 of the Revised Code, the following expenses shall be included as costs of the project:

- (1) Professional fees and expenses for services associated with the preparation of plans;
- (2) Permit costs, testing costs, and other fees associated with the work;
- (3) Project construction costs;
- (4) A contingency reserve fund.

**153.56 Creditor shall furnish statement of amount due - service of notice of furnishing.**

(A) Any person to whom any money is due for labor or work performed or materials furnished in a public improvement as provided in section 153.54 of the Revised Code, at any time after performing the labor or work or furnishing the materials, but not later than ninety days after the completion of the contract by the principal contractor or design-build firm and the acceptance of the public improvement for which the bond was provided by the duly authorized board or officer, shall furnish the sureties on the bond, a statement of the amount due to the person.

(B) A suit shall not be brought against sureties on the bond until after sixty days after the furnishing of the statement described in division (A) of this section. If the indebtedness is not paid in full at the expiration of that sixty days, and if the person complies with division (C) of this section, the person may bring an action in the person's own name upon the bond, as provided in sections 2307.06 and 2307.07 of the Revised Code, that action to be commenced, notwithstanding section 2305.12 of the Revised Code, not later than one year from the date of acceptance of the public improvement for which the bond was provided.

(C) To exercise rights under this section, a subcontractor or materials supplier supplying labor or materials that cost more than thirty thousand dollars, who is not in direct privity of contract with the principal contractor or design-build firm for the public improvement, shall serve a notice of furnishing upon the principal contractor or design-build firm in the form provided in section 1311.261 of the Revised Code.

(D) A subcontractor or materials supplier who serves a notice of furnishing under division (C) of this section as required to exercise rights under this section has the right of recovery only as to amounts owed for labor and work performed and materials furnished during and after the twenty-one days immediately preceding service of the notice of furnishing.

(E) For purposes of this section:

- (1) "Design-build firm" has the same meaning as in section 153.65 of the Revised Code.
- (2) "Principal contractor" has the same meaning as in section 1311.25 of the Revised Code, and may include a "construction manager" and a "construction manager at risk" as defined in section 9.33 of the Revised Code.

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**153.581 Contracts for construction definitions.**

As used in sections 153.581 and 153.591 of the Revised Code:

(A) "Public works contract" means any contract awarded by a contracting authority for the construction, engineering, alteration, or repair of any public building, public highway, or other public work.

(B) "Contracting authority" means the state, any township, county, municipal corporation, school board, or other governmental entity empowered to award a public works contract, and any construction manager at risk as defined in section 9.33 of the Revised Code or design-build firm as defined in section 153.65 of the Revised Code awarding a subcontract.

(C) "Contractor" means any person, partnership, corporation, or association that has been awarded a public works contract.

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**153.65 Professional design services definitions.**

As used in sections 153.65 to 153.73 of the Revised Code:

(A)(1) "Public authority" means the state, a state institution of higher education as defined in section 3345.011 of the Revised Code, a county, township, municipal corporation, school district, or other political subdivision, or any public agency, authority, board, commission, instrumentality, or special purpose district of the state or of a political subdivision.

(2) "Public authority" does not include the Ohio turnpike commission.

(B) "Professional design firm" means any person legally engaged in rendering professional design services.

(C) "Professional design services" means 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.

(D) "Qualifications" means all of the following:

(1) (a) For a professional design firm, competence to perform the required professional design services as indicated by the technical training, education, and experience of the firm's personnel, especially the technical training, education, and experience of the employees within the firm who would be assigned to perform the services;

(b) For a design-build firm, competence to perform the required design-build services as indicated by the technical training, education, and experience of the design-build firm's personnel and key consultants, especially the technical training, education, and experience of the employees and consultants of the design-build firm who would be assigned to perform the services, including the proposed architect or engineer of record.

(2) Ability of the firm in terms of its workload and the availability of qualified personnel, equipment, and facilities to perform the required professional design services or design-build services competently and expeditiously;

(3) Past performance of the firm as reflected by the evaluations of previous clients with respect to such factors as control of costs, quality of work, and meeting of deadlines;

(4) Any other relevant factors as determined by the public authority;

(5) With respect to a design-build firm, compliance with sections 4703.182, 4703.332, and 4733.16 of the Revised Code, including the use of a licensed design professional for all design services.

(E) "Design-build contract" means a contract between a public authority and another person that obligates the person to provide design-build services.

(F) "Design-build firm" means a person capable of providing design-build services.

(G) "Design-build services" means 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 of a public improvement.

(H) "Architect or engineer of record" means the architect or engineer that serves as the final signatory on the plans and specifications for the design-build project.

(I) "Criteria architect or engineer" means the architect or engineer retained by a public authority to prepare conceptual plans and specifications, to assist the public authority in connection with the establishment of the design criteria for a design-build project, and, if requested by the public authority, to serve as the representative of the public authority and provide, during the design-build project, other design and construction administration services on behalf of the public authority, including but not limited to, confirming that the design prepared by the design-build firm reflects the original design intent established in the design criteria package.

(J) "Open book pricing method" means a method in which a design-build firm provides the public authority, at the public authority's request, all books, records, documents, contracts, subcontracts, purchase orders, and other data in its possession pertaining to the bidding, pricing, or performance of a contract for design-build services awarded to the design-build firm.

#### **153.66 Submitting statement of qualifications.**

(A) Each public authority planning to contract for professional design services or design-build services shall encourage professional design firms and design-build firms to submit a statement of qualifications and update the statements at regular intervals.

(B) Notwithstanding any contrary requirements in sections 153.65 to 153.70 of the Revised Code, for every design-build contract, each public authority planning to contract for design-build services shall evaluate the statements of qualifications submitted by design-build firms for the project, including the qualifications of the design-build firm's proposed architect or engineer of record, in consultation with the criteria architect or engineer before selecting a design-build firm pursuant to section 153.693 of the Revised Code.

#### **153.67 Announcing contracts available for professional design or design-build services.**

Each public authority planning to contract for professional design services or design-build services shall publicly announce all contracts available from it for such services. The announcements shall:

(A) Be made in a uniform and consistent manner and shall be made sufficiently in advance of the time that responses must be received from qualified professional design firms or design-build firms for the firms to have an adequate opportunity to submit a statement of interest in the project;

(B) Include a general description of the project, a statement of the specific professional design services or design-build services required, and a description of the qualifications required for the project;

(C) Indicate how qualified professional design firms or design-build firms may submit statements of qualifications in order to be considered for a contract to design or design-build the project;

(D) Be sent to any of the following that the public authority considers appropriate:

(1) Design-build firms, including contractors or other entities that seek to perform the work as a design-build firm;

(2) Architect, landscape architect, engineer, and surveyor associations;

(3) The news media;

(4) Any publications or other public media , including electronic media.

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### **153.69 Evaluating and selecting firms.**

For every professional design services contract, each public authority planning to contract for professional design services shall evaluate the statements of qualifications submitted by professional design firms specifically regarding the project, and may hold discussions with individual firms to explore further the firms' statements of qualifications, the scope and nature of the services the firms would provide, and the various technical approaches the firms may take toward the project. Following this evaluation, the public authority shall:

(A) Select and rank no fewer than three firms which it considers to be the most qualified to provide the required professional design services, except when the public authority determines in writing that fewer than three qualified firms are available in which case the public authority shall select and rank those firms;

(B) Negotiate a contract with the firm ranked most qualified to perform the required services at a compensation determined in writing to be fair and reasonable to the public authority. Contract negotiations shall be directed toward:

(1) Ensuring that the professional design firm and the agency have a mutual understanding of the essential requirements involved in providing the required services;

(2) Determining that the firm will make available the necessary personnel, equipment, and facilities to perform the services within the required time;

(3) Agreeing upon compensation which is fair and reasonable, taking into account the estimated value, scope, complexity, and nature of the services.

(C) If a contract is negotiated with the firm ranked to perform the required services most qualified, the public authority shall, if applicable under section 127.16 of the Revised Code, request approval of the board to make expenditures under the contract.

(D) Upon failure to negotiate a contract with the firm ranked most qualified, the public authority shall inform the firm in writing of the termination of negotiations and may enter into negotiations with the firm ranked next most qualified. If negotiations again fail, the same procedure may be followed with each next most qualified firm selected and ranked pursuant to division (A) of this section, in order of ranking, until a contract is negotiated.



(E) Should the public authority fail to negotiate a contract with any of the firms selected pursuant to division (A) of this section, the public authority may select and rank additional firms, based on their qualifications, and negotiations may continue as with the firms selected and ranked initially until a contract is negotiated.

(F) Nothing in this section affects a public authority's right to accept or reject any or all proposals in whole or in part.

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**153.692 Obtaining services of criteria architect or engineer.**

For every design-build contract, the public authority planning to contract for design-build services shall first obtain the services of a criteria architect or engineer by doing either of the following:

- (A) Contracting for the services consistent with sections 153.65 to 153.70 of the Revised Code;
- (B) Obtaining the services through an architect or engineer who is an employee of the public authority and notifying the department of administrative services before the services are performed.

**153.693 Evaluation of design-build firms.**

(A) For every design-build contract, the public authority planning to contract for design-build services, in consultation with the criteria architect or engineer, shall evaluate the statements of qualifications submitted by design-build firms specifically regarding the project, including the design-build firm's proposed architect or engineer of record. Following this evaluation, the public authority shall:

- (1) Select and rank not fewer than three firms which it considers to be the most qualified to provide the required design-build services, except that the public authority shall select and rank fewer than three firms when the public authority determines in writing that fewer than three qualified firms are available;
- (2) Provide each selected design-build firm with all of the following:
  - (a) A description of the project and project delivery;
  - (b) The design criteria produced by the criteria architect or engineer under section 153.692 of the Revised Code;
  - (c) A preliminary project schedule;
  - (d) A description of any preconstruction services;
  - (e) A description of the proposed design services;
  - (f) A description of a guaranteed maximum price, including the estimated level of design on which such guaranteed maximum price is based;
  - (g) The form of the design-build services contract;
  - (h) A request for a pricing proposal that shall be divided into a design services fee and a preconstruction and design-build services fee. The pricing proposal of each design-build firm shall include at least all of the following:
    - (i) A list of key personnel and consultants for the project;

(ii) Design concepts adhering to the design criteria produced by the criteria architect or engineer under section 153.692 of the Revised Code;

(iii) The design-build firm's statement of general conditions and estimated contingency requirements;

(iv) A preliminary project schedule.

(3) Evaluate the pricing proposal submitted by each selected firm and, at its discretion, hold discussions with each firm to further investigate its pricing proposal, including the scope and nature of the firm's proposed services and potential technical approaches;

(4) Rank the selected firms based on the public authority's evaluation of the value of each firm's pricing proposal, with such evaluation considering each firm's proposed costs and qualifications;

(5) Enter into contract negotiations for design-build services with the design-build firm whose pricing proposal the public authority determines to be the best value under this section.

(B) In complying with division (A)(5) of this section, contract negotiations shall be directed toward:

(1) Ensuring that the design-build firm and the public authority mutually understand the essential requirements involved in providing the required design-build services, the provisions for the use of contingency funds, and the terms of the contract, including terms related to the possible distribution of savings in the final costs of the project;

(2) Ensuring that the design-build firm shall be able to provide the necessary personnel, equipment, and facilities to perform the design-build services within the time required by the design-build construction contract;

(3) Agreeing upon a procedure and schedule for determining a guaranteed maximum price using an open book pricing method that shall represent the total maximum amount to be paid by the public authority to the design-build firm for the project and that shall include the costs of all work, the cost of its general conditions, the contingency, and the fee payable to the design-build firm.

(C) If the public authority fails to negotiate a contract with the design-build firm whose pricing proposal the public authority determines to be the best value as determined under this section, the public authority shall inform the design-build firm in writing of the termination of negotiations. The public authority may then do the following:

(1) Negotiate a contract with a design-build firm ranked next highest under this section following the negotiation procedure described in this section;

(2) If negotiations fail with the design-build firm under division (C)(1) of this section, negotiate a contract with the design-build firm ranked next highest under this section following the negotiation procedure described in this section and continue negotiating with the design-build firms selected under this section in the order of their ranking until a contract is negotiated.

(D) If the public authority fails to negotiate a contract with a design-build firm whose pricing proposal the public authority determines to be the best value as determined under this section, it may select additional design-build firms to provide pricing proposals to the public authority pursuant to this section or may select an alternative delivery method for the project.

(E) The public authority may provide a stipend for pricing proposals received from design-build firms.

(F) Nothing in this section affects a public authority's right to accept or reject any or all proposals in whole or in part.

### **153.694 Conflicts of interest.**

If a professional design firm selected as the criteria architect or engineer creates the preliminary criteria and design criteria for a project and provides professional design services to a public authority to assist that public authority in evaluating the design-build requirements provided to the public authority by a design-build firm pursuant to section 153.692 of the Revised Code, that professional design firm shall not provide any design-build services pursuant to the design-build contract under section 153.693 of the Revised Code for the project for which the professional design firm was selected as the criteria architect or engineer.

### **153.70 Requiring professional liability insurance.**

(A) Except for any person providing professional design services of a research or training nature, any person rendering professional design services to a public authority or to a design-build firm, including a criteria architect or engineer and person performing architect or engineer of record services, shall have and maintain, or be covered by, during the period the services are rendered, a professional liability insurance policy or policies with a company or companies that are authorized to do business in this state and that afford professional liability coverage for the professional design services rendered. The insurance shall be in amount considered sufficient by the public authority. At the public authority's discretion, the design-build firm shall carry contractor's professional liability insurance and any other insurance the public authority considers appropriate.

(B) The requirement for professional liability insurance set forth in division (A) of this section may be waived by the public authority for good cause, or the public authority may allow the person providing the professional design services to provide other assurances of financial responsibility.

(C) Before construction begins pursuant to a contract for design-build services with a design-build firm, the design-build firm shall provide a surety bond to the public authority in accordance with rules adopted by the director of administrative services under Chapter 119. of the Revised Code.

### **153.71 Administrative rules.**

Any public authority planning to contract for professional design services or design-build services may adopt, amend, or rescind rules, in accordance with Chapter 119. of the Revised Code, to implement sections 153.66 to 153.70 of the Revised Code. Sections 153.66 to 153.70 of the Revised Code do not apply to either of the following:

(A) Any project with an estimated professional design fee of less than fifty thousand dollars if both of the following requirements are met:

(1) The public authority selects a single design professional or firm from among those that have submitted a current statement of qualifications within the immediately preceding year, as provided under section 153.68 of the Revised Code, based on the public authority's determination that the selected design professional or firm is the most qualified to provide the required professional design services;

(2) The public authority and the selected design professional or firm comply with division (B) of section 153.69 of the Revised Code with respect to the negotiation of a contract.

(B) Any project determined in writing by the public authority head to be an emergency requiring immediate action including, but not limited to, any projects requiring multiple contracts let as part of a program requiring a large number of professional design firms of the same type

**153.72 Authority of design-build firm.**

A design-build firm contracted for design-build services by a public authority may do either of the following:

(A) Perform design, construction, demolition, alteration, repair, or reconstruction work pursuant to such contract;

(B) Perform professional design services when contracted by a public authority for design-build services even if the design-build firm is not a professional design firm.

**153.73 Construction of statutes.**

The requirements set forth in sections 153.65 to 153.72 of the Revised Code for the bidding, selection, and award of a contract for professional design services or design-build services by a public authority prevail in the event of any conflict with any other provision of this chapter.