TO:	**ALL COUNTY PERSONNEL**
FROM:	**ROBERT WEISMAN** **COUNTY ADMINISTRATOR**
PREPARED BY:	**FACILITIES DEVELOPMENT & OPERATIONS**
SUBJECT:	**BOND WAIVER PROGRAM**
PPM#:	**CW-F-016**

ISSUE DATE	**EFFECTIVE DATE**
April 3, 2013	April 3, 2013

PURPOSE:

To establish policy and procedures for a County Bond Waiver Program. The Program will be open to any business performing construction contracts of $200,000 or less. In lieu of a bond for a project less than $200,000, special procedures will apply regarding subcontractors and supplier payments.

UPDATES:

Future updates to this PPM will be the responsibility of the Director of Facilities Development & Operations.

AUTHORITY:

— Section 255.05(1)(d), Florida Statutes
— Palm Beach County Purchasing Ordinance
— Palm Beach County Small Business Ordinance

DEFINITIONS:

1. **Bidder:** A contractor submitting a bid in response to an Invitation to Bid issued by the County.
2. **Bid Security**: A pledge in the form of, at Bidder's option, a cashier's check, certified check, money order or Bid Bond in favor of the County, that Bidder will enter into a contract with the County on the terms stated in its Bid and will furnish payment and performance bonds.
3. **Bond**: A bond is a non-cancelable commitment issued by a surety to the owner of the project guaranteeing that the contractor will complete the bid or contract within its set terms and conditions.

BACKGROUND:

Florida Statutes requires that a payment and performance bond be provided for the construction of or renovation to any publicly owned facility, but also permits the waiver of bond when a County, political subdivision or public authority enters into a contract for $200,000 or less. The Palm Beach County Board of County Commissioners approved the waiver of bonds on construction projects of $200,000 or less. Resolution R-89-1178 was adopted on June 13, 1989, and PPM CW-F-016 was issued to implement the policy on November 1, 1989.

POLICY:

It is the policy of the Palm Beach County Board of County Commissioners to eliminate the barriers that impede the accessibility to government contracts by small businesses. It is the goal of Palm Beach County to provide construction opportunities for all businesses, thereby creating a more competitive business environment.

PROCEDURES:

A. Every request for bid from the Engineering Department, Facilities Development & Operations, Department of Airports, Water Utilities, or Environmental Resource Management with an estimated cost of $250,000 or less will contain provisions consistent with this PPM for the waiver of bonding requirements (Bond Waiver Projects), unless the Department requesting the bid deems the project to have exceptional risk or a bond is required by state or federal regulations.

B. The following project types with costs less than $200,000 do not require a bond and are exempt from the bond waiver requirements of this PPM:

   1. Projects with a value of less than $50,000.
   2. Projects in which there are no subcontractors or suppliers greater than $2500.
   3. Projects with durations of 30 days or less and where the contract does not provide for progress payments.
   4. Projects less than $200,000 which are awarded through the Construction Manager continuing services contracts provided the Construction Manager is bonded for single projects greater than $10,000,000.

C. Any Palm Beach County or State of Florida contractor holding the required licenses is eligible to submit a bid proposal for a Bond Waiver Project. The company need not be located in Palm Beach County to qualify for a Bond Waiver Project. Bond Waivers are open to any qualified firm. There is no company size or gross sale ceiling for the Bond Waiver Program. The Bond Waiver shall be extended by the prime contractor to the subcontractors hired by the prime contractor.

D. Bidding

Bond Waiver Projects shall be bid on the following basis:

1. Bid documents for projects that are estimated at $250,000 or less shall:

   (a) contain language similar to the following:

   "Bid Security is not required for bids of less than $50,000 and will be waived for all other bids of less than $200,000 if the bidder is going to participate in the Bond Waiver Program, provided bidder complies with Palm Beach County Resolution R-89-1178 and Palm Beach County Policies and Procedures relative to the Bond Waiver Program. For bids with values between $50,000 and $200,000, the bidder must complete an affidavit entitled "Intent to Participate in Bond Waiver Program Bid Affidavit" or provide a Bid Security. Failure to provide a Bid Security or complete and return this affidavit shall result in rejection of bid. The affidavit can be obtained from the Facilities Development & Operations Department. For all contracts less than $200,000, the Public Construction Bond will be waived as well, provided bidder complies with Palm Beach County Resolution R-89-1178 and Palm Beach County Policies and Procedures relative to the Bond Waiver Program. Copies of the requirements of the Bond Waiver Program may be obtained from the Facilities Development and Operations Department." ; and

   (b) include Attachment A "Intent to Participate in Bond Waiver Program Bid Affidavit"

2. Bids are evaluated per the Department's normal process.

3. Once the recommended awardee is determined, concurrent with the Notice of Intent, a bidder submitting a bid less than $200,000 is given two options:

(a) The bidder may provide the County a performance bond and payment bond in accordance with existing County policy. Should this option be elected, the County shall increase the contract price to include the costs of the performance bond and payment bond up to a total amount not to exceed 2% of the bid price. Such amount may be included in the first available draw in which proof of the cost and actual payment for the performance bond and payment bond is available.

In those cases where an acceptable bond is provided, the other provisions of this procedure are inapplicable, including the joint check procedures.

(b) In the alternative, the bidder may elect to complete and submit the Contractor Qualification Form *(see Attachment B)* to the County within seventy-two (72) consecutive hours after receipt by the bidder of the form from the County, if such information has not been previously submitted as part of the bid. If the bidder is

determined to be not qualified for the Bond Waiver Program, then the bidder must provide a payment and performance bond (option a).

4. In either of the above cases, the project will be awarded to the lowest responsive and responsible bidder on the bid price submitted, excluding the not-to-exceed 2% performance/payment bond amount.

E. Bond Waived Projects – Special Procedures

1. The successful Contractor must provide written notice to its subcontractors and suppliers that the project will be performed under the Palm Beach County Bond Waiver Program. Evidence of such notice shall be in the form of a notarized statement signed by each subcontractor and/or supplier *(see Attachment C)* indicating that said notice was received, and shall be given to the County at the time of the pre-work meeting or within twenty (20) days of receipt of the contract, whichever comes first.

2. Unless otherwise required by the County, the Contractor shall provide a list signed and dated by the Contractor, including name, address, and telephone number of all subcontractors and material suppliers greater than $2500, and contract value to the County Project Manager within seven (7) days of his/her receiving the notice to proceed with the work. This list shall be revised due to additions, deletions, or substitutions of any subcontractor or material suppliers, and shall be submitted to the Project Manager within seven (7) days of such additions, deletions or substitutions.

3. Final payment shall not be made until those subcontractors who have submitted notices as provided in Paragraph 2 above have supplied the County with signed and dated statements that they have no claims against the Contractor for the work under the contract. Said statement shall identify the project by name and project number.

4. In the case of default by the Contractor on a project where the bond has been waived pursuant to this PPM, the suppliers and subcontractors who have provided the County with a Notice to Owner prior to default and are making claims against the Contractor for unpaid bills will be paid from the project retainage on a pro rata basis as follows: The sum of all claims made against the Contractor shall be divided into each individual claim, thereby deriving a percentage value for each claim. The total retainage will then be multiplied by the percentage value and the result shall be the pro rata share of the retainage to be paid to each claimant; however, the payment shall not exceed the amount of the claim. Subcontractors on projects exempt pursuant to B.3. shall be eligible to make claims pursuant to this subsection.

F. Joint Check Procedure for Subcontractors/Suppliers

1. This subsection of the PPM will apply only to "bond waived" contracts issued under this PPM.

    1. The subcontractor list to be provided under Section B(2) will identify all suppliers and subcontractors whose charges for work to be performed on the contract are estimated at $2,500 or greater.

    2. With each pay request, the Contractor will separately identify any amounts claimed for work or services provided by subcontractors/suppliers. In addition, the Contractor will submit a fully executed Joint Check Disbursement Form *(see Attachment D)* which indicates that the Contractor and each of his subcontractors/suppliers who provided a service to the Contractor are in agreement with the payment amount for the specific pay request.

    3. The responsible Department will use reasonable efforts when verifying and approving invoices to determine if work by the subcontractors/suppliers have been properly listed and identified. Invoices will otherwise be reviewed and approved in the normal manner.

    4. The responsible Department will provide Finance with a signed summary of each pay request *(see Attachment E)*

    5. The total retainage authorized by the contract will be withheld from the payments due to the Prime Contractor.

    6. Checks will be made payable to the Prime and appropriate subcontractor/supplier. Checks will be delivered to the Prime for distribution.

G. Bond Waiver Reserve Fund

1. Upon award of each Bond Waiver Contract (unless bond has actually been provided as authorized in Section A.3a above), the Department will charge the project 2% of the contract price (and any subsequent increase thereto) and transfer by Journal Voucher these funds to the Bond Waiver Reserve Fund. This charge will not be applied when the Fund 1261 balance exceeds $400,000.

2. A Bond Waiver Reserve Fund (1261) to which the transfer will be credited has been established in the financial system. This fund will be available solely to fund excess costs incurred by the contracting department as a result of the default of any unbonded contractors under this program, when authorized by the Board of County Commissioners.

H. Miscellaneous

1. A contractor may have up to four (4) bond waived contracts with Palm Beach County not to exceed a cumulative contract amount of $200,000 at any one time, subject to satisfactory performance on the projects. If a contractor submits a bid which brings its cumulative contract amount to over $200,000, he may not participate further in the Bond Waiver Program and will be required to furnish a Bond.

2. A contractor may only have one project at a time that is less than $50,000 for which financial information from the contractor is waived.

3. Default or unsatisfactory performance under a bonded or bond-wavier project, as determined by the head of the contracting department, shall be reasonable grounds to suspend or debar a bidder from participation in the Bond Waiver Program consistent with the provision of Section 2.54(e) of the Palm Beach County Code.

4. In the event of the base bid and selective alternatives to the base bid which are estimated to increase the contract amount to over the $200,000 limit, a performance/payment bond will be required. If a bidder submits a bid proposal over $200,000 for a bond waiver project, he/she must be bonded for the total amount.

5. In the event of additive change orders to the base bid increasing the contract amount over the $200,000 limit, the project will continue to be exempt from bonding.

DEPARTMENT RESPONSIBILITIES

A. COUNTY ADMINISTRATOR'S OFFICE

The County Administrator's office shall be responsible for the overall direction and coordination of the Bond Waiver Program.

B. CONTRACTING DEPARTMENTS

Each contracting department will be responsible for all project information, including bond waiver information for the projects. The contracting department will be responsible for reviewing the qualifications and eligibility of each contractor for the purpose of award and assuring compliance with this PPM.

C. FACILITIES DEVELOPMENT & OPERATIONS (FDO)

Fund 1261 shall be managed by FDO on behalf of all contracting departments. Any transfers to projects from this fund will require Board of County Commission approval.

D. OFFICE OF FINANCIAL MANAGEMENT AND BUDGET (OFMB)

OFMB shall be responsible for reviewing the financial statements of the contractors participating in the bond waiver program and determining financial capability of a contractor.

ATTACHMENTS

A. Intent to Participate in Bond Waiver Program Bid Affidavit
B. Contractor Qualification Form
C. Notice to Subcontractor/Supplier that project is not bonded
D. Joint Check Disbursement Form
E. Summary Joint Check Disbursement

ROBERT WEISMAN
COUNTY ADMINISTRATOR

Supersession History:

1. PPM CW-F-016, dated 11/01/89
2. PPM CW-F-016, dated 05/01/93
3. PPM CW-F-016, dated 08/27/01
4. PPM CW-F-016, dated 03/17/03
5. PPM CW-F-016, dated 06/15/2011

INTENT TO PARTICIPATE IN BOND WAIVER PROGRAM
BID AFFIDAVIT

PROJECT NUMBER: _____

If the contractor intends on participating in the Bond Wavier Program, this form must be completed in its entirety and returned with the Contractor's bid. ***FAILURE TO COMPLETE THIS FORM OR INCLUDE A BID SECURITY FOR PROJECTS WITH VALUES BETWEEN $50,000 AND $200,000, SHALL RESULT IN REJECTION OF YOUR BID.***

_____ (Name of Bidder) hereby states that it intends on participating in the Bond Waiver Program as described in Palm Beach County Resolution R-89-1178 and Palm Beach County Policies and Procedures.

_____
Signature of Contractor

_____
Title

State of _____
County of _____

Subscribed and Sworn to (or affirmed) before me on this _____ day of _____, 20__ by _____ who is personally known to me or has presented _____(type of identification) as identification.

_____
Notary Public Signature and Seal
Print Notary Name and Commission Number

CONTRACTOR QUALIFICATION FORM

Contractor: _____

Contact Person: _____

Address: _____

_____

Phone No.: _____

Fax No.: _____

Email: _____

I. CONTRACTOR'S BUSINESS INFORMATION

Check if:

☐ Corporation ☐ Joint Venture ☐LLC
☐ Partnership ☐ Sole Proprietorship

Has your firm or any of its principals ever filed for Bankruptcy? ☐ Yes ☐ No

If yes, attach a full explanation of the circumstances including date filed, case number and current status.

If Corporation:

State and Date of Incorporation: _____

Name Incorporated Under: _____

Name and Title of Officer(s): _____

If Partnership:

State and Date of Organization: _____

Name of all Partners: _____

_____

_____

Type of Partnership:

☐ General ☐ Publicly Held
☐ Limited ☐ Other (describe)_____

List all Subsidiaries or Holding Companies:

_____

_____

_____

_____

If Joint Venture:

State and Date of Organization: _____

Name, address, and form of organization of joint venture partners. The percentage of the joint venture responsibility is to be shown for each partner. Submit evidence of joint venture's current certification and license number.

If joint venture has not received license as a joint venture, proof that an application has been submitted to the Department of Professional Regulation for licensure must be included with the pre-qualification questionnaire. Proof of receipt of appropriate license as a joint venture will be required at the time of Bid Opening. Failure to produce a valid license at the time of Bid Opening may result in the Bid being considered non-responsive.

If Sole Proprietorship or LLC:

State and Date of Organization: _____

Name of address of all Owner(s):_____

II. INSURANCE REQUIREMENTS

Furnish to the Department certificates of insurance evidencing the existence of current valid, and binding insurance policies for the limits and coverage in accordance with the requirements delineated in the General Conditions, where such insurance is to be provided by Contractor, or as otherwise modified within the Contract Documents, together with a declaration of deductible amounts applicable to each type of insurance provided, acceptable to the County.

III. EXPERIENCE

A. Attached Schedule A listing a minimum of three (3) of the largest projects completed within the last two (2) years where a project was completed by your firm.

B. Attach Schedule B listing all current projects that are over $5,000.00 (Five Thousand Dollars) value contract amount and are active by your firm. Use this form to show all previous work performed for Palm Beach County, or any other municipality in the past five (5) years.

C. Attach Schedule C stating Key Personnel job experience and role assumed when working on County projects.

IV. LITIGATION

A. List any current and pending litigation, arbitration and/or administrative proceedings initiated by or brought against your firm or qualifying agent(s) within the last (10) years as a result of related matters, including but not limited to liens, delays, defective performance or workmanship. Said information must include project name, presiding court, plaintiff and defendant, and case number.

B. List any judgments for or against your firm(s) during the past five (5) years involving litigations with an Owner regarding construction matters including, but not limited to, mechanics liens, warranty, delay, negligence, or bonds. State project name and location, judgment amount, presiding court, plaintiff, defendant, and case number.

V. FINANCIAL

Provide a list with name, address and telephone number of the firm's principal banking institution, and include three (3) business-related credit references.

VI. ACCOUNTING AND FINANCIAL REPORTING

Federal Tax ID No.: _____

Social Security No. (if bidding as a proprietorship): _____

Provide one of the following forms of financial information:

A. Annual compiled Financial Statements for the most recent fiscal year.

Preparer's Name: _____

Preparer's Address: _____

_____

Preparer Phone No.: _____

Preparer Fax No.: _____

☐ CPA ☐ Other (describe)_____
☐ Public Accountant

How many years has the firm prepared your financial statements? _____

How many years has the firm prepared your tax returns? _____

Fiscal Year End Date:_____

The statement is prepared: ☐ Partially audited ☐ Fully audited (unqualified)

☐ Review basis ☐ Compilation basis

Are interim statements prepared? ☐ Yes ☐ No

If yes, how often? ☐ Monthly ☐ Quarterly ☐ Semi-Annually

Basis of preparation, if different than fiscal. _____

Have your operations been profitable since the last statement date? ☐ Yes ☐ No

Are taxes current: ☐ Yes ☐ No Any tax liens? ☐ Yes ☐ No

Have there been any major changes in your financial condition since last statement date with respect to:

☐ Ownership ☐ Major loans or refinancing
☐ Withdrawals ☐ Major equipment purchases or leases
☐ Other (describe)_____

If so, describe:_____

_____

_____

B. 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 Thomson Reuters Bank Insight Quarterly Listing, or a minimum rating of 125 in the latest IDC Bank Financial Quarterly Listing.

C. An acceptable Dunn & Bradstreet rating.

In accordance with Florida Statute 119.07(3), any financial statement which the County requires a prospective bidder to submit, in order to pre-qualify for bidding or for responding to a proposal for a road or any other Public Works project, is confidential and exempt from the provisions of the Florida Public Records Statute.

D. Letter from Contractor's Surety attesting to bidder's bonding capacity.

E. Pre-qualification letter from another government entity.

VII. LICENSURE

A. List one or more of your firm's current licenses, as follows:

LICENSE NUMBER	ISSUING AGENCY
_____	_____
_____	_____
_____	_____
_____	_____

B. List and attach copies of all licenses (including those listed above, in VII. A.) and certificates of competency possessed by key members of the firm including the qualifying agent(s).

VIII. REGULATORY FINES

A. List any current and pending regulatory fines, arbitration and/or administrative proceedings initiated by or brought against your firm or qualifying agent(s) within the last ten (10) years, including but not limited to liens, delays, defective performance or workmanship. Said information must include project name, presiding court, case number, names of regulatory agency and defendant.

B. List any regulatory judgments for or against your firm(s) during the past five (5) years involving a regulatory agency. State project name and location, action, judgment amount, presiding court, case number, names of regulatory agency and defendant.

CERTIFICATION:

STATE OF _____

COUNTY OF _____

I, the undersigned authority, hereby certify that the information submitted herewith, including any attachment hereto, is true and accurate to the best of my knowledge and belief under perjury of law.

By: _____
Print Name

_____
Signature

_____
Title

_____
Date

Witness: _____
Print Name

_____
Signature

_____
Date

State of _____
County of _____

Subscribed and Sworn to (or affirmed) before me on this _____ day of _____, 20__ by _____ who is personally known to me or has presented _____(type of identification) as identification.

_____
Notary Public Signature and Seal
Print Notary Name and Commission Number

MINIMUM CRITERIA TO BE USED IN PRE-QUALIFING CONTRACTORS

I. CONTRACTOR'S BUSINESS INFORMATION

No Minimum Criteria as to type of business is required other than possessing the requisite licensure as provided by Section 287.055, Florida Statutes and local regulations to perform the specific work required by these documents.

II. INSURANCE

Must provide evidence of required insurance.

III. EXPERIENCE

A. Submit experience records demonstrating a minimum of five (5) years experience as a Contractor.

IV. LITIGATION

The firm(s) must:

A. Not be involved in current or pending litigation which is likely to have a material negative impact on their ability to execute this project.

B. Not display an undesirable pattern of construction related litigation with project Owners.

V. FINANCIAL

The firm(s) must provide evidence of adequate financial stability and resources to execute the work.

VI. LICENSURE

The firm must possess a valid License pursuant to Florida Statute Chapter 489.

VII. REGULATORY FINES

The firm(s) must:

A. Not be involved in current or pending litigation which is likely to have a material negative impact on their ability to execute this project.

B. Not display an undesirable pattern of regulatory judgments.

PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS

Request for Qualifications (RFQ)

Schedule A: Relevant Project Experience

Note: Please provide one (1) form Schedule A per project. Include at least the three (3) largest projects completed in the last two (2) years. Duplicate form as necessary.

Project Title: _____

Project Type: _____

Location: _____

Total Dollar Value: _____

Scheduled State Date	Scheduled Completion Date	Actual Completion Date
_____	_____	_____

Name: _____ _____

Address: _____ _____

_____ _____

Phone: _____ _____

Other contacts (specify name, organization, address, and phone number):

_____

_____

_____

Brief description of project scope and type of work:

_____

_____

_____

PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS
Request for Qualifications (RFQ)

Schedule B: Current Status

List all current projects over a Five Thousand Dollar ($5,000.00) amount that are active by your firm. If you have done work for Palm Beach County in the past five (5) years, or another municipality, use this form to show that work, regardless of the dollar amount. Duplicate form as necessary.

Project Title	*Dollar Amount*	*Work Type*	*Start/ Completion Date*	*Contact Person/ Phone No.*

PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS
Request for Qualifications (RFQ)

Schedule C: Key Personnel

Note: Attach a copy of the resume for each key personnel. Duplicate form as necessary.

Name:_____

Proposed Role:_____

Years of experience performing in a similar role:_____ Locally available: ☐ Yes ☐ No

Years with your organization:_____ Number of hours employed weekly:_____

Educational background/Special Training/Certifications/Licenses:

_____

_____

_____

Experience: Describe experience, list projects performed where key personnel had a similar role as that proposed. Indicate the name of the project, the dollar value of the project, owner, and brief description of role in the project. Attach additional sheets as necessary.

Project:_____

Owner:_____ Contract Dollar Amount:_____

Description of role in project:_____

_____

_____

Project:_____

Owner:_____ Contract Dollar Amount:_____

Description of role in project:_____

_____

_____

NOTICE TO SUBCONTRACTORS/SUPPLIERS
THAT PROJECT IS NOT BONDED

To: Palm Beach County, _____ Department/Division.

Re: Project No._____Project Name:_____

I, _____ in my capacity as _____,
Representative of Subcontractor/Supplier Title

Hereby acknowledge receipt of notice from _____ that
General Contractor

this project is being performed under Palm Beach County's Bond Waiver Program. I understand that the General Contractor is not required to obtain a payment bond. It is also understood that if the General Contractor fails to make appropriate periodic payments to any Subcontractor/Supplier, that Subcontractor/Supplier should notify the Palm Beach County contracting Department/Division in writing of the non-payment indicating the project number, title, and amount owed.

If one or more notices are received on any one project, the contracting Department/Division may withhold payment to the General Contractor until the payment(s) in question is/are made, and proof of such payment is submitted to the contracting Department/Division.

Subcontractor/Supplier:

Name: _____

Title: _____

Company: _____

State of _____
County of _____

Subscribed and Sworn to (or affirmed) before me on this _____ day of _____, 20__ by _
_____ who is personally known to me or has presented _____
_____(type of identification) as identification.

_____
Notary Public Signature and Seal
Print Notary Name and Commission Number

JOINT CHECK DISBURSEMENT

Date:_____

Re: Project No._____ Project Name:_____

TO APPLY TO ESTIMATE NO._____, 20___

_____, Prime Contractor for the above-referenced contract, and _____, Subcontractor/Supplier to the above Prime Contractor, are in agreement that a Joint Check made out in both company names in the amount of $_____ may be issued to the County.

_____ _____

Prime Contractor Subcontractor/Supplier

SUMMARY
JOINT CHECK DISBURSEMENT

Date:_____

Re: Project No._____ Project Name:_____

TO APPLY TO ESTIMATE NO._____, 20___

_____	_____
Prime Contractor	Amount
_____	_____
Subcontractor/Supplier	Amount
_____	_____
Subcontractor/Supplier	Amount
_____	_____
Subcontractor/Supplier	Amount
	_____
	Total Amount