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Force Account Agenda

- What is it
- Form
- Technical Bulletins
- Auditing force accounts
- FAQ's



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FORCE ACCOUNTS

- An exception to the Competitive Bidding Laws
- Occurs when a road project is conducted by a public office using its own labor, material and equipment



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FORCE ACCOUNT BACKGROUND INFORMATION

Undertaking project by force account a public entity must:

- Estimate cost of project R.C. § 117.16
- If costs exceed statutory limits, project is subjected to competitive bidding before completing by force account



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FORCE ACCOUNTS FOR MUNICIPAL CORPORATIONS OHIO REVISED CODE 723.52

- Requires a city or village to estimate the cost of a project for the construction, reconstruction, widening, resurfacing, or repair of a street or other public way using the AOS force account project assessment form (R.C. 723.52).
- In municipal corporations having an engineer, or an officer having a different title but the duties and functions of an engineer, the estimate shall be made by the engineer or other officer.
- A municipality may proceed by force account if the total estimated cost of the project is \$30,000 or less.
- It is unlawful to divide a street or connecting streets into separate sections.



Exception: Charter cities or villages



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FORCE ACCOUNTS FOR MUNICIPAL CORPORATIONS OHIO REVISED CODE 723.52 & 723.53

- If the total estimated cost of the project is \$30,000 or above a municipality is required to invite and receive competitive bids for the project as provided by law.
- The municipality must consider the bids received and officers have the power to reject such bids.
- If the bids are rejected, the officers may order the work done by force account or direct labor.



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FORCE ACCOUNTS FOR MUNICIPAL CORPORATIONS

OHIO REVISED CODE 723.52 & 723.53

- If a municipality chooses to reject the bids received and proceed by force account or direct labor the engineer or other officer or employee in charge of such work must keep a complete and accurate account, in detail, of the cost of doing the work.
- The account must include the following:
 - Labor
 - Materials
 - Freight
 - Fuel
 - Hauling
 - Overhead expenses
 - Workers' compensation premiums
 - All other items of cost and expense



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FORCE ACCOUNTS FOR TOWNSHIPS

OHIO REVISED CODE 5575.01



- A Township may complete a project by contract or force account without going through the competitive bidding process in the following situations:
 - Maintenance and Repair of Township Roads:
 - If total cost of project does not exceed \$45,000
 - Exception - Force account assessment forms are not required for projects of less than \$15,000
 - Construction or Reconstruction of Township Roads:
 - If total cost of project does not exceed \$15,000/mile
 - Exception - Force account assessment forms are not required for projects of less than \$5,000/mile



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JOINT FORCE ACCOUNT PROJECTS

OHIO REVISED CODE 117.161

- 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 Township join together on a road construction project, the force account limit would be \$25,000/mile, the amount specified in statute for ODOT.
- Entities are prohibited from aggregating their force account limits.
- 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 \$25,000/mile, the Township's share of the project should not exceed its limit of \$15,000/mile.
- In addition, no entity that is subject to a reduced force account limit may enter into a joint force account project.



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PENALTIES FOR NONCOMPLIANCE

OHIO REVISED CODE 117.16

- If the Auditor of State identifies one instance of noncompliance in an audit of a Township or Municipality, the force account limits for that office shall be reduced to the following levels for a period of one year:
 - For a Township, \$15,000 for road maintenance and repair; \$5,000/mile for construction or reconstruction of a township road.
 - For a 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 Township or Municipality shall be reduced in the same manner as described above for a period of two years.
 - Additionally, 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 Township or Municipality.



FORCE ACCOUNT ASSESSMENT FORM

- The General Assembly requires 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.



FORCE ACCOUNT ASSESSMENT FORM LABOR

- The labor cost is composed of:
 - Base wages of all employees working on the project.
 - 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.



FORCE ACCOUNT ASSESSMENT FORM 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,
 - The total number of units for each material.
- Additionally, an overhead cost is added to the cost of materials.
 - The safe harbor rate for overhead is 15 percent.



FORCE ACCOUNT ASSESSMENT FORM 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
 - Hauling
- An entity 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. 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.



FORCE ACCOUNT ASSESSMENT FORM

- The Force Account Assessment Form is available on the Auditor of State's website:



www.ohioauditor.gov

Partial miles

- For projects exceeding one mile, proportionally for partial miles.
- For projects less than a mile, the entire per mile limit will apply.



FORCE ACCOUNT TECHNICAL BULLETINS

Auditor of State Technical Bulletin 2008-004 Background

- During Crawford County's audit period ending Dec. 31, 2006, we identified two separate instances of noncompliance with laws governing road construction force account projects.
- As a result of the County's first violation cited in the previous audit, we applied the penalty provided for in RC 117.16 and reduced Crawford County's competitive bidding threshold from \$30,000/mile to \$10,000/mile for road projects and bridge and culvert projects were reduced from \$100,000 to \$40,000, for a period of one year beginning August 1, 2005.
- As a result of the second violation, the County's force account limits were reduced to the same thresholds for a period of 2 years.
- However, because we identified a third violation, an amount equal to 20% of the total cost of the force account project found to be in violation of the limits were to be certified to the state tax commissioner and deducted from any funds due or payable to Crawford County. The 20% equaled \$22,225.60.

FORCE ACCOUNT TECHNICAL BULLETINS

Auditor of State Technical Bulletin 2008-004 (continued)

Ohio Attorney General Opinion No. 2008-007

- The completion of the AOS 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 AOS 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;
- In addition, the estimate of the cost of the work must include in the estimate 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.

AUDITS OF FORCE ACCOUNTS OHIO REVISED CODE 117.16

- Underscoring the General Assembly's intent to impose a new layer of accountability in the use of force accounts, the law 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.



Audit procedures



- Minutes, inquire, scan exp
- Inspect forms
- Verify total amount under bid threshold
- Safe harbor percent
- Compare actual cost to estimates
- Management representation
- Penalty



AUP

- Management inquiry
- Scan the Payment Register Detail Report
- Determine if the township proceeded by force account

EXAMPLES OF AUDIT FINDINGS

Joint Force Account – Noncompliance Citation



- Henry Township entered into a joint force account project with the Village of New Baltimore for the Mitchell Road repair project. A force account project assessment form is required to be completed by one of the participating entities. Neither the Township nor the Village completed this form.
- Additionally, the joint force account limit is the higher force account limit for the participating entities. The force account limit for a township is \$45,000 – this is the higher of the two. The materials, alone, for the project were \$68,915. Had the Township completed the required force account project form, it would have also included labor, making this total larger. As is, however, the materials, alone, exceeded the \$45,000 force account limit, amounting to a violation by the Township of its force account limits. For this reason, the Township was notified that it had violated its force account limit and that, for a period of one year from the date of notification, it would be required to apply the reduced force account limits.



EXAMPLES OF AUDIT FINDINGS

Township – Noncompliance Citation

- Rushcreek Township completed a road project through force account as part of an Ohio Public Works Commission (OPWC) project in 2006. Part of the project was completed by Township employees and part of the project was completed by contractors. The County Engineer contracted with Korda/Nemeth Engineering (Korda) to provide the Township with engineering services for this project. Korda completed a "cost estimate" form, but did not complete the force account assessment form developed by the Auditor of State as required.
- The "cost estimated" prepared by Korda did not break out the costs for employee salaries and benefits, materials, or overhead and the form was for the entire OPWC project which made it difficult to determine the estimated cost for the force account portion of the project.
- The estimated cost of the force account portion of the project was \$76,222 which exceeds the limits established for Township force accounts.
- The Township should have competitively bid the force account portion of the project.
- Based on the violation, the force account limits for the Township were reduced to fifteen thousand dollars for maintenance and repair of a road or five thousand per mile for construction or reconstruction of a township road for the period of one year.

EXAMPLES OF AUDIT FINDINGS

Failure to Follow Competitive Bidding Requirements

Ohio Revised Code § 5575.01 states "in the maintenance and repair of roads, the board of township trustees may proceed either by contract or force account. When the board proceeds by contract, the contract shall, if the amount involved exceeds forty-five thousand dollars, be let by the board to the lowest responsible bidder after advertisement for bids once, not later than two weeks, prior to the date fixed for the letting of the contract, in a newspaper published in the county, and of general circulation in the township."

- Adams Township paid \$75,427 to Gerken Paving, Inc. for road shoulder repair work done in fiscal year 2006 without using the proper competitive bidding procedures as set forth in the aforementioned Code provision.
- Union Township advertised for 2005 road bids in March 2005 asking for bids to be received by April 18, 2005. On that date, the Trustees received and reviewed one bid. On May 16, 2005, the Trustees received another bid for the 2005 road work project and the contract was granted to the late bidder. There was no indication the project was re-advertised nor did the Township provide opportunity for other contractors to submit bids past their bid opening deadline. The Township expended \$66,993 to the company for the project in 2005.
- The Champaign County Engineer completed a project assessment form for Salem Township road project in 2005. The total estimated cost of the project was \$177,000. The Township proceeded to hire the County Engineer to complete \$92,000 of this project without following the bid procedures.

FREQUENTLY ASKED QUESTIONS

Question: When are the trustees required to proceed by either contract or force account?
Answer: Construction or reconstruction, and maintenance and repair of roads, must be done by contract after advertising for bids pursuant to O.R.C. 5575.02. If the contract exceeds \$15,000/mile, for construction/reconstruction, or the total project exceeds \$45,000 for maintenance and repair, it must be let by competitive bidding. O.R.C. 5575.01.

Question: May the township trustees proceed by contract when constructing, reconstructing or improving a township road?
Answer: Yes.



Question: May the township trustees proceed by force account when constructing or reconstructing a township road?
Answer: O.R.C. 5575.01 permits township trustees, if the board deems it for the best interest of the public, to proceed to construct the road by force account instead of constructing a road by contract. However, if the total estimated cost of the work exceeds \$15,000 per mile, the board must invite and receive competitive bids for furnishing all labor, materials and equipment, and shall consider and reject such bids before ordering the work done by force account.

FREQUENTLY ASKED QUESTIONS

Question: The trustees wish to proceed by contract in the widening of a short section of a road. Are the trustees required to have the county engineer prepare estimates of the cost of the work?
Answer: Yes. Widening of a road falls into the category of an improvement as does construction and reconstruction, and resurfacing.

Question: What is the meaning of "contract" as the term is used in O.R.C. 5575.01?
Answer: Under the contract procedure the township enters into an agreement with a person, company or corporation which undertakes to do a road project for the township at a price agreed upon between the township and such person, company or corporation. The person, company or corporation with which the township has contracted then purchases the necessary material, hires and pays the necessary labor, and uses its own equipment in performing the road project at a total price to the township which presumably will be great enough to cover the entire cost of the material, labor and equipment and furnish a profit to the company.

FREQUENTLY ASKED QUESTIONS

Question: The trustees wish to proceed by force account in the widening of a short section of a road. The county engineer's estimate shows that the job will cost no more than \$750. Is it necessary to advertise for bids?
Answer: No. For this improvement project, the second paragraph of O.R.C. 5575.01 provides that advertising for competitive bids is required only where the total estimated cost of the work exceeds fifteen thousand dollars per mile.

Question: The trustees wish to reconstruct a mile and a half of road by force account and the county engineer's estimate shows that the total cost of this improvement project will be \$15,250 per mile. Must the trustees advertise for bids?
Answer: Yes. The second paragraph of O.R.C. 5575.01 which pertains to the construction, reconstruction or improvement of a township road provides that "Where the total estimate cost of the work exceeds fifteen thousand dollars per mile, the board shall invite and receive competitive bids for furnishing all labor, materials, equipment and doing the work, as provided in O.R.C. 5575.02." However the section does provide that after the trustees consider the bids, they may then reject them and proceed by force account. This section further provides, however, that such force account work "shall be performed in compliance with the plans and specifications upon which the bids were based."

FREQUENTLY ASKED QUESTIONS

Question: Are there any exceptions to the O.R.C. 5575.01 requirement that contracts for road improvements be let only after advertising and bidding?

Answer: Yes. O.R.C. 505.08 provides that after adopting by a unanimous vote a resolution declaring a real and present emergency in connection with the administration of township services or the execution of duties assigned by law to any officer of a township, the board of township trustees may, by resolution, enter into a contract, without bidding or advertising, for the purchase of services, supplies, materials or equipment needed to meet the emergency if the estimated cost of the contract is less than fifty thousand dollars.

Question: If the township purchases oil, and uses township employees and township equipment to apply the oil to the road, is it necessary that anyone supervise the project?

Answer: Yes. O.R.C. 5575.01 provides that "All force account work shall be done under the direction of a member of the board or the superintendent."

FREQUENTLY ASKED QUESTIONS

Question: May the county commissioners proceed by force account in doing work for a township under a contract authorized by O.R.C. 307.15?

Answer: Yes. However, in road improvement projects, the county commissioners must comply with the provisions of O.R.C. 5543.19 including the making of estimates by the county engineer and the inviting and receipt of competitive bids when the total estimated cost of the work exceeds ten thousand dollars per mile.

Question: If the board of township trustees proceeds to construct a building to house road equipment by purchasing the material and employing the necessary labor, may a single township trustee or the road superintendent alone purchase any of the material or hire any of the labor?

Answer: Yes. O.R.C. 5549.21 would authorize the board of township trustees, when proceeding in effect by force account in the construction of a building to house road equipment, to adopt a resolution authorizing one of the members of the board of township trustees or the township highway superintendent to purchase material or hire labor at a price fixed by the board in such resolution.

Summary

- These AOS bulletins should be consulted by public offices initiating force account projects
 - 2003-003
 - 2007-001
 - 2008-004



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