

Auditor of State Bulletin

Date Issued: December 23, 2003

TO: All State Agencies, Boards, and Commissions
All State Universities and Colleges
All Statewide Elected Officials
Ohio Supreme Court
All County Auditors, Commissioners, and Prosecutors
All City Auditors, Finance Directors, Council Members, and Treasurers
All Independent Public Accountants
All School District Treasurers
All Township Clerks and Trustees
All Village Fiscal Officers, Council Members, and Clerks
All Public Libraries

**FROM: Betty Montgomery
Ohio Auditor of State**

SUBJECT: Unresolved Findings for Recovery Database (ORC Section 9.24)

House Bill 95, the State of Ohio Operating Budget for fiscal years 2004-05, enacted a new provision of law (ORC section 9.24), effective January 1, 2004, that prohibits a state agency or political subdivision from awarding a contract for goods, services or construction, which is paid for in whole or in part with state funds, to a person against whom a finding for recovery has been issued by the Auditor of State, if the finding for recovery is unresolved. The purpose of this bulletin is to describe the provisions of this new law and to explain the database established by the Auditor of State pursuant to this law.

Explanation of Findings for Recovery

ORC 9.24 defines a finding for recovery as “a determination issued by the Auditor of State, contained in a report the Auditor of State gives to the Attorney General pursuant to section 117.28 of the Revised Code, that public money has been illegally expended, public money has been collected but not been accounted for, public money is due but has not been collected, or public property has been converted or misappropriated.”

Pursuant to ORC 117.28, when a finding for recovery is issued in an audit report, the legal counsel for the public office is authorized to collect the public money due within 120 days after receiving the audit report. In addition, the Auditor of State is required to notify the Attorney General of every finding for recovery. If, after 120 days, the legal counsel for the public office has not initiated legal action to recover the public money due, the Attorney General is authorized to bring such an action.

ORC 9.24 (B) provides that a finding for recovery is unresolved unless any of the following criteria applies:

1. The money identified in the finding for recovery is paid in full to the state agency or political subdivision to whom the money was owed;
2. The debtor has entered into a repayment plan that is approved by the Attorney General and the state agency or political subdivision to whom the money identified in the finding for recovery is owed. A repayment plan may include a provision permitting a state agency or political subdivision to withhold payment to a debtor for goods, services, or construction provided to or for the state agency or political subdivision pursuant to a contract that is entered into with the debtor after the date the finding for recovery was issued.
3. The Attorney General waives a repayment plan described in division (2) of this section for good cause;
4. The debtor and state agency or political subdivision to whom the money identified in the finding for recovery is owed have agreed to a payment plan established through an enforceable settlement agreement.
5. The state agency or political subdivision desiring to enter into a contract with a debtor certifies, and the Attorney General concurs, that all of the following are true:
 - (a) Essential services the state agency or political subdivision is seeking to obtain from the debtor cannot be provided by any other person besides the debtor;
 - (b) Awarding a contract to the debtor for the essential services described in division (5)(a) is in the best interest of the state;
 - (c) Good faith efforts have been made to collect the money identified in the finding of recovery.
6. The debtor has commenced an action to contest the finding for recovery and a final determination on the action has not yet been reached.

Auditor of State Database

ORC 9.24 (D) requires the Auditor of State to establish and maintain a database which is accessible to the public and which lists all persons¹ against whom an unresolved finding for recovery has been issued, dating back to January 1, 2001. The database is also to list the amount of money identified in the finding for recovery. The statute requires the Auditor of State to update the database on a quarterly basis to reflect findings for recovery that have been resolved. Both the initial database and all updates reflecting findings that have been resolved will be based upon written reports that the Attorney General is to provide to the Auditor of State. All new findings for recovery will be added to the database immediately upon being issued by the Auditor of State.

Although the statute only requires that the database be updated to reflect resolved findings on a quarterly basis, the Auditor of State and the Attorney General have agreed to a process to allow for more frequent updates. The Attorney General will notify the Auditor of State in writing upon the resolution of a finding, and the Auditor's database will be updated upon receipt of the certification from the Attorney General.

The database required by ORC 9.24 will be accessible via the Auditor of State's web site, at www.auditor.state.oh.us. The web site will contain a search function, allowing anybody to search for a specific person by name to determine if that person has unresolved findings for recovery issued since January 1, 2001. If the person does have a finding for recovery, the web site will provide additional information about the person and the finding, as well as a link to the audit report in which the finding was issued.

If a public office is searching the database in order to comply with the provisions of ORC 9.24, the web site will allow the public office to perform a certification search. A certification search allows users to be more specific about the persons for whom they are searching and at the end of the process, if none of the search results match the person to whom the public office plans to award a contract, it can print off a certification page documenting this fact for audit purposes.

In addition to searches by name, the database will allow users to obtain a complete listing of all unresolved findings issued since 2001. The database will also contain, for informational purposes only, all persons against whom findings for recovery have been issued since January 1, 2001, even if those findings have been resolved. The database will allow users to easily distinguish between resolved and unresolved findings for recovery. **Please note that only those persons who have unresolved findings for recovery are prohibited from entering into public contracts.**

¹ **NOTE:** For purposes of this draft, the use of "person" is defined an individual, corporation, business trust, estate, trust, partnership, and association. See ORC 1.59.

Responsibilities of a Public Office

ORC 9.24 (D) provides that before awarding a contract for goods, services or construction, which is paid for in whole or in part with state funds, a state agency or political subdivision is required to verify that the person does not appear in the database established by the Auditor of State.

As mentioned above, the Auditor of State and the Attorney General have agreed to a process that will keep the database as accurate and timely as possible. Nonetheless, it is still possible that a person may have resolved the finding, but the finding continues to be listed in the Auditor of State's database as unresolved. If this occurs, the public office should consult with its legal counsel about how to proceed.

Upon performing a certification search of the Auditor of State's database, if the person is not listed as having an unresolved finding for recovery, the public office may proceed with the contract. Again, when the database shows no unresolved findings for recovery for the person, the web site will offer users the option of printing out a certification page that can be maintained to demonstrate compliance with ORC 9.24 (E).

Responsibilities of a Person With an Unresolved Finding for Recovery

Any person who has an unresolved finding for recovery is prohibited from receiving a contract for goods, services, or construction, paid for in whole or in part with state funds. As described earlier in this bulletin, ORC 9.24 (B) provides the ways in which a finding for recovery may be resolved. **A finding for recovery will not be removed from the Auditor of State's database until written notification of the resolution is received from the Attorney General. Consequently, any person who wishes to resolve a finding for recovery should contact the Attorney General's Office at (614) 644-1234.**

We are well aware that many questions have arisen with this new legislation and that new questions will likely continue to arise. Because many of these questions involve legal interpretations of statute, the Auditor of State's Office is not able to answer all of these questions at this time. We will continue to work closely with the Attorney General's Office to seek clarification on these legal issues. In the meantime, state agencies and political subdivisions should work closely with their own legal counsel to determine how to comply with the requirements of ORC 9.24.

Again, the database of unresolved findings for recovery will be available on the Auditor of State's web site on January 1, 2004, at www.auditor.state.oh.us. Questions concerning this bulletin or the Auditor of State's database should be directed to the Auditor's Office at 1-800-282-0370. Questions regarding the resolution of findings for recovery should be directed to the Attorney General's Office at (614) 644-1234.

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