

**TO: ALL COUNTY PERSONNEL**

**FROM: VERDENIA C. BAKER  
COUNTY ADMINISTRATOR**

**PREPARED BY: PURCHASING DEPARTMENT**

**SUBJECT: PROCUREMENT PROTEST HEARINGS**

**PPM#: CW-L-039**

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**ISSUE DATE**  
**August 21, 2018**

**EFFECTIVE DATE**  
**August 21, 2018**

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**POLICY:**

The utilization of Special Masters is necessary for specified vendor related protest hearings in accordance with the Palm Beach County Purchasing Code (“Purchasing Code”), the Palm Beach County Living Wage Ordinance (“Living Wage Ordinance”), the Small Business Enterprise (“SBE”) Ordinance and the internal PPM of the Department of Housing and Economic Sustainability (“DHES”) PPM # HES-O-603.

**UPDATES:**

Future updates to this PPM will be the responsibility of the Purchasing Department.

**AUTHORITY:**

- Palm Beach County Code, Sections 2-55 and 2-56
- Palm Beach County Code, Section 2-150.1
- Palm Beach County Code, Section 2-80.30(j)
- PPM # HES-O-603, as may be amended

**PROCEDURES:**

**I. GENERAL**

In accordance with the Purchasing Code, the Living Wage Ordinance, the SBE Ordinance or PPM # HES-O-603, as applicable, the protestor, complainant, applicant, requestor, or vendor (hereinafter collectively referred to as “protestor”) may provide a request, in writing, for a Special Master hearing. Persons having

standing to request a Special Master Hearing and the issues that may be heard by a Special Master are set forth in the Purchasing Code, the Living Wage Ordinance, the SBE Ordinance, or PPM # HES-O-603, as applicable.

## **II. SELECTION OF SPECIAL MASTERS**

- A. Qualifications. Special Master(s) shall have the following minimum qualifications:
  - 1. A Current member of The Florida Bar for no less than three (3) years and in good standing;
  - 2. No less than three (3) years experience in government procurement law, or a related expertise within the past ten (10) years.
  - 3. No disciplinary action by the Florida Bar Association or by a bar association of any other jurisdiction within the past five (5) years; and
  - 4. Any other applicable qualification(s) that may be established by the County.
  
- B. Selection of, and Contracting with, Special Masters:
  - 1. The need for Special Masters shall be competitively solicited in accordance with the Purchasing Code.
  - 2. No more than five (5) Special Masters shall be selected to resolve protests.
  - 3. The selection of a Special Master for each particular and requested hearing may be based or awarded upon a justification of availability, conflict of interest, and/or specific and necessary expertise of the required Special Master. If there are no contracted Special Masters or if no Special Master is available or able to accept a hearing assignment, the County may seek and obtain a Special Master from another source on an emergency basis.
  - 4. Special Masters shall contract with the County for their services. Said contract shall contain provisions which ensure adherence to the Purchasing Code, the Living Wage Ordinance, the SBE Ordinance, and PPM # HES-O-603, as well as all rules, regulations, policies and procedures of the County.

C. Contract Requirements. Contracts executed by the Special Masters shall contain, at a minimum, the following provisions:

1. Compensation shall be made at the rate set forth in the contract between the Special Master and the County for time spent in preparation and research, hearing participation, and writing the determination for each hearing. In no event shall a Special Master be paid in excess of Two Thousand Dollars (\$2,000.00) per case, unless otherwise determined by the Director of Purchasing, the Director of the Office of Small Business Assistance (“OSBA”) or the Director of DHES, as applicable. Costs for travel, courier charges, secretarial work, and telefacsimilie charges shall not be reimbursable by the County. Should the Special Master be required to appear before the Board of County Commissioners to discuss a hearing determination, the compensation for said attendance will be at the rate as set forth in the contract between the Special Master and the County.
2. An assignment letter shall be sent to the Special Master providing the nature of the hearing and the principal parties thereto. Upon receipt of a hearing assignment, the Special Master should accept or reject same within forty-eight (48) hours of receipt thereof. Upon acceptance of the hearing assignment, the Special Master shall submit to the County a letter stating that the Special Master accepts the hearing assignment and has no conflict of interest which might interfere with his/her hearing of the issue(s). The Special Master shall immediately notify the County upon discovery of any potential conflict of interest. The County retains the right to make the final determination regarding any potential conflict of interest and any hearing assignment that may be impacted due to the potential conflict.
3. Hearings are scheduled upon mutual agreement between the Special Master and the Director of Purchasing, the Director of OSBA, or the Director of DHES, as applicable. Every effort shall be made to hold the hearing within one (1) month of the Special Master receiving the hearing assignment.
4. When multiple protests, complaints, or appeals (hereinafter referred to as “protests”) are filed with regard to the same procurement or issue, the County may, at its sole discretion, require that those protests be heard jointly at a single hearing.

5. Hearings shall be conducted on County workdays between the hours of 8:00 a.m. and 5:00 p.m. Depending on the complexity and timeliness of the hearing, the Special Master, at his/her sole discretion, may extend a hearing past 5:00 p.m.
6. The Special Master shall prepare and submit a written determination subsequent to each hearing that shall include, at a minimum, a list of the parties, summary of the issues heard, the determination(s) made, and a summary of the rationale for the foregoing.
7. In order to be compensated, the Special Master must submit an invoice for services rendered identifying the assigned hearing, the date of the hearing, the number of hours expended in preparation for and participation during the hearing, and the appropriate monetary rate as set forth in the contract between the Special Master and the County.

D. Administration of the Hearing:

1. Initial notification of the date, time, and place of the hearing, and any subsequent changes thereto, shall be issued by the Purchasing Department, OSBA, or DHES, as applicable, after coordination with the Special Master. Notification shall be given to all parties to the protest.
2. The County shall provide a copy of all documents pertaining to the hearing to the Special Master. These documents shall include, but not be limited to, the protest letter(s); correspondence from the Purchasing Department, from OSBA or DHES, if applicable; the contract(s); the Small Business Certification Application, if applicable; the solicitation document(s) and the posting and bid tabulation/re-cap sheet or the Notice of Intent to Award and a summary of the Selection Committee scoring/ranking; the review(s) by OSBA, if applicable; and, any other document(s) relative to the issue(s) to be heard. In addition, the County shall provide copies of other information as requested by the Special Master.
3. The County shall immediately forward a copy of the Special Master's determination to all parties.

### **III. SPECIAL MASTER HEARING PROCEDURES AND GUIDELINES**

#### **A. Rules of Conduct for the Special Master Hearing:**

1. At no time shall a protestor, a party, or any other person, contact the Special Master regarding any issue pertaining to or to be raised at the hearing. Communication between the County and the Special Master shall be limited to scheduling and other administrative issues, including the provision and copying of public records pertinent to the hearing.
2. All hearings shall be open to the public and shall be advertised accordingly.
3. The County, the protestor and any other party to the protest may submit evidence and present testimony of witnesses.
4. At the hearing, the burden of proof shall be upon the protestor to show by clear and convincing evidence that the recommended procurement award should be overturned, that the suspension or debarment was in error, that the denial of the Small Business Certification or Recertification was in error, that the Small Business Decertification was in error, or that there was a violation of the Purchasing Code, the Living Wage Ordinance, the SBE Ordinance, the PPM # HES-O-603, or any policy or procedure related thereto. Unless otherwise specifically provided in the Purchasing Code, the Living Wage Ordinance, the SBE Ordinance, or PPM # HES-O-603 where proper notice of the hearing has been provided and the protestor fails to appear at the noticed location and time, the protest shall be denied by the Special Master. However, in those instances where the protestor fails to appear at the hearing, the Director of Purchasing, the Director of OSBA or the Director of HES, as applicable, shall have the discretion to reopen the protest and to reconvene the hearing, based upon good cause shown by the protestor.
5. Notice of hearing. The County shall notify the protestor, the recommended awardee, and any other party of record, of the time, date and location of the scheduled hearing. Said notification shall be made by regular mail and e-mail.
6. The formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the hearings. Upon determination of the Special Master,

irrelevant, immaterial or unduly repetitious evidence may be excluded.

7. The Special Master shall limit the scope of the hearing to only those matters raised in the original protest submitted by the protestor. The Special Master shall make a determination based solely on the facts that are submitted and pertinent thereto. Any matter or issue not submitted in writing within the designated timeframe as set forth in the Purchasing Code, the Living Wage Ordinance, the SBE Ordinance, or PPM # HES-O-603, as applicable, shall not be considered.
8. While questions may be posed by one party to another party or witness, this questioning shall not be conducted in an adversarial or combative manner, and the Special Master shall prohibit such manner of questioning. The Special Master may require that a party direct a question(s) to the Special Master, who shall determine whether the question(s) is relevant. If the Special Master determines the question(s) to be relevant, the Special Master may pose the question(s) to the intended party or witness. Such party or witness shall direct his/her answer to the Special Master.
9. Each party to the protest shall be given the opportunity to state the reason why the protest should or should not be upheld, and to submit testimony and/or documentary evidence to support its position. The protestor shall be the first to present its case to the Special Master.
10. After the County and the protestor(s) have had an opportunity to present their argument(s), any other party of record may state his/her reasons as to why the protest should be upheld or denied and submit testimony and/or documentary evidence supporting his/her position.
11. Due to the time-sensitive nature of many County contracts, the Special Master should avoid delays which will cause the hearing to be extended to another day, except under compelling circumstances.

B. Rendering of the Special Master's Determination:

1. The Special Master may verbally render a determination at the conclusion of the hearing.

2. In any event, within forty-eight (48) hours of the conclusion of the hearing, the Special Master shall provide to the County, in writing, a determination of the hearing. If deemed necessary, a time extension may be granted by the Director of Purchasing, the Director of OSBA or the Director of DHES, as applicable, upon request by the Special Master.

C. Post-Hearing Obligation

The Special Master may be required to appear before the Board of County Commissioners to discuss the hearing and his/her determination. Should this be required, the Special Master shall be compensated at the rate set forth in the contract between the Special Master and the County.

  
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**VERDENIA C. BAKER**  
**COUNTY ADMINISTRATOR**

Supersession History:

PPM # CW-L-039, effective 10/30/2000  
PPM # CW-L-039, effective 12/01/2006  
PPM # CW-L-039, effective 08/01/2008  
PPM # CW-L-039, effective 02/09/2015