

Revised
9-11-90

ORIGINAL

RESOLUTION NO. R-89-1178

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, ADOPTING A POLICY ON THE WAIVER OF PERFORMANCE BONDS ON CONSTRUCTION CONTRACTS OF TWO HUNDRED THOUSAND DOLLARS (\$200,000.00) OR LESS PURSUANT TO §225.05, FLORIDA STATUTES

WHEREAS, §225.05, Florida Statutes, permits counties to exempt contractors entering into contracts for construction projects of Two Hundred Thousand Dollars (\$200,000.00) or less from executing performance bonds; and

WHEREAS, the Board of County Commissioners directed staff to formulate a policy whereby the County could avail itself of the statutory bond waiver; and

WHEREAS, a committee of representatives of all affected departments of County staff was formed to study the feasibility of waiving the bond requirement and make recommendations to the Board to implement such a policy; and

WHEREAS, that committee has met on a regular basis for the past six (6) months to study all aspects and ramifications of a bond waiver policy including meeting with representatives of surety companies, owners of small businesses and other members of the local construction industry; and

WHEREAS, the committee has formulated a policy for the waiver of performance bonds pursuant to §225.05, Florida Statutes, which shall become board policy to be included in the County Administrative Code.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that it will be the policy of Palm Beach County that it may waive the requirement of performance bonds for those construction contracts of Two Hundred Thousand Dollars (\$200,000.00) or less pursuant to §225.05, Florida Statutes, and under those terms and conditions as more fully set forth in those policies and procedures in the County's Policies and Procedures Manual.

The foregoing resolution was offered by Commissioner Howard who moved its adoption. The motion was seconded by Commissioner Marcus and upon being put to a vote, the vote was as follows:

- CAROL J. ELMQUIST - AYE
- KAREN T. MARCUS - AYE
- CAROL A. ROBERTS - ABSENT
- RON HOWARD - AYE
- CAROLE PHILLIPS - NAY

BOOK 0753 288

R89 1178

The Chair thereupon declared the resolution duly passed and adopted this 13th day of June, 1989.

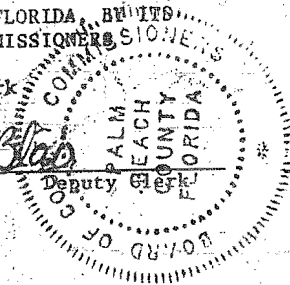
APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By Maura Cullen
County Attorney

PALM BEACH COUNTY, FLORIDA, BOARD OF COUNTY COMMISSIONERS

John B. Dunkle, Clerk

By Tina M. Blair
Deputy Clerk



(lg/Performance Bonds Res.)

R89 1178

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EXH T "B"

BONDING COMMITTEE
FINAL REPORT & RECOMMENDATIONS
MAY 25, 1989

Background:

This staff committee was formed in November 1988, to examine alternatives to the County's current policy requiring performance bonds for all construction contracts. In 1986, the County Attorney's office had sought direction from the Board of County Commissioners as to the necessity for bonding a small (approx. \$50,000) construction project for the Sheriff's Fuel Island. The Board direction to staff was to require bonding for all projects, regardless of the dollar amount of the contract. Florida State Statutes, however, permit waiver of the bond for contracts of \$200,000 or less (Ch.255.05 F.S. Attachment I). The Minority Business Study completed by Arthur Young recommended that the County examine alternatives to bonding because the bonding requirements place not only M/WBE's but also small business owners at a disadvantage in obtaining County projects due to their inability to meet the standards of the surety companies.

In the current legal environment, the County may not use race and sex-based classifications if it desires to establish alternatives to bonding. The small business classification was selected because it is a neutral criterion. However, it is expected that opening contract opportunities to more small businesses will directly provide the same opportunities to minority and women owned businesses since most of these are small.

1
R89 1178

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businesses. The statistics on the number of small businesses in Palm Beach County (Attachment II) indicate there is a large number of contractors who could be participating in the County's bid process.

In order to adequately address major policy alternatives and operating procedures, the following departments participated on this committee:

County Administration
County Attorney's Office
OFMB (Budget & Contract Administration)
OEO
Purchasing
Finance
Engineering
Water Utilities
Airports

Review and Comment:

Following are the committee's recommendations on the major policy issues and operating procedures needed to execute the recommended policies. This draft report is being submitted to community groups and to various County internal service departments for final review and comment prior to submission to the Board of County Commissioners.

Recommendations:

1. The County should adopt an alternative program to bonding in order to provide a greater opportunity for small businesses to bid on County projects.

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BOOK 0796 211

The Committee invited several small business owners to speak about the problems they've experienced in obtaining bonds. Not only do they find it difficult or impossible to secure bonds, but they also are charged a much higher premium than large, well-established companies. To further verify the process for bonding small companies, the committee heard a presentation from a local bonding agent and learned that the bonding problem is common to most small contractors. Generally a bonding company will require \$100,000 - \$200,000 in working capital, \$1 million in bonded work and a net worth of at least \$400,000 in order to issue a Class A bond. The County's bonding requirements act as a barrier to small companies who cannot meet these requirements.

2. Of the available alternatives to bonding, a bond waiver program is the recommended alternative.

The Committee examined several alternatives and selected the bond waiver program because State statutory authority already exists to waive bonding for contracts up to \$200,000, the program can be readily implemented by County staff without a large additional funding requirement, and because other governmental entities have had success with this program (Attachment III). Volusia County, for example, has had a program in place for four years, involving an estimated 55 projects with only one instance of non-performance.

R89 1178

BOOK 0795 FEB 212

Of the other available alternatives the revolving loan program was discussed; however, a legal opinion from the County Attorney's office indicates that a revolving loan program would primarily benefit the private businesses and as such the program (if funded with County dollars) would lack the primary public purpose necessary to justify the expenditure of County funds (Attachment IV). Also, this program is costly to start up and administer and does not have a direct relationship to the small contractors' inability to obtaining bonding. A HUD funded small business revolving loan program is in the initiation stage in our Community Services Department.

Increased retainage was also considered; however, small contractors who already do not have a large amount of working capital would be further disadvantaged by a higher retainage policy. The Committee discussed phased bonding but the number of projects which lend themselves to phasing is not sufficient to justify this as an overall solution for most small businesses. Finally, the Committee considered a construction monitoring program presented by RGW Associates under the auspices of the Minority Business Development Center; however, this program did not include field inspections of projects and other required administrative and management functions which the County needs in its program.

4 - R89 1178

BOOK 0793 213

3. The bond waiver program is recommended only if certain protective measures are implemented and existing procedures enhanced to minimize the County's risk:

a) A qualification approval process for all contracts must be implemented. All bidders on construction projects would be required to submit a qualifications statement. A standard qualifications questionnaire will be used by all participating County departments (Purchasing, Engineering, Airports, Water Utilities). These departments will review qualifications and conduct reference checks prior to recommending the bid award. A standard qualifications questionnaire has been developed for use by all departments. (Attachment V)

b) A non-refundable payment of 2% of the contract amount paid by the contractor at the time of contract for bond waived projects. These monies would be deposited in a trust account to be used by the County for project completion in the event of a default. The committee observed that the small businesses' problem was the inability to meet bonding requirements, not the inability to pay a reasonable bond premium. Since the County must bear some risk by waiving bonding, it seems reasonable to expect some payment to offset the risk assumed. The charge would equalize opportunities between small businesses and large businesses who generally can obtain lower bonding rates than small businesses.

c) A thorough review of payment invoices by the responsible department to insure the work is completed and is not faulty.

Although departments are currently inspecting work prior to processing invoices for payment, staff expects to have to increase the frequency of inspections to insure continuous work quality and prevent occurrences of non-payment due to faulty work. More frequent inspections are also expected to assist new contractors in identifying problems while still easily correctable.

4. The recommended structure of the bond waiver program:

a) The bond waiver would apply to all projects under \$200,000, except those projects which the Department Head, in consultation with the County Attorney and Risk Management deem to have exceptional risk and therefore would require bonding.

Ch.255.05 F.S. permits a waiver of bonding on contracts of \$200,000 or less. After considering reports from Engineering, Airports, Water Utilities and Purchasing on the total-dollar volume of contracts under \$100,000 and under \$200,000, the committee recommends the maximum waiver level allowed by Statute. Based on historical data this could provide approximately \$7 million in contracting opportunities or 5.2% of the total amount of all projects, compared to a waiver up

R89 1178

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to \$100,000 which could provide only 2.4%. (See Attachment VI for comparisons.) An example of a project with exceptional risk would be one with inherent health hazards in the event of work stoppage or faulty work i.e. some asbestos removal projects.

b) Large as well as small contractors would be able to bid on projects under \$200,000. The committee discussed the advantages and disadvantages of this approach. While some members felt large companies would receive most awards if this approach is used, the group as a whole thought small businesses would benefit and that the focus of the committee's work should be the elimination of the bonding requirement as a barrier to small companies' participation, not a limitation of competition. The committee did favor reexamining this issue after an experience analysis.

c) Waiver of the performance bond does not eliminate the requirement for a bid bond. A cashier's check will be accepted in lieu of the bid bond. At the request of several community group and business representatives, the committee considered the feasibility of accepting letters of credit in lieu of bid bonds; however, the committee is aware that standardized criteria have not been established for use of letters of credit and that the Mini-Grace Investment Task Force is examining this issue and will be making

recommendations. The bonding committee may revisit this issue depending on the Mini-Grace's recommendations.

d) The waiver program will apply to general contractors; the County will not require prime contractors to waive bonding for their subcontractors, but will encourage prime contractors to waive bond requirements in their subcontractor relationships. The waiver program will be extended to some work normally subcontracted by means of an in-house construction management program.

The decision regarding prime contractors and subcontractors was extensive in that the committee desired to find some way to have the waiver program benefit subcontractors, since so many of these are small businesses. An in-house construction management program, i.e. the County contracts directly with the electrical, plumbing and other subcontractors required for a project, appears to be the only vehicle which would extend the waiver program to subcontractors without the County assuming undue risk. Construction management is currently used by the Architectural Division to manage small County facilities construction projects. The committee recommends this as an ongoing program to open the bidding process to subcontractors. An outline of this construction management program and procedures has been submitted by Engineering for inclusion with this report. (Attachment VII)

R89 1178

0733 217

e) Bidding on projects eligible for the bond waiver will not be limited to in-County businesses.

Although the committee found that the County could legally restrict the bond waiver program to in-County businesses, a number of advantages were cited to opening the process to all bidders. Outside general contractors often use in-County subcontractors and/or hire local labor, thus expanding employment within the County. Including all bidders will further competition and may avoid the potential of price fixing. The program results will be monitored and a further analysis made whether to restrict it to in-County businesses.

f) Companies participating in the bond waiver program must successfully complete one project before receiving another award under this program. On an annual basis, companies would not be limited to any set number of projects. However, the committee felt that limiting participation to one project at a time would allow a greater number of companies the opportunity to receive contract awards and allow the County to minimize potential risk resulting from failure of any one contractor in this program.

5. Payment of Services. Delays in receipt of payment were often cited as a problem for small businesses in dealing with the

R89 1178.

County. Assistance to contractors in submitting proper documentation will be provided by the operating departments and OEO. Finance has indicated that the new Financial Management System being installed should reduce time currently required for transmittal of documentation. However, without legislative change, Board of County Commissioners approval is required for all payments on the warrant list, prior to release of checks.

6. Monitoring and Reporting. The staff committee will continue to meet monthly to review progress and to make further recommendations for program changes and/or corrective action. The program results will be monitored by the Office of Equal Opportunity. Periodic reporting is required to determine the level of participation of small businesses, including minority and women owned companies. Operating departments will be required to submit quarterly reports in a format predetermined by OEO. Semi-annual reports will be submitted by OEO to the Board of County Commissioners and will include analysis and recommendations for any needed program modifications.

387

F.S. 1987

PUBLIC PROPERTY AND PUBLICLY OWNED BUILDINGS

Ch. 255

... possess the specialized training required for the in-
... sion of fallout protection in building design and upon
... sion from the architect-engineer concerned or the
... sion of the state or local agency, provided at no cost to
... sion of the architect-engineer or agency, professional develop-
... sion of service to increase fallout protection through shel-
... sion of slanting and cost-reduction techniques.

(4) Nothing in this act shall be construed as estab-
... sion of a mandatory requirement for the incorporation of
... sion of fallout shelter in the construction of, modification of, or
... sion of addition to the public buildings concerned. It is manda-
... sion of tory however, that the incorporation of such protection
... sion of be given every consideration through acceptable shelter
... sion of slanting and cost-reduction techniques. The responsi-
... sion of ble state or local official shall determine whether cost,
... sion of or other related factors precludes or makes impractica-
... sion of ble the incorporation of fallout shelter in public buildings.
... sion of Further, the Department of Community Affairs may
... sion of waive the requirement for consideration of shelter in
... sion of those cases where presently available shelter spaces
... sion of equal or exceed the requirements of the area con-
... sion of cerned.

(5) Nothing in this act shall apply to school buildings
... sion of erected by the school board.
History.— s 1, ch. 67-66 ss 18, 35 ch 69-106 s 1 ch 69-300 s 25 ch
... sion of 67-116 s 25 ch 83-55
... sion of s 1, ch. 252 Emergency management

255.049 — Art in state buildings. —

(1) Each appropriation for the original construction
... sion of of a state building which provides public access shall in-
... sion of clude an amount of up to 0.5 percent of the total appro-
... sion of priation for the construction of the building to be used
... sion of for the acquisition of works of art produced by, but not
... sion of limited to, Florida artists or craftsmen. Those works of
... sion of art acquired shall be displayed, for viewing, in public ar-
... sion of eas in the interior or on the grounds or exterior of the
... sion of building and not in private offices or areas with limited
... sion of public access.

(2) The Department of General Services shall, in
... sion of consultation with the Florida Arts Council, determine any
... sion of construction projects which may be exempt from the
... sion of provisions of this section and shall determine the
... sion of amount to be made available for purchase of works of
... sion of art for each project. Payments therefor shall be made
... sion of from funds appropriated for fixed capital outlay accord-
... sion of ing to law.

(3) The selection and commissioning of artists or
... sion of craftsmen, the reviewing of design, and the acceptance
... sion of of works of art shall be the responsibility of the Florida
... sion of Arts Council.

(4) This section shall not apply to any funds for the
... sion of construction of public buildings if the funds were appro-
... sion of priated prior to July 1, 1979.
History.— s 1, ch. 79-166 s 125 ch 83-217

255.05 Bond of contractor constructing public
buildings; form; action by materialmen. —

(1) Any person entering into a formal contract
... sion of with the state or any county, city, or political subdivision
... sion of thereof, or other public authority, for the construction of
... sion of a public building, for the prosecution and completion of
... sion of a public work, or for repairs upon a public building or
... sion of public work, shall be required, before commencing the

work, to execute a payment and performance bond with
... sion of a surety insurer authorized to do business in this state
... sion of as surety. Such bond shall be conditioned that the con-
... sion of tractor perform the contract in the time and manner pre-
... sion of scribed in the contract and promptly make payments to
... sion of all persons defined in s. 713.01 whose claims derive di-
... sion of rectly or indirectly from the prosecution of the work pro-
... sion of vided for in the contract. Any claimant may apply to the
... sion of governmental entity having charge of the work for cop-
... sion of ies of the contract and bond and shall thereupon be fur-
... sion of nished with a certified copy of the contract and bond.
... sion of The claimant shall have a right of action against the con-
... sion of tractor and surety for the amount due him. Such action
... sion of shall not involve the public authority in any expense.
... sion of When such work is done for the state and the contract
... sion of is for \$100,000 or less, no payment and performance
... sion of bond shall be required at the discretion of the official
... sion of or board awarding such contract when such work is
... sion of done for any county, city, political subdivision, or public
... sion of authority, any person entering into such a contract
... sion of which is for \$200,000 or less may be exempted from exe-
... sion of cuting the payment and performance bond. When such
... sion of work is done for the state, the director of the Depart-
... sion of ment of General Services may delegate to state agen-
... sion of cies the authority to exempt any person entering into
... sion of such a contract amounting to more than \$100,000 but
... sion of less than \$200,000 from executing the payment and per-
... sion of formance bond. In the event such exemption is granted,
... sion of the officer or officials shall not be personally liable to per-
... sion of sons suffering loss because of granting such exemption.

(b) The Department of General Services shall adopt
... sion of rules with respect to all contracts for \$200,000 or less,
... sion of to provide.

1. Procedures for retaining up to 10 percent of each
... sion of request for payment submitted by a contractor and pro-
... sion of cedures for determining disbursements from the
... sion of amount retained on a pro rata basis to laborers, materiel-
... sion of men, and subcontractors, as defined in s. 713.01.

2. Procedures for requiring certification from labor-
... sion of ers, materialmen, and subcontractors, as defined in s.
... sion of 713.01, prior to final payment to the contractor that such
... sion of laborers, materialmen, and subcontractors have no
... sion of claims against the contractor resulting from the comple-
... sion of tion of the work provided for in the contract.

The state shall not be held liable to any laborer, materiel-
... sion of man, or subcontractor for any amounts greater than the
... sion of pro rata share as determined under this section.

(2) A claimant, except a laborer, who is not in privity
... sion of with the contractor and who has not received payment
... sion of for his labor, materials, or supplies shall, within 45 days
... sion of after beginning to furnish labor, materials, or supplies for
... sion of the prosecution of the work, furnish the contractor with
... sion of a notice that he intends to look to the bond for protec-
... sion of tion. A claimant who is not in privity with the contractor
... sion of and who has not received payment for his labor, materiel-
... sion of als, or supplies shall, within 90 days after performance
... sion of of the labor or after complete delivery of the materials
... sion of or supplies, deliver to the contractor and to the surety
... sion of written notice of the performance of the labor or delivery
... sion of of the materials or supplies and of the nonpayment. No
... sion of action for the labor, materials, or supplies may be insti-
... sion of tuted against the contractor or the surety unless both

1851

R89 1178

R89 1178

CONSTRUCTION BUSINESS IN PALM BEACH COUNTY

According to the Bureau of Labor Market Statistics, there was a total of 2,941 construction firms employing approximately 25,872 people. The actual figures are higher than this but certain very large firms are protected by nondisclosure laws and their number of employees could not be disclosed.

These statistics are derived from The Department of Labor's unemployment compensation records as of September 1988.

The following is a breakdown by Standard Industrial Code Classifications:

General Building Contractors - Residential
& Commercial (SIC 15)

<u>Firm Sizes</u>	<u>No. of Employees</u>	<u>No. of Firms</u>	<u>Total Employees</u>
* -0-		189	-0-
1	1 - 4	408	878
2	5 - 9	190	1,248
3	10 - 19	99	1,326
4	20 - 49	64	1,876
5	50 - 99	20	1,248
6	100 - 249	7	937
7	250 - 499	4	1,347
8	500 - 999	Undisclosed	?
9	1,000 - +	-0-	-0-
Total General Contractors		981	8,860

* Represents firms reporting no employees from January to March 1988.

R89 1178

CONSTRUCTION BUSINESS IN PALM BEACH COUNTY

Heavy Construction other than Building Construction including: Highways, Streets, Bridges, Tunnels, Underground Utilities. (SIC 16).

The following is a breakdown by Standard Industrial Code Classifications:

Firm Sizes	No. of Employees	No. of Firms	Total Employees
* -0-		23	-0-
1	1 - 4	46	100
2	5 - 9	30	194
3	10 - 19	30	391
4	20 - 49	29	886
5	50 - 99	7	498
6	100 - 249	10	1,406
7	250 - 499	Nondisclosed	-0-
8	500 - 999	-0-	-0-
9	1,000 - +	-0-	-0-
Total Heavy Construction		175	3,475

* Represents firms reporting no employees from January to March 1988.

R89 1178

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CONSTRUCTION BUSINESS IN PALM BEACH COUNTY

Special Trade Constructors: Plumbers, Electrical, Roofers,
etc. (Subs). (SIC 16)

The following is a breakdown by Standard Industrial Code
Classifications:

Firm Sizes	No. of Employees	No. of Firms	Total Employees
* -0-		203	-0-
1	1 - 4	757	171
2	5 - 9	372	2,475
3	10 - 19	268	3,604
4	20 - 49	152	4,396
5	50 - 99	23	1,450
6	100 - 249	10	1,441
7	250 - 499	4	1,347
8	500 - 999	-0-	-0-
9	1,000 - +	-0-	-0-
Total Subcontractors		1,785	13,537

* Represents firms reporting no employees from January to March
1988.

R89 1178

PALM BEACH COUNTY BUSINESS STATISTICS

According to the Tax Collector's office, there were 49,359 Occupational licenses applied for or renewed in the current fiscal year from Sept. 30 to the present.

The Department of Labor Market Information reports that Palm Beach County has 23,382 businesses. Those businesses that could be classified as small are as follows:

No. of Employees

1-4	11,817
5-9	4,316
10-19	2,620
20-49	1,673
	<hr/>
	20,426

R89 1178

1961

JURISDICTION WITH BONDING PROGRAMS

<u>Jurisdictions</u>	<u>Amount Waived</u>	<u>Participants</u>	<u>Written Policies</u>	<u>No. of Projects</u>	<u>Experiences</u>	
<u>COUNTIES (Cont'd.)</u>						
Hillsborough	100,000 for 1 year. Now Bond Requirement has been reinstated.	All Businesses	Yes	1	20	300 mil. CIP Program Problems with 4 Projects. Lack of performance Unable to pay suppliers Suspended program as a result. Only had Majority Contractors.
Lee	Case-by-case to \$200,000	M/WBE's	Yes		2	No Failures.
<u>CITIES</u>						
Tallahassee	\$100,000	All Businesses	Yes		40 to 50 Projects	No Defaults. Requires 5% Bid Bond Prime cannot require subs to be bonded.
Miami	\$200,000	M/WBE's	Yes		\$26.4 mil. total construction \$ 1.8 mil.-Black \$ 6.5 mil.-Hispanic	No Failures to date. 100 Bid Bond Vouchers 50 Bond Waivers per year.
Jacksonville	\$100,000	All Businesses	Yes		20 +	No Defaults.

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RPO 1179

JURISDICTION WITH BONDING PROGRAMS

<u>Jurisdictions</u>	<u>Amount Waived</u>	<u>Participants</u>	<u>Written Policies</u>	<u>No. of Projects</u>	<u>Experiences</u>
STATE AGENCIES					
Dept. of Gen. Servs. (Construction Div.) Tallahassee	\$100,000	All Businesses	Fl. Stat. 255.05	60 to 75	Good Quality Work Problems with approximately 12 to 20 projects - all related to payment of subs & suppliers. No Bid Bond required.
Florida Atlantic University	\$120,000	All Businesses	Yes	5 to 10 Valued at 10,000- 116,000	No Problems Big firms getting the work.
University of Florida	\$200,000	All Businesses	Fl. Stat. 255.05	Undisclosed	Some bad experiences - no details disclosed.
COUNTIES					
Dade	Bond Guarantee \$7 mil. avail- able.	M/WBE's	Resolution & Policies	25 Projects less than \$600,000	5% Bid Bond required 90% goes to Black Contractors 10% to Hispanics, Women, Other Very successful.
DADE COUNTY SCHOOL BOARD	\$200,000	M/WBE's	Yes	10-20 Projects per month 1.5 mil.	No Failures. Program has been in effect 3-4 years.
Volusia	\$200,000	All Businesses	None	50 to 60	1 Project Defaulted. Project is 4 years old.
Broward	\$150,000 or less/will accept Irrevoc- able Letter of Credit	All Small Businesses	Administrative Order	90 Contracts with with values under \$100,000. 60 Projects without Bonding	3 Contracts Contractors have defaulted to date on H.C.D. projects

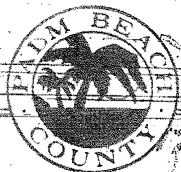
R89 1178
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APPENDIX III

Board of County Commission

Carol J. Elnquist, Chairman
Karen T. Marcus, Vice Chair
Carol A. Roberts
Ron Howard
Carole Phillips

County Attorney
Van B. Cook



ATTACHMENT IV

MEMORANDUM

DATE: April 14, 1989
TO: Jean Creamer
Assistant County Administrator
FROM: Maureen Cullen
Assistant County Attorney
RE: REVOLVING LOAN/LEGAL OPINION

This memo is written in response to the following inquiry:

Can Palm Beach County advance funds to a private entity doing business with the County as start-up costs or to a business in need of financial assistance to complete a county project through a revolving loan program?

Article VII, Section 10, of the Florida Constitution would prevent the advancement of such funds by the County to private businesses. That provision prohibits counties from giving, lending or using its taxing power or credit to aid any corporation, association, partnership or person.

Under this provision, counties, as well as the state and municipalities, are prohibited from using public funds to benefit private entities. This is clear in the case law which authorized expenditures of public funds only to those enterprises whose paramount purpose is a public one. Only where private benefit is strictly incidental to a paramount public purpose will a court approve financing from public funds. Orange County Industrial Development Authority v. State, 427 So.2d 174 (Fla. 1983).

R89 1178

An Equal Opportunity/Affirmative Action Employer
BOX 1989 WEST PALM BEACH, FLORIDA 33402-1989
(407) 355-2225 Suncom (407) 271-2225

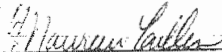
0795 227

R89 1178

Jean Creamer
Re: Revolving Loan/Legal Opinion
April 14, 1989

Page 2

It is clear that the proposed revolving loan program would primarily benefit the private businesses which are the recipients of the loan and that any benefit accruing to the County or public at large would be merely incidental to that private benefit. As such it lacks the primary public purpose necessary to justify the expenditure of public funds and therefore would conflict with Article VII, Section 10 of the Florida Constitution.


Signature

MC/lg

(lg/Creamer)

R89 1178

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Bonding File

5/25/89

DRAFT

CONTRACTOR QUALIFICATION FORM

PROJECT NAME: _____

PROJECT NO: _____

Please fill this questionnaire out completely. This form is used to qualify all contractors interested in bidding on Palm Beach County construction contracts. Additional information may be required. Failure to respond to this questionnaire may be considered non-responsive.

In order for this office to properly qualify your firm and its bid proposal for the referenced project, please provide the following information:

Performance Bonds will be waived for all contractors for amounts not exceeding \$200,000. Bid Bonds or a cashier's check for 5% of the total bid are required for all projects.

1. Legal Name and Address:

Name: _____

Address: _____

Phone: _____

City, State, Zip: _____

2. Check one: Corporation: _____ Partnership: _____

Individual: _____

3. If Corporation, state:

Date of Incorporation: _____

Date in which Incorporated: _____

R89 1178

0795 228

4. If an out-of-state Corporation, currently authorized to do business in Florida, give date of such authorization: _____

5. Name and Title of Principal Officers: _____ Date Elected _____

6. If Partnership, state:
Date of Partnership _____

Name and Address of Partners:

Please include the Partnership Agreement and all amendments.

7. If a Sole Proprietorship, state:
Name and Address of Owner:

8. List State, County or other Public Agencies in which your organization is qualified to perform work by some means of prequalification:

<u>Agency</u>	<u>Trade in which Qualified</u>	<u>Expiration Date</u>	<u>Amount Approved</u>

R89 1178

9. Has your Organization or any member been involved in any litigation or arbitration within the last ten (10) years as a result of construction contracts, including but not limited to liens, defective performance or workmanship? If yes, provide the following information for each case: (Submit attachments as necessary.)

a. Style or caption of litigation or arbitration:

b. All parties to such proceedings.

c. Names, Addresses, Telephone Numbers of Attorneys for each party.

d. Date Litigation Started:

e. Status of Case:

f. Provide explanation of each claim by and against each party. (Attachments, as necessary).

10. Have you or any principal of your company ever declared bankruptcy?

Yes _____ No _____

If yes, provide dates and particulars.

Date Reason

11. List three (3) construction related credit references.

Name Address Phone No.

R89 1178

0785-291

12. List all subsidiaries or holding companies.

13. List corporate names or business names under which each of the principals in the present corporation have done business for the last ten (10) years.

14. List major subcontractors and suppliers from your three (3) largest most recent projects.

<u>Project Name</u>	<u>Subcontr./Supp.</u>	<u>Contact</u>	<u>Phone</u>

15. State construction experience of principal members of your organization:

<u>Name</u>	<u>Title</u>	<u>Years Exper.</u>	<u>Type Work</u>	<u>Cost Range</u>	<u>In What Capacity</u>

R89 1178'

List projects under direct supervision of the assigned Project Manager and/or Superintendent. (Attachments.)

Project/Type	Size/Value	Date

(If not listed above, provide work experience of Project Manager and/or Superintendent.)

16. List licenses of key members and attach copies, including Certificate of Competency:

R89 1178

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17. LIST SIX (6) SIMILAR PROJECTS YOUR ORGANIZATION HAS COMPLETED IN THE LAST FIVE (5) YEARS. LIST SIMILAR FLORIDA PUBLIC WORKS PROJECTS FIRST.

NAME OF PROJECT _____ ADDRESS _____

OWNER _____ ADDRESS _____

PHONE # _____

ARCHITECT _____ ADDRESS _____

PHONE # _____

CONTRACT AMOUNT _____ DATE OF COMPLETION _____

WAS PROJECT COMPLETED WITHIN ALLOWED CONTRACT TIME? Yes ___ No ___

PERCENTAGE OF THE COST OF THE WORK DONE BY YOUR OWN FORCES: _____ %

NAME OF PROJECT _____ ADDRESS _____

OWNER _____ ADDRESS _____

PHONE # _____

CONTRACT AMOUNT _____ DATE OF COMPLETION _____

WAS PROJECT COMPLETED WITHIN ALLOWED CONTRACT TIME? Yes ___ No ___

PERCENTAGE OF THE COST OF THE WORK DONE BY YOUR OWN FORCES: _____ %

NAME OF PROJECT _____ ADDRESS _____

OWNER _____ ADDRESS _____

PHONE # _____

ARCHITECT _____ ADDRESS _____

PHONE # _____

CONTRACT AMOUNT _____ DATE OF COMPLETION _____

WAS PROJECT COMPLETED WITHIN ALLOWED CONTRACT TIME? YES ___ NO ___

PERCENTAGE OF THE COST OF THE WORK DONE BY YOUR OWN FORCES: _____ %

R89 1178

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17. LIST SIX (6) SIMILAR PROJECTS YOUR ORGANIZATION HAS COMPLETED IN THE LAST FIVE (5) YEARS. LIST SIMILAR FLORIDA PUBLIC WORKS PROJECTS FIRST.

NAME OF PROJECT _____ ADDRESS _____

OWNER _____ ADDRESS _____

PHONE # _____

ARCHITECT _____ ADDRESS _____

PHONE # _____

CONTRACT AMOUNT _____ DATE OF COMPLETION _____

WAS PROJECT COMPLETED WITHIN ALLOWED CONTRACT TIME? Yes ___ No ___

PERCENTAGE OF THE COST OF THE WORK DONE BY YOUR OWN FORCES: _____ %

NAME OF PROJECT _____ ADDRESS _____

OWNER _____ ADDRESS _____

PHONE # _____

CONTRACT AMOUNT _____ DATE OF COMPLETION _____

WAS PROJECT COMPLETED WITHIN ALLOWED CONTRACT TIME? Yes ___ No ___

PERCENTAGE OF THE COST OF THE WORK DONE BY YOUR OWN FORCES: _____ %

NAME OF PROJECT _____ ADDRESS _____

OWNER _____ ADDRESS _____

PHONE # _____

ARCHITECT _____ ADDRESS _____

PHONE # _____

CONTRACT AMOUNT _____ DATE OF COMPLETION _____

WAS PROJECT COMPLETED WITHIN ALLOWED CONTRACT TIME? YES ___ NO ___

PERCENTAGE OF THE COST OF THE WORK DONE BY YOUR OWN FORCES: _____ %

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18. STATUS OF CURRENT CONTRACTS
OVER \$10,000

Project Name, Location & Description, Owner Contact & Phone No.	Contract Amount	% Complete	Projected Completion Date
---	--------------------	---------------	---------------------------------

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19. What is the maximum bonding capacity (dollar amount) of your company? (N/A if not applicable.)

(a) Include the name, phone number and address of your current bonding company and any others you have used in the past five (5) years.

20. Please attach current Compiled Financial Statements prepared by an independent CPA.

R89 1178

SUPPLEMENT

For the County reporting purposes only. (Please check only one in each applicable column below, provide responses to the following questions.)

21. How many current full-time employees does the company have on payroll? # _____ employees.

Controlling Ownership of the Company

(1) <input checked="" type="checkbox"/>	(2) <input type="checkbox"/>	(3) <input type="checkbox"/>
Minority Owned _____	American Indian _____	Physical Disability _____
Women Owned _____	Asian _____	
Other _____	Black _____	(4) _____
	Hispanic _____	Female _____
	White _____	Male _____

Note: The determining factor for ownership of the company is fifty-one percent (51%) controlling interest by one or more individuals.

R89 1178

22. (For Bond Waiver Program) You must complete the following sections.

Business Asset \$ _____

Business Liability \$ _____

Personal Asset \$ _____

Personal Liability \$ _____

I certify that all information is true and accurate to the best of my knowledge.

Authorized Representative _____ Signature _____ Date _____

R89 1178

COMPARISON OF PROJECTS UNDER \$200,00
TO TOTAL PROJECTS *

Department	\$0 - 100,000	# Projects	%/ Total \$	\$100 - 200,000	# Projects	%/ Total \$	\$0 - 200,000	# Projects	%/ Total \$	Total \$ Amt. All Projects
<u>Eng.</u>										
Road Const.	\$ 770,000	11		\$1,535,000	11		\$2,305,000	22		\$ 42,875,000
Arch/Work Orders	250,000	22		111,000	1		361,000	23		858,000
Arch/ Construction	539,000	10		463,000	3		1,002,000	13		14,200,000
<u>Utilities</u>	198,000	4		140,000	1		338,000	5		59,429,000
<u>Purchasing</u>	1,381,000	35		1,602,000	11		2,983,000	46		16,139,000
	\$3,138,000	82	2.4%	\$3,851,000	27	2.9%	\$6,989,000	109	5.2%	\$133,501,000

* Annual basis

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R89 1178

ATTACHMENT VI

PROPOSED
OUTLINE OF THE ARCHITECTURAL DIVISION
CONSTRUCTION MANAGEMENT PROGRAM

Definition:

A construction management program is that group of management activities related to the review of the Architectural and Engineering program and design documents, the processing of bid packages and related management controls such as schedules, inspections and payments required during the construction phase.

Scope:

The construction manager would be involved in review of the Architectural and Engineering efforts during the planning, programming and design document preparation phase of the project. The construction manager would, through the County Purchasing Department, arrange for competitive bidding of the bid packages for the subcontract trades required for the construction of each project. Additionally, the construction manager would be responsible for ensuring that all contracts, purchase orders, insurance certificates and permits were issued as required to properly facilitate the requirements of the projects. The scheduling, coordination, inspection and monitoring of the actual construction work through the completion of the project would be the responsibility of the construction manager.

Objective:

The objective of a construction management program is to ensure the most economical and timely completion of building construction project by bidding and awarding bid packages to subcontractors and managing the project to successful completion within the time and cost limitations and to the satisfaction of the functional and quality requirements of the contract documents.

Staffing Impact:

It is presently estimated that between \$500,000.00 and \$1,000,000.00 in construction activities, which are typically handled by the Building Services Division, would be handled by the construction manager of the Architectural Division on an annual basis. To add construction management services to the Architectural Division's present responsibilities would require the upgrade of one currently vacant Building Construction Inspector II position to that of construction manager. Support services for the construction management such as consultant contractual services, design services, clerical and inspection services would be provided by the current staff of the Architectural Division.

R89 11785

11/11/89

Benefits:

Presently, I see the benefits of the proposed Architectural Division construction management program as follows:

1. Dramatically reduce the amount of work order requests for construction work currently being sent to the Building Services Division.
2. With this reduced demand on the Building Services Division for new construction and major remodeling, the Building Services Division should be more available to redirect their current personnel to preventive maintenance and upkeep of the ever increasing number of county owned facilities.
3. The current design and construction experience in the Architectural Division will be available to support the construction manager's efforts without adding additional staff.
4. The experience and involvement of the Architectural Division's construction manager will ensure a consistent high level of quality sought in all county building programs.
5. The subcontract bidding opportunities for small businesses should be greatly improved with the development of this proposed construction management program. The enhancement of this opportunity would be better realized if an alternate to the current bonding requirements are made part of this program.
6. It is estimated that direct contracts with the subcontractors will save approximately 15% of the overall project cost. This type of program is capable of producing more than \$100,000.00 in construction cost savings, thus covering the cost of the construction management program.
7. When practical and/or necessary, the construction manager will attempt to fast track projects involved in this program by utilizing advanced construction activity scheduling. It is presently estimated that projects under this program will be able to start ten (10) weeks earlier than typical construction projects.

Procedures:

The actual procedures and implementation plan for the Construction Management Program will be developed by the Architectural Division, according to MBO-8901, after conceptual approval.

R89 1178

6/13/89

2:00 SPECIAL ITEM

PROGRAM BUDGET ESTIMATES FOR FY'90

EXHIBIT "C"

Engineering: Request is for one full-time position of Construction Manager to supervise the proposed construction management program.

Salaries (1 Const. Mgr.)	29,261
FICA	2,227
Retirement	4,372
Life & Health Insurance	2,175
Worker's Compensation	500
Travel & Per Diem	403
Registration	550
Communications	500
Office Equipment & Furniture	1,247
Operating Supplies	150
Leasehold Improvements	2,000
	<u>43,385 (12 mos.)</u>

Office of Equal Opportunity: Request is for two full-time position(s) and computer hardware and software to provide training to small businesses (including minority and women owned businesses) and to implement a monitoring and reporting system for the County's bond waiver program.

Salaries (1 Secty. & 1 Technician)	36,260
FICA	2,760
Retirement	5,415
Life & Health Insurance	4,350
Worker's Compensation	1,000
Training	10,000
Communications	2,900
Postage	2,375
Office Equipment & Furniture	1,975
Office Supplies	2,000
Printing	2,830
Data Processing Software & Accessories	1,735
Machinery & Equipment	1,800
Data Processing Software	700
Data Processing Hardware	9,000
	<u>85,100 (12 mos.)</u>

R89 1178

0736-243

JA-1

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

H-10
5-0

Consent [] Regular [X] Ordinance [] Public Hearing []

I. EXECUTIVE BRIEF

Request Submitted By: Administration
Department

For: Department

Motion and Title: Staff recommends motion to approve: Revisions to the Bond Waiver Program Policies and Procedures. **SUMMARY:** Resolution R-89-1178 implemented the waiver of performance bond requirements for construction contracts of \$200,000 or less as permitted by Ch. 255.05 F.S. Based on input from minority groups and contractors regarding certain program provisions, the staff committee is recommending changes to the policies and procedures pertaining to financial statements, the two percent fee, the bid bond and limitations on the number of projects.

Background and Justification: The Bond Waiver Committee, which includes representatives from OEO, OFMB, Engineering (Roads), Architecture, County Attorney and Administration, held several meetings with minority groups and construction industry representatives to hear concerns about some of the policies and procedures currently in effect for the Bond Waiver Program. Briefly, the problems these groups outlined were the following:

1. **Financial Statements:** Current policy requires the low bidder to submit a financial statement. Some low bidders have not provided the financial statements because either a) it is too costly for a small company or b) the companies feel that their financial position should be proprietary information.

The staff committee discussed the possibility of not requiring any financial information from bidders but rejected that alternative because small companies' previous experience may be too limited to qualify them for County projects. In those instances, having financial information does assist County staff in their determination of a company's capability. The staff committee recommends that some type of financial information be provided by the low bidder for most bond-waived projects. Detailed recommendations are shown in Attachment A.

2. **Two Percent Fee:** Current policy requires the low bidder to pay a two percent fee at the time of contract. The small business owners advised staff that the two percent fee is a disadvantage because they cannot afford to pay money to the County at the beginning of a project. The large companies objected to the two percent fee on the grounds that they could provide a performance bond at a lesser cost than the two percent fee.

(Continued on page 3)

Attachments:

- A. Summary of Proposed Changes to Bond Waiver Program

(SEE PAGE 2 FOR OFMB/PREM COMMENTS.)

Recommended by:	<u>Jean Creamer</u>	8/28/90
	Department Director	Date
Reviewed by:	<u>Richard Roberts</u>	8/28/90
	OFMB Signature	Date
Legal Sufficiency:	<u>Van B. Cook</u>	8/30/90
	County Attorney	Date
Approved by:	<u>Jean Creamer</u>	8/31/90
	Assistant County Administrator	Date

R 89-1178
Book 0796 P 243 (A)

II. FISCAL IMPACT ANALYSIS (To be completed by the submitting agency)

Five Year Summary of Fiscal Impact:

Fiscal Years	19__	19__	19__	19__	19__
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
Operating Revenues	_____	_____	_____	_____	_____
Is Item Included In Current Budget?	Yes		No		
Budget Account No.:	Fund _____	Agency _____	Org. _____	Object _____	
	Reporting Category _____				

Recommended Sources of Funds/Summary of Fiscal Impact:

III. REVIEW COMMENTS:

OFMB Comments:

Fiscal:

Contract Administration:

PREM: Real Estate Transactions only:

OTHER:

REVISED 10/89
ADM FORM 01

(THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.)

2

R-89-1178

Book 0796 P 243 (B)

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Background and Justification (Continued):

The staff committee weighed both groups' objections and recommends that the two percent of project cost be handled as an internal transfer between the project budget and the special trust fund set up to handle any defaults under this program. In this way, the two percent will not be passed through the bid proposals at all. Since both large and small contractors will be bidding pure contract costs, neither group should feel disadvantaged by this solution.

3. One Project at a Time: Current policy requires a contractor to complete one project under the bond waiver program before receiving another bid award. Small contractors told staff this limitation severely restricts their ability to bid on several small projects. The Architectural Division reported that some small contractors were capable of handling several small projects at a time.

Since the original emphasis of the committee was to protect the County from having one bidder with many projects default on all of them, the committee wanted to retain some control over the County's exposure. The recommendation, therefore, is to allow one contractor an aggregate of \$200,000 in projects, not to exceed four contracts, at a time. The amount will be calculated by adding the amount of uncompleted work on current projects to the bid amounts on new projects.

4. Bid Bond: Current policy requires each bidder to submit a bid bond or cashier's check in the amount of five percent of the bid amount. Small businesses told staff they cannot afford to tie up five percent of their cash in order to bid a County project. They also cannot provide a bid bond since it is normally purchased with a performance bond. If the company cannot obtain a performance bond, they cannot obtain a bid bond either.

The staff committee felt the County has other means to deal with a low bidder who receives the award and then refuses to hold his price and execute the contract. The recommendation is to permit a disqualification of that bidder from the bond waived projects for a period of one year.

5. Payment Bond: A performance bond generally includes a payment bond which protects subcontractors by paying them if the general contractor defaults. The AGC has pointed out that, by not requiring a performance bond, the County is exposing subcontractors to non-payment.

The staff committee agreed that some leverage is available to insure payment to subcontractors. Evidence of non-payment to subcontractors can be considered by the County in qualifying bidders for future projects.

The above staff recommendations have been shared with the interested groups and it appears they are satisfied with staff's recommendations. A summary of these is in Attachment A.

R-89-1178

BOOK 0796 P 243(c)

SUMMARY OF PROPOSED CHANGES TO
BOND WAIVER PROGRAM

CURRENT PROVISIONS

PROPOSED CHANGES

1. Compiled financial statements: A current Compiled Financial Statement prepared by an independent CPA must be submitted by every vendor in order to qualify for a bond-waived project under \$200,000.
- 1.a. No financial statement will be required for bond-waived projects under \$50,000; however, these will still be limited to one project at a time. (See 3.b. below)
- b. For projects between ~~\$150,000~~ \$50,000 and \$200,000, the low bidder will have 72 hours after notification of low bid from the user department to provide either an annual compiled financial statement for the most recent fiscal year, or provide one or more of the following:
- 1) Verification of a line of credit equivalent to 30% of the contract amount from an acceptable financial institution. An acceptable institution is one which has a minimum "peer group" rating of 50 in the latest Sheshunoff Quarterly Listing or a minimum rating of 125 in the latest IDC Bank Financial Quarterly Listing.
 - 2) Letter from a bonding company attesting to the bidder's bonding capacity.
 - 3) Pre-qualification letter from D.O.T.
 - 4) Pre-qualification letter from Palm Beach County School Board.
 - 5) An acceptable Dun & Bradstreet rating.
2. Two Percent Fee: A non-refundable payment of 2% of the contract amount must be paid by the low bidder at the time of contract for a bond-waived project. These monies are deposited in a trust account to be used by the County for project completion in the event of a default.
2. The two percent fee will no longer be assessed the low bidder. An internal charge off of 2% of the project cost will be made from the project budget to the same trust account already established for this purpose.

R-89-1178
Book 0796 P243(D)

3. Project Limit: Contractors participating in the bond waiver program must successfully complete one project before receiving another bid award under this program.

3.a. Under the bond waiver program, a contractor will be permitted to contract up to an aggregate amount of \$200,000, not to exceed four contracts, inclusive of change orders.

b. For projects under \$50,000, the waiver of the requirement for financial information will only be granted for one project at a time. The contractor's current bond waived project must be substantially complete before the contractor is awarded another project under \$50,000, unless financial information is provided.

4. Bid Bond: A bid bond is required; a cashier's check in the amount of five percent of the bid is accepted in lieu of a bid bond.

M. The bid bond will no longer be required for projects under \$200,000. If a bidder fails to execute a contract for the project, and cannot show an error in his bid estimate, the bidder may be disqualified from bidding on future projects for a period of one year.

R-89-1178

BOOK 0796 P 243(E)