



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.19.

7/11/2023

Subject:

Proposed Revisions to Board Policy BCC-27, "Construction Contracts."

Fiscal Impact:

There is no fiscal impact to the proposed revisions to Board Policy BCC-27, "Construction Contracts."

Dept/Office:

Central Services/Purchasing Services

Requested Action:

It is requested the Board of County Commissioners adopt the proposed revisions to Board Policy BCC-27, "Construction Contracts."

Summary Explanation and Background:

The proposed revisions to Board's Policy BCC-27, "Construction Contracts" addresses the following provisions in the Policy:

- Realigns the definitions to alphabetical order.
- References are at the end of Section II, Definitions and References.
- Updates the security requirement on construction projects from \$100,000 to \$200,000. The security requirement on construction contracts hasn't been updated since November 1997.
- Added a definition for an alternative form of security to align the Policy with Section 255.05(7), Florida Statutes which permits an alternative form of security.
- Removed the Board's exemption language for projects not exceeding \$100,000 and replaced it with language that provides the Board and County Manager the right to require a form of security to be executed if it's been determined that any exemption becomes inadequate or insufficient or the Contractor fails to comply with its obligations to suppliers, materialmen, or subcontractors.
- Combined Construction Contract Change Order and Construction Change Directive and added the thresholds established in Board Policy BCC-25, "Procurement."
- Aligned In Section IV.D. performance measurements on construction projects found in Section IV.D., of the Policy to reference the language in Section 2-228(e), Brevard County Code of Ordinances.

Clerk to the Board Instructions:



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

Telephone: (321) 637-2001
Fax: (321) 264-6972
Kimberly.Powell@brevardclerk.us

July 12, 2023

MEMORANDUM

TO: Frank Abbate, County Manager

RE: Item F.19., Proposed Revisions to Board Policy BCC-27, "Construction Contracts"

The Board of County Commissioners, in regular session on July 11, 2023, adopted the proposed revisions to Board Policy BCC-27, "Construction Contracts" to address the following provisions in the Policy:

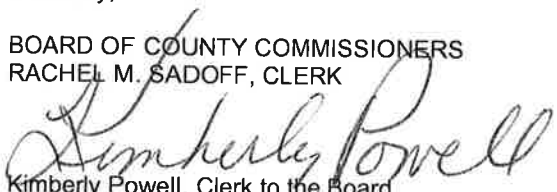
- Realigns the definitions to alphabetical order
- References are at the end of Section II, Definitions and References
- Updates the security requirement on construction projects from \$100,000 to \$200,000
- Added a definition for an alternative form of security to align the Policy with Section 255.05(7), Florida Statutes which permits an alternative form of security
- Removed the Board's exemption language for projects not exceeding \$100,000 and replaced it with language that provides the Board and County Manager the right to require a form of security to be executed if it has been determined that any exemption becomes inadequate or insufficient or the Contractor fails to comply with its obligations to suppliers, materialmen, or subcontractors
- Combined Construction Contract Change Order and Construction Change Directive and added the thresholds established in Board Policy BCC-25, "Procurement"
- Aligned in Section IV.D. performance measurements on construction projects found in Section IV.D. of the Policy to reference the language in Section 2-228(e), Brevard County Code of Ordinances.

Enclosed is the fully-executed Board Policy.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK


Kimberly Powell, Clerk to the Board

/sm

Encl. (1)

cc: County Attorney
Central Services
Purchasing



BOARD OF COUNTY COMMISSIONERS

POLICY

Number: BCC-27
Cancels: December 17, 2019
Approved: July 11, 2023
Originator: Central Services
Review: July 11, 2026

TITLE: CONSTRUCTION CONTRACTS

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 Orders 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. Definitions and References

- A. Board – Board of County Commissioners of Brevard County, Florida, a political subdivision of the State of Florida.
- B. Bid Bond – is a guarantee, from a contractor or surety company to Brevard County, that the Contractor is able to fulfill the obligations of the solicitation.
- C. Change Order – is a change to the construction contract required due to a

change in the construction documents, unforeseen conditions, change in the Scope of Work, change in the usage of the project, added value to the project, or deletion of items or areas in the project, and must be approved by the Board . The Board may delegate authority to the County Manager, Assistant County Manager or department/office director within the thresholds established in Board Policy BCC-25, "Procurement" to authorize the initiation of work described in a Change Order. A Change Order is prepared by the County and/or Project Architects/Engineers; signed by the Contractor, Project Architect/Engineer, County Oversight department/office, and the County Manager, if required, stating their agreement upon the following:

1. A change in the project's Scope of Work;
 2. A change in the usage of the project;
 3. Added value to the project.;
 4. Deletion of items or areas in the project; if any;
 5. Unforeseen conditions;
 6. The extension of the time for completion of the project;
 7. An increase/decrease in the project's contracted price.
- D. Contractor – Any person entering into a solicitation and/or 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 project.
- E. Construction Change Directive – is a change directive prepared by the County and/or Project Architect/Engineer, signed by the County Oversight department/office, and the County Manager, if required, directing an addition, deletion, or revision in the project's 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 project. 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.
- F. County – Brevard County, Florida.
- G. County Oversight Department/Office – is the County department/office with the designated responsibility of working as the representative for the County during the design and construction phases of the construction project.
- H. 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.

- I. Public Construction Bond – Bond to be executed by a Contractor and surety, specifically conditioned upon said Contractor's performance of the construction work in the time and manner prescribed in the contract and promptly making payment for all material or labor provided by the subcontractors, suppliers or laborers, or others in the completion of work prescribed in an executed contract with Brevard County
- J. Form of Security – For the performance of the construction work in the time and manner prescribed in the contract and promptly making payment to all material or labor provided by the subcontractors, suppliers or laborers, or others in the completion of work prescribed in an executed contract with the County, the Contractor may execute or provide the following form of security:
 - 1. Execute a Public Construction Bond; or
 - 2. Security in the form of cash, money order, certified check, or cashier's check, an irrevocable letter of credit or a security type listed in part II, Chapter 625, Florida Statutes.
- K. Project Architect/Engineer – is a consultant or County employee retained to design the construction project and prepare specifications.
- L. User Department/Office – is defined as the County department/office who will operate or manage the facility or infrastructure after the construction project is completed.
- M. Section 218.735, Florida Statutes – "Timely payment for purchases of construction services."
- N. Section 255.05 Florida Statutes – "Bond of contractor constructing public buildings; form; action by claimants."
- O. Section 255.05(7), Florida Statutes –
- P. Section 255.0525, Florida Statutes – "Advertising for competitive bids or proposals."
- Q. Section 255.077, Florida Statutes – "Project closeout and payment of retainage."
- R. Section 255.078, Florida Statutes – "Public construction retainage."

- S. Part II, Chapter 625, Florida Statutes – "Investments."
- T. Chapter 2, Article VII, Construction and Improvement of Public Buildings."
- U. Administrative Order AO-33, "Prompt Payment of Invoices."
- V. Administrative Order AO-45, "Post-Project Contractor and Subcontractor Evaluations."

III. Directives

FORM OF SECURITY REQUIREMENTS:

1. It is the intent of the Board that any person entering into a contract where the cost will exceed \$200,000 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 Public Construction Bond or other substitute surety as authorized in Section 255.05, Florida Statutes, as may be amended. Security provisions are considered necessary to provide assurance that the Contractor will perform the contract in the time and manner prescribed in the solicitation and/or contract and promptly make payments to all persons whose claims derive directly from the prosecution of the work provided for in the contract.

The following types of security are acceptable to the County:

- A. A Contractor may elect to execute a Public Construction Bond and must provide the County with a certified copy of the recorded bond as required by Section 255.05, Florida Statutes, as may be amended. Additionally, the Contractor must provide a copy of the bond to all subcontractors and notify them of deadlines to make claims under the bond.
- B. In lieu of a Public Construction Bond, pursuant to Section 255.05(7), Florida Statutes, as may be amended, the County has the authority to accept an alternative form of security in the form of cash, a money order, a certified check, a cashier's check, an irrevocable letter of credit or a security of a type listed in Part II, Chapter 625, Florida Statutes. Alternative form of security shall be approved by the County Attorney's Office and the County's Risk Management. Any such alternative form of surety shall contain a provision to the effect that such surety shall reimburse the County for all costs, including attorney's fees, sustained by the County because of the Contractor's default, or incurred by the County in enforcing an alternative form of security to the County. Alternative forms of security must conform to the following standards:
 - a. All alternative forms of security shall be issued by a federally or state-

chartered bank or savings and loan association doing business in Brevard County, Florida.

- b. A date of expiration at least fourteen (14) months beyond completion of the project.
- c. A business office in Brevard County, Florida at which drafts against the alternative form of security may be redeemed.

C. When a construction project doesn't exceed \$500,000, and when the Contractor elects to execute a Public Construction Bond, such bond shall be issued from a surety company meeting all requirements of Section 287.0935, Florida Statutes. 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

D. The Board and the County Manager reserve the right at any time to require a form of security to be executed or obtained if either determines that any exemption 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 and Construction Change Directives

- A. The Board hereby delegates to the County Manager, Assistant County Managers and Department/Office Directors the authority to perform the following:
 - 1. Authorize work associated with Change Orders and Construction Change Directive in any amount within the threshold established in Board Policy BCC-25, "Procurement," and when within the budgeted amount of the project;
 - 2. 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, within the threshold established in BCC-25, "Procurement," and when within the budgeted amount of the project.

3. The Board hereby delegates to the County Oversight department/office, with concurrence of the User department/office, the authority to authorize work associated with all Change Order which do not result in a change to the contract time or a change the contract amount. The County Oversight department/office may extend contract time judiciously in consultation with the User department/office if determined to be in the best interest of the County.
4. Emergency Change Orders or Construction Change Directives 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 of construction workers or the public, or endanger the environment may be approved by the County Manager as established in Board Policy BCC-25, "Procurement" or if is above the threshold established by Board Policy BCC-25, "Procurement" will be reported to the Board for ratification after-the-fact.

B. The Board directs the following:

1. Prior to initiation of work all Change Orders and Construction Change Directives, in an amount not exceeding the thresholds established by Board Policy BCC-25, "Procurement" must be authorized by the County Manager, Assistant County Managers or Department/Office Director as delegated in Section IV.A. of this Policy.
2. All Change Orders and Construction Change Directives authorized by the County Manager, Assistant County Managers or Department/Office Director, and as delegated in Section IV.A. for work to be initiated, will not require Board approval. Only those Change Orders and Construction Change Directives over the thresholds established in Board Policy BCC-25, "Procurement" will need to be brought to the Board.
3. The County Manager, Assistant County Managers or Department/Office Director shall initiate internal administrative procedures to ensure the following:
 - a. Change Orders and Construction Change Directives are certified by the County Oversight department/office and User department/office, 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 department/office and User department/office.
 - c. All Change Orders and Construction Change Directives 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 or Construction Change Directives authorized under the County Manager's, Assistant County Manager's or Department/Office Director's authority will be completed within sixty (60) days.
 - e. Impasses or disagreements among the Contractor, Project Architect/Engineer of Record and County Oversight department/office 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.
- C. The Board and County Manager reserve 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.
- D. The following performance measurements will be utilized for each project at the completion of the project: measured as it relates to compliance with project budget, schedule and specifications. Additionally, the County Oversight department/office will complete an evaluation of the Contractor's and may complete an evaluation on critical Subcontractor's performance, in accordance with Section 2-228(e), Brevard County Code of Ordinances. All evaluation records shall be copied to the party evaluated and maintained by Purchasing Services for future reference.

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 solicitation and/or Contract between the County and the Contractor:
1. A requirement of a written certification by the 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 Contractor inform Subcontractor(s) not to execute Waivers of Rights Against Public Construction Bond or alternative security unless the Subcontractor has in fact been paid.
- C. The 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 Public Construction Bond or the alternative form of security for only the previous pay request.

Notwithstanding the foregoing, pursuant to Section 255.05(11), Florida Statutes, as may be amended, when the Contractor has furnished and recorded a Public Construction 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 shall be withheld by the County Oversight department/office in accordance with Administrative Order AO-33, "Prompt Payment of Invoices."

VI. Reservation of Authority

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

ATTEST:


Rachel M. Sadoff, Clerk

BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA


Rita Pritchett, Chair

JUL 11 2023

As approved by the Board: _____



BOARD OF COUNTY COMMISSIONERS

POLICY

Number: BCC-27

Cancels: ~~August 23, 2016~~ December 17, 2019

Approved: ~~December 17, 2019~~ July 11, 2023

Originator: ~~Public~~ Works/Facilities Central Services

Review: ~~December 17, 2022~~ July 11, 2026

TITLE: CONSTRUCTION CONTRACTS

I. Objectives

A. BOND REQUIREMENTS:

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C. PAYMENT & RETAINAGE:

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II. Definitions and References

A. Board – Board of County Commissioners of Brevard County, Florida, a political subdivision of the State of Florida.

A.B. Bid Bond – is a guarantee, from a contractor or surety company to Brevard County, that the Contractor is able to fulfill the obligations of the solicitation.

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. Change Order – is a change to the construction contract required due to a change in the construction documents, unforeseen conditions, change in the Scope of Work, change in the usage of the project, added value to the project, or deletion of items or areas in the project, and must be approved by the Board of County Commissioners (Board). The Board may delegate authority to the County Manager, Assistant County Manager or Department Director/department/office director within the thresholds established in Board Policy BCC-25, "Procurement" to authorize the initiation of work described in a Change Order. A Change Order is prepared by the Owner/County and/or Project Architects/Engineers; signed by the Contractor, Project Architect/Engineer, County Oversight department/office, and the County Manager, if required, stating their agreement upon the following:

1. A change in the project's Scope of Work;
2. A change in the usage of the project;
3. Added value to the project.;
4. Deletion of items or areas in the project; if any;
5. Unforeseen conditions;
6. The extension of the time for completion of the project;
7. An increase/decrease in the project's contracted price.

D. Contractor – Any person entering into a solicitation and/or 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 project.

E. Construction Change Directive – is a change directive prepared by the Owner/County and/or Project Architect/Engineer, signed by the County Oversight department/office, and the County Manager, if required, directing an addition, deletion, or revision in the project's 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 project. 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.

F. County – Brevard County, Florida.

G. County Oversight Department/Office – is the County department/office with the designated responsibility of working as the Representative for the Board County during the design and construction phases of the construction project.

H. 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.

I. Public Construction Bond – Bond to be ~~posted-executed~~ by a Contractor and surety, specifically conditioned upon said Contractor's performance of the construction work in the time and- manner prescribed in the contract and promptly making payment for ~~properly paying for~~ all material or labor provided by the subcontractors, suppliers or laborers, 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.~~

J. Form of Security – For the performance of the construction work in the time and manner prescribed in the contract and promptly making payment to all material or labor provided by the subcontractors, suppliers or laborers, or others in the completion of work prescribed in an executed contract with the County, the Contractor may execute or provide the following form of security:

1. Execute a Public Construction Bond; or
- G.2. Security in the form of cash, money order, certified check, or cashier's check, an irrevocable letter of credit or a security type listed in part II, Chapter 625, Florida Statutes.

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 a construction bond 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 when in compliance with the criteria approved by the Board. A Change Order is prepared by the

Owner and/or Project Architects/Engineers; signed by the Contractor, Project Architect/Engineer, County Oversight Agency, and the County Manager, if required, 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, if required, 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.

K. Project Architect/Engineer – is a consultant or County employee retained to design the construction project and prepare specifications.

H.L. User Agency Department/Office – is defined as the County Department or Agency department/office 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.A. ~~Project Architect/Engineer~~ — is a consultant or employee retained to design the construction project and prepare specifications.

~~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.

M. Section 218.735, Florida Statutes – “Timely payment for purchases of construction services.”

N. Section 255.05 Florida Statutes – “Local bids and contracts for public construction works; specification of state-produced lumberBond of contractor

constructing public buildings; form; action by claimants."

O. Section 255.05(7), Florida Statutes – "In lieu of the bond requirement."

P. Section 255.0525, Florida Statutes – "Advertising for competitive bids or proposals."

Q. Section 255.077, Florida Statutes – "Project closeout and payment of retainage."

R. Section 255.078, Florida Statutes – "Public construction retainage."

S. Part II, Chapter 625, Florida Statutes – "'Investments."

T. Sections 2-226 through 2-240, Brevard County Code of Ordinances –
"Construction and Improvement of Public Buildings."Chapter 2, Article VII,
Construction and Improvement of Public Buildings."

U. Administrative Order AO-33, "Prompt Payment of Invoices."

~~K.V.~~ Administrative Order AO-45, "Post-Project Contractor and /Subcontractor
Evaluations."

III. Directives

BOND FORM OF SECURITY REQUIREMENTS:

1. It is the intent of the Board that any person entering into a contract where the cost will exceed \$~~100,000~~200,000 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 ~~construction bond~~Public Construction Bond or other substitute surety as authorized hereinin Section 255.05, Florida Statutes, as may be amended. ~~Surety~~Security provisions are considered necessary to provide assurance that the Contractor will perform the contract in the time and manner prescribed in the solicitation and/or contract and promptly make payments to all persons whose claims derive directly from the prosecution of the work provided for in the contract.

The following types of security are acceptable to the County:

- 1.A. The ~~A~~ Contractor may elect to execute a Public Construction Bond and must provide the County with a certified copy of the ~~record~~recorded the bond per Chapteras required by Section 255.05, of the Florida Statutes, as may be amended. Additionally, the Contractor must provide a copy of the bond to all subcontractors and notify them of deadlines to make claims under the bond.

~~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.~~

~~When no Construction Bond has been submitted on a project, all Contractors will 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 Public Construction 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 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.~~

2.B. In lieu of a Public Construction Bond, pursuant to Section 255.05(74), Florida Statutes, as may be amended, the County has the authority to accept an alternative form of security in the form of cash, a money order, a certified check, a cashier's check, an irrevocable letter of credit or a security of a type listed in Part II, Chapter 625, Florida Statutes. Alternative form of security shall be approved by the County Attorney's Office and the County's Risk Management. 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 alternative form of surety shall contain a provision to the effect that such surety shall reimburse the Board County for all costs, including attorney's fees, sustained by the Board County because of the Contractor's default, or incurred by the Board County in enforcing a surety's obligation an alternative form of security to the Board County. Substitute sureties Alternative forms of security must conform to the following standards:

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.

- a. All letters of credit alternative forms of security 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:
- b. A date of expiration at least fourteen (14) months beyond completion of the project.
- 1.c. A business office in Brevard County, Florida at which drafts against the alternative form of security may be presented redeemed.

- 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.~~

When no Construction Bond has been submitted on a project, all Contractors will 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 Public Construction 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 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.

- 3. ~~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.~~
- 4. ~~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.~~
- 5. ~~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.~~
- 6. ~~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 construction 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 completely 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.~~

7.C. ~~When a construction project doesn't exceed \$500,000, Required surety construction bonds and when the Contractor elects to execute a Public Construction Bond, such bond~~ shall be issued from a surety company meeting all requirements of Florida Statute Section 287.0935, Florida Statutes. 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

8.D. ~~The Board and the County Manager reserves~~ the right at any time to require a form of security-surety-construction-bond to be posted-executed or obtained if ~~it either~~ 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 and Construction Change Directives

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.A. The Board hereby delegates to the County Manager, Assistant County Managers and Department/Office Directors the authority to perform the following:

1. ~~The County Manager may authorize Authorize~~ work associated with ~~Construction Contract Change Orders and Construction Change Directive~~ in any amount ~~under \$100,000 within the threshold established in Board Policy BCC-25, "Procurement,"~~ and when within the budgeted amount of the project;
2. ~~The Assistant County Managers may authorize work associated with Construction Contract Change Orders and Construction Change Directive within the threshold established in Board Policy BCC-25, "Procurement," any amount under \$50,000 and when within the budgeted amount of the project;~~
3. ~~The Department/Office Director may authorize work associated with the Construction Change Order and Construction Change Directive within the threshold established in Board Policy BCC-25, "Procurement," any amount under \$25,000, and when within the budgeted amount of the project;~~
- 4.2. ~~The County Manager may authorize 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, within the threshold established in BCC-25, "Procurement," any amount under \$100,000, and when within the budgeted amount of the project;
5. ~~The Assistant County Managers 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, within the threshold established in BCC-25, "Procurement," any amount under \$50,000, and when within the budgeted amount of the project;~~
6. ~~The Department/Office Office Director department/office 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, within the threshold established in BCC-25, "Procurement," 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 Directive 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.~~
3. The Board hereby delegates to the County Oversight department/office, with concurrence of the User department/office, the authority to authorize work associated with all Change Order which do not result in a change to the contract time or a change the contract amount. The County Oversight department/office may extend contract time judiciously in consultation with the User department/office if determined to be in the best interest of the County.
4. Emergency Change Orders or Construction Change Directives 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 of construction workers or the public, or endanger the environment may be approved by the County Manager as established in Board Policy BCC-25, "Procurement" or if is above the threshold established by Board Policy BCC-25, "Procurement" will be reported to the Board for ratification after-the-fact.

C.B. The Board directs the following:

1. Prior to initiation of work all Change Orders and Construction Change Directives, in an amount not exceeding the thresholds established by Board Policy BCC-25, "Procurement" \$100,000, must be authorized by the County Manager, Assistant County Managers or Department/Office Director as delegated in Section IV.AB. of this Policy.
2. All Change Orders and Construction Change Directives authorized by the County Manager, Assistant County Managers or Department/Office Director, and as delegated in Section IV.BA. for work to be initiated, will not require Board approval. Only those Change Orders and Construction Change Directives \$100,000 and over the thresholds established in Board Policy BCC-25, "Procurement" will need to be brought to the Board's attention.
3. The County Manager, Assistant County Managers or Department/Office Director shall initiate internal administrative procedures to ensure the

following:

- a. Change Orders and Construction Change Directives are certified by the County Oversight Agency department/office and User Agency department/office, 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 department/office and User Agency department/office.
 - c. All Change Orders and Construction Change Directives 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 or Construction Change Directives authorized under the County Manager's, Assistant County Manager's or Department/Office Director's authority will be completed within sixty (60) days.
 - e. Impasses or disagreements among the Contractor, Project Architect/Engineer of Record and County Oversight Agency department/office 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.
- C. The Board and County Manager 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.
- D. The following performance measurements will be utilized for each project at the completion of the project: measured as it relates to compliance with project budget, schedule and specifications. Additionally, the County Oversight department/office will complete an evaluation of the Contractor's and may complete an evaluation on critical Subcontractor's performance, in accordance with Section 2-228(e), Brevard County Code of Ordinances. All evaluation records shall be copied to the party evaluated and maintained by Purchasing

Services for future reference.

~~E. The following performance measurements will be utilized for each project:~~

- ~~1. At the time of Board approval (or approved Capital Improvement Plan (CIP)) 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 solicitation and/or 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 BondPublic Construction Bond or alternative security 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, anddraw and require Subcontractor Waivers of Rights Against Payment BondPublic Construction Bond or the alternative form of security for only the previous pay request.

~~G.~~ Notwithstanding the foregoing, pursuant to Section 255.05(11), Florida ~~Statutes, when~~Statutes, as may be amended, when the Contractor has furnished and recorded a Public Construction 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~~ department/office in accordance with ~~Florida Statute Section 218.735, Florida Statutes~~ Administrative Order AO-33, "Prompt Payment of Invoices."

VI. Reservation of Authority

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

ATTEST:

BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA

~~Scott Ellis~~ Rachel M. Sadoff, Clerk ~~Brian Lober, Chairman~~ Rita Pritchett, Chair

As approved by the Board: 12/17/2019