
Betty Montgomery Auditor of State

Bulletin 2003-003

Date Issued: July 17, 2003

TO: Director, Ohio Department of Transportation
City Managers
City Auditors, Finance Directors, and Treasurers
City Service and Safety Directors
Village Administrators
Village Clerks, Treasurers, and Finance Directors
Township Trustees
Township Clerks
Township Administrators
County Auditors
County Engineers
County Administrators
County Commissioners

**FROM: Betty Montgomery
Ohio Auditor of State**

**SUBJECT: Legislative Changes Regarding Force Account Projects (Sections
117.16, 117.161, 723.52, 5517.02, 5543.19, 5575.01, R.C.)**

House Bill 87 was recently enacted and establishes new requirements effective June 30, 2003 for all public entities that undertake road construction projects by force account. In general, a force account project is conducted by the public office, using the office's own labor, material, and equipment. The legislative changes are intended to provide additional accountability in the process of estimating costs for force account projects. The purpose of this bulletin is to describe these new provisions for the benefit of those public entities who wish to perform projects by force account.

Force Account Limits (5517.02, 5543.19, 5575.01, 723.52, R.C.)

Existing law requires that before undertaking a project by force account, a public entity must estimate the cost of the project. If the total cost exceeds certain statutory limits, which vary depending on the type of entity, the project must be subjected to competitive bidding. Otherwise, the project may be conducted by force account without going through competitive bidding.

The new provisions increase the statutory limits below which a public office may complete a project by force account without going through competitive bidding. The new limits are as follows:

- State (5517.02, R.C.): \$25,000/mile of highway; \$50,000 for bridges, culverts, or traffic control signals.
- County (5543.19, R.C.): \$30,000/mile for construction or reconstruction of roads; \$100,000 for bridges or culverts.
- Township (5575.01, R.C.): \$15,000/mile for construction or reconstruction of roads with a total project limit of \$45,000.
- Municipality (723.52, R.C.): \$30,000 for construction or reconstruction of streets.

Force Account Project Assessment Form (117.16, R.C.)

As you may know, issues have been raised for several years regarding the use of force accounts. Responding to these concerns, the General Assembly has clearly required specificity in order to justify the use of force accounts by audited entities. The new law requires the Auditor of State to develop and make available a force account project assessment form that is to be used by public offices to estimate or report the cost of a force account project. The General Assembly has required that the assessment form account for all of the following in estimating the cost of a project:

- Employee salaries and benefits, and other labor costs;
- Materials;
- Freight, fuel, and hauling;
- Overhead expenses;
- Workers' compensation premiums; and
- All other items of cost and expense, including a reasonable allowance for the use of all tools and equipment used and for the depreciation on the tools and equipment.

For projects conducted by or in conjunction with the Ohio Department of Transportation (ODOT), the use of the Transportation Management System is acceptable in lieu of the Auditor of State's force account project assessment form.

The new assessment form is available at the Auditor of State web site (www.auditor.state.oh.us), and it can be printed directly from the web site. The form is divided into three primary sections: Labor, Material, and Equipment. Each section is described in more detail below.

LABOR: The labor cost is composed of the base wages of all employees working on the project, as well as markups for fringe benefits and overhead. The total amounts of base wages are determined by listing all employees working on the project, the hourly rate for each employee, and the total number of hours each employee is expected to work on the project. Fringe benefits may be computed by using a safe harbor rate of 30 percent

of the total base wage amount. Overhead costs may be calculated using a safe harbor rate of 38 percent of the total amount of base wages and fringe benefits. If a public office chooses to use different percentages, it will be required to justify the rates it uses.

MATERIALS: The cost of materials is determined by listing each type of material being used in the project, the cost per unit for each material, and the total number of units for each material. In addition, an overhead cost is added to the cost of materials. The safe harbor rate for overhead is 15 percent. If a public office uses a different percentage, it will be required to justify the rate it uses.

EQUIPMENT: Each piece of equipment used in a project must be assigned an hourly rate. For equipment owned by the public entity, this rate must reflect the original purchase price of the equipment, maintenance costs, time in service, depreciation, freight, fuel, and hauling. The public office may use any generally accepted rate that reflects all of the aforementioned considerations, or it may use the statewide rates as published by the Ohio Department of Transportation and updated on a quarterly basis; however, the office must use the same rate source for all equipment used in a project. Any equipment rented by the public entity must be listed in the form and reflect the actual rental rate.

Audits of Force Account Projects (117.16, R.C.)

Underscoring the General Assembly's intent to impose a new layer of accountability in the use of force accounts, the law now requires the Auditor of State to audit the forms and records of a sampling of force account projects conducted by the office to determine compliance with the force account limits. Although the assessment form will be the principal document demonstrating how the estimated cost of the project was determined, supporting documentation will be examined to determine the sources of the numbers listed in the assessment form. The Auditor may conduct additional audits of force account projects upon receiving a complaint that the limits are being violated.

Penalties for Noncompliance (117.16, R.C.)

PLEASE NOTE: The new law also includes penalty provisions applicable to counties, townships, and municipalities. If the Auditor of State identifies one instance of noncompliance in an audit of one of these public offices, the force account limits for that office shall be reduced to the following levels for a period of one year:

- County – \$10,000/mile for construction or reconstruction of a road; \$40,000 for construction, reconstruction, maintenance, or repair of a bridge or culvert;
- Township – \$15,000 for maintenance and repair of a road; \$5,000/mile for construction or reconstruction of a township road;
- Municipality – \$10,000 for the construction, reconstruction, widening, resurfacing, or repair of a street or other public way.

If the Auditor of State identifies a second instance of noncompliance in the same or any subsequent audit, the force account limits for the public office shall be reduced in the same manner as described above for a period of two years.

For a third or subsequent instance of noncompliance, the force account limits for the public office shall be reduced in the same manner as described above for a period of two years and an amount equal to 20 percent of the total cost of the force account project(s) found to be in violation of the limits shall be certified to the state tax commissioner and deducted from any funds due or payable to the public office. If insufficient funds are available to cover the entire certified amount, the tax commissioner shall certify the remaining amount to the county auditor. The county auditor shall withhold the amount certified from any funds under the county auditor's control that are due and payable to the public office, and the county auditor shall promptly pay that amount to the tax commissioner. Any funds withheld in the manners described in this paragraph are to be credited to the highway operating fund and redistributed on a biannual basis to local governments that are not in violation of the force account limits.

When multiple instances of noncompliance are identified within the same audit, and at least one instance is subject to the withholding of funds and at least one instance is not, the instances will be considered in chronological order for the purpose of determining the amount of funds to be withheld.

Joint Force Account Projects (117.161, R.C.)

If two or more public offices undertake a joint force account project, the force account limit shall be the highest amount that applies to any of the entities. For example, if the state and a county join together on a road construction project, the force account limit would be \$30,000/mile, the amount specified in statute for counties.

The new law prohibits entities from aggregating their force account limits, and further specifies that the share of any entity in a joint project should not exceed that entity's force account limit. Using the example described above, even though the overall force account limit is \$30,000/mile, ODOT's share of the project should not exceed its limit of \$25,000/mile.

In addition, no entity that is subject to the reduced force account limits described in the penalty section above may enter into a joint force account project.

We have greatly appreciated the contributions and suggestions we have received from all of the interested parties in developing this bulletin and the force account project assessment form. We are well aware that the new law may not be particularly popular among all parties. However, the legislative intent with regards to the new law is clear: the General Assembly wants to ensure that competitive bidding occurs in certain circumstances and that when force account projects are conducted, strict guidelines are adhered to. Thus, while some parties have expressed concerns about the force account

project assessment form, it is one which we believe must be used in order to comply with both the spirit and the letter of the law.

In light of the new penalties enacted by the General Assembly, we are committed to helping public offices avoid violations of the force account limits. Consequently, we encourage you to contact our office with any questions you may have about force accounts in order to avoid any confusion. Questions should be addressed to the Legal Division or Accounting & Auditing Support Group of the Auditor of State's Office at 1-800-282-0370. To obtain copies of the force account project assessment form, please visit the Auditor of State's web site at www.auditor.state.oh.us. As always, it is a pleasure to work with you.

A handwritten signature in black ink that reads "Betty Montgomery". The signature is written in a cursive, flowing style.

Betty Montgomery
Ohio Auditor of State