

SHARON R. BOCK
Clerk & Comptroller
Palm Beach County

Clerk & Comptroller Administrative Policy (08-04)

TO: ALL CLERK & COMPTROLLER PERSONNEL
FROM: SHARON R. BOCK
CLERK & COMPTROLLER, Palm Beach County
SUBJECT: CONTRACT POLICY

ORIGINAL ISSUE DATE

October 1, 2008

REVISED DATE

February 26, 2010

I. PURPOSE:

This policy provides guidelines as to the types of expenditures which require a formal contractual obligation for goods or services and to ensure said contracts have been properly developed and reviewed prior to presentation to the Clerk & Comptroller, Palm Beach County, hereinafter referred to as the "Clerk", for approval and execution.

This policy also ensures that the Clerk's contracting procedures are in line with "Best Business Practices". In addition, this policy shall provide for standardization and transparency of the appropriate and authorized use of public funds for the benefit of the citizens and residents of Palm Beach County, by requiring that all contracts of \$5,000 or greater be listed on the Clerk's website.

II. POLICY:

The policy, as described below, applies to all Clerk purchases for goods or services. The procurement of professional services to \$4,999 that meet the criteria as defined below require, at a minimum, a fully executed *Clerk's Short Form Contract*. The procurement of goods or services of \$5,000 or greater, require, at a minimum, a fully executed *Clerk's Long Form Contract* (or contractors equivalent inclusive of all the provisions and requirements of this policy).

1. **CONTRACT CRITERIA:** The following goods and/or services with negotiated terms and conditions for procurement by the Clerk, shall require an executed contract (please refer to the Clerk's "Procurement Policy" for specific information related to the procurement of goods and services):
 - A. The performance of all professional services on behalf of the Clerk.
 - B. Goods received by or services performed on behalf of the Clerk and to be paid for based upon progress payments, benchmarks and or milestones.
 - C. The performance of services or receipt of goods on a recurring basis (monthly, quarterly, semi-annual and or annual).
 - D. Negotiated computer hardware and software maintenance agreements.
 - E. Negotiated office and equipment services and maintenance agreements.



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2. **CONTRACT RESPONSIBILITY:** The Chief Officer or Director of the division requesting the goods or services covered by the contract shall assign primary responsibility for the contract process to a person who shall be the designated Contract Liaison or the Project Manager if the contract initiates, or is part of, an on-going project. The Chief Officer and Director responsible for the contract shall be responsible for reviewing Section 2.3 of the Clerk's Employee Handbook (Matters Involving a Conflict of Interest) and Florida Statute 112.313 (Code of Ethics for Public Officers and Employees). If a conflict is discovered, the Clerk shall have the option to terminate the contract.

3. **CONTRACT DEVELOPMENT:** The Contract Liaison or Project Manager, in consultation with his or her Chief Officer or Director, will have primary responsibility for developing the contract's technical content with input from other divisions and the Clerk's Legal Counsel as necessary. The Contract Liaison or Project Manager shall be responsible for obtaining required approvals, completion of any required forms, and presentation of the finalized contract with accompanying forms are presented to the Clerk for signature. All new contracts, or contract addendums or amendments that add significant time or cost to an existing contract, shall be presented to the Executive Committee.

The following shall be the minimum requirements to establish a contractual agreement:

- A. Identify the type of entity and its exact legal name. (i.e. sole Proprietorship, Corporation ("C" or "S", Professional Associations, Limited Liability Companies) Partnership (General, Limited, registered Limited Liability Partnership).
- B. Verify the entity's existence. If the entity is a Corporation, Limited Liability Company, Professional Association or registered Limited Liability Partnership, it must be registered with the Department of State, Division of Corporations ("DOS"). General Partnerships may register with the DOS, but are not required to do so. If the entity is not registered with the DOS, obtain a copy of the document forming the entity (i.e. the Partnership Agreement) and review same to determine if the entity is authorized to enter into the proposed contract with the Clerk. If the entity is a foreign entity (non-Florida), verify its authority to conduct business in the State of Florida. Partnerships often have Corporate General Partners which are empowered to act on behalf of such a Partnership. Under these circumstances, corporate information and status must be obtained by the DOS for the Corporate General Partner as well as information regarding the Partnership itself.
- C. Verify the authority of the person who will sign the contract. Obtain a fully completed and properly executed Certificate or Affidavit from the entity regarding the authorized signatory.



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D. Ensure that the contract is complete. (all minimum requirements and inclusions are met and complete).

4. **CONTRACT APPROVALS:** All proposals and resulting contracts that will increase, or that will result in an increase to, an existing or future department budget, (rather than a one-time budgeted expenditure that does not incur maintenance, equipment or additional costs), or contract addendums or amendments that add significant time or cost to an existing contract, will require a *Financial Impact Assessment Form (Attachment A)*. This form is used to assess the financial impact of a purchase, availability of budgeted funds, the impact to recurring expenses, cost/benefit analysis, and requirements for additional equipment or other expenses in future years. The department Contract Liaison or Project Manager will prepare this form with assistance from the Contracts and Procurement Group. Once the Contracts and Procurement Group has completed a review of the contract and Financial Impact Assessment Form (when required), they will be routed, electronically, along with all other related contract documents, to the Clerk's Legal Counsel for review.

All contracts shall be assigned a unique number, by the Clerk's Legal Counsel at the time the contract is presented for legal review. This contract number shall be referenced throughout the development, execution and performance phases. Contracts are to be presented to Clerk's Legal Counsel in word readable format. Clerk's Legal Counsel will review and return the Contract to the Contract Liaison or Project Manager with changes. If the contract is approved, the electronic copy will be electronically stamped approved with the contract number affixed, converted to Adobe format and returned to the Department Contract Liaison or Project Manager. The Clerk's Legal Counsel will provide an update on the status and the contract number to the Contracts and Procurement Group for tracking purposes. The Contracts and Procurement Group will track the status of all in progress contracts once a number has been assigned. In those cases where electronic copies are not available, the hard copies will be reviewed and a legal approval placed on the original copy. The Clerk's Legal Counsel will return this document to the Contract Liaison or Project Manager who will provide a printed copy of the approved contract to the Clerk for final approval and signature. Note: Vendor should sign prior to Clerk.

5. **CONTRACT EXECUTION:** The Contract Liaison or Project Manager shall ensure that the proposed contract has been approved and reviewed by the department's Chief Officer and Legal Counsel prior to presentment to the Clerk for approval and signature. No work can be performed prior to the execution of the contract. Unless specific verbal or electronic authorization from the Clerk is obtained, members of the Clerk's staff have no authority to execute contracts, scope changes, change orders and or amendments on behalf of the Clerk.



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Specific verbal or electronic authorization to execute such changes, on behalf and in the absence of the Clerk, must be followed by the routing of a *Consent to Execute Contract Form (Attachment B)* to the Clerk for signing and filing. This form must be completed and signed within 30 days of contract execution. The signed contracts will be directed from the Clerk's staff to Legal Services for scanning and emailing to the Contract Liason or Project Manager and the Procurement Group, and for confirmation of forwarding the executed copy to the vendor. Following scanning, the original contract will be maintained by the Clerk's Legal Counsel..

6. **MINIMUM CONTRACT INCLUSION REQUIREMENTS:** The following minimum components/clauses are required to be present in all formally executed contracts:
 - A. **Contract Execution:** Absent specific authorization of the Clerk, members of the Clerk's staff have no authority to execute contracts, scope changes, change orders and or amendments on behalf of the Clerk.
 - B. **Contract Maximums:** All contracts which obligate the Clerk to pay for goods and/or services shall indicate a maximum amount (not to exceed) to be paid under the contract or a fixed price (lump sum). "Not to Exceed" and "Lump Sum Contracts" are required to include either hourly rates to be paid for all persons working on the contract or other provisions that explain or substantiate the value of the services to be performed in exchange for the fixed payment. If reimbursable expenses are to be paid, they must comply with the Reimbursable Expenses guidelines and be in accordance with the Clerk's Travel Policy. A maximum amount for reimbursable expenses must be stated.
 - C. **Federal Tax ID Number:** All contracts shall include the Federal Tax ID Number of the contractor. In the case of individuals (Sole Proprietors), the contractor shall provide to the Clerk, under separate cover, their social security number. As required by Florida Statute, the social security number must be kept confidential and it will be the responsibility of the Clerk to maintain the social security number.
 - D. **Effective Dates:** The contract must contain an effective date. Unless otherwise provided in the contract, the effective date will be the date of execution by the Clerk. The completion date or time of performance must be indicated in the contract. Contracts may include renewals (refer to Renewal Options within this Administrative Policy); however no contract, including but not limited to project based contracts, shall have an open ended term. Renewals and/or extensions should be in written form.



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- E. Changes in Scope of Work and Change Orders:** The Clerk reserves the right to make changes in Scope of Work, including alterations, reductions therein or additions thereto. If the Clerk so instructs in writing, the contractor shall suspend work on that portion of the scope of work affected by a contemplated change, pending the Clerk's decision to proceed with said change. Unless specific verbal authorization from the Clerk is obtained and documented, members of the Clerk's staff have no authority to execute scope changes, change orders and or amendments on behalf of the Clerk.
- F. Reimbursable Expenses** – The following conditions should be included in the reimbursement terms of the contract:
1. Reimbursement for travel expenses shall be in accordance with the Clerk's Travel Policy.
 2. Reimbursement will not be provided for items or expenses normally connected with the course of doing business such as office supplies, advertisement for hiring personnel, lease or purchase of office furniture, equipment or space, local telephone service, entertainment expenses (including business lunches), computer time on the contractor's own equipment and normal reproduction (copying) charges.
 3. Special charges may be reimbursed if the contract terms identify the exact nature, quantity and unit cost maximum for each type of special charge required by the contract and subject to reimbursement.
 4. The Clerk reserves the right to determine if an expense is reasonable and may reject expenses which are excessive or represent costs of a personal nature. The Clerk will not reimburse for personal items, sundries, travel insurance, in-room movies, laundry or valet services, cable TV hookups or charges, first class airfare (unless no other service is available) alcoholic beverages, entertainment expenses and meals or snacks except as indicated in the Clerk's Travel Policy.
 5. All expenses submitted for reimbursement per the terms of the contract will require supporting original receipts or copies thereof.
- G. Advance Payment** – No formally executed contract by the Clerk shall provide for any payment prior to the receipt and acceptance of goods or services represented by that payment, except for rent or lease payments, training courses, continuing education, memberships and subscriptions, copier or printer maintenance payments or as otherwise authorized by the Clerk as in cases where a prepayment will result in a cost savings.



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H. Documentation Requirements for Payment: All requests for payment shall be accompanied by documentation sufficient to establish the amount of goods and/or services delivered to incur the obligation of payment by the Clerk. Payment requests must be approved by the Contract Liaison or Project Manager, and Director and Chief Officer prior to payment either by the completion of a receiver or by direct signoff on the invoice itself. The following specific documentation requirements shall apply to contracts providing for reimbursement of expenses:

1. Originals or copies of receipts or invoices are required. Computer printouts or lists of expenses prepared by the contractor are not acceptable as documentation. Copies of contractor's employees' expense reports are not acceptable unless accompanied by originals or copies of receipts, tickets and or other documentary evidence of payment.
2. Documentation of travel must include the purpose of the trip, the name of the person traveling, the date and time of departure and the date and time of return in accordance with the Clerk's Travel Policy.

I. Final Payments: Final payments on a contract may be made without further approval by the Clerk in accordance with this policy, provided the work is completed and/or goods have been received and accepted in accordance with the contract (including subsequent amendments or change orders) and appropriate approvals are obtained. Payment shall not be made for services rendered or goods received after the expiration date or the completion time of the contract without the Clerk's approval, even though the total amount of the contract has not yet been expended. This does not apply to professional service contracts where services are to be provided on a task by task basis or in situations where goods and/or services are ordered during the contract term.

J. Negotiated Fixed Price Contracts: The contract shall contain sufficient information to establish the value received such as: a schedule of labor hours (name and/or title, raw hourly rate, load factors and corresponding hourly costs if applicable, materials, billable line item tasks (these should correspond to the billed line items on each individual invoice submitted for payment), deliverables and milestones. Reimbursable expenses are subject to the guidelines as identified in this policy. The fixed Price shall be the negotiated total for each schedule. The Contract Liaison (or Project Manager if different) shall be responsible for tracking percentage of completion and deliverables on the contract as they relate to total billings to date.



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- K. Schedule of Work:** Contracts shall include payment milestones or deliverables, or payments tied to materials delivered, labor hours on the project, phases complete, percentage of project completion, tasks completed, manpower hours incurred, and/or completion dates where applicable. Payments shall be tied directly to those milestones, deliverables, tasks, etc.
- L. Scope of Work:** The Scope of the Work shall include a detail narrative statement indicating clearly the "who", "what", "when" and "how" of the contract vendor's responsibilities.
- M. Audit:** Contracts shall include a clause indicating that the authority and right is granted to the Clerk & Comptroller's office to review and audit any contractor's records to determine the reasonableness of any charges billed to the Clerk.
- N. Renewal and Extension Options:** Except for cases in which there is substantial capital investment, contracts shall not extend beyond a five-year term including the initial term and renewal(s). Renewals shall be at the option of the Clerk at the established price, terms and conditions as the original contract or at negotiated incremental increases. The contract should not include Automatic Renewal clauses. The renewal should be formally executed in writing by letter or some other comparable means wherein the new contract dates, amount or rates and milestones are clearly indicated. Renewals do not require a complete formal contract to be executed.
- O. Termination:** The contract must contain language stating that the Clerk shall have the right to terminate the contract, in whole or in part, and with or without cause either (1) immediately upon written notice to the contractor or (2) within 30 days following the notice, or some variation of these options. The contractor shall be paid for all work satisfactorily performed to the date of termination. After receipt of a Termination Notice from the Clerk, except as otherwise directed by the Clerk, the contractor shall:
1. Stop work on the date and to the extent specified.
 2. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
 3. Transfer all work in process, completed work and other materials relate to the terminated work to the Clerk.
 4. Continue and complete all parts of the work that has not been terminated.



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- P. Non-Appropriations:** Any contract extending beyond the Clerk's fiscal year in which it is executed should contain an annual appropriations clause wherein the contractor acknowledges the Clerk is a public office subject to public funding issues and that the contract may be terminated should funds not be appropriated or budgeted for that purpose in any subsequent fiscal year.
- Q. Insurance:** Insurance requirements must be adequate to protect the Clerk. It shall be each department's responsibility to coordinate the insurance requirements of any given contract with the contractor and review with the Clerk's Legal Counsel, and if deemed necessary, insurance certificates should be submitted prior to the execution of the contract. It is the responsibility of each department to obtain current insurance certificates when necessary on multi-year contracts.
- R. Public Entity Crimes:** All contract documents as defined by Florida Statute 287.058 must contain a clause which informs the Contractor of the provisions of Florida Statutes 287.133 (3), (a). Recommended wording for the contract is as follows: "As provided in Florida Statutes 287.132-133, by entering into this Contract or performing any work in furtherance hereof, Vendor certifies that it, its affiliates, suppliers, subcontractors, and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the date hereof. This notice is required by Florida Statutes 287.133(3), (a)."
- S. Indemnification/Attorney's Fees:** The Clerk's office is a public office and cannot agree to indemnify vendors or contractors. Vendors and contractors must carry sufficient insurance to protect themselves from risk. Contractors assume the risk of providing services/goods to our office and therefore contractors providing services must agree to indemnify and hold harmless the Clerk from any damages, injuries, losses or claims arising from, or out of the goods or services delivered or contracted for in the contract. The issue of attorney's fees is a matter of negotiation and content. Both parties can agree to pay attorneys fees and costs if there is a dispute. The Clerk will not agree to a unilateral provision in favor of the contractor on attorneys fees.
- 7. APPROVAL OF INVOICES FOR PAYMENT:** All invoices for goods or services are to be mailed directly to the Accounts Payable Group within the Accounting Department for processing (PO Box 229, West Palm Beach, FL 33402-0229). Invoices for payment must be approved by the Contract Liaison or Project Manager, and Director and Chief Officer prior to payment either by the completion of a receiver or by direct signoff on the invoice itself.



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The Director and Chief Officer approvals are required on amounts of \$1,000 or greater. The completion of a receiver or sign-off of invoices signifies that the goods or services billed for on the invoice have been received or performed to date as indicated in the contract. Discrepancies must be resolved through the Chief Officer level prior to submission of the invoice for payment. Except for limited circumstances and as determined by the Clerk, the Clerk does not pay for goods or services not yet received or performed.

III. DEFINITIONS:

1. **Contract** – (a) a deliberate verbal or written agreement between two or more competent parties to perform, or not perform, a specific act or acts or provide goods (b) any type of agreement regardless of what it is called, for the procurement or disposal of goods, supplies or services.
2. **Contractor** – is any person(s) or entity having a contract with the Clerk.
3. **Negotiate** – is to confer with another so as to arrive at the settlement of some matter and to arrange for or bring about an agreement through conference, discussion, and compromise. Note: there is a definitive distinction between a Negotiated Contract (one in which the Clerk elects terms, conditions and Vendor performances and/or deliverables, including equipment or supplies, for an agreed upon price) versus an “In the Box Agreement” (wherein the terms and conditions are standard for all purchasers and the price is fixed).
4. **Formally Executed Contract** – is the existence of a formal, written contract document requiring the signature of two or more parties, one of which must be the Clerk.
5. **Contract Liaison** – is the individual assigned by the Chief Officer or Director of the Division contracting the goods or services when the contract initiates, or is part of, an ongoing project. The Contract Liaison is responsible for the development, delivery and/or implementation of the contract and approval of invoices for payment in accordance to the contract.
6. **Project Manger** – a person assigned to lead a project and take responsibility for all aspects of the project implementation.
7. **Proposal** – A submission by a vendor suggesting the purchase of goods or services.



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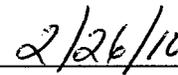
8. **Request for Proposal (RFP)** – is a solicitation prepared by the Clerk & Comptroller’s office requesting that vendors respond to criteria presented by the Clerk & Comptroller’s by proposing terms, conditions and pricing pertaining to the purchase of goods and/or services. The proposals are evaluated based on pre-determined criteria and a contract awarded based on the best interests of the office.

9. **Invitation to Negotiate (ITN)** – is a solicitation similar to a Request for Proposal wherein the Clerk & Comptroller’s office requests proposals be submitted by vendors. Following evaluation of the proposals based on pre-determined criteria, vendors will be selected for negotiations which shall culminate in a final selection following the negotiation process.

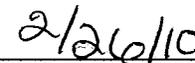


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Reviewed by Legal Counsel



DATE



DATE



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Attachment A

CLERK & COMPTROLLER – PALM BEACH COUNTY FINANCIAL IMPACT ASSESSMENT FORM

Contract Description: _____

Effective Date: _____ **Completion Date:** _____

Contract Terms: _____

Cost/Benefit Analysis*: _____

**Including financial benefits/cost savings, performance measures, justification or other relevant information.*

Contract Payments:

Milestone/Deliverable	Payment Date	Amount
Total Contract Payments		\$

Recurring annual costs? YES _____ NO _____

Recurring Cost Description **Annual Cost**

If yes, please describe: _____

Is the contract budgeted? YES _____ NO _____

Contract & Procurement Review: **Initials:** _____ **Date:** _____



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Attachment B

CLERK & COMPTROLLER – PALM BEACH COUNTY CONSENT TO EXECUTE CONTRACT FORM

In accordance with Section II. 5. of the Clerk & Comptroller's Contract Policy, I provided authorization for _____ to execute a contract with _____, contract number _____ on the following date _____.

SHARON R. BOCK
CLERK & COMPTROLLER

DATE