

STANDARD CONTRACT PROTECTIONS

The City values our contractors and seeks to maintain good relationships with them. The City also has an obligation to protect the taxpayer money that we spend, and to that end we have protections in place for our contracts, which vary depending on type of contract. **Commission approval is required by a surety before they will issue bonds for a contract.** Once the bonds and insurance certificates are obtained, the City Attorney reviews the contract and then the City Manager signs it.

Prevailing wages: Required for construction projects over \$50,000 (and sometimes on state or federal for lesser amounts). This is the hourly wage, usual benefits and overtime, paid to the majority of workers, laborers, and mechanics within a particular area. This is usually the union wage. Prevailing wages are established by regulatory agencies for each trade and occupation employed in the performance of public work, as well as by State Departments of Labor (DOL) or their equivalents, are specific to Calhoun County. Purchasing pulls the current wages from the DOL at the time of publication of the Invitation for Bid; those wages do not change after that point and become part of the contract. Prevailing wage compliance is monitored by our Department of Public Works, and they collect the certified payrolls.

Performance bond: Required for construction contracts over \$50,000. In the amount of 100% of the contract value, a performance bond is a surety bond that guarantees satisfactory completion of a project. Very rare to ever call on a bond. A performance bond can also be used for non-construction; we require a performance bond for residential waste and land application of sludge, which are both high dollar and high risk should the contract fail.

Payment/Labor/Materials bond: Required for construction contracts over \$50,000. In the amount of 100% of the contract value, a PLM bond protects subs. A contractor cannot put a lien on a public building, so our subcontractors who provide both goods and services require protection in the event that the general contractor can't or won't pay their subs. Rare for our subs to call on any of our general contractors' bonds.

General liability insurance: Required for all contracts. Certificates of insurance for general commercial liability, workers' compensation, auto liability, and property damage are obtained prior to contract award. The City is always named as "additional insured" with respect to general liability, meaning the policy provides coverage to the City for work done under that contract. The Purchasing Office tracks all contracts and associated insurance, and we ensure that policies are kept current.

Liquidated damages: Used in most construction contracts. A clause as a material part of the contract, which is an amount to be withheld from payment for each calendar day that the contractor fails to complete the work within the time allowed. Liquidated damages are held in lieu of actual damages, which can be difficult to calculate, and may not be used as penalty. This amount is pre-determined by the engineer, usually anywhere from \$500 - \$2000 per calendar day, and is published in the Invitation for Bid along with the project completion date that must be met. Contractors know the liquidated damages amount and the completion date before they submit their bids. Delays outside the control of a contractor will not result in liquidated damages being withheld. A reason *not* to have a liquidated damages clause would be times of unusually long lead times or times when contractors are very busy because it could discourage bids.

Cancellation Clauses: All contracts contain clauses that allow the City to cancel a contract due to breach, poor performance, or convenience (i.e., no reason needed). Term contracts, those that can go on for many years, are typically executed for 1-2 years at a time, with renewals that are always mutual and optional. Very rare to cancel a contract. Most often, we simply don't renew a term contract if there were unresolved performance issues throughout the year, if we want to change the scope of work substantially, or if we no longer require those goods/services.

Bid bond/bid surety: for construction bids over \$50,000, contractors must submit with their bid a bid bond in the amount of 5% of their bid, which ensures they sign the contract after Commission approval. If the low bidder refuses to sign the contract, then the City could seek recourse on the bid bond and move to the next lowest responsive, responsible bidder. **A bid bond has no value or purpose after the contract is signed.** In the very rare case that a bidder has made an obvious and honest error, we would allow them to withdraw their bid. The City has not called on a bid bond during current Purchasing Agent's time (since 2001), so it's extremely rare.