

# The Public Competitive Bidding Act of 1974

## Quick Reference Guide - November 1, 2022

Title 61 O.S. §§ 101 - 138

- Applies to any public construction.
- Applies to road-construction projects.
- Applies to any repairs or construction of public buildings.

Bidding Levels		
Standard Contracts	Construction Manager Contracts	
Contracts without Construction Managers	Construction Management Trade Contracts (Agency)	Construction Management Subcontracts (At-Risk)
\$100,000 and over	\$50,000 and over	\$50,000 and over
\$10,000 to \$100,000	\$10,000 to \$50,000	\$25,000 to \$50,000
Under \$10,000	Under \$10,000	Under \$25,000

There are two types of project delivery methods:

- Standard contracts are a project delivery method in which the County contracts directly with the entity (county) doing the work without the help of a Construction Manager.
- Construction Management Contracts are a project delivery method based on an agreement whereby the County acquires from a construction entity a series of services that include, but are not necessarily limited to, design review, scheduling, cost control, value engineering, constructability evaluation, preparation and coordination of bid packages, and construction administration.

### Title 61 O.S. § 202(6)(a)

- “Agency Construction Management” - The construction entity provides services to the County without taking on financial risks for the execution of the actual construction or time of performance, and the County contracts directly with those awarded trade contracts for the work.

### Title 61 O.S. § 202(6)(b)

- “At-risk Construction Management” – the construction entity, after providing agency services during the pre-construction period:
  - (1) Takes on the financial obligation to timely carry out construction under a specified cost agreement.
  - (2) Enters into written subcontracts for the work in accordance with the construction management procedures.

### Title 61 O.S. § 103(A) – Competitive Bidding Required:

- All public construction contracts shall be let and awarded to the lowest responsible bidder, by open competitive bidding after solicitation for sealed bids.
- No work shall be commenced until a written contract is executed and all required bonds and insurance have been provided by the contractor to the County.

**Standard Contracts over \$100,000,  
Construction Management Trade Contracts over \$50,000, Or  
Construction Management Subcontracts over \$50,000**

Title 61 O.S. § 104 - Bid Notices:

- Notice shall be given electronically and by publication.
- Publication of notice in a newspaper in the county where work is to be performed. Must be published in two consecutive issues, the first being at least 21 days prior to opening bids.
- Notice must be sent to one in-state trade or construction publication (notice only, not required to be published).

Title 69 O.S. § 601.6 - Public Notice /DOT:

- The board of county commissioners in every county in this state must notify the Department of Transportation at least 21 days prior to accepting bids on any publicly let road or bridge work projects in the county. The Department shall make this information available to the public on their website.

Title 61 O.S. § 105 - Contents of Bid Notices:

- Sufficient details of the contract that all bidders shall know exactly what their obligation will be, either in the bid notice itself or by reference to bidding documents available to the public.
- How to obtain the bidding documents and if applicable, the cost of the documents.
- Date, time, and place of opening of the sealed bids either in person or electronically.
- Name and address to whom sealed bids should be submitted or information sufficient to enable a bid to be submitted electronically.
- Any other information that would be of beneficial interest to prospective bidders or the public.

Title 61 O.S. § 106:

- One set of bidding documents must be on file with the County Clerk and made available to the public at least 20 days prior to opening the bids.
- Copies should be available to anyone wanting to submit a bid.
- The County may require a reasonable deposit for each set - deposit should not exceed the actual cost of duplicating the documents.
- The County may retain all or part of the deposit as stated in the notice of bids.

Title 61 O.S. § 107 - Bid Bonds:

- The bid should be accompanied with:
  - A certified check, cashier's check, or bid bond equal to 5% of the bid, which shall be deposited with the awarding public agency as a guaranty, or
  - An irrevocable letter of credit containing terms prescribed by OMES in an amount equal to 5% of the bid.

**Standard Contracts over \$100,000,  
Construction Management Trade Contracts over \$50,000, Or  
Construction Management Subcontracts over \$50,000**

[Title 61 O.S. § 107 - Bid Bonds \(continued\):](#)

Purpose of Bid Bond:

- To recover the cost of republication of the notice to bidders, actual expenses incurred by reason of the bidder's default.

Additional information Regarding Bid Bond:

- May be forfeited to the county in the event the apparently successful bidder fails to execute the contract or fails to provide the required bonds or irrevocable letters of credit and insurance to the county.
- The County shall return a certified or cashier's check, bid bond, or irrevocable letter of credit to the successful bidder on execution and delivery of the contract and required bonds or irrevocable letters of credit and insurance. Checks of unsuccessful bidders shall be returned to them in accordance with the terms of the bid solicitation.
- The County may return the bid bond if it is determined that the bidder committed an excusable bidding error (clerical error) and for that reason it would not be equitable to enforce the bid security.

[Title 61 O.S. § 108 - Business-Relationship Affidavit:](#)

- Nature of any partnership, joint venture, or other business relationships then in effect or which existed within 1 year prior to the date of affidavit.
- Business relationship between any officer or director of the bidding company and any officer or director of the architectural or engineering firm or other party to the project.
- The names of all persons having any such business relationships and the positions they hold with their respective companies or firms. If none of the business relationships hereinabove mentioned exist, then a statement to that effect.

[Title 61 O.S. § 109 - Late Bids:](#)

- Any bid received by the County after the time set for opening of bids, shall not be considered by the governing board.

[Title 61 O.S. § 110 - Opening Bids:](#)

- All bids whether submitted in paper or electronic format shall be sealed and opened only at the time and place mentioned in the bidding documents and read aloud in the presence of an administrative officer (Board of County Commissioners) of the awarding public agency. Electronic bids shall not be viewable prior to the time listed for bid opening. Such bid opening shall be open to the public and to all bidders.

**Standard Contracts over \$100,000,  
Construction Management Trade Contracts over \$50,000, Or  
Construction Management Subcontracts over \$50,000**

Title 61 O.S. § 111 - Time To Award Contract:

- Contract shall be awarded to the lowest responsible bidder within 30 days after the opening of bids unless the governing body of the awarding public agency, by formal recorded action and for good cause shown, provides for a reasonable extension of that period.
- State/Local funds - extension of 15 days.
- Federal funds- extension of 90 days.
- Upon mutual agreement between the bidders and the awarding agency the contract award period may be extended no more than 120 days from the bid opening date.

Title 61 O.S. § 112 - Documents Open for Public Inspection:

- All bids, both successful and unsuccessful, and all contracts and required bonds shall be retained for a period of 5 years from the date of opening of bids or for a period of 3 years from the date of completion of the contract, whichever is longer, shall be open to public inspection and shall be matters of public record.

Title 61 O.S. § 1(A) – Contracts Exceeding Certain Amount – Bond – Affidavit of Payment:

- Prior to an award of a contract exceeding One Hundred Thousand Dollars (\$100,000) for construction or repair of a public building or structure, or improvement to real property, the person that receives the award shall furnish a bond with good and sufficient sureties payable to the state in a sum not less than the total sum of the contract; or

Title 61 O.S. § 1(B) – Contracts Exceeding Certain Amount – Bond –Affidavit of Payment:

- The bond shall ensure the proper and prompt completion of the work in accordance with the contract [*performance bond*] and shall ensure that the contractor shall pay all indebtedness the contractor incurs for the contractor's subcontractors and all suppliers of labor, material, rental of machinery or equipment, and repair of and parts for equipment the contract requires the contractor to furnish [*payment bond*].

**Standard Contracts over \$100,000,  
Construction Management Trade Contracts over \$50,000, Or  
Construction Management Subcontracts over \$50,000**

Title 61 O.S. § 113(A) - Execution of Contract, Bond, and Insurance:

- Within 60 days of awarding the contract, a contract embodying the terms set forth in the bidding documents shall be executed by the County and the successful bidder, or where construction management at-risk is project method, by the construction manager.

Title 61 O.S. § 113(B)(1),(2) - Execution of Contract, Bond, and Insurance:

Payment/Performance Bond

- A bond complying with the provisions of [61 O.S. § 1](#).
- The purpose of this bond is to ensure the proper and prompt completion of the work in accordance with the contract and shall ensure that the contractor shall pay all indebtedness incurred for subcontractors, labor, materials, rental of equipment, etc.

Title 61 O.S. § 113(B)(3) - Execution of Contract, Bond, and Insurance:

Warranty Bond

- A bond in a sum equal to the contract price to protect the awarding public agency against defective workmanship and materials for a period of 1 year after acceptance of the project.

Title 61 O.S. § 113(B)(4) - Execution of Contract, Bond, and Insurance:

Insurance

- Contractor must provide evidence of public liability and workers' compensation insurance during construction in reasonable amounts.

Title 61 O.S. § 113(C)- Execution of Contract, Bond, and Insurance:

- Contractor may request of the governing board an additional sixty (60) days in which to obtain the bond.

Title 61 O.S. § 113(D) - Execution of Contract, Bond, and Insurance:

- Procedures to follow in the event an administrative error in the award process has occurred:
  - At the next regularly scheduled public business meeting, upon the record, present to the governing body that an error has been made in the award process and shall state the nature of the error. The governing body, upon presentation of the facts of the error, may rescind the award and readvertise for bids, or may direct correction of the error and award the contract to the lowest responsible bidder, whichever shall be in the best interests of the county.



**Standard Contracts over \$100,000,  
Construction Management Trade Contracts over \$50,000, Or  
Construction Management Subcontracts over \$50,000**

Title 61 O.S. § 114 - Conflict of Interest:

- The chief administrative officer and members of the governing body of the awarding public agency authorizing or awarding or supervising the execution of a public construction contract, and their relatives within the third degree of consanguinity or affinity, are forbidden to be interested directly or indirectly through stock ownership, partnership interest, or otherwise in any such contract.
- Contracts entered into in violation of this section shall be void.
- Persons willfully violating this section shall be guilty of a felony and shall be subject to removal from office.

Title 61 O.S. § 115 - Collusion Among Bidders:

- Any agreement or collusion among bidders, prospective bidders, or material suppliers in restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding, or otherwise, shall render the bids of such bidders void. Persons willfully violating this section shall be guilty of a felony.
- Non-Collusion Affidavit: Each bidder shall accompany the bid with a sworn statement that the bidder has not been a party to any such agreement. The form of the statement shall be substantially as provided in Section 85.22 of Title 74 of the Oklahoma Statutes, but modified in wording to refer to the appropriate public agency requesting bids.

Title 61 O.S. § 117 - Award to Other Than Lowest Bidder:

- If an award is made to other than the lowest bidder, the County shall accompany its action with a publicized statement setting forth the reason for its action.
- This requirement is met if it is properly recorded in an open meeting in the minutes of the Board of County Commissioners meeting.

Title 61 O.S. § 119 - Rejection of Bids:

- By majority action of the board of county commissioners, the County shall have the right to reject any or all bids and solicit bidders again as herein provided if, in the opinion of the board, the best interests of the people of the State of Oklahoma would be best served by so doing.

Title 61 O.S. § 124 - Inspections:

- The board of county commissioners shall make provision for the inspection of projects prior to acceptance by the said agency and shall approve claims for payment only after proper inspection has been made as provided in the plans and specifications for said project.

**Standard Contracts over \$100,000,  
Construction Management Trade Contracts over \$50,000, Or  
Construction Management Subcontracts over \$50,000**

Title 61 O.S. § 126 - Construction on Force Account Basis:

- Nothing in this act shall be construed to prevent a County from doing public construction work on a force-account basis.

Title 61 O.S. § 131 - Splitting of Contracts:

- No contract shall be split into partial contracts for the purpose of avoiding the requirements of this act. All such partial contracts shall be void. Any person who knowingly violates the provisions of this section shall, upon conviction, be guilty of a misdemeanor punishable by imprisonment in the county jail for not more than 1 year, or by a fine of not more than \$1,000.00, or by both.

Title 61 O.S. § 133 - Law Governing:

- If a statute, charter, or general ordinance provides more stringent standards or procedures than those provided by this act, then the statute, charter, or general ordinance shall prevail.

Title 61 O.S. § 134 - Insurance or Bond to be Secured From  
Carrier Licensed in OK:

- Any insurance or bond required by this act shall be secured from an insurance or indemnity carrier licensed to do business in the State of Oklahoma.

Title 61 O.S. § 136 - Conflicts with Federal Rules and  
Regulations - Laws Governing:

- In the event any provision of this act conflicts with or is inconsistent in any manner with the rules and regulations of any agency of the United States Government, which is providing all or any portion of the funds used to finance any public construction contract, the rules and regulations of said agency of the United States Government shall supersede and take precedence over such portion or portions of this act in conflict or inconsistent therewith, it being the intent of the Legislature to secure all of the benefits available to the people of the State of Oklahoma from federally-assisted programs.

**Standard Contracts over \$10,000 - \$100,000  
Construction Management Trade Contracts \$10,000 - \$50,000, Or  
Construction Management Subcontracts over \$25,000 - \$50,000**

[Title 61 O.S. § 138 - Non-Collusion Affidavit:](#)

- Any competitive bid submitted pursuant to the Public Competitive Bidding Act of 1974 to a school district, county, or municipality for furnishing of goods or services shall be accompanied by the sworn non-collusion statement contained in [Section 85.22 of Title 74](#), modified in wording to refer to the school district, county, or municipality instead of the state.

[Title 61 O.S. § 103\(C\) - Competitive Bidding Required:](#)

- Must obtain written bids or competitive quotes.
- Must notify all vendors who have requested their business be considered for bid purposes.
- A minimum of three quotes should be obtained.
- Discuss and award contract in an open meeting.

Nothing would prohibit a County from requiring a contractor to provide the following on contracts \$100,000 and less:

- ✓ Performance/Payment Bond or Warranty Bond
- ✓ Evidence of Insurance
- ✓ Any other part of PCBA requirements



**Standard Contracts under \$10,000  
Construction Management Trade Contracts under \$10,000 Or  
Construction Management Subcontracts under \$25,000**

Title 61 O.S. § 103(D) - Competitive Bidding Required:

- May be negotiated with a qualified contractor.
- Work may be commenced in accordance with the purchasing policies of the public agency.
- All contracts are required to be approved by the BOCC.

**Title 69 Statutes (regarding bidding)**

Title 69 O.S. § 633 - Engineer Requirements:

- The statute requires a county to have engineering plans and specifications prepared by the county engineer to ensure sound engineering practices for:
  - Culvert or bridge to be constructed or reconstructed at an estimated cost of \$300,000 or more.
  - Grade and drainage project, reconstruction project, replacement project, or major repairs for road construction at an estimated cost of \$800,000 or more.
- If a county wants to utilize the force account for the construction of culverts or bridges costing \$300,000 or more OR road construction (etc.) costing \$800,000 or more, the county must:
  - Document the estimated cost of construction is below or equal to the estimate of the engineer,
  - OR
  - Document the estimated cost of construction is below any bid submitted at a public letting.
- The statute further requires the project to be advertised for bids pursuant to 69 O.S. § 1101.

**Other considerations regarding Public Construction Contracts**

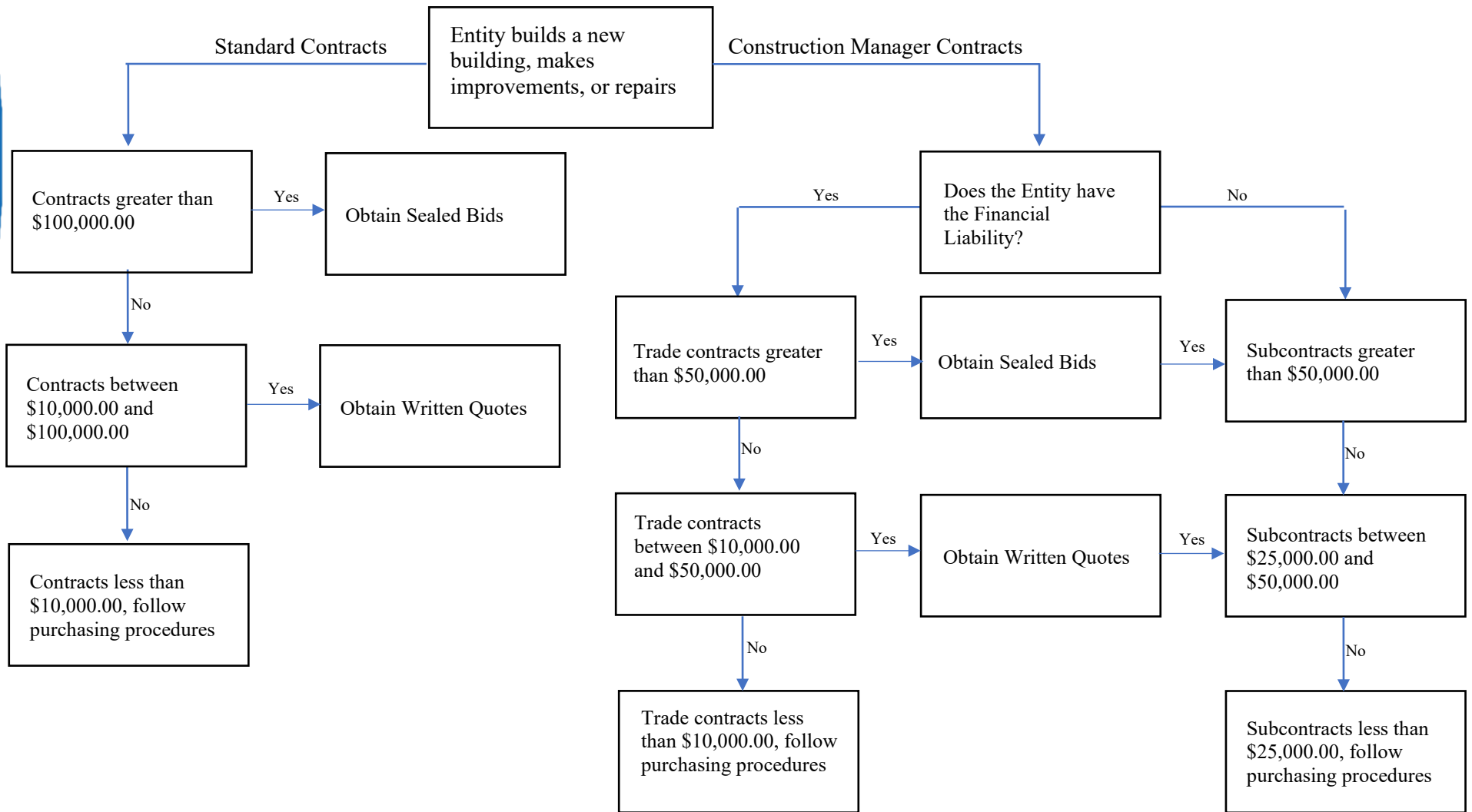
Title 61 O.S. §§ 11 & 12 – Facilities for Handicapped

- All plans and specifications for the erection of public buildings through the use of public funds shall provide facilities for people with disabilities and shall conform with the codes and standards adopted by the State Fire Marshal.
- Plans and specifications shall be submitted prior to bidding and awarding to the State Fire Marshal or other authority having jurisdiction.

Title 61 O.S. § 121 - Change Orders or addenda

- Change orders or addenda for public construction contracts \$1 million or less shall not exceed 15% cumulative increase in the original contract amount.
- Change orders for public construction contracts in excess of \$1 million shall not exceed the greater of \$150,000 or 10% cumulative increase in the original contract amount.

*Note: changes in excess of the limit require a separate/additional bid.*





NON-COLLUSION BIDDING CERTIFICATION

\_\_\_\_\_ (PROJECT NAME)

STATE OF OKLAHOMA )  
 )SS  
COUNTY \_\_\_\_\_)

A. For purposes of competitive bids, I certify:

1. I am the duly authorized agent of \_\_\_\_\_, the bidder submitting the competitive bid which is attached to this statement, for the purpose of certifying the facts pertaining to the existence of collusion among bidders and between bidders and state officials or employees, as well as facts pertaining to the giving or offering of things of value to government personnel in return for special consideration in the letting of any contract pursuant to the bid to which this statement is attached;
2. I am fully aware of the facts and circumstances surrounding the making of the bid to which this statement is attached and has been personally and directly involved in the proceedings leading to the submission of such bid; and
3. Neither the bidder nor anyone subject to the bidder's direction or control has been a party to the following:
  - a. Any collusion among bidders in restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding;
  - b. Any collusion with any state official or employee as to quantity, quality or price in the prospective contract, or as to any other terms of such prospective contract; and
  - c. Any discussions between bidders and any state official concerning exchange of money or other thing of value for special consideration in the letting of a contract.

B. I certify, if awarded the contract, whether competitively bid or not, that neither the Contractors nor anyone subject to the Contractor's direction or control has paid, given, or donated or agreed to pay, give, or donate to any officer or employee of the State of Oklahoma any money or other thing of value, either directly or indirectly, in procuring the contract to which this statement is attached.

Certified this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Position in the Company)

# **The Public Competitive Bidding Act of 1974 Checklist**

**Standard Construction Contracts \$100,000 and over**

**Construction Management Trade Contracts (Agency) over \$50,000**

**Construction Management Subcontracts (At-Risk) over \$50,000**

- 1) Start project file.
- 2) List project on BOCC agenda.
- 3) BOCC approval to let bids documented in minutes.
- 4) Bidding documents on file with County Clerk and available electronically.
- 5) Notice of bid sent to DOT 21 days prior to accepting/awarding bids in open meeting.
- 6) Publication in County newspaper twice, first publication should be 21 days prior to accepting/awarding bids.
- 7) Bid notice posted electronically.
- 8) Date and time stamp bids.
- 9) Open bids in open meeting as stated in publication.
- 10) Ensure all bid documents are enclosed – including bid bond, business relationship affidavit, non-collusion bidding certification.
- 11) Bid should be awarded within 30 days of opening bids (some exceptions).
- 12) All bid bonds of unsuccessful bidders should be returned.
- 13) Written, executed contract signed by BOCC and Contractor. All bonds should be provided to the County prior to executing the contract. Evidence of insurance should be provided to the County prior to executing the contract.
- 14) After contract is signed, the Contractor's bid bond may be returned.
- 15) Work can be commenced upon execution of written contract.
- 16) Inspection of project should be made prior to approving claims.