1. District Update (District Officials)
   - Operating Needs
   - Permanent Improvement Needs
   - Status of Selection of Design Professional for Project or Pre-Bond Issue Services Only

2. Working Relationship (Project Team)
   - Decision Making Structure and Working Group
   - Responsibilities

3. Pre-Election Steps (Bond Counsel)
   - Operating
   - Combination Question – Bonds + Levy (Property or Income Tax)
   - Election Deadlines and Costs
   - Debt Capacity State Approvals – State Consent (4%), Special Needs (9%)
   - Reimbursement Resolution

4. Post-Election Steps (Bond Counsel, Finance Professionals)
   - Election Certification and Contest Period
   - Develop Plan of Issuance/Market Risk
   - Confirm Procedure to Start Tax Collection/Rate for First Year
   - Develop Tax Rate Review System
   - Other Borrowing Needs
   - Establish Financing Schedule and Distribution List
   - Select Paying Agent
   - Official Statement/Disclosure Worksheet
   - Continuing Disclosure/EMMA
   - Rating/Credit Enhancement
   - Close Notes/Bonds
   - Fund Transfer Limits
   - Invest Proceeds/Investment Policy
   - Ohio Contract Certification Law
   - Records Retention (term of securities + 3 years)
5. Tax Issues (Bond Counsel)
   - Post-Issuance Compliance Policy
   - Estimated Construction Draw Schedule
   - Timing of Expenditures
     - Arbitrage Temporary Period Rules – District must reasonably expect to satisfy the following tests (note that the District can invest bond proceeds at an unrestricted yield during the 3-year or 5-year temporary periods discussed below):
       - Expenditure test – reasonably expect to spend 85% of bond proceeds plus investment earnings in 3 years or, after obtaining an architect’s letter, spend 85% in 5 years
       - Time test – 5% encumbered or spent in six months
       - Due diligence test – completion of project with due diligence
     - Hedge Bond Rules – If the District does not reasonably expect to spend 85% of the bond proceeds plus investment earnings within 3 years, the District must reasonably expect to spend 85% of the bond proceeds plus investment earnings within 5 years pursuant to this alternative schedule:
       - 1 year – 10%
       - 2 years – 30%
       - 3 years – 60%
       - 5 years – 85%
     - Bank Qualification - $10 million annual limit (calendar year basis)
   - Note: Hedge bonds cannot be refunded with tax-exempt bonds.
   - Arbitrage Rebate – exemptions from rebate
     - Small Issuer - under $15 million for construction issues (75% of costs spent on construction). Note - the term of refunding bonds must be less than 30 years to qualify for this exemption.
     - Option to split issue over calendar years
     - Spending Exceptions - 2-year spending exception is longest available spending exception (6-month and 18-month exceptions are even shorter)
       - 6 months - 10%
       - 12 months - 45%
       - 18 months - 75%
       - 24 months - 100% (5% retainage)
   - Bank Qualification - $10 million annual limit (calendar year basis)

6. Construction Issues (Construction Counsel)
   - Project Delivery Methods
     - Construction Manager at Risk (CMR)
     - Design-Build (DB)
     - General Contractor (GC)
     - Traditional Multiple Prime
   - Professional Team Selection
     - Architect (also referred to as A/E or Design Professional)
       - District may select Architect for pre-bond issue planning or for the entire
Project (pre-bond issue services, plus design and construction administration, contingent upon availability of funding for the Project) following the statutory qualifications-based selection process. For OSFC\(^1\) co-funded projects, school districts select a design professional for planning / programming services (or pre-bond issue services); once local share funding is secured, the design professional for the co-funded project is co-selected with the Ohio Facilities Construction Commission (OFCC), which administers OSFC programs.

- **Construction Manager -- optional**
  - CM-agents (CMa) can be used with multiple prime contracting.
  - Traditional CMa is not used with new construction project delivery methods: (1) General Contract (GC); (2) CM-at risk (CMR); and (3) Design-Build (DB). Multiple prime contracting, which was the required project delivery method before Construction Reform, is still an option, but is used less frequently now. The most common method for school facilities projects is CMR.
    
    a. CMR selection process typically begins soon after the local share funds are available (for a bond issue or tax levy, after passage of the bond issue or tax levy). Because the initial qualifications phase of the selection process requires a 30-day notice period before qualifications can be submitted, for co-funded OSFC program projects, the process often begins and runs concurrently with the design professional selection process. Districts not participating in an OSFC program project may select a CMR to provide preconstruction services and help with programming and budget development before funds are available, with the continued services being contingent upon availability of funds for the project.

- **Consultants**
  - Owner Representative (OR) (referred to as an Owner Agent (OA) for co-funded OSFC program projects).
    
    a. **OSFC Program Projects.** In some situations, OFCC may approve the use of an OA to provide services that were formerly within the scope of a CM-agent as a co-funded project cost. OFCC has a pre-approved list of OA firms from which to choose for this service. The form of agreement used is a State consultant form. OFCC negotiates the scope of services and cost for services and prepares the agreement. The Board must approve the agreement.
    
    b. **Non-OSFC Projects.** Districts may choose to use an OR to provide oversight and administration for a construction project (including projects using the CMR delivery method). There is no statutory process required for selection of an OR.
    
    • Surveys, Geotechnical Services, Construction Materials and Inspections, Roof Inspection and Observation. Different consultant services are required for construction projects. Most of these are design professionals (engineers) and

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\(^1\) OSFC = Ohio School Facilities Commission. OSFC program projects are now overseen by the Ohio Facilities Construction Commission (OFCC) and its employees.
selection of these consultants is subject to the statutory qualifications-based
selection process.

- Commissioning Authority (CxA).
  a. **OSFC Program Projects.** A commissioning authority or agent (CxA) is
     used for each co-funded project to monitor mechanical and building
     envelope systems during design, construction, and implementation of the
     system with the goal to have functioning systems within the school
     facilities that work as specified. OFCC has a list of pre-approved CxA
     firms from which to choose for this service. The form of agreement used
     is a State consultant form. OFCC negotiates the scope of services and
     cost for services and prepares the agreement. The Board must approve
     the agreement.
  
  b. **Non-OSFC Projects.** Districts may choose whether to have a third party
     CxA for the project to have this service provided by its design
     professional.

- Competitive Bidding. The statutory competitive bidding process applies to GC and
  multiple prime projects when the cost of the work will exceed $50,000.

- Advertisement/Notice Requirements. Legal notices and bid periods only apply to GC
  and multiple prime contracting methods. With the CMR approach, the work is not
  competitively bid within the ORC 3313.46 requirements; the CMR solicits “bids” or
  costs from prequalified subcontractors (approved by the District), reviews the pricing
  received with the District (open book pricing approach), and recommends which
  subcontracts it wishes to use. The Board must approve the CMR’s subcontracts.

- Notice of Commencement, Notices to Surety and Surety Agent, Notice to Proceed.
  - Notice of Commencement (NOC). This is required by the Ohio Mechanic’s Lien
    Law for all construction projects and provides protections to subcontractors,
    material suppliers, and laborers for payment. Be careful that the appropriate
    District individuals are receiving any notices of claim related to the Project based
    upon the Notice of Commencement because there are specific notice and other
    requirements imposed by the ORC when a lien claim is received.
  
  - Notices to Surety and Surety Agent (NTS). This notice is also required by the
    ORC. The purpose is to inform the surety and the surety agent of the contractor
    awarded a contract that the contract has been awarded and the amount of the
    contract. Practically, it triggers the conversion of the bid guaranty and contract
    bond to the contract bond for the project and also the issuance to the contractor
    from the surety agent of the invoice for the bond cost.
  
  - Notice to Proceed. There is no statutory form or requirement for a notice to
    proceed. It can be combined with a notice of award and list all documents and
    information to be required by the contractor, as well as telling it when it can
    mobilize on site and begin work.

- Contracting for the Work. The statutory competitive bid process applies to GC or
  Multiple-Prime contracting, unless an exception to the statutory process is used (e.g.,
  urgent necessity, security and protection of school project, sole source availability,
  cooperative purchasing program contracts). The Board or its designated
  representative is involved with establishing qualifications for subcontractors and
  approving pre-qualified subcontractors for CMR and DB, as described in the following
section.

- Contractor and Subcontractor Qualifications. Criteria for determining the lowest responsible bidder are included in the bidding documents; these include basic criteria from the ORC and other project-specific qualifications (training, experience, etc.). Qualifications for the pre-qualified subcontractor list (applies to CMR and DB project delivery methods) are defined minimally in the Ohio Administrative Code and can be expanded for specific project needs. Other types of criteria include:
  - Local Participation Program with or without a defined goal
  - Criminal Background Checks (renovations of occupied schools and new construction on a site close to an occupied school)

- Contract Award or Subcontract Approval
- Builder's Risk Insurance – provided by the Board
- Construction Retainage – determine how to address with either a separate interest-bearing savings account (often referred to as an escrow account in the ORC) or in a separate cost center in the District’s construction fund
- Change Orders – who approves, prepares, tracks?
- GMP Amendments for CMR agreements – if more than one building, or the construction is phased, there may be more than one GMP Amendment to the CMR agreement. The GMP Amendment is based upon a GMP proposal prepared by the CMR when the construction documents (drawings and specifications) for a defined scope of work are sufficiently complete for the CMR to prepare pricing for the work. The GMP proposal and amendment are not based upon specific subcontractor pricing. Approval by the Board of the recommended subcontractors occurs after the GMP amendment.
- Contract Performance

7. Related Construction Issues (Construction Counsel)

- Board resolutions to document steps and actions related to the Project (e.g., designating an authorized representative for the Project and delegating change order authority, approving design phases, approving professional services agreements, approving GMP amendment(s), approving change orders, finding an item to be available from a sole source, urgent necessity or security and protection of school property, real estate interests or sale of property, etc.)
- LEED Certification and required resolutions to document certain LEED requirements, if applicable to the project (OFCC requires LEED silver for co-funded projects)
- Construction Claims
- Real Estate (land acquisition, easements, etc.)
- Environmental and Archeological Issues
- Utilities and Access Roads
- Sale of Real and Personal Property – RC 3313.41 requirements
- Demolition and Abatement of Buildings