

TO: ALL COUNTY PERSONNEL

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

**PREPARED BY: OFFICE OF FINANCIAL MANAGEMENT & BUDGET
(OFMB)**

**SUBJECT: PROCEDURE REGARDING FRONT-END LOADING AND
UNBALANCED BIDS FOR CONSTRUCTION CONTRACTS**

PPM # CW-O-042

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ISSUE DATE
July 17, 2017

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EFFECTIVE DATE
July 17, 2017
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PURPOSE:

To establish specific standard language to be included in all construction bids which allows for rejection of bids which are found to be front-end loaded or containing unbalanced line items and detailed payment provisions pertaining to specific items in which the possibility of front-end loading or unbalanced bidding may most frequently occur. There shall be a standardized review procedure of construction bids.

UPDATES:

Future updates to this PPM are the responsibility of the Director of OFMB.

AUTHORITY:

Palm Beach County Administrative Code Section 307, as may be amended.
Florida Statutes, Chapter 218, as may be amended.

DEFINITIONS:

1. **Bid verification:** The County may ask a bidder to verify in writing the accuracy of its bid. Once a bid has been verified, the County shall not accept further verification from the contractor after award.
2. **Bid clarification:** If anything more than a simple verification of bid is required it becomes a bid clarification. Examples would be an explanation of how a bidder arrived at its bid price or how it intended to perform the work.

3. **Clearing and grubbing:** This item may include but is not limited to:
 - removal and disposal of trees, stumps and roots
 - removal of existing pavement, building and structures
 - removal of debris and other items necessary to prepare the site for construction, including leveling of the terrain
4. **Front-end loading of bids:** This occurs on a line-item bid when a bidder submits a relatively high price on items which are normally complete or substantially completed, in the early phases of construction. These items may include: mobilization, clearing and grubbing, maintenance of traffic, insurance and bonds, and/or stored materials. In this context these items would be billed at the beginning of the project and, if paid as billed, result in excess County money expended at the beginning of the project. In essence, the County would then be floating the debt or financing a part of the construction project for the contractor.
5. **Lump Sum, Fixed-Price bid:** A bid wherein the bidder submits a total dollar amount offer, and line items and unit prices are not indicated.
6. **Maintenance of Traffic:** This item may include, but is not limited to:
 - construction of detour facilities
 - providing access to local residents
 - providing signals, barricades and flag persons
7. **Milestone:** A significant point in the completion of a project, generally distinguished within a project schedule.
8. **Mobilization:** This item may include, but is not limited to:
 - movement of personnel, equipment and supplies to the job site
 - establishment of temporary offices, buildings and sanitary facilities
 - bonds
 - insurance
 - other related preconstruction expenses
9. **Progress payments:** Refers to the County's contractual obligation to make incremental payments to the contractor based on the amount of work completed to date. In the absence of a progress payment clause in the contract, the County would not be obligated to make any payment until the entire project had been completed and accepted.
10. **Progress schedule:** This includes planning and scheduling the work in a manner which will result in timely completion. In the absence of a contract requirement to the contrary, the establishment and maintenance of a progress schedule is left to the discretion of the contractor.

11. **Project Manager:** An individual of the County or a consultant retained by the County on a contracted basis who provides the administration, review and coordination services on any construction project.
12. **Retainage:** A portion of the contractor's earned progress payment which is retained by the County until the work is complete. Retainage protects the County against defective workmanship and the claims by unpaid suppliers and subcontractors as well as provides an incentive for the contractor to complete the work.
13. **Schedule of values:** A schedule of values is derived from the estimated cost of the various components of the work. It is used by the Contractor and County as an administrative tool for facilitating computation of progress payments.
14. **Total Offer, line-item basis bid:** A bid wherein unit prices are submitted for individual items as well as overall total bid price.
15. **Unbalanced bid items:** Bid items in which the unit prices are not in line with industry standards or averages for the items. In order for a bid to be balanced each item must carry its proportionate share of direct cost, overhead and profit. Unbalanced items which are provided and/or installed and billed at the beginning of a project also result in "front-end loading."

POLICY:

I. Lump Sum, Fixed-Price Construction Contracts:

Upon receipt and subsequent award of bid, a pre-construction meeting(s) shall occur to negotiate a schedule of values based upon a reasonable review in accordance with common practice and historical references. One of the primary purposes of these negotiations shall be to preclude front-end loading and unbalanced item pricing. The unit prices negotiated as the schedule of values shall be the basis for comparing the amount of any succeeding change orders in which identical line items are used.

The contractor must submit a detailed schedule and milestones for completion of the project which must be approved by the County. This schedule and milestone dates shall be compared to actual completion prior to approval of progress payments.

II. Total Offer, Line-item Basis Construction Contracts:

Construction bids which include, as part of the bid proposal, line-item pricing as well as a total offer, shall include line-item estimating of the project by the project manager prior to bidding.

Upon receipt of bids, the Project Manager shall compare the lowest overall bid against the estimate for each line item, and shall further compare the lowest bid against the average for each line item of all bids received. Should any of the line items appear to be "front-end loaded" or "unbalanced", the Project Manager shall follow the following procedures:

- A. Review the pre-bid estimates for accuracy. Should a determination be made that the estimates are substantially inaccurate as to cause a possible windfall profit for the low bidder or that the inaccuracies may affect the competitiveness of the bid prices amongst the bidders, all bids shall be rejected and the project re-bid with revised estimated quantities.
- B. If the bid estimates are determined to be substantially accurate, the Project Manager shall obtain bid verification of all bidders and/or bid clarification from the low bidder such that the contractor's pricing is sufficiently justified to the project manager. Should pricing not be sufficiently justified, the Project Manager may recommend, through his/her department head, that the Board of County Commissioners (BCC) reject the bid in accordance with the bid terms and conditions.

Should any construction project result in bids all of which exceed the budgeted (or estimated amount where there is no budget) amount, the Project Manager may recommend any of the following:

- A. Rejection of all bids and re-bid with revised specification and/or scope of work
- B. Abandonment of the project
- C. Award of the bid to the lowest responsive and responsible bidder

Should alternative "C" be selected, the award recommendation to the BCC shall include a justification by the Project Manager for acceptance of the bid pricing by the contractor recommended for award.

PROCEDURES:

As a minimum standard, the following process shall apply to the bidding and awarding of all County construction contracts with line-item bidding:

All bids for construction with line-item bidding shall include the following clause in the terms and conditions section:

"Bids which are determined by the County to be front-end loaded, unbalanced, or which contain unbalanced line-item pricing when compared to competitor's bids for the same item and standard industry prices, and which significantly deviate from the County's determination of acceptable line-item pricing, may be rejected by the County."

Road construction contracts shall adhere to the latest Florida Department of Transportation Standard Specifications for Road and Bridge Construction as amended unless otherwise required in accordance with State or Federal grants or other external agency requirements.

The construction contract shall contain the following payment terms if any of the specified items are expected to be completed at the beginning of the project:

I. Mobilization

When the proposal includes a separate line item for Mobilization, partial payments will be made in accordance with the following:

For contracts of 120 contract days duration or less, partial payment will be made at 50% of the bid price for Mobilization per month for the first two months. For contracts in excess of 120 contract days duration, partial payment will be made at 25% of the bid price for Mobilization per month for the first four months. In no event shall more than 50% of the bid price be paid prior to commencing construction on the project site.

Total partial payments for Mobilization on any project, will be limited to 10% of the original Contract amount for the project. Any remaining amount will be paid upon completion of all work on the Contract.

II. Clearing and Grubbing

This item shall be paid as a percentage of actual clearing and grubbing work completed.

III. Maintenance of Traffic

This item shall be paid as a percentage of actual contract completed.

IV. Stored Materials

Payment for stored materials will be made only for such stored materials which will be used on the project or for materials which are specially fabricated for the project. Stored materials must be on site or verified to be stockpiled in an approved location. Payment may be made at the invoice amount, unless otherwise indicated in the contract documents, for stored materials purchased by the contractor. The contractor must submit to the County a certified invoice as proof prior to payment by the County.

V. Retainage

Road construction contracts shall be paid on a percentage of completion basis, less standard retainage of 5% until 90% completion, and 2.5% thereafter. Building and other construction contracts shall be paid on a percentage of completion basis, in accordance with the Local Government Prompt Payment Act.


VERDENIA C. BAKER
COUNTY ADMINISTRATOR

Supersession History:

1. PPM #CW-O-042, issued 12/10/91
2. PPM #CW-O-042, issued 11/1/2010
3. PPM #CW-O-042, revised 11/21/2011
4. PPM #CW-O-042, revised 4/2/12