

**Lee County Board of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20030254

1. REQUESTED MOTION:

ACTION REQUESTED: Adopt a Resolution amending Lee County Administrative Code 4-2, entitled "Bid Protest Hearing Guide".

WHY ACTION IS NECESSARY: Amends AC 4-2, the Lee County Purchasing Manual (Section 14) and Lee County Contract Manual (Section 12) to comply with FTA-funded procurements.

WHAT ACTION ACCOMPLISHES: Revises Lee Trans procurement procedures in conformity with FTA requirements by eliminating the need for a protest bond for FTA-funded procurements.

2. DEPARTMENTAL CATEGORY:
COMMISSION DISTRICT # ALA

3. MEETING DATE: 03-25-2003

4. AGENDA:

CONSENT

ADMINISTRATIVE

APPEALS

PUBLIC

WALK ON

TIME REQUIRED:
5 min.

5. REQUIREMENT/PURPOSE:
(Specify)

STATUTE

ORDINANCE

ADMIN. CODE

OTHER

Contract & Purchasing Manuals

6. REQUESTOR OF INFORMATION:

A. COMMISSIONER _____

B. DEPARTMENT _____

C. DIVISION Transit

BY: Steve Myers / Transit

Cindy Logan Contracts Mgr

Janet Sheehan / Purchasing

7. BACKGROUND: On December 3, 2002, the Federal Transit Administration's (FTA) final report and formal review of Lee County Transit disclosed a need for an exception to the requirement of a protest bond for FTA funded procurements. In compliance with federal regulations, the proposed amendment to Lee County Administrative Code 4-2 will eliminate the requirement of a protest bond for FTA funded projects only. Accordingly, Lee County's Contracts Manual and Purchasing Manual will be revised to reflect that "a contractor/vendor/firm is not required to post a protest bond for any FTA funded procurements."

Exhibits - Resolution
Amended A.C. 4-2 - Exhibit A
Proposed changes to manuals - Exhibit B

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL:

A Department Director	B Purchasing and Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
		N/A	N/A		OA	OM	RISK	GC	
				2/27/03	3/12/03	3/12/03	3/12/03	3/12/03	3-13-03

10. COMMISSION ACTION:

APPROVED

DENIED

DEFERRED

OTHER

Rec. by CoAtty
Date: 2/27/03
Time: 8:55 am
Forwarded To:

RECEIVED BY
COUNTY ADMIN. PM
3-12-03
1:30
COUNTY ADMIN.
FORWARDED TO: 08
3/13/03

LEE COUNTY RESOLUTION NO. _____

A RESOLUTION OF THE LEE COUNTY BOARD OF COUNTY COMMISSIONERS RELATING TO AMENDMENTS TO THE LEE COUNTY ADMINISTRATIVE CODE AS ADOPTED BY LEE COUNTY ORDINANCE NO. 97-23; PROVIDING FOR APPROVAL OF CERTAIN AMENDMENTS TO THE LEE COUNTY ADMINISTRATIVE CODE; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners is the governing body in and for Lee County, a political subdivision of the State of Florida; and,

WHEREAS, the Board of County Commissioners has previously enacted Lee County Ordinance No. 96-01, creating a charter form of government for Lee County pursuant to Section 125.80 and ff., Florida Statutes, and which was approved and ratified by the Electorate of Lee County on November 5, 1996; and,

WHEREAS, the Board of County Commissioners has previously enacted Lee County Ordinance No. 97-23, which adopted the Lee County Administrative Code pursuant to Section 2.2.E. of Ordinance No. 96-01, the Lee County Charter; and,

WHEREAS, Lee County Ordinance No. 97-23 at Section III allows and provides for amendments to the Lee County Administrative Code to be made by Resolution of the Board of County Commissioners at a regularly scheduled Board of County Commissioners' meeting; and,

WHEREAS, certain amendments to the Lee County Administrative Code are now being proposed, and the Board of County Commissioners finds that such proposed amendments are acceptable, serve a public purpose and are consistent with the terms and

conditions of Lee County Ordinance No. 96-01, the Lee County Charter.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS that:

1. The above preamble is hereby accepted and approved as being true and accurate, and is adopted and incorporated herein as if set out further at length.
2. The proposed amendment(s) to the Lee County Administrative Code 4-2 (attached hereto as Exhibit "A" and Exhibit "B"), is (are) approved, and is (are) hereby directed to be incorporated into the Lee County Administrative Code as indicated in the amendment(s).
3. The provisions of this Resolution are severable, and it is the intention to confer to the whole or any part of this Resolution, the powers herein provided for. If any of the provisions of this Resolution shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the other remaining provisions of this Resolution. It is hereby declared to be the Board's legislative intent that this Resolution would have been adopted had such an unconstitutional provision not been included herein.
4. This Resolution shall become effective immediately upon its adoption by the Board of County Commissioners.

The foregoing Resolution was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and, being put to a vote, the vote was as follows:

BOB JANES	_____
DOUGLAS ST. CERNY	_____
RAY JUDAH	_____
ANDREW COY	_____
JOHN E. ALBION	_____

DULY PASSED AND ADOPTED this ____ day of _____, 2003.

ATTEST:
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Chairman

APPROVED AS TO FORM:

By: _____
Office of the County Attorney

EXHIBIT A
ADMINISTRATIVE CODE
BOARD OF COUNTY COMMISSIONERS

CATEGORY: Purchasing/Contracts	CODE NUMBER: AC-4-2
TITLE: Bid Protest Hearing Guide	ADOPTED: 3/5/92
	AMENDED: 1/26/94 5/31/95
	ORIGINATING DEPARTMENT: Public Works/Contracts

PURPOSE/SCOPE:

The purpose of this administrative code is to provide a mechanism which will expedite the procurement process when a bid protest is filed with the County and its entities. The code will also provide for the submission of a bid protest bond to cover costs associated with the hearings. The administrative code will supplement the existing bid protest procedure.

POLICY/PROCEDURE:

SECTION ONE: DEFINITIONS

1. "County" shall mean Lee County, a political subdivision of the State of Florida.
2. "Board" shall mean Board of County Commissioners of Lee County Florida; Port Authority Commissioners; Community Redevelopment Agency; or any other entity under the jurisdiction of the Board of County Commissioners, over which said Commissioners have final decision-making authority for procurement, pursuant to Florida Statutes.
3. "Bid, Proposal or Quote" shall mean any procurement of goods, supplies, services, materials or labor, the total cost of which requires the approval of the Board under applicable County Administrative Code revisions or statutory authority. Professional services obtained pursuant to Chapter 287.055, Florida Statutes, are excluded.
4. "Bidder" shall mean any person, firm, corporation, company or other entity desiring to provide goods, supplies, materials, labor and/or services in response to a solicitation from the County. Professional services obtained pursuant to Chapter 287.055, Florida Statutes, are excluded.
5. "Solicitation" shall mean an invitation to provide a bid, proposal or quote, extended by the County to the public.

SECTION TWO: FILING FORMAL WRITTEN PROTEST

A detailed protest procedure shall be outlined in the County Administrative Code or Purchasing and Payment Procedures Manual and Contract Manual for Construction Projects approved by the Board. A Bidder's protest must be filed within the time frame set forth in the Administrative Code or Purchasing and Payment Procedures Manual or Contract Manual for Construction Projects, and otherwise comply with those procedures.

Except, as provided in the paragraph below, upon filing of Bidder's protest (as defined in the formal protest procedure), the Bidder shall post a bond, payable to the County in the amount equal to five percent

of the total bid, proposal or quote or Ten Thousand dollars (\$10,000.00), whichever is less. Said bond shall be conditioned upon the payment of all costs which may be adjudged against the protesting Bidder in the event of an adverse determination of the protest.

A Letter of Credit or other form of approved security, payable to the County, will be accepted. Failure to submit a bond simultaneously with formal written protest shall invalidate the bid protest at which time the County may continue its procurement process as if the notices regarding the bid protest had never been filed.

Any Bidder submitting the County's standard bond form (CSD:514 as amended from time to time), along with the bid/proposal/quote, shall not be required to submit an additional bond along with the filing of the formal written protest.

Protest bonds are not required for protests involving FTA funded procurements.

SECTION THREE: PROTEST HEARINGS

The County Purchasing Payment Procedures Manual or Contracts Manual for Construction Projects or Administrative Code shall specify the composition of the Dispute Committee. The Dispute Committee shall conduct a preliminary meeting with the unsuccessful Bidder filing the protest to attempt an amicable resolution of the protest. If such resolution does not occur to the mutual satisfaction of all parties involved, the Dispute Committee shall forward to the Board its recommendation, which shall include background information related to the solicitation and procurement.

Upon receiving the recommendation, the Board shall conduct an informal hearing at a regularly scheduled meeting or at such other time as may be arranged. Following presentations by involved parties, the Board shall render its decision on the merits of the protest.

If the Board's decision upholds the recommendation by the Dispute Committee regarding the award, and further finds that the protest was frivolous and/or lacked merit, the Board, in its discretion, may assess costs, charges or damages associated with any delay of the award or any costs incurred with regard to the bid protest procedure. These costs, charges or damages may be deducted from the security provided by the Bidder pursuant to this procedure. Any costs, charges or damages assessed by the Board in excess of the bond security shall be paid by the protesting Bidder within thirty (30) calendar days of the Board's determination thereof.

SECTION FOUR: EXPEDITED REVIEW

In the event circumstances are presented in writing to the County Administrator, or other appropriate agency head, demonstrating that a delay incident to suspending the bid quote, proposal and/or contract award process would be detrimental to the best interests of the County or the public's health, safety or welfare, the County Administrator, or other appropriate agency head, may authorize an expedited protest procedure. The expedited hearing shall be heard within ninety-six (96) hours of the action giving rise to the Bidder's protest, or as soon as the County deems practical.

BID BOND

KNOW ALL MEN BY **THESE** PRESENTS, that we _____

_____ as Principal, and _____
(BIDDER'S Name)

_____ a Corporation licensed to do
(Surety's Name)

business under the laws of the State of Florida as a Surety, are held and firmly bound unto LEE COUNTY BOARD OF COUNTY COMMISSIONERS; LEE COUNTY, FLORIDA, a Political Subdivision of the State of Florida, in the SUM OF _____

for the payment whereof, well and truly to be made, we bind ourselves, our heirs, successors, personal representatives and assigns, jointly and severally, firmly, by these presents.

SIGNED AND SEALED this _____ day of _____ 19__

WHEREAS, said Principal is herewith submitting a Proposal for the construction of: _____

NOW, THEREFORE, the condition of the above obligation is such that if said Principal shall be awarded the Contract upon said Proposal within the specified time and shall enter into a written Contract, satisfactory in form, provide an acceptable Public Construction Bond from a Surety acceptable to the COUNTY and provide other Insurance as **may** be required to the COUNTY within seven (7) calendar days after the written Notice of Award date, or within such extended period as the COUNTY **may** grant, then this obligation shall be null and void; otherwise said Principal and Surety shall pay to said COUNTY in money the difference between the amount of the Bid of said Principal and the amount for which said COUNTY **may** legally contract with another party to perform said work, if the latter amount be in excess of the **former**, together with any expenses and reasonable attorney's fees incurred by said COUNTY if suit be brought hereon, but in no event shall said Surety's liability exceed the penal sum hereof plus such expenses and attorney's fees. For purposes of unsuccessful-bid protests filed by the Principal herein, this obligation shall bind the Surety to pay costs and damages associated with the bid protest or delays to the project upon a finding from the Board of County Commissioners' for Lee County that the bid protest was frivolous and/or **lacked** merit. The liability of the Surety shall not exceed the penal sum of the bid bond.

Witness as to Principal: _____ (SEAL)
_____ (Principal)

(By)

Witness as to Surety: _____ (SEAL)
_____ (Surety's Name)

_____ (By-As Attorney-in-Fact, Surety)

Affix Corporate Seals and attach proper Power of Attorney for Surety.

EXHIBIT B

The following manuals will be amended:

Contract Manual

Section 12: Bid/Proposal Protest Procedure

5. a. The affected party must then file a Formal Written Protest within ten (10) calendar days after the time for the filing of the Notice of Intent to File a Protest has expired. Except as provided for in the paragraph below, upon filing of the Formal Written Protest, the firm shall post a bond payable to the Lee County Board of County Commissioners in an amount equal to five percent (5%) of the total bid/proposal or Ten Thousand Dollars (\$10,000.00), whichever is less. Said bond shall be designated and held for the payment of any costs that may be levied against the protesting firm by the Board of County Commissioners, if the protest is deemed by the County to be a frivolous Protest. All deadlines will be strictly construed by the County.

- b. A contractor/vendor/firm is not required to post a protest bond for any FTA funded procurements.

Purchasing Manual

Section 14: Bid/Proposal Protest Procedure

- 14.0.5.5 A contractor/vendor/firm is not required to post a protest bond for any FTA funded procurements.