

Meeting Date
August 23, 2016



AGENDA	
Section	CONSENT
Item No.	#, C. 2.

**AGENDA REPORT**  
 BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	<b>Approval RE: BCC-27, Construction Contracts</b>
DEPT/OFFICE:	CENTRAL SERVICES DEPARTMENT/FACILITIES

Requested Action:  
 It is requested that the Board of County Commissioners approve changes to Policy BCC-27.

Summary Explanation & Background:

**BCC-27** establishes the criteria the Board of County Commissioners shall use in considering the type and necessity of security (bonding) for the performance by contractors for public buildings and public works projects; and the criteria the Board shall use in authorizing Change Orders and Construction Change Directives.

Staff is recommending the following changes:

**Section IV. Change Orders – Section B, Items 1, 2, 4, 5, 7, and 8** – Add signature level for Assistant County Manager for change orders \$50,000 and under and when within budgeted amount of the project.

**FISCAL IMPACT:** None.

Clerk to the Board Instructions: N/A

Exhibits Attached: BCC-27

Contract /Agreement (If attached): Reviewed by County Attorney Yes  No  PR

County Manager	Assistant County Manager Frank Abbate	Department Director / Extension  Teresa Camarata, Central Services Department Director 617-7390
Stockton Whitten	Assistant County Manager	



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001  
Fax: (321) 264-6972  
Tammy.Rowe@brevardclerk.us

August 24, 2016

**M E M O R A N D U M**

TO: Stockton Whitten, County Manager

RE: Item II.C.2., Board Policy BCC-27, Construction Contracts

The Board of County Commissioners, in regular session on August 23, 2016, approved changes to Board Policy BCC-27. Enclosed is a fully-executed Policy.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

/cm

Encl. (1)

cc: Central Services Director  
Finance  
Budget

# POLICY

TITLE: CONSTRUCTION CONTRACTS

NUMBER: BCC-27  
CANCELS: November 13, 2012  
APPROVED: August 23, 2016  
ORIGINATOR: Central Services Department  
REVIEW: August 23, 2019

I. OBJECTIVES:

A. BOND REQUIREMENTS:

To specify and establish the criteria that the Board of County Commissioners shall utilize in considering the type and necessity of security for the performance by Contractors for public building and public works projects.

B. CHANGE ORDERS:

To specify and establish the criteria that the Board of County Commissioners shall utilize in authorizing Change Orders and Construction Change Directives, and delegating the authority to authorize Change Orders and Construction Change Directives. It is the Policy of the Board of County Commissioners not to encourage the use of Change Order to construction contractors. The Board of County Commissioners, nonetheless, recognizes construction projects sometimes present unique circumstances that will require the use of Change Orders. Therefore, it is necessary to delineate the Change Order process and to delegate limited authority to approve the commencement of work associated with Change Order and Construction Change Directives.

C. PAYMENT & RETAINAGE:

To specify and establish the criteria that the Board of County Commissioners shall utilize in authorizing payment and retainage release payment, and delegating to the County Manager the authority to authorize payment and retainage release payment.

II. REFERENCES & DEFINITIONS:

A. Board – Board of County Commissioners of Brevard County, Florida.

B. Letter of Credit – An irrevocable agreement to pay, upon the Contractor's failure to comply with the contract, those amounts necessary to properly complete the work, up to the dollar amount of the contract.

C. Payment and Performance Bonds – Bonds to be posted by a Contractor, specifically conditioned upon said Contractor properly paying for all material or labor provided by the subcontractors, suppliers or labor, or others in the completion of work prescribed in an executed contract with Brevard County for construction or repair of a building or public work, and performing the executed contract in the time and manner prescribed in the contract.

- D. Contractor – Any person entering into a formal contract with Brevard County for the construction of a public building, for the prosecution and completion of public work, or for repairs upon a public building or public work.
- E. Section 255.05 Florida Statutes – State Statutes requiring payment and performance bonds with a surety insurer authorized to do business in the State of Florida as surety for the public building and public work contracts.
- F. Change Order – is a change to the construction contract required due to incorrect information in the construction documents, unforeseen conditions, change of usage, added value to the project, or deletion of items or areas, and must be approved by the Board of County Commissioners (Board). The Board may delegate authority to the County Manager or Department Director to authorize the initiation of work described in a Change Order prior to Board approval when in compliance with the criteria approved by the Board. A Change Order is prepared by the Owner and/or Project Architect/Engineers; signed by the Contractor, Project Architect/Engineer, County Oversight Agency, and the County Manager stating their agreement upon the following:
  - 1. A change in the Scope of Work;
  - 2. The amount of the adjustment in the contract sum, if any; and
  - 3. The extend of the adjustment in the contract time, if any.
- G. Construction Change Directive – is a change directive prepared by the Owner and/or Project Architect/Engineer, signed by the County Oversight Agency, and the County Manager directing an addition, deletion, or revision in the Scope of Work. The Construction Change Directive is necessary when no agreement exists among the Architect/Engineer of Record, Brevard County and the Contractor on the dollar amount of a necessary change in the Scope of Work and/or an extension of time to the construction contract. The Construction Change Directive is used when an unsafe, hazardous or other similar condition exists, and/or when failure to achieve prompt resolution of the change will result in demobilization of the Contractor, or a significant delay in completing the work. A Construction Change Directive does not change the contract price or the contract time, but is evidence that the parties expect that the change will be incorporated into a subsequently issued Change Order following negotiations by all parties.
- H. User Agency – is defined as the County Department or Agency who will operate or manage the facility or infrastructure after the construction project is completed.
- I. County Oversight Agency – is the County Department or Agency with the designated responsibility of acting as the Agent or Representative for the Board during the design and construction phases.
- J. Project Architect/Engineer – is a consultant or employee retained to design the construction project and prepare specifications.
- K. Emergency – is a situation during the construction phase of a County-owned facility where failure to act or abate a problem will lead to a substantial delay in the construction schedule, demobilization of the Contractor's construction forces, cause substantial cost overruns, endanger lives or construction workers or the public, or endanger the environment.

III. DIRECTIVES:

BOND REQUIREMENTS:

- A. It is the intent of the Board that any person entering into a contract where the cost will exceed \$100,000 for the construction of a public building, for the prosecution or completion of a public work, or for repairs on a public building or public work shall be required to execute a payment and performance bond or other substitute surety authorized herein. The Contractor must record the bond(s) per Chapter 255 of the Florida Statutes. Additionally, the Contractor must provide a copy of the bond(s) to all subcontractors and notify them of deadlines to make claims under the bond(s).

Surety provisions are considered necessary to provide assurance that the Contractor will perform the contract in the time and manner prescribed in the contract and promptly make payments to all persons whose claims derive directly from the prosecution of the work provided for in the contract. All Contractors will also be required to submit original, final releases signed by materialmen and suppliers indicating that they have been paid for all work, materials, and supplies prior to release of the final amount the Board is obligated to pay the Contractor. Notwithstanding the foregoing, pursuant to Section 255.05(11), Florida Statutes, when the Contractor has furnished and recorded a Payment and Performance Bond and provided the County with a written consent from the Surety regarding the Project or payment in question, no such releases shall be required. The Surety may, in a writing served on the County, revoke its consent or direct that the County withhold a specified amount from a payment, which shall be effective upon receipt.

- B. A letter of credit, assignment of a certificate of deposit, or cash shall be permitted in lieu of a surety-insured bond for construction projects on public buildings or public work projects when the contract price exceeds \$100,000. Any such substitute surety shall contain a provision to the effect that such surety shall reimburse the Board for all costs, including attorney's fees, sustained by the Board because of the Contractor's default, or incurred by the Board in enforcing a surety's obligation to the Board. Substitute sureties must conform to the following standards:
1. All letters of credit and accompanying performance sureties shall be in the form prescribed and approved by the County Attorney and available in Risk Management. All letters of credit shall be issued by a federally or state chartered bank or savings and loan association doing business in Brevard County, Florida, and shall provide the following:
    - a. A date of expiration at least fourteen (14) months beyond completion of the project;
    - b. A business office in Brevard County, Florida at which drafts against the letter of credit may be presented.
- C. The Board hereby exempts a Contractor from all surety requirements for construction projects on public buildings or public works where the construction cost will not exceed \$100,000.
- D. The Board may exempt a Contractor from all surety requirements when the contract price is between \$100,000 and \$200,000 when the Board determines that the Contractor's reputation, financial solvency, experience on projects similar to the project to be undertaken, and prior work performance for the Board are such that surety requirements are not necessary. Board members shall not be personally liable to persons suffering loss because of the granting of such exemption.
- E. The County Manager may exempt a Contractor from all surety requirements for emergency construction projects necessary to correct a life, health or safety hazard where the construction costs will not exceed \$200,000.

- F. In conjunction with exempting surety requirements for contracts below \$100,000 the Contractor must agree, in writing, to the following conditions:
1. A document notifying all suppliers and materialmen that the Contractor has not executed a payment and performance bond shall be posted in a conspicuous place at the construction site or location where materials or supplies are to be delivered;
  2. The Contractor shall not be paid except for work satisfactorily completed and inspected by the appropriate representative of the Board. The Board may withhold up to ten percent (10%) of the total amount owed to the Contractor for the longer of 100 days or such period of time it takes the Board to determine that Subsection 3. and 4. of this Section have been complied with;
  3. The Contractor shall submit original releases signed by materialmen and suppliers indicating that they have been paid for all work, materials, and supplies prior to the release of the amount the Board is obligated to pay the Contractor unless otherwise waived by the Board;
  4. Prior to final payment by the Board, the Contractor shall execute a notarized sworn affidavit stating that all suppliers, including suppliers of labor, and materialmen have been fully paid for the project labor, materials and supplies;
  5. At the discretion of Brevard County joint checks in the name of the Contractor and Subcontractor(s) may be issued if the County has indications that Subcontractor(s) are not being paid in a timely manner.
- G. Required surety payment and performance bonds shall be issued from a surety company meeting all requirements of Florida Statute 287.0935. In cases where the amount of a surety bond exceeds \$500,000 the surety company shall also have an A.M. Best's rating of no less than B+ and, depending on the amount of the bond, shall have a minimum A.M. Best's financial size category ranking as follows:

Bond Amount Up To	Financial Class
\$ 1,000,000	V
\$ 2,500,000	VI
\$ 5,000,000	VII
\$ 10,000,000	VIII
\$ 25,000,000	IX
\$ 50,000,000	X
\$ 75,000,000	XI
\$100,000,000	XII

- H. The Board reserves the right at any time to require a surety payment and performance bond to be posted if it determines that any exemption of bond surety provided for herein is or becomes inadequate or insufficient, or if the Contractor fails to comply with its obligations to suppliers, materialmen, subcontractors or the Board.

IV. CHANGE ORDERS:

- A. Change Orders over the authority limits delegated to the County Manager will be approved by the Board prior to initiation of the work described.
- B. The Board hereby delegates to the County Manager, Assistant County Manager and Department Directors the authority to perform the following:

1. The County Manager may authorize work associated with Construction Contract Change Orders in any amount under \$100,000, and when within the budgeted amount of the project;
2. The Assistant County Manager may authorize work associated with Construction Contract Change Orders in any amount under \$50,000 and when within the budgeted amount of the project;
3. The Department Director may authorize work associated with the Construction Change Order in any amount under \$25,000, and when within the budgeted amount of the project;
4. The County Manager may authorize work associated with Change Orders to construction contracts when an unsafe, hazardous condition exists and/or when failure to achieve prompt resolution of the change will result in demobilization of the Contractor, or a significant delay in completing the project, in any amount under \$100,000, and when within the budgeted amount of the project;
5. The Assistant County Manager may authorize work associated with Change Orders to construction contracts when an unsafe, hazardous condition exists and/or when failure to achieve prompt resolution of the change will result in demobilization of the Contractor, or a significant delay in completing the project, in any amount under \$50,000, and when within the budgeted amount of the project;
6. The Department Director may authorize work associated with Change Orders to construction contracts when an unsafe, hazardous condition exists and/or when failure to achieve prompt resolution of the change will result in demobilization of the Contractor, or a significant delay in completing the project, in any amount under \$25,000, and when within the budgeted amount of the project;
7. The County Manager may authorize work associated with Construction Change Directives in any amount under \$100,000, and when within the budgeted amount of the project;
8. The Assistant County Manager may authorize work associated with Construction Change Directives in any amount under \$50,000, and when within the budgeted amount of the project;
9. The Department Director may authorize work associated with Construction Change Directives in any amount under \$25,000, and when within budgeted amount of the project.

C. The Board directs the following:

1. Prior to initiation of work all Change Orders, in an amount not exceeding \$100,000, must be authorized by the County Manager, Assistant County Manager or Department Director as delegated in Section IV.B. of this Policy.
2. All Change Orders and Construction Change Directives authorized by the County Manager, Assistant County Manager or Department Director, and as delegated in Section IV.B. for work to be initiated, will not require Board approval. Only those Change Orders and Construction Change Directives \$100,000 and over will need to be brought to the Board's attention.

3. The County Manager, Assistant County Manager or Department Director shall initiate internal administrative procedures to ensure the following:
  - a. Change Orders are certified by the County Oversight Agency and User Agency, as required, to complete the project in a timely, prudent and efficient manner and within the budgeted amount of the project.
  - b. Change Orders and Construction Change Directives necessary to mitigate problems associated with health and safety hazards, emergencies or other situations which may lead to demobilization of the Contractor or significantly delay the project, be certified as such by the County Oversight Agency and User Agency.
  - c. All Change Orders will identify the actual change in contract price, contract time, the reason for the change, the technical analysis of the change, the value benefits to the project, a listing of all previous changes and a status of the contract dollars.
  - d. All forms associated with Change Orders authorized under the County Manager's, Assistant County Manager's or Department Director's authority will be completed within sixty (60) days.
  - e. Impasses or disagreements among the Contractor, Project Architect/Engineer and County Oversight Agency will be submitted through the process delineated in the Contract Documents for resolution within thirty (30) days after impasse or disagreement is identified. However, if resolution is not feasible within thirty (30) days after the occurrence, the impasse or disagreement shall be resolved prior to final completion of the project and final payment to the Contractor.
- D. The Board reserves the right to rebid the contract changes where the work has not been previously initiated, where the change increases the original Scope of Work and where the rebid process will not impact existing work by the awarded Contractor. Language to this effect shall be incorporated in all solicitations and contractual documents.
- E. The following performance measurements will be utilized for each project:
  1. At the time of Board approval of the project, the project budget will be submitted to the Board.
  2. At the completion of the project, performance will be measured as relates to compliance with project budget, schedule and specifications. In accordance with Brevard County Ordinance 98-37, Contractor/Subcontractor Performance Evaluations should be forwarded to Purchasing Services for future reference.
- F. The Board hereby delegates to the County Oversight Agency, with concurrence of the User Agency, the authority to authorize work associated with all Change Orders which do not result in a change to the contract time or a change in the contract amount.

V. PAYMENT REQUIREMENTS:

- A. The Contractor will put all Subcontractors on written notice at the onset of a project notifying them that the Contractor will be paid directly by the County, and that the County cannot have liens placed upon it.

- B. The following will be included in the Contract between the County and the General Contractor:
1. A requirement of a written certification by the General Contractor that they will pay the Subcontractor(s) in a timely manner upon receipt of payment from the County for work satisfactorily completed by the Subcontractor(s).
  2. Include a requirement that the General Contractor inform Subcontractor(s) not to execute Waivers of Rights Against Payment Bond unless the Subcontractor has in fact been paid.
- C. The General Contractor must provide Subcontractor(s) releases from the prior payment draw prior to making the next payment draw, and require Subcontractor Waivers of Rights Against Payment Bond for only the previous pay request. Notwithstanding the foregoing, pursuant to Section 255.05(11), Florida Statutes, when the Contractor has furnished and recorded a Payment and Performance Bond and provided the County with a written consent from the Surety regarding the Project or payment in question, no such releases shall be required. The Surety may, in a writing served on the County, revoke its consent or direct that the County withhold a specified amount from a payment, which shall be effective upon receipt.
- D. Retainage – Reduction of retainage for construction services exceeding \$200,000 shall be withheld by the County Oversight Agency in one of the following manners:
1. The County Oversight Agency may choose to withhold retainage in accordance with Florida Statute 255.078, adopted October 01, 2005;
  2. The County Oversight Agency may choose to withhold retainage in the amount of five percent (5%) for the duration of the project;
  3. The County Oversight Agency may choose to withhold no retainage for the duration of the project.

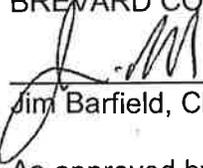
VI. RESERVATION OF AUTHORITY:

The Board reserves the right to amend or modify this Policy at any time, subject to the provisions of Section 255.05, Florida Statutes.

ATTEST:

  
\_\_\_\_\_  
Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS  
BREVARD COUNTY, FLORIDA

  
\_\_\_\_\_  
Jim Barfield, Chair

As approved by the Board: 8-23-2016