

Mary Taylor, CPA Auditor of State

Bulletin 2008-004

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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: Mary Taylor, CPA
Ohio Auditor of State

SUBJECT: Ohio Attorney General Opinion 2008-007 Regarding Force Account Projects

Background and Summary

The purpose of this bulletin is to inform you about recently released Ohio Attorney General Opinion 2008-007, which addresses several issues regarding force accounts. Although the opinion was issued in response to a County's inquiry, it will be appropriately applied to each public office that undertakes force account projects. In addition to this bulletin, the Auditor of State has issued two previous bulletins regarding the requirements for force account projects, 2007-001 and 2003-003. All three bulletins should be consulted by public offices initiating force account projects.

Briefly, the opinion states:

- The completion of the Auditor of State's force account project assessment form estimating the cost of the work constitutes commencement of the project for purposes of determining which force account limit is in effect and applicable to the project;

- The Auditor of State is authorized to require the use of a “safe harbor rate” for the cost of overhead or the justification of a different rate in estimating the cost of road, bridge and culvert work;
- A public office may acquire material and equipment pursuant to contract, and may subcontract part of the work undertaken by force account, so long as the contracts for material and equipment and the subcontracts are let in compliance with the appropriate competitive bidding requirements;
- The estimate of the cost of road, bridge or culvert work must include the cost of materials and equipment that would be acquired by contract, and the cost of work that would be performed pursuant to a subcontract, if the project were undertaken by force account. If the total exceeds the applicable force account limit, the whole project must be competitively bid;
- Failure to comply with competitive bidding requirements when contracting for materials or equipment as part of a force account project, or when subcontracting work performed on a force account project, constitutes a violation of the force account limits as well as the applicable competitive bidding law.

Commencement of a Force Account Project

“Force account” refers to certain capital construction and maintenance projects undertaken by the state, counties, municipal corporations (cities and villages), and townships, which may be performed by the entities’ own employees, equipment, and materials as opposed to competitively bidding these jobs out to private contractors if the estimated cost of these projects are below certain statutory limits.

House Bill 87, effective June 30, 2003, increased bid limits, and required the Auditor of State to prescribe, and the entities to use, under certain circumstances, a uniform force account project assessment form developed by the Auditor of State under section 117.16 of the Revised Code. The Bill also charged the Auditor with auditing political subdivisions for compliance with the statutory force account limits and administering penalties for non-compliance with the bid limits.

Ohio Attorney General Opinion 2008-007 has determined that completion of the Auditor of State’s force account project assessment form estimating the cost of the work constitutes commencement of the project for purposes of determining which force account limit is in effect and applicable to the project.

For example, if a public office is in a penalty phase and completes the force account project assessment form, and the total amount of the project is over the force account limit in effect on the date that the assessment form is completed, then the public office is required to competitively bid the project if they choose to go forward with the project while they remain in the penalty phase. If the public office prefers to assume the project under their force account authority after the penalty phase has expired, they

are required to complete a new force account project assessment form once the penalty phase has expired which will constitute commencement of the project. Therefore, if any materials are ordered or physical work commences on the force account project before the expiration of the penalty phase, the public office will be in violation of the force account limits.

With projects constructed 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.

Use of the "Safe Harbor" Rate

The General Assembly has delegated to the Auditor of State the responsibility to ensure compliance with the statutory force account limits. Additionally, Ohio Attorney General Opinion 2008-007 gives deference to the Auditor's administrative interpretations of the force account laws, specifically, the use of "safe harbor" rates in assessing the cost of a force account project.

As stated in AOS Bulletin 2003-003, public offices are not compelled to use the "safe harbor" rates for overhead in determining costs for labor, materials and equipment; however, if the public office chooses to use different rates, it will be required to justify the rates it uses. Please see Auditor of State Bulletin 2003-003 for more information on safe harbor rates for overhead.

Relationship Between Competitive Bidding and Force Accounts

Under a force account project, a public office may acquire material and equipment from outside vendors, so long as the acquisitions are made in compliance with the competitive bidding monetary thresholds and requirements for that public office (R.C. 125.05 for state; R.C. 307.86 for counties; R.C. 723.52 for cities; R.C. 5575.01 for townships; and R.C. 731.14 for villages).

Additionally, when determining if it is allowable to proceed by force account, the costs of the materials and equipment acquired under a contract, and the work performed by subcontractors, must be included in the estimate of the project's total cost. If this total, including the outside contracts, exceeds the force account limit, then the whole project must be competitively bid.

The fact that a contract for materials and supplies is part of a force account project does not relieve a public office from complying with the competitive bidding laws. Failure to competitively bid a required contract is considered a violation of the force account limit, as well as the competitive bidding laws.

Questions

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.

A handwritten signature in black ink that reads "Mary Taylor". The script is cursive and fluid.

Mary Taylor, CPA
Auditor of State