



# 2024 REVISED CONTRACT POLICY MANUAL



**COUNTY OF ORANGE**



**CONTRACT POLICY MANUAL**

**Adopted by the  
Orange County Board of Supervisors  
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**DONALD P. WAGNER  
CHAIRMAN  
THIRD DISTRICT**

**DOUG CHAFFEE  
VICE CHAIRMAN  
FOURTH DISTRICT**

**ANDREW DO  
SUPERVISOR  
FIRST DISTRICT**

**VICENTE  
SARMIENTO  
SUPERVISOR  
SECOND DISTRICT**

**KATRINA  
FOLEY  
SUPERVISOR  
FIFTH DISTRICT**

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## **SECTION 1 – GENERAL RESPONSIBILITIES**

## SECTION 1.1

### OFFICE OF THE COUNTY PROCUREMENT OFFICER

#### **§1.1-101**      **Statute**

- (1) Title 3, Division 2, Part 2, Chapter 5, Article 7 (Secs. 25500 et seq.) of the California Government Code authorizes the County Board of Supervisors to employ a County Purchasing Agent to perform certain duties on behalf of the County. These duties are defined in Government Code §25501 and the Codified Ordinances of the County of Orange, Title 1, Division 4, Article 2, Sections 1-4-12 through 1-4-38. Additional statutes, particularly those applicable to Public Works, Architect-Engineering and Real Estate contracts and procurements, have been further included herein as applicable, however all procurement procedures remain subject to all applicable laws whether or not expressly cited herein.

#### **§1.1-102**      **Policy**

- (1) The County Purchasing Agent, also referred to herein as the County Procurement Officer, shall establish methods and procedures necessary for the proper functioning of County procurement in an efficient, transparent and economical manner.
- (2) All County procurement contracts shall be solicited and executed in accordance with the provisions of this Contract Policy Manual (CPM) unless otherwise authorized by the County Board of Supervisors.

#### **§1.1-103**      **Ethical Statement**

- (1) The County Procurement Officer, as well as all those involved in County procurement shall discharge their duties in accordance with high ethical standards by practicing their profession with integrity, honesty, truthfulness, transparency, and adherence to the absolute obligation to safeguard the public trust.

#### **§1.1-104**      **Scope**

- (1) It shall be the duty of the County Procurement Officer and others, as set forth herein, to purchase for the County of Orange, its offices, and any special district whose affairs and funds are under the supervision and control of the Board of Supervisors all services, materials, supplies, furnishings, equipment, livestock, and other personal property of whatever kind and nature required to conduct County business.

#### **§1.1-105**      **Contracts Outside Scope of County Procurement Officer Authority**

- (1) Except as otherwise provided by statute or ordinance, or as otherwise delegated by the Board of Supervisors herein, the Board of Supervisors has delegated authority to the County Procurement Officer pursuant to the legal authority provided in §1.1-101 above. To the extent that the Board of Supervisors has delegated its authority to execute contracts contemplated herein to other department heads or their authorize representatives, those authorized representatives, with the exception of Real Estate Contracts, are required to be deputized by the County Procurement

Officer and will avail themselves of the training opportunities provided by the Office of the County Procurement Officer.

- (2) Notwithstanding procurement authority otherwise delegated herein, all contracts for goods and services that are not competitively solicited (including sole source contracts and any contracts with less than two (2) bids), or any nonstandard payment provisions of a contract, which have been requested, directed or otherwise initiated by an individual Member of the Board of Supervisors or their staff, shall require approval of the Board of Supervisors.
- (3) Commencing on January 1, 2025:
  - a) Pursuant to Government Code Section 26227.5, all contracts, sponsorship agreements or grant agreements with community organizations or nonprofit organizations, which are entered into at the discretion and at the direction of an individual member of the Board, shall require approval of a majority of the Board.
    - i. The Board shall post on its internet website a log of appropriated district discretionary funds at the end of each quarter.
    - ii. The log shall list:
      1. The planned and actual costs of the program or project, including the indirect costs, that the district discretionary funds cover.
      2. The spending timeline of those funds.
      3. The purpose of program funding.
      4. The eligibility requirements to receive funding.
      5. Total dollars awarded to the entity that is contracted with the County.
  - b) Pursuant to Government Code Section 25043, Board Members shall disclose a known family relationship with an officer or employee of a nonprofit entity before the Board appropriates money to, or approves a contract, sponsorship agreement or grant agreement with, that nonprofit entity.

**§1.1-106      Delegation of Authority**

- (1) In this capacity, the County Procurement Officer may delegate their authority to other employees of the County of Orange, its offices, or any special districts whose affairs and funds are under the supervision and control of the Board of Supervisors.
  - a) These employees shall be those designated by department heads, and shall be trained under the direction of the County Procurement Officer and deputized as Deputy Purchasing Agents to perform in the County Procurement Officer's capacity, except as otherwise provided herein.
  - b) The delegation of authority by the County Procurement Officer to Deputy Purchasing Agents in no way grants authority to persons who have not been authorized by department heads.

**§1.1-107      Authority to Procure**

- (1) Except as otherwise provided herein, no procurement of personal property, services, commodities (including cash alternatives and court-ordered commodities and services), food or travel by any person other than the County Procurement Officer or Deputy Purchasing Agents shall be binding upon the County, or constitute a lawful charge against any County funds, except in emergencies and as may be otherwise provided through action by the Board of Supervisors.
- (2) Employees responsible for procuring personal property, services and commodities on behalf of the County cannot also be responsible for approving requisitions for purchases, receiving the commodities purchased, or the approval/processing of invoices for payment for their department.

**§1.1-108      Specific Duties**

- (1) Except as otherwise provided herein, or where statutes or ordinances dictate otherwise, the County Procurement Officer and Deputy Purchasing Agents are authorized to carry out the specific duties listed in this manual plus any additional duties as provided by resolution of the Board of Supervisors, Codified Ordinances of the County of Orange, or laws of the State of California. The County Procurement Officer and Deputy Purchasing Agents are authorized to:
  - a) Solicit and purchase all services, commodities, materials, supplies, furnishings, equipment, livestock, food, travel and other personal property of whatever kind and nature required to conduct County business, except in cases of emergency and as otherwise provided through Board of Supervisors action;
  - b) Negotiate and execute all Contracts, as detailed in Section 3 of this manual;
  - c) Execute Memoranda of Understanding (MOUs), as detailed in Section 3 of this manual;
  - d) Approve and confirm emergency purchases;
  - e) Encourage the procurement of “environmentally preferable” products in all solicitations, where practical, that are executed by the County in accordance with current federal and/or state regulations;
  - f) Review specifications written for the acquisition of services and commodities to ensure that they are not unnecessarily restrictive and provide the County with the benefits of open and fair competition; and,
  - g) Develop and maintain a procurement process which is fair, effective, and efficient.

**§1.1-109      Responsibilities of the County Procurement Officer:**

- (1) The County Procurement Officer or authorized designee is responsible for the following:
  - a) Solicit bids/proposals for cooperative contracts used County-wide by departments;
  - b) Establish Procurement policies and procedures to be followed by departments::;
  - c) Establish policies and procedures to be followed by departments for the use of a Purchasing Card Program to promote efficiencies for low dollar purchases;



- d) Maintain the “bidders list”, as may be required, for use by departments purchasing units for solicitation of bids and proposals;
- e) Verify, on a periodic basis, that each Deputy Purchasing Agent obtains insurance certificates and endorsements for department purchasing contracts;
- f) Identify and pursue other governmental department and other organizations cooperative purchasing contracts, that may be executed, that would be beneficial for County use and where appropriate, make these contracts available for use by each department in accordance with Section 4.7 of this manual;
- g) Manage a centralized program for the reuse of surplus County personal property to foster reuse by other departments in accordance with Section 1.6 of this manual;
- h) Sell and dispose of personal property, including electronic equipment, no longer required for County use, in accordance with the current County “E-Waste Policy”, as well applicable state, federal and county regulations;
- i) Assist in identifying new advancements in technology and other innovations in public sector procurement that would be beneficial for County use, and working with the County’s Chief Information Officer (CIO), as appropriate, implement these innovations for County-wide use;
- j) Develop training materials and conduct training programs for Deputy Purchasing Agents, their supervisors, and others, as designated by department heads that ensures a County-wide procurement process which is fair, effective and efficient, and ensures the integrity of the County’s procurement process;
- k) Deputize those trained in the procurement process when assured that they are adequately trained to perform with the delegated authority of the County Procurement Officer;
- l) Provide assistance on a consultative basis, as requested by department heads or their designees, in the development of solicitations and contracts and the handling of vendor protests;
- m) Review solicitations and contracts when so requested by department personnel;
- n) Develop and implement a compliance monitoring plan with performance measures to review the procurement documents prepared by the Deputy Purchasing Agents, and to report to the appropriate Procurement Council Representative with recommendations for corrective action to ensure the County procurement process is fair, efficient, and compliant with legal requirements and County policies and procedures;
- o) Chair the Procurement Council;
- p) Convene and chair the Procurement Appeals Board;
- q) Encourage County involvement in public procurement organizations in an effort to promote the public procurement profession through education and peer networking;
- r) Amend this manual to include additional Board policy, as directed by the Board of Supervisors or the County Executive Officer;
- s) Carry out the other duties and responsibilities as defined in this manual;

- t) Implement and maintain a Procurement Procedure Manual consistent with this CPM to guide the procurement and management of all contracts in a manner consistent with law, in consultation with County Counsel; and
- u) Amend this CPM to make clerical, ministerial, or other non-material edits, subject to review and approval of such clerical, ministerial, or other non-material edits by County Counsel, including updating provisions based on statutory authority that is cited in the CPM (e.g., statutory dollar triggers and limits, restrictions and authorizations). CPO will communicate to the Board any proposed increases to thresholds as a result of changes in statutory authority. All other changes will be made only as approved by the Board of Supervisors.

**§1.1-110      Custodian of Documents**

- (1) All standardized procurement contract templates shall be the sole documents utilized for purposes of County business, except as otherwise approved by the County Procurement Office. Excluding Real Estate Contracts, and except as deemed necessary by OC Sheriff's Department for security and screening purposes, the County Procurement Officer shall be the custodian of these documents and provide the appropriate updates and controls and shall be authorized to modify, add or delete documents as necessary. All standardized contract templates, and any subsequent material changes thereto, shall require legal review and approval of County Counsel.

## SECTION 1.1.1

### DEPUTY PURCHASING AGENTS

#### §1.1.1-101 Policy

- (1) Unless otherwise directed by the Board of Supervisors and/or the County Executive Officer and executed by the County Procurement Officer, or as otherwise set forth herein, department heads shall be fully responsible for the procurement of all services and commodities required for those operations under their direction, subject to the following conditions:
  - a) Employees referred by the heads of departments to receive training and certification as Deputy Purchasing Agents will be the only persons authorized to procure services and commodities on behalf of their respective department.
  - b) Deputy Purchasing Agents shall be trained and certified under the sole direction of the County Procurement Officer.
  - c) Deputy Purchasing Agents shall follow the procurement policies established herein, as well as those procedures established by the County Procurement Officer as set forth in the Procurement Procedures Manual, to ensure a procurement system which is fair, effective, efficient, and in compliance with legal requirements and Board of Supervisors policy.

#### §1.1.1-102 Scope

- (1) Except as otherwise provided in this manual or as directed by the Board of Supervisors, only those employees who are trained and deputized by the County Procurement Officer and authorized by their department head or designee, have the authority to procure services, commodities, etc., for the County pursuant to the CPM.
- (2) Deputy Purchasing Agents are required to use Regional Cooperative Agreements (RCAs) issued by the office of the County Procurement Officer or provide valid written justification detailing the reasons for not using available RCAs in the procurement file, or as specified by the County Procurement Officer.
- (3) Deputy Purchasing Agents may utilize other cooperative contracts issued by other governmental jurisdictions and organizations that have been approved and made available for use by the County Procurement Officer in accordance with Section 4.7 of this manual.

#### §1.1.1-103 Specific Duties

- (1) The specific duties of the Deputy Purchasing Agents are defined in Section 1.1 of this document, Office of the County Procurement Officer.

## SECTION 1.2

### PROCUREMENT COUNCIL

#### **§1.2-101**      **Definition**

- (1) The Procurement Council will be chaired by the County Procurement Officer or authorized designee and comprised of the Procurement Manager or designee from each department. This council will meet regularly to discuss procurement issues and make recommendations regarding procurement policies, procedures and processes.

#### **§1.2-102**      **Specific Duties**

- (1) The Procurement Council will, among other duties:
  - a) Review and evaluate purchasing policies and procedures;
  - b) Identify services and commodities appropriate for County-wide contracts;
  - c) Review potential operational areas for standardization;
  - d) Identify and discuss new operational concepts;
  - e) Evaluate resource-sharing to identify areas of mutual benefit among departments;
  - f) Recommend and encourage the lead department to issue and coordinate small multi-department contracts with less than six users;
  - g) Assist in the identification, development, and implementation of new technology on a County-wide basis, when appropriate;
  - h) Disseminate and share information with their staff or department in a timely manner;
  - i) Discuss issues of concern in the procurement process;
  - j) Identify and discuss legislation and County policies that, if implemented, could potentially impact County procurement processes;
  - k) Develop and review performance measures for use by the County Procurement Officer in monitoring procurement processes; and,
  - l) Evaluate and provide feedback on the performance of department procurement operations on an ongoing basis.

## SECTION 1.3

### PROTEST

#### **§1.3-101      Policy**

- (1) Any actual or prospective bidder or respondent who alleges an error or impropriety in the solicitation or award of a contract may submit a grievance or protest to the appropriate department Deputy Purchasing Agent, as set forth herein.
- (2) Section 3.6-101 shall govern procedures for Public Works Architect-Engineer Service Contracts and Public Works Construction Contracts solicitations Protests and Appeals.
- (3) Section 4.3.1-104 shall govern procedures for Real Estate solicitation Protests and Appeals.

#### **§1.3-102      Procedure**

- (1) All protests shall be typed under the protester's letterhead and submitted in accordance with the provisions stated herein. All protests shall include at a minimum the following information:
  - a) The name, address and telephone number of the protester;
  - b) The signature of the protester or the protester's representative;
  - c) The solicitation number;
  - d) A detailed statement of the legal and/or factual grounds for the protest; and
  - e) The form of relief requested.

#### **§1.3-103      Protest of Solicitation/Specifications**

- (1) All protests related to solicitation specifications must be submitted to the appropriate soliciting department's Deputy Purchasing Agent no later than five (5) business days prior to the close of the solicitation. Protests received after the five (5) business day deadline will not be considered by the County.
  - a) In the event the protest of specifications is denied, and the protester wishes to continue in the solicitation process, they must still submit a bid or proposal prior to the close of the solicitation in accordance with the solicitation submittal procedures provided in the solicitation.

#### **§1.3-104      Protest of Award of Contract – Invitation for Bid (IFB)**

- (1) In accordance with Section 4.2 of this manual protests related to the award of a contract based on the Invitation for Bid (IFB) process, a protest must be submitted no later than five (5) business days after the Notice of Intent to Award is provided by the Deputy Purchasing Agent.
  - a) Protests relating to a proposed contract award received after the five (5) business day deadline will not be considered by the County.

- b) If the five (5) business day period expires without the receipt of a protest, the department may move forward with the contract award or if necessary, file the item for approval by the Board of Supervisors.

**§1.3-105      Protest of Award of Contract – Request for Proposals (RFP)**

- (1) Prior to the filing of an Agenda Staff Report (ASR) for award of contract, the Deputy Purchasing Agent shall send a Notice of Intent to Award to all interested Parties which will initiate the protest period.
  - a) Vendors will have five (5) business days from the date of the notice in which to file a protest concerning the award of the contract.
  - b) Protests relating to a proposed contract award received after the five (5) business day deadline will not be considered by the County.
  - c) During the five (5) business day period, RFP information, including the final evaluator score sheets with the names of individual evaluators redacted, are subject to public disclosure.
  - d) If the five (5) business day period expires without the receipt of a protest, the department may move forward with the contract award or if necessary, filing the item for approval by the Board of Supervisors.

**§1.3-106      Protest Process**

- (1) In the event of a timely protest, the County shall not proceed with the solicitation or award of the contract until the Deputy Purchasing Agent issues a decision on the protest.
- (2) Upon receipt of a timely protest, the Deputy Purchasing Agent will within ten (10) business days of the receipt of the protest, issue a decision in writing which shall state the reasons for the actions taken.
- (3) The County may, after providing written justification to be included in the procurement file, make the determination that an immediate award of the contract is necessary to protect the substantial interests of the County. The award of a contract shall in no way compromise the protester’s right to the protest procedures outlined herein.
- (4) If the protester disagrees with the decision of the Deputy Purchasing Agent, in accordance with Section 1.3-107, the protestor may submit a written notice to the Office of the County Procurement Officer requesting an appeal to the Procurement Appeals Board.

**§1.3-107      Appeal Process**

- (1) If the protester wishes to appeal the decision of the Deputy Purchasing Agent, the protester must submit, within three (3) business days from receipt of the Deputy Purchasing Agent’s decision, a written appeal to the Office of the County Procurement Officer.
- (2) Within fifteen (15) business days, the County Procurement Officer will review all materials in connection with the appeal, assess the merits of the appeal and provide a written determination that shall contain their decision on whether the appeal shall be forwarded to the Procurement Appeals Board as described in Section 1.4 of this manual.

- (3) The decision of the County Procurement Officer on whether to allow the appeal to go forward will be final and there shall be no right to any administrative appeals of this decision.

## SECTION 1.4

### PROCUREMENT APPEALS BOARD

#### §1.4-101 Definition

- (1) The Procurement Appeals Board is an administrative review board convened by the County Procurement Officer for the sole purpose of hearing vendor protests that have not been resolved at the department level.

#### §1.4-102 Purpose

- (1) It will be the purpose of the Procurement Appeals Board to determine whether a solicitation or contract award is in accordance with applicable case law, statutes, code, County ordinances, policies and procedures, and accepted standards of fairness and ethics.

#### §1.4-103 Policy

- (1) The County Procurement Officer has the authority to establish a Procurement Appeals Board. The Procurement Appeals Board will meet to hear vendor protests that have not been resolved at the department level.
  - a) Upon receipt of written determination by the County Procurement Officer that a hearing is to be convened, the protester and the County department will be given advanced notice of at least ten (10) business days prior to the hearing date, time and location.
  - b) No postponement of the hearing shall be granted, unless good cause is shown by the party seeking the postponement. Whether or not good cause exists shall be in the sole discretion of the County Procurement Officer.
- (2) For Public Works Construction Contracts and Architect-Engineer Service Contracts solicitations, see Section 3.6-101.

#### §1.4-104 Composition

- (1) The Procurement Appeals Board will be chaired by the County Procurement Officer or designee. The County Procurement Officer has the authority to request participation on the Procurement Appeals Board by specific County personnel. The Procurement Appeals Board shall be comprised of:
  - a) One (1) Deputy County Counsel to serve as legal counsel to the Procurement Appeals Board.
  - b) Three (3) Administrative or Executive Managers from various County departments. The County personnel selected for the Procurement Appeals Board shall have no conflict with the solicitation being protested.
  - c) One (1) Member of the Public - The County Procurement Officer shall also include a member of the public whenever reasonably possible. The non-County Procurement



Appeals Board member shall be familiar with public procurement processes and ethical standards, including applicable State and county laws and ordinances, and shall be available on short notice so that protests can be resolved quickly.

**§1.4-105      Conflict of Interest – Procurement Appeals Board**

- (1) Whenever a protest is considered by the Procurement Appeals Board, all members, including the outside member must sign a County Conflict of Interest Statement certifying that they have no conflict or apparent conflict of interest with the protest being heard.

**§1.4-106      Procedures/Support**

The County Procurement Officer may adopt administrative procedures as may be necessary in the execution of the Procurement Appeals Board functions. Any administrative support to the Procurement Appeals Board will be provided by the Office of the County Procurement Officer.

**§1.4-107      No Right to Administrative Appeal**

- (1) The decision of the Procurement Appeals Board will be final and there shall be no right to further protest or appeal to the Board of Supervisors.

## SECTION 1.5

### COMPLIANCE MONITORING

#### **§1.5-101      Policy**

- (1) The County Procurement Officer or designee shall regularly audit the procurement records and processes of all County departments. The frequency of such audits shall be determined at the discretion of the County Procurement Officer based on their assessment in the best interest of the County.
- (2) The compliance monitoring of the department procurement records will be conducted to audit and enforce the procurement processes in accordance with County policies, procedures, and Best Practices and will not be construed to place responsibility for department procurement on the County Procurement Officer.

#### **§1.5-102      Specific Duties**

- (1) The County Procurement Officer or designee shall select procurement documents from each department for compliance monitoring. Selected documents will include a range of the procurement types. Documents will be monitored using the following performance measures:
  - a) compliance with the Procurement Procedures Manual;
  - b) compliance with legal requirements and Board policy set forth in this manual;
  - c) cost effectiveness;
  - d) timeliness of procurement process;
  - e) operational efficiencies of processes used; and,
  - f) other policies, procedures, or Best Practices as determined by the County Procurement Officer.

#### **§1.5-103      Audit Process**

- (1) The compliance process is intended to be educational and will be used to provide guidance and clarification for procurement policies, procedures and Best Practices.
- (2) Upon completion of the audit, the County Procurement Officer or designee will provide the Department Procurement Council Representative a written Final Report that will include, where applicable, a summary of the Findings and Recommendations for corrective action. As part of the compliance process, departments will be expected to make necessary corrections to bring procurement processes into compliance.
- (3) The County Procurement Officer shall submit a report to the department Procurement Council that contains general Findings and Recommendations and identifies areas that may require changes to ensure a procurement process that is fair, effective, efficient, and in compliance with legal requirements and Board of Supervisors policy.

## SECTION 1.6

### SURPLUS COUNTY PROPERTY

#### §1.6-101 Policy

- (1) The County Procurement Officer shall establish methods and procedures necessary for the proper disposition of Surplus County Property. The methods and procedures shall be those that, in the County Procurement Officer's judgment, will return the best value to the County.
- (2) The proper disposition of Surplus County Property must comply with the provisions of this manual and must be conducted in an efficient, transparent and economical manner.

#### §1.6-102 Definition

- (1) Electronic Waste (E-Waste) is defined as an electronic device powered by electricity or a battery that has a printed circuit board or video display attached that has reached the end of its useful life and is being discarded by the user. Examples include televisions, computers, computer peripherals and components, hard drives, CD/DVD drives, printers, facsimile machines, copiers and wireless phones and devices.
- (2) Surplus County Department Property is defined as tangible supplies, materials or equipment to which the County acquired title by means of purchase, donation, grant, or other lawful means, that a County department has determined is no longer needed by the department.
- (3) Surplus County Property is defined as Surplus County Department Property that the County Procurement Officer or designee has determined is not needed for public use by any other County department.

#### §1.6-103 Authority

- (1) Codified Ordinances of the County of Orange, Title 1, Division 4, Article 2, Section 1-4-36, authorizes the County Procurement Officer or designee to sell or otherwise dispose of Surplus County Property in accordance with Sections 25503 through 25507, plus Sections 25372 and 26227, of the Government Code, unless otherwise directed by the Board of Supervisors.

#### §1.6-104 Disposition Methods

- (1) A department must attempt to dispose of Surplus County Department Property through internal transfer to a claiming department, until the County Procurement Officer determines the Surplus County Department Property is not needed by any other County department. At that time, the Surplus County Department Property must be disposed of as Surplus County Property.
  - a) Surplus County Department Property for which disposition is otherwise covered under law, regulation, code, or other Board of Supervisors policy are exempted from Section

1.6; provided that departments notify the County Procurement Officer or designee prior to disposition.

- (2) Surplus County Property shall be disposed of by the following methods, in the order listed below:
  - a) donation of Surplus County Property with a fair market value less than \$5,000 per lot to the Orange County Department of Education, local government agencies, special districts, and not-for-profit organizations
  - b) auction (non-electronic items) or e-waste recycling (electronic items)
  - c) direct sale by department or by County Procurement Officer or designee
  - d) recycling
  - e) trash
- (3) Departments may seek approval from the County Procurement Officer or designee for an exception to Section 1.6-104.
- (4) The procedures for the disposition methods shall be those established by the County Procurement Officer as set forth in the Procurement Procedures Manual.
- (5) When purchasing personal property for which it is not necessary to advertise for bids, the County Procurement Officer or Deputy Purchasing Agent may solicit and accept advantageous trade-in allowances for Surplus County Property that has a scrap value of less than ten thousand dollars (\$10,000.00).

**§1.6-105      Board Approval**

- (1) Approval from the Board of Supervisors is required prior to the donation of any Surplus County Property that is a capital asset or with an estimated market value that exceeds \$5,000, with the exception of donations specified above in Section 1.6-104.

## SECTION 1.6.1

### DISPOSITION OF REAL PROPERTY BY SALE

#### §1.6.1-101 Definitions

- (1) “County Exempt Surplus Land” is County Real Property which has been declared as exempt surplus land pursuant to applicable law.
- (2) “County Real Property” is land owned by the County, or special districts whose affairs and funds are under the supervision and control of the Board of Supervisors, such as the Orange County Flood Control District or Orange County Housing Authority (Special Districts), in fee simple.
- (3) “County Surplus Land” is County Real Property which has been declared as surplus land pursuant to applicable law.
- (4) “HCD” shall mean the Department of Housing and Community Development for the state of California.

#### §1.6.1-102 Policy

- (3) Unless otherwise directed by the Board of Supervisors, the Chief Real Estate Officer (CREO) shall establish methods and procedures necessary for the disposition by sale of County Real Property declared as County Surplus Land or County Exempt Surplus Land consistent with the Surplus Land Act, Government Code section 54220 *et seq.*, and the Surplus Land Act Guidelines (Surplus Land Act).
- (4) The methods and procedures shall be those that, in the CREO’s judgment, will return the best value to the County or serve the County’s best interests. The proper disposition of County Surplus Land must comply with the provisions of this manual and must be conducted in an efficient, transparent and economical manner.
- (5) To administer and implement this policy, CEO Real Estate has implemented this procedure. It is important to determine that County agencies, departments, and districts have no need for the property before deeming the property to be County Surplus Property and holding discussions and negotiations with non-County public sector entities as mandated by Resolution No. 82-677. Notice, as set forth below, is therefore required to be provided to these County entities to determine this need.

#### §1.6.1-103 Real Property Need

The sale and disposition of certain types of County Real Property require unique procedures in addition to these otherwise required, including the following:

- (1) County Exempt Surplus Land: This is land that is exempt from the Surplus Land Act pursuant to Section 103 of the Surplus Land Act Guidelines.
- (2) OC Parks Real Property: The sale of any real property dedicated for, or deed restricted to, park purposes is subject to the provisions of the County Park Abandonment Law of 1959 [Government Code sections 25580-25588] or Orange County Codified Ordinance Section 2-5-301, as applicable. Except for limited circumstances authorized by applicable law, the park property dedication must be abandoned prior to sale of any such County Real Property.

**§1.6.1-104     Notice to County Entities**

- (1) To determine the real property needs for the County, CEO Real Estate will prepare and distribute a “Notice of Availability of Surplus Land” (Form P8-5) to County agencies, departments, and districts governed by the Board of Supervisors, which describes the property and includes a map showing its location. The notice shall request that if there is any interest in utilizing the property that notification be sent to CEO Real Estate within thirty (30) days of the notice date.
- (2) If any County agency, department, or Special District expresses an interest in the County Real Property, the CREO and CEO Real Estate will coordinate with such agency, department, or Special District regarding their possible use of the property.
- (3) If the property is not needed by a County agency, department, or district, in the reasonable discretion of the CREO, the property may be deemed surplus to the needs of the County internally and CEO Real Estate can proceed to appraise the property and proceed to the Board to have it declared County Surplus Real Property and for authority to provide notice in Section 1.6.1-107 to other public agencies pursuant to the Surplus Land Act.

**§1.6.1-105     Appraisal of Real Property**

- (1) After County Real property has been determined internally to be surplus to the needs of the County, an appraisal must be done to determine the value of the property before it can be taken to the Board to have it declared County Surplus Real Property and offered for sale.
- (2) Appraisal services are contracted out and CEO Real Estate keeps a list of qualified appraisers currently on retainer that can be contacted for appraisal services. There are two steps to the appraisal process. A self-contained, highest and best use appraisal shall be procured for the real property, followed by a review appraisal, which is essentially a review of the original appraisal by another appraiser.

**§1.6.1-106     Request for Authorization to Solicit Bidder**

- (1) After real property has internally been determined to be surplus to the needs of the County and an appraisal has been completed, a request for a finding that the property is County Surplus Property, authority to provide notice to other public agencies under the Surplus Land Act (see Section 1.6.1-107, below) and solicit bids for the sale of the property will be submitted to the Board of Supervisors for approval.
- (2) In the event that the property is County Exempt Surplus Land (see Section 1.6.1-108, below), the facts supporting such finding shall be presented to the Board and the Board requested to make such a finding by resolution.
- (3) The Agenda Staff Report (ASR) requesting authority to solicit bids will be accompanied by a complete sales package recommended by CEO Real Estate for Board approval. The request will also indicate that the package has been approved as to form by County Counsel. At a minimum, the sales package will contain:

- a) A “Notice of Availability and Intent to Dispose of Surplus Land” (see Section 1.6.1-107, below)
  - b) A copy of the Notice of Sale, which will give general information as to the terms of the sale, the time and place of the public sale, a description of the property to be sold, and the minimum acceptable bid. Attached to the Notice will be a map properly depicting the property to be sold.
  - c) A copy of the Offer and Agreement to Purchase Real Property. This Agreement shall include all the terms of sale.
  - d) The proposed bidding procedure.
- (4) If allowed under the code section applicable to the sale, the ASR can include a request that the Board delegate authority to the CREO to execute the contract with the highest bidder. Otherwise, the final sale will have to be brought back to the Board for approval. If this request is made, the ASR should also include a recommendation to the Board that “CEO Real Estate be authorized to return the deposits of unsuccessful bidders.”
- (5) CEO Real Estate may choose to utilize a broker or agent to solicit bids for the property and coordinate the bidding process, in which case authority to hire such broker shall be obtained from the Board of Supervisors as part of the ASR authorizing the sale.

**§1.6.1-107      Notice to Other Public Agencies (Surplus Land Act Compliance)**

A “Notice of Availability and Intent to Dispose of Surplus Land” (Form P8-5.1), either by sale, lease, or both, shall be prepared and presented to the Board (see Section 1.6.1-106, above), after it is determined that no County agency, department, or Special District has a need for the property. Once the Board has acted and found the property County Surplus Land (but not County Exempt Surplus Land), Government Code Section 54222 and County policy require that the notice be sent by certified mail or email to:

- (1) The HCD, any local public entity within whose jurisdiction the land is located, as defined in Section 50079 of the Health and Safety Code and, upon written request, “Housing Sponsors” as defined in Section 50074 of the Health and Safety Code, for the purpose of developing low and moderate-income housing and any such sponsors who have notified HCD of their interest in surplus land that is located in Orange County or in all California counties. Priority is to be given to development of the land to provide affordable housing for lower income elderly or disabled persons or households, and other lower income households.
- (2) Any park and recreation department of any city and county within which the land is located. Park, Recreation and Open Space availability notices shall comply with the conditions and follow the requirements as described in Government Code Sections 54221(f)(2), 54222, and 54227(b).
- (3) Any regional park authority having jurisdiction within the area in which the land is located.
- (4) The State Resources Agency or any agency which succeeds its powers.

- (5) The nonprofit neighborhood enterprise association corporation for the area if the land is within an area designated as an enterprise zone, pursuant to Section 7073 of the Government Code. Check with the Planning Department of the city to determine if such a zone and corporation exist.
- (6) The city within which the land is situated. The notice should be addressed to the city manager or city administrator.
- (7) The city managers or city administrator of any other city the boundaries of which are within three miles of the surplus land.

The most recent code sections should be checked to be sure that all currently required notifications are met. Public entities or nonprofit neighborhood enterprise association corporations must respond in writing within 60 days after their receipt of the notice. After notice is received from an entity desiring to purchase (or lease if offered) the land, the CREO will enter into good faith negotiations to determine if a mutually acceptable agreement can be reached. If the price or terms cannot be agreed upon after a good faith negotiation period of not less than sixty (60) days, the land may be disposed of without further regard to Government Code Sections 54220, *et seq.* (Note: The RFP process for real estate is addressed in §4.3.1 of the CPM. Leases may require Surplus Land Act compliance. Please consult with County Counsel for assistance.)

#### **§1.6.1-108      County Exempt Surplus Land**

Government Code Section 54222.3 provides that County Exempt Surplus Land is exempt from the notification requirements of Section 54222. The Surplus Land Act is subject to several exemptions, some of the more common exemptions being land that is:

- (1) Transferred to a public entity for public uses; or
- (2) Less than 5,000 square feet in area;
- (3) Less than the minimum legal residential building lot size, or 5,000 square feet in area, whichever is less; or
- (4) Have no record access and be less than 10,000 square feet in area; and is not contiguous to land owned by a state or local agency which is used for park, recreational, open space or low and moderate income housing purposes, and is not located within an enterprise zone pursuant to Section 7073 nor a designated program area as defined in Section 7082 of the Government Code.
- (5) If the surplus land is not sold to an owner of contiguous land, it is not considered exempt surplus land and notification must be given. The following properties are not considered exempt land and notification must be given, unless some other exemption applies (*see*, e.g. Government Code Section 54221(f)(1)(H)):
  - a) Land within the coastal zone.
  - b) Land within 1,000 yards of a historical unit of the State Park System.



- c) Land within 1,000 yards of any property that has been listed on, or determined by the State Office of Historic Preservation to be eligible for, the National Register of Historic Places.

For further guidance on further exemptions, please consult with County Counsel. A finding that real property is County Exempt Surplus Property shall be made by the Board of Supervisors in a resolution, which shall be provided to HCD at least 30 days prior to a sale of the Exempt Surplus Property.

**§1.6.1-109      Solicitation of Bids**

- (1) After the Board of Supervisors has declared the property to be County Surplus Property, authorized solicitation of bids for its sale and notices have been provided to applicable public agencies under the Surplus Land Act (see Section 1.6.1-107, above), the Notice of Sale will be given wide circulation by CEO Real Estate in order to reach as many potential buyers as feasible, including posting on applicable County websites.
- (2) A list of all persons interested in buying surplus County real property is maintained by CEO Real Estate. Each person on this list is to be sent a Notice of Sale.
- (3) Legal advertisements are to be made if required by applicable statutes affecting the property.
- (4) Whenever necessary to reach potential buyers and when specifically approved by the Board of Supervisors, advertisements will be placed in newspapers and trade magazines.
- (5) If appropriate, press releases covering the sale will be prepared by the CEO Real Estate staff member, approved by the CREO and forwarded to CEO Media Affairs for distribution.
- (6) CEO Real Estate may choose to utilize a broker or agent to solicit bids for the property and coordinate the bidding process, in which case authority to hire such broker shall be obtained from the Board of Supervisors.

**§1.6.1-110      Selection of the Successful Bidder**

- (1) Sealed Offers and Agreements to Purchase will be received by the CEO Real Estate and opened at a specified time.
- (2) Immediately after the sealed Offers have been opened, a call for verbal bids will be made. At this time, all persons who have not already submitted bids and who wish to bid on the property will have the opportunity to enter the bid process upon presentation of the required bid deposit in the manner prescribed in the bid package.
- (3) Once the verbal bidders have been identified, then the verbal bidding process will begin, with the requirement that the first verbal bid exceed the highest written bid by a predetermined percentage amount as set forth in the proposal package, as reasonably determined by the CREO.
- (4) At the close of verbal bidding, the high bidder shall execute the Offer and Agreement to Purchase Real Property and shall be notified that the total sum to be paid outside of escrow is due and must be delivered to CEO Real Estate on or before the date specified in the purchase agreement.

- (5) If the Board has not previously delegated the CREO to execute the agreement, the CEO Real Estate staff member will prepare an ASR that includes information concerning the number of bids received, the highest bidder, a financial resume, and other pertinent facts. The ASR shall be submitted to the Board at the earliest practicable date for final approval of the sale and permission to execute all applicable documents to close escrow, if any.
- (6) The ASR shall include a recommendation to the Board of Supervisors that “CEO Real Estate be authorized to return the deposits of unsuccessful bidders.”
- (7) All procedures and record-keeping shall be closely adhered to so that all those wishing to purchase County property are given an equal opportunity. Every action the County takes must evidence that these procedures are open and fair to all prospective bidders.

## SECTION 1.7

### PROCUREMENT CARDS

#### **§1.7-101**      **Definition**

- (1) Under the direction of the CEO, the County Procurement Officer shall oversee and administer the County's Procurement Card Program. Procurement cards are County credit cards issued to Deputized Purchasing Agents to make purchases on behalf of the department in accordance with this CPM and the Procurement Procedures Manual.

#### **§1.7-102**      **Authorized Use**

- (1) The Procurement Card is imprinted with the County of Orange logo and the cardholder's name. Cards may be used to procure services and commodities for County use only; using the card for personal purchases is strictly prohibited. Any employee who willingly uses the card for personal purchases shall be subject to:
  - a) reimbursing the County for all costs associated with the personal purchases,
  - b) having the card immediately revoked,
  - c) possible referral to the County District Attorney; and
  - d) further disciplinary action as authorized by applicable County procedures, up to and including termination from employment.

#### **§1.7-103**      **Responsibilities**

- (1) Program Administrator: The Program Administrator is responsible for program questions, contract administration, account coordination, card issuance and cancellation, report management and review, and administrative training.
- (2) Department Coordinator: Department heads and designees authorized to request new cards, modifications to card limits, cancel cards, and assign Approving Officials.
- (3) Billing Officials: Department employee responsible for managing the billing, payment and approval processes for department procurements. Billing Officials cannot also be cardholders.
- (4) Approving Official: Department employees authorized to approve payments for procurements made by department cardholders.
- (5) Cardholders: County Deputy Purchasing Agents authorized to make Procurement Card procurements on behalf of their assigned department in accordance with established program policy and procedures and applicable procurement policies and procedures.

#### **§1.7-104**      **Controls**

- (1) In addition to other internal controls and procedures as detailed in the Procurement Procedures Manual and Section 3.6 of this manual, use of County issued Procurement Cards are subject to the following controls:
  - a) 30-Day Purchase Limit per Card: Each card is established with a monthly, not-to-exceed amount predetermined by the Cardholder's department head or designee and approved by the County Procurement Officer. Except as set forth in this Section, there is no other limit on the card's monthly, not-to-exceed amount.
  - b) Single Purchase Limit per Card: Each card is established in the procurement card system with a single transaction limit that is controlled to ensure adherence to all policies and procedures.
  - c) Merchant Code Blocking: Every County issued Procurement Card is blocked to prohibit the Cardholder from making purchases from certain types of vendors.
- (2) Department heads may impose additional restrictions on commodities or services that may not be procured using the Procurement Card.

**§1.7-105      Adherence to Procurement Policy**

- (1) County purchasing policies, as delineated in this manual and the Procurement Procedures Manual, may not be circumvented when using the Procurement Card. In accordance with County policies and procedures outlined herein, where appropriate Cardholders are required to obtain the appropriate number of price quotes before procuring and must document the quotes received with the transaction information and invoice.

## SECTION 1.8

### COUNTY OF ORANGE PROCUREMENT PREFERENCE POLICY

#### §1.8-101 Policy

- (1) Purpose: To establish Orange County Board of Supervisors procedures to facilitate Orange County Local Small Business' (OCLSB) and Disabled Veteran Business Enterprises' (DVBE) ability to procure County contracts.
- (2) In alignment of the County of Orange's Procurement Preference Policy (Preference Policy) with applicable law, the County Procurement Officer is hereby authorized to implement the preferences provided herein to increase the participation of certified OCLSB and DVBE businesses.
- (3) The Preference Policy shall be applied to all procurements where competitive bidding (low bid or scored proposals) is required, except as otherwise provided herein or as otherwise required by Federal, State or County laws and regulations.
- (4) The Preference Policy requirement is not applicable to Emergencies.
- (5) To the extent required by federal law, preferences based on minority or gender status may be extended for federally funded procurements consistent with subsection (h) of the California Constitution, Article I, Section 31.
- (6) Further rules and application of the Preference Policy for different types of procurements are referenced in the following sections: 3.1, 3.2, 3.3, 3.4, 3.6, 3.7, 4.5 and 4.7.

#### §1.8-102 Business Eligibility Requirements

- (1) OCLSB Eligibility - To qualify as an OCLSB, a business shall meet a), b), and c) requirements below:
  - a) Local Business requirements:
    - i. maintains their principal center of operations (i.e. headquarters) within Orange County; and
    - ii. has:
      - 1) a business address located in the County of Orange that is not a post office box, or
      - 2) a valid business license or certificate of occupancy issued by the County of Orange or by an Orange County city, or other documentation acceptable to the County of Orange.

- b) Small Business requirements:
    - i. must be certified as a Small Business by the State of California Department of General Services (DGS); and
  - c) Above requirements must be valid at the time of proposal submittal.
- (2) DVBE Eligibility – To qualify as a DVBE, the DVBE must meet the following requirements:
- a) must be certified as a DVBE by the State of California DGS; and
  - b) DGS DVBE requirements must be valid at the time of bid/proposal submittal.
- (3) Eligibility for Contractors Using OCLSB/DVBE Subcontractors – Prime contractors that do not otherwise meet the OCLSB/DVBE certification requirements may still qualify for OCLSB/DVBE preferences by virtue of their use of OCLSB/DVBE subcontractors. To qualify for the preferences by using certified OCLSB/DVBE subcontractor(s), twenty percent (20%) of the total proposed contract amount must be allocated to OCLSB and/or DVBE subcontractor(s) meeting the qualifications and certification requirements provided in subsections (1) and (2) above.

**§1.8-103      Requests for Proposals**

- (1) A Contractor deemed qualified for the Preference Policy pursuant to one of the eligibility categories detailed in subsections (1), (2) and (3) of Section 1.8-102 above shall apply the five percent (5%) to the total cost. A-E services as defined in Section 3.4 and any other Public Works Procurements shall not include a DVBE preference.
- (2) Except as applied to A-E services as defined in Section 3.4, a Contractor deemed qualified for the Preference Policy pursuant to more than one of the eligibility categories detailed in subsections (1) and (2) of Section 1.8-102 above, or a contractor deemed eligible pursuant to subsection (3) of Section 1.8-102 that includes both certified OCLSB and DVBE subcontractors, shall apply the eight percent (8%) to the total cost.
- (3) If the final score of any OCLSB or DVBE matches the final score of a respondent who is not an OCLSB or DVBE, preference shall be given to the certified OCLSB or DVBE. If two or more OCLSBs and/or DVBEs have the same final score, the County shall determine the contract award based on the County’s best interests. Notwithstanding these preference procedures, the Orange County Board of Supervisors reserves the right to award contracts in any other permissible manner in consideration of the County’s best interests.

**§1.8-104      Invitation for Bids / Low Bid Contracts**

- (1) For solicitations that are based on the lowest responsive and responsible bid, the preference to be granted to a certified bidder pursuant to Section 1.8-102 above shall be equal to five percent (5%) of the lowest bid. A-E Services as defined in Section 3.4 and any other Public Works Procurements shall not include a DVBE preference.

- (2) Except as applied to Public Works Procurements, a bidder deemed qualified for the Preference Policy pursuant to both of the eligibility categories detailed in subsections (1) and (2) of Section 1.8-102 above, or a bidder deemed eligible pursuant to subsection (3) of Section 1.8-102 that includes both certified OCLSB and DVBE subcontractors, the preference to be granted shall be equal to eight percent (8%) of the lowest bid.
- (3) Such preference shall be applied to all certified bidders that requested the preference, even if the certified bidder is the lowest responsible bidder meeting specifications. The contract award shall be the bidder's original bid price, not the price used for bid evaluation purposes.
- (4) In no instance shall any of the preference programs be combined to exceed a total of eight percent (8%), or a maximum of \$100,000, in response to any County solicitation.

**§1.8-105      Waivers/Limitations**

- (1) The County Procurement Officer or designee may consider a departmental request to waive the County of Orange Procurement Preference Policy requirement under special circumstances and/or if it is determined to be in the best interest of the County. Prior to approving a Preference Policy waiver request, the County Procurement Office will notify the Board of Supervisors of the request.
- (2) The Preference Policy waiver request must be approved by the County Procurement Officer or designee and the Chief Financial Officer, on the form(s) approved and provided by the CPO, and shall be made part of the procurement file.
- (3) The County of Orange Procurement Preference Policy requirements shall not apply when prohibited by this policy or applicable laws or regulations including, but not limited to, specific state or federal funded projects.

**SECTION 2 – GENERAL RULES AND PROCEDURES**



## SECTION 2.1

### ETHICS IN PUBLIC CONTRACTING - COUNTY EMPLOYEES

#### §2.1-101 Policy

- (1) Public employment is a public trust. Public employees must discharge their duties impartially to assure fair, competitive access to government procurement by responsible contractors. Moreover, they shall conduct themselves in such a manner as to foster public confidence in the integrity of the County procurement process. Additional guidelines may be found in the County's *Procurement Ethics Manual* maintained by the Office of the County Procurement Officer.

#### §2.1-102 "Arm's Length" Principle

- (1) All procurements must be "arm's-length" transactions; meaning that the parties to a transaction have no conflict of interest in the transaction. Arm's length transactions create an equitable contract that will stand up to legal scrutiny.

#### §2.1-103 General Standards of Ethical Conduct

- (1) It is the duty of all County and Orange County Flood Control District employees to ensure fairness and transparency in contracting by complying with State and local laws and regulations, including those pertaining to conflicts of interest in four areas: (1) contracting (Government Code Sections 1090 et seq.); (2) incompatible activities (Government Code sections 1126 et seq.); (3) financial interests (Government Code Sections 87100 et seq. including regulations promulgated by the Fair Political Practices Commission (FPPC)); and (4) the County Gift Ban Ordinance (Sections 1-3-21 et seq. of the Orange County Codified Ordinances). These conflict of interest provisions are only briefly described here; any question arising from a potential conflict of interest or ambiguity under any of these provisions should be addressed to County Counsel.
- (2) To the extent that violations of the ethical standards of conduct constitute violations of the Government Code, they shall be punishable as provided therein. Such sanctions shall be in addition to any other remedies which the County may pursue in its interest.
- (3) The Code of Ethics and Commitment to County Public Service adopted by the Board of Supervisors states, "A public official or employee shall not meet or confer with a former County official or employee who is acting as a lobbyist within one (1) year following termination of the former official or employee from County employment."
- (4) The Gift Ban Ordinance prohibits County officers and certain designated employees, as defined therein, from soliciting or accepting gifts from persons or entities doing or seeking business with the County. A County officer or someone who does business with the County who violates the Gift Ban Ordinance is subject to criminal liability, and designated employees are subject to discipline, including termination of employment. A more extensive discussion of the Gift Ban Ordinance is contained in a guide, which can be found on the County Counsel intranet site.

- (5) Procurement documents including RFQs, RFPs, RFIs, RFAs, and IFBs will include language that prohibits contacting County staff by non-County interested parties during an active, ongoing procurement solicitation. Prospective bidders or respondents are not allowed to receive information concerning any solicitation details of the specific procurement process except through the Deputy Purchasing Agent who is overseeing the procurement process. This prohibition extends to the prospective bidder's or respondent's employees, representatives, agents, lobbyists, attorneys, sub-consultants, or anyone else acting on the behalf of the interested party. Contacts that are prohibited include those with members of the evaluation panel, the County Executive Officer, and other County staff; *provided, however, this prohibition shall not extend to members of the County's Board of Supervisors and Countywide Elected Officials or members of their respective staffs.*
- (6) If there are functions of a procurement activity that require multiple levels of approval (such as requisitions), the approvals must be from different authorized individuals to ensure a segregation of duties.

**§2.1-104      Conflict of Interest**

- (1) The State of California Government Code addresses conflicts of interest as follows:
  - a) Section 87100: "No public official at any level of state or local government shall make, participate in making, or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest."
  - b) Section 87103: "A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of the official's immediate family, or on any of the following:
    - i. Any business entity in which the public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more.
    - ii. Any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.
    - iii. Any source of income, other than gifts or other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars (\$500) or more in value provided to, received by or promised to the public official within twelve months prior to the time when the decision is made.
    - iv. Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.
    - v. Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within twelve months prior to the time when the decision is made. The amount of the value of gifts specified by this subdivision shall be adjusted biennially by the commission to equal the same amount determined by the commission pursuant to subdivision (f) of Section 89503.

- vi. For purposes of this Section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater."
- c) Section 1090: (a) "Members of the legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity. (b) An individual shall not aid or abet a Member of the Legislature or a state, county, district, judicial district, or city officer or employee in violating subdivision (a). (c) As used in this Section, 'district' means any agency of the state formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries."
- d) Any employees who, in the course of their employment, make, or participate in the making of, decisions which may potentially have a material effect on a financial interest of the employees are deemed 'designated employees' and are required to complete a Statement of Economic Interests (Form 700) on an annual basis, when they assume employment with the County, and when they terminate employment with the County.
- e) Upon discovery of an actual or potential conflict of interest, an employee shall promptly file a written statement of disqualification with the County Procurement Officer or appropriate Deputy Purchasing Agent and shall withdraw from further participation in the transaction involved. The employee may, at the same time, request through his department head an advisory opinion from County Counsel as to what further participation, if any, the employee may have in the transaction.

**§2.1-105      Restrictions on Employment of Present and Former Employees**

- (1) A County public official or employee shall not meet or confer with a former County official or employee who is acting as a lobbyist within one (1) year following termination of the former official or employee from County employment. Moreover, no County official or employee shall engage in any business, transaction or activity, or have a financial interest, which is in conflict with the proper discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties.

**§2.1-106      Use of Confidential Information**

- (1) Confidential information is defined as that information which is available only because of one's status as a County employee. It shall be a breach of ethical standards for any employee or former employee to use confidential information for actual or anticipated personal gain or for the actual or anticipated personal gain of another person.

**§2.1-107      Purchase of Surplus Material and Equipment**

- (1) For any employee who participates in the decision to put materials or equipment in surplus status, it shall be a breach of ethical standards for that employee or any members of that employee's

immediate family to offer to purchase the same through sealed bid, auction, or any other manner, or request that acquisition be made on his or her behalf by another person or persons.

**§2.1-108      Auction Techniques**

- (1) It shall be a breach of ethical standards for any employee to engage in the practice of auctioneering, a technique whereby one vendor is given the price offered by another vendor and asked to submit a lower bid. Bids offered by vendors will not be revealed to anyone until such time as all bids become public information.

**§2.1-109      Purchase for Personal Use**

- (1) It shall be a breach of ethical standards for County employees to use the County's procurement personnel or facilities for personal transactions unless such transactions can be shown to be in the County's best economic interest.

**§2.1-110      Equal Opportunity**

- (1) County employees shall ensure that all vendors receive an equal opportunity to do business with the County. This opportunity will be provided without regard to race, religion, sex, age, national origin, physical disability, or other classifications protected by law.

**§2.1-111      Incremental Contracting**

- (1) Contracts shall not be intentionally split to avoid approval by the Board of Supervisors or to bypass solicitation requirements.
- (2) "In any county, it is unlawful to split or separate into smaller work orders or projects any public works project for the purpose of evading the provisions of this article requiring public work to be done by contract after competitive bidding. Every person who willfully violates the provisions of this section is guilty of a misdemeanor." Public Contract Code §20123.5.

## SECTION 2.2

### ETHICS IN PUBLIC CONTRACTING - CONTRACTORS

#### **§2.2-101      Conflict of Interest**

- (1) Upon County Counsel approval, the County shall require that a respondent to a solicitation provide, at the time it submits its response or bid, client lists, disclosure statements, or any other information that the County may require to determine if a respondent has a conflict of interest which:
  - a) May be detrimental to the County's interests and, therefore, would cause the County not to enter into a contract; or
  - b) May arise after award and during the performance required under a contract and, therefore, foreseeably could provide reason for termination of that contract.
- (2) The County may require that a respondent provide the information described in Paragraph (1) above for each subcontractor a respondent has identified as likely to perform work on a given project.
- (3) The County may also require that a respondent identify any present or potential future relationships or business interests, for both the respondent and any of its officers, which the respondent believes may give rise to a conflict of interest detrimental to the County's interests or which could require the County to terminate any contract after award.
- (4) The County will be the sole judge in determining if such a conflict would preclude the County from entering into a contract or be reason for termination.
- (5) By participating in any solicitation, respondents to a solicitation agree to furnish the required information as requested and accept the County's decision in regard to the existence of an actual or potential conflict of interest that would preclude award of a contract as final.

#### **§2.2-102      Vendor/Contractor Code of Conduct**

- (1) Vendors shall independently and honestly prepare and submit bids or proposals without collusion or otherwise obtaining information about a competitor's bid or proposal.
- (2) Prospective vendors shall truthfully disclose who owns and controls their company or firm, as well as the company or firm's current financial condition during solicitation and contract phases.
- (3) Vendors shall not share price information with competitors for the purpose of manipulating the winning bid of the contract, also known as "price-fixing" or "bid-rigging or collusion".
- (4) Vendors shall not submit low dollar bids with the expectation of making up the difference after the contract has been won through change orders or amended contracts.
- (5) Strict observance of all local, state, and federal laws is a minimal requirement in all aspects of vendor/contractor conduct.

- (6) Vendors must adhere to the County’s gift ban limits.
- (7) Failure to meet these standards could result in sanctions including, but not limited to, avoidance of current or future contracts.

**§2.2-103      Levine Act**

- (1) Government Code section 84308, a provision of the Political Reform Act known as the “Levine Act,” generally prohibits campaign contributions of more than \$250 by a party or a party’s agent within the preceding 12 months of a proceeding, and within 12 months after there has been a final decision on the matter, to officials participating in a decision regarding a “license, permit, or other entitlement for use,” which includes contracts and franchises. These restrictions do not apply to labor, personal employment contracts, or contracts where the County has little, if any, discretion in choosing the contractor. For example, a circumstance where bidders submit fixed amounts in their bids and the County is required to award the contract to the lowest responsible bidder (such as public works contracts under the Public Contracts Code).

Licenses, permits, and contracts subject to the Levine Act must comply with the County’s Levine Act Policy. Departments and Deputy Purchasing Agents shall ensure compliance with the policy, including requiring that all applications and solicitations contain Levine Act notices and disclosures referenced in the policy. Failure of an applicant or a bidder to complete required disclosures may be a basis to reject an application or bid or deny the award of a contract.

## SECTION 2.3

### SURETY AND INDEMNIFICATION

#### §2.3-101 Definitions

- (1) As used in this Section, the following terms have the meanings set forth:
- a) Bid Bond: Used in conjunction with the bidding process. The bond acts as a guarantee that, if awarded the contract based on the bid submitted, the contractor will enter into a contract to perform the work at the price quoted. If the contractor declines to enter into a contract to perform the work at the agreed-upon price, the bid bond will reimburse the County the difference between the defaulting contractor's bid and the next lowest bid, up to the maximum amount covered under the bond.
  - b) Indemnification: The agreement of one party to assume financial responsibility for the liability of another party. The County's standard indemnification provision transfers the risk associated with the contract to the Contractor.
  - c) Insurance: A contractual relationship where an insurance company agrees, for a premium paid, to reimburse the insured or other party for a loss to a specified subject caused by designated hazards or risks.
  - d) Labor and Materials Bond: Labor and materials payment bond is an agreement in which security is provided by a surety company to the County on behalf of a contractor. Such bond guarantees the County that all bills for labor and materials contracted for and used by the contractor will be paid by the surety if the contractor defaults.
  - e) Performance Bond: A performance bond guarantees that the contractor will perform the work in accordance with the contract and related documents, thus protecting the County from financial loss up to the maximum amount covered under the bond in the event the contractor fails to fulfill its contractual obligations.

#### §2.3-102 Policy

- (1) It is County policy for Deputy Purchasing Agents, as well as those individuals with the delegated authority to issue contracts on behalf of their department and/or County, to assess the risks involved in the contract and to seek review/approval from the County's Risk Manager or designee when a vendor takes exceptions to the County's standard insurance requirements (as stated in §2.3-103).
- (2) It is County policy for Deputy Purchasing Agents, as well as those individuals with the delegated authority to issue contracts on behalf of their department and/or County, to assess the risks involved in the contract and to seek review/approval from the County's Risk Manager or designee and County Counsel for bonds and when a vendor limits its liability or takes exception to the County's indemnification clause (as stated below).
- (3) Indemnification: Contractors doing business with the County will indemnify the County against losses, liabilities, and/or claims that arise from contractor's performance including, but not limited to, patent violations, copyright violations, unauthorized use of materials, wrongful acts,

injuries to persons or property, and any other loss, liability or claim unless stated otherwise in this manual.

- (4) **Insurance:** Insurance will be required where the County may suffer risk of loss due to the nature of the work being performed. It will be the obligation of each department to research and include in the contracts the appropriate insurance requirements for each applicable circumstance as stated in §2.3-103, below.
- a) No insurance is required for the following purchases:
    - i. emergency purchases (as consistent with Section 3.3-122(1)(a)(iii), when applicable),
    - ii. commodity purchases of \$5,000 or less (regardless of method of delivery),
    - iii. off-the-shelf software products, including off-the-shelf software maintenance, or
    - iv. commodity purchases in excess of \$5,000 that are delivered by third party common couriers to County.
  - b) For service purchases, no insurance is required for purchases of \$5,000 or less unless the purchase is for:
    - i. maintenance services related to trades (e.g., plumber, electrician or carpenter) that are performed on County property/premise, or
    - ii. services described in §3.3-101(1) subsections (a), (f), (g) or (i).

If the department believes that a particular purchase falls under one of the exemptions above so as to not require insurance, the department may still seek County Risk Manager or designee's review and assessment regarding the appropriateness of including County's standard insurance requirements (as stated in §2.3-103, below) as part of that purchase.

- (5) **Bonds:** Bid Bonds, Labor and Materials Payment Bonds, and Performance Bonds will be required from vendors in those situations where they are required by statute or ordinance or when less than faithful performance of the contract would create considerable loss to the County. In requiring bid and performance bonds, consideration will be given to the impact these requirements will have on the ability of small businesses to participate in the contracting process. Bond information should be submitted to CEO/Risk Management as early in the contract development process as possible. Submission of the bond information to CEO/Risk Management allows the confirmation that the bond issuer meets financial, rating, licensing and other legal criteria.
- (6) **Liquidated Damages:** Liquidated damages clauses are enforceable if: (1) damages are difficult to ascertain or estimate at the time the contract is formed; and (2) the amount is a reasonable forecast of compensatory damages in the case of breach. Specifically, if the liquidated damages amount significantly exceeds the amount of damages prospectively probable, the liquidated damages clause may not be enforceable. Thus, liquidated damage clauses may be included in service contracts when the County could suffer financial loss due to delays in performance. Consistent with legal requirements, the amount of damages listed in the contract must be a "reasonable forecast" of the County's actual damage.

### **§2.3-103      Standard Insurance Requirements**



- (1) For standard insurance requirements, refer to the *Insurance Requirements and Reference Manual* maintained on the County Risk Management website:  
<https://ocgov.sharepoint.com/sites/IntraRisk/SitePages/Contract-Insurance-Requirements.aspx>

## SECTION 2.4

### PROCUREMENT REQUISITIONS

#### §2.4-101 Definition

- (1) A request which authorizes the commencement of a procurement transaction and includes a description of the need and other information as specified by County Procurement Officer.

#### §2.4-102 Policy

- (1) In compliance with Government Code 25501 and Orange County Codified Ordinance Sec. 1-4-26 - Requisition Procedure, each of the following provisions shall apply:
- a) All purchases, rentals and contracts shall be made only upon receipt of proper written/authorized requisitions, which shall be supplied by the Procurement Officer to the several offices of the County.
  - b) No purchase order shall be issued unless approved budget appropriation is shown according to the budget procedure established by the Auditor-Controller and the County Executive Officer.
  - c) The head of any County office, department or institution or their duly designated assistant is hereby authorized to draw requisitions for purchases for such office, department or institution in accordance with current budget accounts.
  - d) Such head may delegate such authority to one or more of their deputies, assistants or employees within the department.
  - e) Requisitions must be fully approved (i.e., final and budget requisition approval) prior to procuring any goods and/or services otherwise this will be an Unauthorized Expenditure.

#### §2.4-103 Procedure

- (1) An approved/signed requisition shall be submitted in advance to the County Procurement Officer or appropriate Deputy Purchasing Agent for the processing of any procurement or contract transaction, in accordance with County procurement policies and procedures. A justification which explains the purpose of the purchase must be included in the requisition. Unless otherwise provided for in this manual, only those employees who are trained and deputized by the County Procurement Officer have the authority to procure for the County.

#### §2.4-104 Process

- (1) Approved County requisitions shall be processed and executed in accordance with the procurement policies contained in this manual, as well as those Procurement procedures outlined

in the Procurement Procedures Manual, established by the County Procurement Officer to be followed by departments.

### **SECTION 3 - TYPES OF CONTRACTS**

## SECTION 3.1

### COMMODITIES

#### §3.1-101 Definition

- (1) Commodities include all supplies and equipment, equipment rentals and leases, certain types of software and software licenses costing less than \$5,000 per unit, including tax and freight, and those costing \$5,000 per unit or more with a useful life expectancy of less than one (1) year. Included in the definition of commodity contracts covered in this Section are the following:
- a) Cash Alternatives: Cash alternatives, including gift cards and gift certificates, to purchase travel and food for non-employee County department clients receiving services from the County.
  - b) Equipment – Operating Rental/Lease: These contracts are in essence an extended rental contract under which the owner of the equipment allows the County to operate or otherwise make use of the equipment in exchange for periodic lease payments. These types of contracts are “Operating leases” and are characterized by short-term, cancelable terms. The lessor bears the risk of obsolescence and depreciation of the equipment. Operating leases are generally preferable when the county needs the equipment for a short period of time such as for minor office equipment, printers, copiers, and light-duty vehicles and related equipment. Not included in the definition are long-term, "capital," non-cancelable leases.
  - c) Recognition/Promotional Items: May include tangible items of nominal value and cost that bear the County logo or other County symbol. These items may include plaques, keychains, coffee mugs, pens, folders, calendars, or other nominally priced tokens of appreciation. Recognition/promotional items may only be distributed at a County Business Meeting for the purpose of promoting the name or image of the County, provide information, or enhancing County productivity. Recognition/promotional items should not contain the name or depict the likeness of any County official.
  - d) Software/Licenses (Retail– Perpetual and Subscription): Contracts for proprietary software licenses where the software publisher grants the use of the software under the end-user license contract (EULA), but ownership of the software remains with the software publisher. These types of purchases typically include terms which define the uses of the software and number of users allowed.
    - i. Perpetual License - The right to use a software program indefinitely with payment of a single fee. License may or may not include a limited Software Maintenance period and/or the option to purchase ongoing Software Maintenance at the time of purchase or at a later date.
    - ii. Subscription License - The right to use a software as designed without customization for a determined fee, which includes general technical support, updates and upgrades to new versions or releases of the software (e.g. Software as a Service (SaaS) or Commercial Off the Shelf (COTS) software) irrespective of where the software is hosted. It may also include other no charge support that is included in the purchase price of the product in the commercial marketplace.

No charge support includes items such as user blogs, discussion forums, on-line help libraries and FAQs (Frequently Asked Questions), hosted chat rooms, and limited telephone, email and/or web-based general technical support for users' self-diagnostics.

- iii. Software Maintenance - Includes person-to-person communications regardless of the medium used to communicate: telephone support, on-line technical support, and/or technical expertise which are charged commercially.
- e) Software Maintenance: Software maintenance as a product includes the publishing of bug/defect fixes via patches and updates/upgrades in function and technology to maintain the operability and usability of the software product. It may also include other no charge support that is included in the purchase price of the product in the commercial marketplace. No charge support includes items such as user blogs, discussion forums, on-line help libraries and FAQs (Frequently Asked Questions), hosted chat rooms, and limited telephone, email and/or web-based general technical support for users' self-diagnostics. Software Maintenance as a product is billed at the time of purchase or on an annual basis.
- f) Subscriptions/Databases/Cloud Computing: Contracts for access to on-line information, databases or remote servers to be used to enhance or support a County program or project. Contracts of this type involve no on-site visits or work by a vendor and are limited to the digital exchange of information for a predetermined fee.
- g) Telecommunications/Data Communications: Contracts for technologies that enable the transmission, reception, and exchange of information and digital data between individuals, devices, systems, or networks, which may include wired or wireless connections to transmit data, such as the internet, telephone networks, data networks or satellite systems. These types of contracts typically include a monthly recurring charge for a predetermined fee. This definition does not include any contracts that may be procured under sections 3.4 or 3.5.

### **§3.1-102      Solicitation Considerations**

- (1) Solicitations for commodities shall be written so that critical factors associated with the acquisition shall be considered. These factors may include, but are not necessarily limited to the following:
  - a) Item capabilities - Will it carry out the functions for which it is being acquired?
  - b) Size, dimensions - Will it fit within the space where it is to be used?
  - c) Power requirements - Does the County possess the necessary mechanisms for powering the item as it requires?
  - d) Safety - Does the item meet all local, state, and federal safety requirements?
  - e) Pollution - Can the item be used without unnecessarily harming the environment? Does it require special Air Quality Management District permits?
  - f) Maintenance - Are service and spare parts readily available? Are maintenance contracts available?

- g) Life cycle cost - What is the total cost of ownership including initial acquisition cost, cost of operating supplies, cost of maintenance, cost of required space, residual value, etc.?
- h) Liability insurance - If the item is being installed by vendor, use the standard insurance requirements, as set forth in Section 2.3-103.

**§3.1-103      Term of Contract**

- (1) The duration of all contracts for commodities shall be based upon the County’s Best Interest. Consideration will be given to product availability, price volatility, and expectation of need. Except for contracts defined under Section 4.8 of this manual, in no case shall a commodity contract exceed five (5) years, except as specified in Section 3.1-104(2) below.
- (2) All contracts will include a provision for cancellation by the County due to lack of funds, termination of requirement, termination for convenience, termination with cause or prices which no longer reflect reasonable market prices.
- (3) Prior to renewal or extension of an existing contract, the department will document that performance of the contractor has been satisfactory.

**§3.1-104      Contract Extensions**

- (1) Non-Board Contracts may be extended up to a five (5) year term without approval by the Board of Supervisors. The extension(s) may be issued by the Deputy Purchasing Agent, without Board of Supervisors approval provided there are no monetary increases that cumulatively exceed the Board of Supervisors approval threshold, while complying with solicitation thresholds.
- (2) Board and non-Board contract extensions may be issued by the Deputy Purchasing Agent for up to one (1) year, beyond the fifth year, with County Procurement Officer or designee approval, provided there are no monetary increases (i.e., within the contract’s existing contract amount) or other material changes to the contract.

**§3.1-105      Contract Pricing**

- (1) Contracts will be written so that pricing is controlled and monitored during the contract period. This may be done in several ways, including, but not limited to the following:
  - a) A contract may show a firm price for the contract period.
  - b) A contract may show a percentage increase which will occur during the contract period.
  - c) A contract’s prices may be tied to an index, such as the Consumer Price Index, during the contract period.

**§3.1-106      Vendor Selection**

- (1) Selection of vendors for commodities will be based on the competitive process except Sole Source purchases as defined in Section 4.5 of this manual. Solicitations shall be made as follows:
  - a) Contracts \$10,000 or less over the life of the contract      Minimum of one written quote

- b) Contracts \$10,001 to \$25,000 over the life of the contract      Minimum of two written quotes
  - c) Contracts above \$25,000 over the life of the contract      Written solicitation issued on County's bidding system
- (2) Commodity purchases that are below the solicitation threshold are not required to be competitively bid nor require a sole source justification for award, except as may be required for Federal or State funded purchases.
  - (3) For commodities obtained through the IFB solicitation method as detailed in Section 4.2, awards in all cases will be made to the lowest responsive and responsible bidder.
  - (4) Consecutive contracts going back three (3) years for purchases that contain substantially the same scope shall not be issued to the same vendor using the written quote(s) solicitation method when the consecutive contracts' cumulative dollar amount exceeds the written solicitation threshold.

**§3.1-107      Public Bid Opening**

- (1) A public bid opening will be held at a time and place announced in the solicitation for purchases exceeding \$100,000 annually.
  - a) The amount of each bid, together with the name of each bidder, shall be recorded and made available for public inspection.
  - b) In cases where bids are submitted and tabulated electronically, bid openings will be considered public as long as the individual bids are electronically available immediately after the bids close.

**§3.1-108      Retroactive Contract and Amendments/Changes**

- (1) Retroactive contracts or contract overruns are not permitted. If a retroactive contract or contract overrun occurs, it is invalid unless ratified by the Board of Supervisors or unless one of the following exemptions applies:
  - a) Retroactive contracts or contract overruns with a total value of \$500 or less that have the approval of the department head.
  - b) Retroactive contracts or contract overruns that exceed \$500 and are \$10,000 or less that have the approval of the County Procurement Officer or designee and Chief Financial Officer on the form(s) approved and provided by the County Procurement Office.

Retroactive contracts or contract overruns with a total value exceeding \$10,000 shall require approval by the Board of Supervisors.

- (2) Retroactive contracts in the following categories shall also be exempt from Board of Supervisors approval:
  - a) Contracts governed by separate rules and regulations that conflict with this policy.
  - b) Telephone services requests and emergency contracts in any amount.
  - c) Modifications for computer hardware/software maintenance to add licenses and/or users.

- (3) Extra compensation or extra allowance to a Contractor after service has been rendered or a Contract has been entered into and performed in whole or in part are not allowed, pursuant to article XI, section 10 of the California Constitution.

**§3.1-109      Contract Increases**

- (1) A contract's total expenditure may not increase by more than 30 percent (30%) of the original contract amount, unless it is demonstrated to be in the best interest of the County and reflective of good procurement practices and approved by the County Procurement Officer or designee.
  - a) Exemptions: Subordinate contracts issued against RCAs, and subordinate contracts issued against CPO approved cooperative programs, that are below the thresholds requiring approval by the Board of Supervisors, and contracts awarded via informal solicitations (one or two written quotes) will not require approval from the County Procurement Officer or designee.

**§3.1-110      Multiple Awards**

- (1) Awards of commodity contracts may be on an individual basis, a group basis, or on a low total bid basis for the total contract amount, whichever is determined to be in the County's best interest.

**§3.1-111      Incremental Contracting**

- (1) Contracts shall not be split to avoid approval by the Board of Supervisors or to bypass competitive bidding requirements.

**§3.1-112      Commodity Substitutions**

- (1) If a commodity in the contract is temporarily unavailable, upon approval by the County department administering the contract, the vendor may provide a substitute item, if the item is of equivalent or better quality and the price is the same or less than the price of the contract item.

**§3.1-113      Emergencies**

- (1) Emergencies are defined as those situations where the welfare of County residents is at stake and/or immediate procurement action is required to prevent serious economic or other hardship to the County. When, due to the nature of the emergency, it is not possible or it is impractical to follow competitive bidding requirements, these requirements may be waived by the County Procurement Officer or Deputy Purchasing Agent.
  - a) Emergency commodity purchases of \$1,000 or less may be made using petty cash or purchasing card, in accordance with Section 4.6 –Petty Cash Purchases.
  - b) For emergency commodity purchases exceeding \$1,000, the requestor will contact the County Procurement Officer or the department Deputy Purchasing Agent. The emergency will be described and the County Procurement Officer or Deputy Purchasing



Agent may, if so authorized, use a purchasing card or may issue a contract number for an amount sufficient to resolve the immediate emergency.

- c) No later than ten (10) business days from the request date, an approved requisition referencing the purchase will be submitted to the County Procurement Officer or Deputy Purchasing Agent.
- d) The requisition will be accompanied by a memorandum from the department head or designee briefly detailing the emergency situation. The justification will become a permanent part of the procurement file.
- e) If the emergency occurs during other than normal business hours, the department is authorized to secure the commodities required and contact the County Procurement Officer or Deputy Purchasing Agent on the next regular working day for issuance of a contract.

(2) County of Orange Procurement Preference Policy requirement is not applicable to Emergencies.

**§3.1-114      Board Approval – Sole Source**

- (1) Approval by the Board of Supervisors is required prior to the execution of a Sole Source Commodity Contract which costs more than \$250,000 annually. Commodity contracts may not be Sole Sourced to avoid the bidding requirements contained in this Section. Refer to Section 4.5 – Sole Source Requests for additional policy concerning Sole Source purchases.

**§3.1-115      Approval of Non-Standard Contract Terms**

- (1) Unless Risk Management agrees in writing that the risk to the County is minimal and County Counsel agrees in writing that the legal risk to the County is minimal, approval by the Board of Supervisors is required prior to the execution of the commodity contract that includes non-standard terms in the indemnification contract provisions and/or limits the vendor's liability. This shall not apply to off-the-shelf software products and commodity purchases of \$5,000 or less.
- (2) Unless County Counsel agrees in writing that the legal risk to the County is minimal, approval by the Board of Supervisors is required prior to the execution of the commodity contract that includes non-standard terms in the governing law or arbitration/dispute resolutions contract provisions. This shall not apply to off-the-shelf software products and commodity purchases of \$5,000 or less.

**§3.1-116      Contractor Name/Ownership Changes**

- (1) Except as provided herein, Board of Supervisors approval is required for Board awarded contracts where there is a change in a contractor's ownership or control resulting in the assignment of rights and responsibilities from one entity to another.
- (2) Deputy Purchasing Agents are authorized to approve the following changes to Board awarded contracts in the absence of a novation or other release from liability, and upon approval of County Counsel:

- a) There is a change in the contractor company name only, but there is no change in the company's:
    - i. ownership or control,
    - ii. key staff identified in an existing contract, or
    - iii. tax identification (e.g., EIN).
  - b) There is a proposed assignment of the existing Board awarded contract to a different legal entity based on bankruptcy, merger, sale of the company (as opposed to a mere sale or acquisition of assets), restructuring or dissolution, and the Deputy Purchasing Agent has determined that the proposed assignee is qualified to perform according to the terms of the contract and original solicitation requirements and any key staff identified in the contract remain unchanged.
- (3) Upon approval of County Counsel, Deputy Purchasing Agents are authorized to approve a change in contractor name or ownership for non-Board awarded contracts.

**§3.1-117      Indemnification**

- (1) Except for contracts in which Section 3.1-115 (1) applies, contractors doing business with the County will indemnify the County against losses, liabilities and/or claims that arise from contractor performance including, but not limited to, patent violations, copyright violations, unauthorized use of materials, wrongful acts, and injuries to persons or property, and any other loss, liability or claim unless stated otherwise in this manual.

**§3.1-118      Insurance**

- (1) All contractors will provide the Deputy Purchasing Agent administering the contract with a certificate of insurance and required endorsements unless such certificate and endorsements are not required as provided in §2.3-102(4) or waived by County's Risk Manager or authorized designee.
- (2) For appropriate insurance levels and requirements, see Section 2.3-103.

**§3.1-119      Opportunity Buy**

- (1) An "Opportunity Buy" is a situation where necessary commodities are for sale at significantly reduced rates from what is normally offered in the general market or where an alternative product to the one being bid represents significant cost savings to the County. In the event this situation arises, the Department Head or designee shall prepare a written justification in support of the prompt action taken that shall become part of the permanent procurement file. The justification shall include:
  - a) A detailed description of the commodity to be provided by the vendor and an explanation of the cost savings achieved;
  - b) Why the recommended vendor is the only one capable of providing the required commodities with back-up information included to support the justification;

- c) Comparison of the recommended vendor's prices or fees to the general market with price and attach quotes for comparable items provided, if available; and,
- (2) County Procurement Officer or designee approval is required for Opportunity Buys exceeding \$1,000,000, and an Agenda Staff Report will be filed with the Board of Supervisors by the appropriate Department Head. The Agenda Staff Report shall include all documentation and justification in support of the purchase.

**§3.1-120 Federal and State Funding**

- (1) Should any portion of the funding for a commodities contract be derived from federal and/or state funding sources, the solicitation process and selection of vendors must be conducted in accordance with the applicable federal and/or state regulations. In the event of a contradiction between County policy and federal and/or state requirements, the more restrictive method must be followed.
  - a) On federally funded projects, DPAs will be required to consult the System for Award Management (SAM) at SAM.gov to comply with funding source requirements.

**§3.1-121 Hybrid Contract Definition**

- (1) A hybrid contract is a contract which consists of multiple contract type purchases. For example, a contract for the purchase of a commodity and a service is considered a hybrid contract. The solicitation process will be based on the portion with the greater amount; however, each situation should be carefully considered and documented.
- (2) Purchases that are evenly split between commodity and service should be reviewed on a case-by-case basis by the Deputy Purchasing Agent to determine the appropriate Service or Commodity solicitation process, which shall be documented and made a permanent part of the procurement folder.
- (3) If the service portion of a hybrid contract exceeds an annual aggregate cost of \$200,000, or the service portion of a sole source hybrid contract exceeds an annual aggregate cost of \$75,000 or a five (5) year term, refer to Section 3.3-102 (1) a) and b) of this manual.

**§3.1-122 Cash Alternative Purchases**

- (1) Deputy Purchasing Agents are authorized to purchase Cash Alternatives in accordance with the Cash Alternative Procedures outlined in the Procurement Procedures Manual. County departments shall develop and maintain written Departmental Cash Alternative Procedures that are consistent with the Cash Alternative Procedures, and which set forth internal controls for the purchase and distribution of Cash Alternatives including procedures to ensure compliance with applicable tax requirements relating to the distribution of Cash Alternatives.
- (2) The purchase of Cash Alternatives in amounts of more than \$500 per unit must be approved by the County Procurement Officer or designee, other than the purchasing Deputy Purchasing Agent, and department head.
- (3) Debit cards, such as a prepaid Visa or Mastercard, cannot be purchased as Cash Alternatives without approval of the Board of Supervisors.

**§3.1-123      Subcontractors**

- (1) All contracts for goods and services shall include a contract provision requiring the County's prior express written consent to approve a contractor's proposed use of a subcontractor. DPAs shall conduct the appropriate due diligence and obtain any documentation necessary from a requesting contractor to confirm a subcontractor's qualifications to perform any contract or portion thereof, prior to approving a contractor's request or submitting the request for Board approval. Board approved contracts shall require Board approval of any subsequent contractor requests to use subcontractors.
- (2) If the original solicitation specifically precluded the use of subcontractors, then DPAs shall not consent to any subcontractors.

**§3.1-124      Contractor Monitoring**

- (1) Contract monitoring is the means of providing oversight of the Contract post-procurement and includes contract compliance, deliverables or services, productivity, fiscal responsibility and records maintenance.
- (2) The level of contract monitoring varies depending upon the type of commodities or service(s) contracted. Should funding for contracts derive from sources such as federal and/or state funding sources, the monitoring of contractors (including subrecipients to the extent mandated by applicable funding requirements and regulations such as Uniform Guidance) must be conducted in accordance with the applicable regulations and should be specified in the contract.
- (3) All contracts for goods and services shall include a provision requiring contractors to remain in compliance and in good standing, maintaining current and active business entity and/or nonprofit registration status, with all applicable federal, state and local registration requirements at the time of execution of the contract through the duration of the term of the contract, and requiring contractors to provide annual confirmation of current and active status through term of the contract. DPAs shall confirm the vendor's current and active status prior to final execution of the contract. During the term of the contract, County shall annually obtain the relevant documentation and confirm the contractor's current and active registration status.

## SECTION 3.2

### CAPITAL ASSETS

#### **§3.2-101      Definition**

- (1) Capital Assets are tangible property costing \$5,000 or more per unit, including tax, delivery and installation, with a useful life expectancy exceeding one (1) year. The Auditor-Controller is responsible for setting the Capital Asset amount and making a Capital Asset determination on questionable items.

#### **§3.2-102      Used Equipment**

- (1) If opportunities arise to procure used equipment, such equipment may be procured without competitive bidding, provided all the following conditions are met:
  - a) The equipment being sold is under warranty or, in the case of an “as-is, where-is” purchase, there is an inspection by a qualified party who certifies that the condition of the item is acceptable and adequate for efficient County use.
  - b) The dealer of the equipment is qualified reputable dealer as verified through reference checks, or the equipment is being purchased from another governmental entity.
  - c) The selling price of the equipment is less than \$100,000, including tax, installation, freight, applicable training, etc.
- (2) Justification for the Sole Source purchase of used equipment must be documented and maintained as part of the procurement file.
- (3) The procurement of used equipment is not a way to avoid the competitive bidding process for the acquisition of new equipment.

#### **§3.2-103      Board Approval**

- (1) Unbudgeted Capital Assets:
  - a) Approval of the Board of Supervisors is required prior to the procurement of unbudgeted Capital Assets which cost more than \$50,000 each.
  - b) Unbudgeted vehicle procurements of any amount require prior Board approval.
- (2) Budgeted Capital Assets:
  - a) Budgeted Capital Assets within the budgeted amount approved by the Board require no further Board approval prior to procurement.
  - b) Board approval is required for budgeted Capital Assets when the cost exceeds the budgeted amount by more than 10% or \$100,000, whichever is less. This requirement shall not apply to budgeted Capital Assets originally budgeted at \$50,000 or less when the revised increased cost does not exceed \$55,000.

(3) Sole Source Capital Assets:

- a) Approval by the Board of Supervisors is required prior to the procurement of a Sole Source Capital Asset costing more than \$75,000. Procurements may not be Sole Sourced to avoid the bidding requirements contained in this manual. For additional rules and guidelines, refer to Section 4.5 of this manual.

**§3.2-104      Approval of Non-Standard Contract Terms**

- (1) Unless Risk Management agrees in writing that the risk to the County is minimal and County Counsel agrees in writing that the legal risk to the County is minimal, approval by the Board of Supervisors is required prior to the execution of a Capital Asset contract that includes non-standard terms in the indemnification contract provisions and/or limits vendor's liability.
- (2) Unless County Counsel agrees in writing that the legal risk to the County is minimal, approval by the Board of Supervisors is required prior to the execution of a Capital Asset contract that includes non-standard terms in the governing law or arbitration/dispute resolutions contract provisions.

**§3.2-105      Solicitation Considerations**

- (1) Solicitations for Capital Assets shall be written so that critical factors associated with the acquisition shall be considered. These factors may include, but are not necessarily limited to the following:
  - a) Item capabilities - Will item carry out the functions for which it is being acquired?
  - b) Size, dimensions - Will item fit within the space where it is to be used?
  - c) Power requirements - Does the County possess the necessary mechanisms for powering the item as it requires?
  - d) Safety - Does the item meet all local, state, and federal safety requirements?
  - e) Pollution - Can the item be used without unnecessarily harming the environment? Does it require special AQMD permits?
  - f) Certification/licensing Requirements – Does the Capital Asset being purchased require special licensing/certification/training for the operator?
  - g) Maintenance - Are service and spare parts readily available? Are maintenance contracts available?
  - h) Life cycle cost - What is the total cost of ownership including initial acquisition cost, cost of operating supplies, cost of maintenance, cost of required space, residual value, etc.?
  - i) Liability insurance - If the item is being installed by vendor, use the standard insurance requirements, as set forth in Section 2.3-103.



- b) Telephone services requests and emergency contracts in any amount.
  - c) Modifications for computer hardware/software maintenance to add licenses and/or users.
- (3) Extra compensation or extra allowance to a Contractor after service has been rendered or a Contract has been entered into and performed in whole or in part are not allowed, pursuant to article XI, section 10 of the California Constitution.

**§3.2-109      Indemnification**

- (1) Except for contracts in which Section 3.2-104 (1) applies, contractors doing business with the County will indemnify the County against losses, liabilities and/or claims that arise from contractor performance including, but not limited to, patent violations, copyright violations, unauthorized use of materials, wrongful acts, and injuries to persons or property, and any other loss, liability or claim unless stated otherwise in this manual.

**§3.2-110      Insurance**

- (1) All contractors will provide the Deputy Purchasing Agent administering the contract with a certificate of insurance and required endorsements unless such certificate and endorsements are not required as provided in §2.3-102(4) or waived by County's Risk Manager or designee.
- (2) For appropriate insurance levels and requirements, see Section 2.3-103.

**§3.2-111      Emergencies**

- (1) Emergencies are defined as those situations where the safety and/or welfare of County residents or employees is at stake and/or immediate purchasing action is required to prevent serious economic or other hardship to the County. When due to the nature of the emergency, it is not possible or it is impractical to follow competitive bidding requirements, these requirements may be waived, by the County Procurement Officer or Deputy Purchasing Agent.
- a) For emergency procurement of Capital Assets costing less than \$75,000 emergency procedures under §3.1-113, Commodities, shall be followed.
  - b) When an emergency requiring the acquisition of a Capital Asset exceeding \$75,000 arises, the department will first call the CEO to receive budget approval for the procurement; and
  - c) The County Procurement Officer or department Deputy Purchasing Agent will issue a contract for an amount sufficient to resolve the immediate emergency.
  - d) If the item cost is over \$75,000, a requisition with CEO approval shall be submitted to the County Procurement Officer or the Deputy Purchasing Agent, as appropriate, within ten (10) working days of the emergency.
  - e) A memorandum from the department head or designee briefly detailing the emergency situation shall accompany the Procurement Request. This justification should become a permanent part of the procurement file.
- (2) County of Orange Procurement Preference Policy requirement is not applicable to Emergencies.



**§3.2-112 Federal and State Funding**

- (1) Should any portion of the funding for a capital asset contract be derived from federal and/or state funding sources, the solicitation process and selection of vendors must be conducted in accordance with the applicable federal and/or state regulations. In the event of a contradiction between County policy and federal and/or state requirements, the more restrictive method must be followed.
  - a) On federally funded projects, DPAs will be required to consult the System for Award Management (SAM) at SAM.gov to comply with funding source requirements.

**§3.2-113 Opportunity Buy**

- (1) An “Opportunity Buy” is a situation where necessary capital assets are for sale at significantly reduced rates from what is normally offered in the general market or where an alternative product to the one being bid represents significant cost savings to the County. In the event this situation arises, the Department Head or designee shall prepare a written justification in support of the prompt action taken that shall become part of the permanent procurement file. The justification shall include:
  - a) A detailed description of the capital asset to be provided by the vendor and an explanation of the cost savings achieved;
  - b) Why the recommended vendor is the only one capable of providing the required capital asset with back-up information included to support the justification;
  - c) Comparison of the recommended vendor’s prices or fees to the general market with price and attach quotes for comparable items provided, if available; and,
- (2) County Procurement Officer or designee approval is required for Opportunity Buys exceeding Board thresholds as specified in Section 3.2-103 (1) and (2) above. An Agenda Staff Report will be filed with the Board of Supervisors by the appropriate Department Head as soon as possible, after the purchase has been made. The Agenda Staff Report shall include all documentation and justification in support of the purchase.

**§3.2-114 Subcontractors**

- (1) All contracts for goods and services shall include a contract provision requiring the County’s prior express written consent to approve a contractor’s proposed use of a subcontractor. DPAs shall conduct the appropriate due diligence and obtain any documentation necessary from a requesting contractor to confirm a subcontractor’s qualifications to perform any contract or portion thereof, prior to approving a contractor’s request or submitting the request for Board approval. Board approved contracts shall require Board approval of any subsequent contractor requests to use subcontractors.
- (2) If the original solicitation specifically precluded the use of subcontractors, then DPAs shall not consent to any subcontractors.

**§3.2-115**      **Contractor Monitoring**

- (1) Contract monitoring is the means of providing oversight of the Contract post-procurement and includes Contract compliance, deliverables or services, productivity, fiscal responsibility and records maintenance.
- (2) The level of Contract monitoring varies depending upon the type of commodities or service(s) contracted. Should funding for contracts derive from sources such as federal and/or state funding sources, the monitoring of contractors (including subrecipients to the extent mandated by applicable funding requirements and regulations such as Uniform Guidance) must be conducted in accordance with the applicable regulations and should be specified in the Contract.
- (3) All contracts for goods and services shall include a provision requiring contractors to remain in compliance and in good standing, maintaining current and active business entity and/or nonprofit registration status, with all applicable federal, state and local registration requirements at the time of execution of the contract through the duration of the term of the contract, and requiring contractors to provide annual confirmation of current and active status through term of the contract. DPAs shall confirm the vendor's current and active status prior to final execution of the contract. During the term of the contract, County shall annually obtain the relevant documentation and confirm the contractor's current and active registration status.

## SECTION 3.3

### SERVICE CONTRACTS

#### §3.3-101 Definition

- (1) Service contracts encompass all contracts for services either with or without the furnishing of materials. Included in the definition of service contracts covered in this Section are the following:
- a) Architect-Engineer (“A-E”) Consultant Services: Services may include but are not necessarily limited to: investigations, report preparation, cost estimating, shop drawing review, CEQA documentation preparation, regulatory permit application and acquisition, archeology, geological and soils analysis, agronomy, limnology, biology, paleontology, material testing and inspection, real estate appraisal, and property acquisition services. Services also may include studies addressing engineering, architecture, facilities management, and environmental issues but **shall not** include design or construction drawings used for public works construction projects.
  - b) Booth/Table/Exhibit Use Services: A purchase or contract, that is not otherwise subject to Section 3.7 herein, for short-term use of booths, tables or space/room rentals that do not to exceed a cost of \$10,000 and a term of use of five (5) days or less procured for County business purposes, including the provision of County services, education, public outreach, and recruitment.
  - c) Capital Leases (non-real estate): A long-term lease that transfers to the lessee most rights and obligations concerning the asset leased, and usually transfers ownership at the end of the lease.
  - d) Consultant Service Contracts: Are for those services which are of an advisory nature, which provide a recommended course of action or personal expertise, and which have an end product which is basically a transmittal of information. Consultant service contracts are issued in order to obtain professional or technical advice or expertise which will supplement departmental expertise or advice or where an independent opinion or audit is required. All consultant service contracts shall contain a provision which prohibits “follow-on” projects that prevent the consultant from performing work related to any recommendations being formulated as a result of the consulting work.
  - e) Customized Software Maintenance: Software maintenance creates, designs, implements, and/or integrates customized changes to software that solve one or more problems and is not included with the price of the software.
  - f) Facilities and equipment services: Services which provide maintenance to existing facilities or equipment, including such services as janitorial and grounds maintenance, equipment maintenance and repair, etc. Prevailing wage shall be paid pursuant to Labor Code Section 1720 et seq., when applicable. Registration with the Department of Industrial Relations will be required, when applicable, pursuant to Labor Code Section 1771.1(a) and 1725.5.
  - g) Human Services: Human Services Contracts include all contracts for services that directly maintain or improve the social, economic, physical, or mental well-being of persons for whom the County bears such a responsibility, including food and travel.

Included in the definition of Human Services Contracts are services provided in response to or in support of federal, state and/or local service mandates to provide health and human services to a target population.

- h) Personnel or employee-related services: Services which provide benefit or assistance directly to employees, including such services as temporary employment, security, etc.
  - i) Professional Services: Services provided by licensed and/or technically trained professionals, including such services as, data processing, accounting, legal, medical, auditing, information-technology (IT) related services that may or may not include: customized software/application, installation and implementation services, creation/development, design, implementation and/or integration of customized changes to software that are not included with the price of the software or software maintenance.
  - j) Revenue Generating Contracts (non-real estate): A contract for contractor-provided services on County premises in which the County does not pay a fee, but instead receives a portion of the revenues that are generated from the services such as vending machines, etc.
- (2) Service contracts as defined in, and applied to, this section do not include Architect-Engineer Service Contracts (related to engineering and design of public projects), Public Works Construction Contracts, and Real Estate Contracts. For policies related to Architect-Engineer Service Contracts, refer to Section 3.4. For policies related to Public Works Construction Contracts, refer to Section 3.5. For policies related to Real Estate Contracts, refer to Sections 3.7 and 4.3.1.

### **§3.3-102      Board Approval**

- (1) Approval by the Board of Supervisors is required for all service contracts in accordance with the guidelines listed below.
  - a) Contracts Exceeding \$200,000 – Approval by the Board of Supervisors is required for all service contracts and/or revenue generating contracts where for any year of the contract, the annual value to any one contractor exceeds \$200,000, in accordance with Government Code Section 25502.5.
  - b) Sole Source Service Contracts – Approval by the Board of Supervisors shall be required for all Sole Source service contracts that exceed a total annual amount of \$75,000 or a five (5) year term. Contracts may not be split to avoid this policy, including proposed successor contracts that contain substantially the same scope of work. Renewal of a Sole Source Service where no changes to the scope or the dollar amount of the contract will not require a new Sole Source approved form. For additional information and guidelines refer to Section 4.5 – Sole Source Requests.

### **§3.3-103      Approval of Non-Standard Contract Terms**

- (1) Unless Risk Management agrees in writing that the risk to the County is minimal and County Counsel agrees in writing that the legal risk to the County is minimal, approval by the Board of Supervisors is required prior to the execution of any contract for \$200,000 or less that includes non-standard terms in the indemnification contract provisions and/or limits the vendor's liability.

This shall not apply to service purchases of \$5,000 or less, unless the contract contains an indemnification provision that requires the County to indemnify the vendor.

- (2) Unless County Counsel agrees in writing that the legal risk to the County is minimal, approval by the Board of Supervisors is required prior to the execution of a contract for \$200,000 or less that includes non-standard terms in the governing law or arbitration/dispute resolutions contract provisions. This shall not apply to service purchases of \$5,000 or less.

**§3.3-104      Contractor Name/Ownership Changes**

- (1) Except as provided herein, Board of Supervisors approval is required for Board awarded contracts where there is a change in a contractor's ownership or control resulting in the assignment of rights and responsibilities from one entity to another.
- (2) Deputy Purchasing Agents are authorized to approve the following changes to Board awarded contracts in the absence of a novation or other release from liability, and upon approval of County Counsel:
  - a) There is a change in the contractor company name only, but there is no change in the company's:
    - i. ownership or control,
    - ii. key staff identified in an existing contract, or
    - iii. tax identification (e.g., EIN).
  - b) There is a proposed assignment of the existing Board awarded contract to a different legal entity based on bankruptcy, merger, sale of the company (as opposed to a mere sale or acquisition of assets), restructuring or dissolution, and the Deputy Purchasing Agent has determined that the proposed assignee is qualified to perform according to the terms of the contract and original solicitation requirements and any key staff identified in the contract remain unchanged.
- (3) Upon approval of County Counsel, Deputy Purchasing Agents are authorized to approve a change in contractor name or ownership for non-Board awarded contracts.

**§3.3-105      Term**

- (1) The duration of a service contract will depend upon the County's need, prevailing market conditions, contract start-up costs, and the County's best economic interest.
- (2) With respect to Board awarded contracts, the initial term of a service contract shall not exceed three (3) years, with a two-year renewable term, unless otherwise approved by the Board.
- (3) In no case shall a service contract exceed five (5) years in duration unless the contract is specifically approved by the Board of Supervisors or is extended from the original contract term by one (1) year in accordance with Section 3.3-106 in this manual.
- (4) Prior to renewal or extension of an existing contract, the department will document that performance of the contractor has been at least satisfactory.

**§3.3-106      Contract Extensions**

- (1) Service Contracts may be extended up to a five (5) year term without approval by the Board of Supervisors. The extension may be issued by the Deputy Purchasing Agent, without Board of Supervisors approval provided there are no monetary increases that cumulatively exceed the Board of Supervisors approval threshold, while complying with solicitation thresholds.
- (2) Board and non-Board contract extensions may be issued by the Deputy Purchasing Agent for up to one (1) year, beyond the fifth year, with County Procurement Officer or designee approval, provided there are no monetary increases (i.e., within the contract's existing contract amount) or other material changes to the contract.

**§3.3-107      Renewals**

- (1) Applicable to all service contracts with a value that exceeds \$200,000 per year.
  - a) All renewals are subject to Board of Supervisors approval.
  - b) Agenda Staff Reports (ASRs) shall be filed on the Board's "Discussion Calendar" in accordance with the Board Rules of Procedure.
  - c) All service contract renewals shall be stated in the Recommended Action portion of the Agenda Staff Report (ASR) for consideration by the Board.

**§3.3-108      Pricing**

- (1) Service contracts will be written with one of the following methods of pricing:
  - a) Cost per Task or Total Fixed Price: This is the preferred method of pricing service contracts.
  - b) Hourly Rate/Time and Materials: If service contracts are priced with an hourly rate, repetitive tasks should be given a fixed rate or "hours per job" guarantee. Materials are to be reimbursed on an actual cost basis unless otherwise justified.
  - c) Contract Prices Based on Cost Plus: Contracts priced on a "cost plus" fixed fee basis shall have a fixed fee for profit and overhead. Cost plus as a percentage of cost should be avoided whenever possible. Additionally, when compensation is primarily based on cost of labor as well as materials, the County will not use "cost plus percentage of cost" contract pricing without specific approval by the Board of Supervisors.
- (2) The method for allowing increases in the unit rates, if any, during the contract period will be stated in the solicitation. Increases may be permitted on a fixed percentage basis to occur during the contract period or may be tied to published index prices, such as the Consumer Price Index.

**§3.3-109      Vendor Selection**

- (1) With the exception of Sole Source service contracts, selection shall be based on the competitive process. Solicitations shall be made as follows:
  - a) Contracts \$75,000 or less over the life of the contract      Minimum of one written quote
  - b) Contracts above \$75,000 over the life of the contract      Written solicitation issued on County’s bidding system
- (2) Services that are below the solicitation threshold are not required to be competitively bid nor require a sole source justification for award, except as may be required for Federal or State funded procurements.
- (3) Awards in Invitation for Bid solicitations will be made to the lowest responsive and responsible bidder as defined in Section 4.2-102 of this manual. In the case of a negotiated procurement, award shall be made to the vendor with the most responsive and responsible proposal as detailed in Section 4.3-114 of this manual.
- (4) Consecutive contracts going back three (3) years for purchases that contain substantially the same scope shall not be issued to the same vendor using the written quote(s) solicitation method when the consecutive contracts’ cumulative dollar amount exceeds the written solicitation threshold.

**§3.3-110      Public Bid Opening**

- (1) A public bid opening will be held at a time and place announced in the solicitation for the procurement of services exceeding \$200,000 annually. The amount of each bid, together with the name of each bidder, shall be recorded and made available for public inspection.
  - a) In cases where bids are submitted and tabulated electronically, bid openings will be considered public as long as the individual bids are electronically available immediately after the bids close.

**§3.3-111      Retroactive Contract and Amendments/Changes**

- (1) Retroactive contracts or contract overruns are not permitted. If a retroactive contract or contract overrun occurs, it is invalid unless ratified by the Board of Supervisors or unless one of the following exemptions applies:
  - a) Retroactive contracts or contract overruns with a total value of \$500 or less that have the approval of the department head.
  - b) Retroactive contracts or contract overruns that exceed \$500 and are \$10,000 or less that have the approval of the County Procurement Officer or designee and Chief Financial Officer on the form(s) approved and provided by the County Procurement Office.

Retroactive contracts or contract overruns with a total value exceeding \$10,000 shall require approval by the Board of Supervisors.

- (2) Retroactive contracts in the following categories shall also be exempt from Board of Supervisors approval;
  - a) Contracts governed by separate rules and regulations that conflict with this policy.
  - b) Telephone services requests and emergency contracts in any amount.
  - c) Modifications for computer hardware/software maintenance to add licenses and/or users.
- (3) Extra compensation or extra allowance to a Contractor after service has been rendered or a Contract has been entered into and performed in whole or in part are not allowed, pursuant to article XI, section 10 of the California Constitution.

**§3.3-112      Adjustments to Contract Amount**

- (1) Decreases: The department Deputy Purchasing Agents may decrease the amount of a contract without obtaining approval from the Board of Supervisors.
- (2) Increases: With respect to non-Board awarded service contracts, cumulative contract increases may not exceed 10% of the original annual contract amount, unless authorized/approved by the County Procurement Officer or designee on the form(s) approved and provided by the County Procurement Office. The department Deputy Purchasing Agent shall submit a form, which shall be made a permanent part of the procurement file, to request an increase of the value of a non-Board awarded service contract under the following circumstances:
  - a) The need for service could not be accurately projected and the percentage of increase does not justify rebidding.
  - b) An emergency exists which does not permit rebidding.
  - c) Special economic factors justify a contract increase.
- (3) For Board awarded contracts, no increase exceeding the contingency amount will be permitted without approval by the Board of Supervisors.
- (4) Exemptions: Subordinate contracts issued against RCAs, and subordinate contracts issued against CPO approved cooperative programs with a total aggregate contract amount below the thresholds requiring approval by the Board of Supervisors, and contracts awarded via informal solicitations (one written quote) will not require approval from the County Procurement Officer or designee.

**§3.3-113      Contingency Funds**

- (1) When requesting approval for award of a service contract from the Board of Supervisors, a contingency amount may also be requested. Justification for this contingency will be presented to the Board of Supervisors in the Agenda Staff Report (ASR) in accordance with the following:
  - a) The total amount requested shall not exceed a total of 10 percent (10%) of the original amount for the first year of the contract.
  - b) This amount, if approved by the Board, may be used over the entire term of the contract.



- c) Contingencies shall only be used to cover services already provided in the scope of work, or additional services substantially similar to those already provided in the scope of work, as set forth in the contract.
- d) The use of the contingency amount is subject to approval requirements established by the County Procurement Officer.

**§3.3-114      Multiple Awards**

- (1) Awards of service contracts may be broken up by individual service required, groups of related services required, or low total bid basis, whichever the County determines to be in its own best interest.

**§3.3-115      Incremental Contracting**

- (1) Contracts shall not be split to avoid approval by the Board of Supervisors or to bypass competitive solicitation requirements.

**§3.3-116      Indemnification**

- (1) Except for contracts in which Section 3.3-103 (1) applies, contractors doing business with the County will indemnify the County against losses, liabilities and/or claims that arise from contractor performance including, but not limited to, patent violations, copyright violations, unauthorized use of materials, wrongful acts, and injuries to persons or property, and any other loss, liability or claim unless stated otherwise in this manual.

**§3.3-117      Insurance**

- (1) All service contractors will provide the Deputy Purchasing Agent administering the contract with a certificate of insurance and required endorsements unless such certificate and endorsements are not required as provided in 2.3-102 (4) or waived by the County's Risk Manager or designee.
- (2) For appropriate insurance levels and requirements, see Section 2.3-103.

**§3.3-118      Bid and Performance Bond**

- (1) Where appropriate, the County will require bid and performance bonds to be provided. These bonds will guarantee that the contractors will enter into a contract and that the contract will be performed per the contract terms and conditions.

**§3.3-119      Liquidated Damages**

- (1) Liquidated damages clauses are enforceable if:
  - a) damages are difficult to ascertain or estimate at the time the contract is formed; and

- b) the amount is a reasonable forecast of compensatory damages in the case of breach. Specifically, if the liquidated damages amount significantly exceeds the amount of damages prospectively probable, the liquidated damages clause may not be enforceable.
- (2) Liquidated damage clauses may be included in service contracts when the County could suffer financial loss due to delays in performance. Consistent with legal requirements, the amount of damages listed in the contract must be a “reasonable forecast” of the County’s actual damages.

(3) Liquidated Damages Clause:

- a) It is agreed by and between the Contractor and the County that if this Contract is not fully and completely performed within the terms of the contract, damage will be sustained by the County. Said damage includes any additional costs resulting from a delay in scheduled time frames by the Contractor. Since it is and will be impractical and extremely difficult to determine the actual damage which the County will sustain by reason of such delay, it is therefore agreed that Contractor will pay to the County liquidated damages in a set amount for each and every day of delay as set forth in this document.
- b) In the event the liquidated damages as set forth herein are not paid by the Contractor, the County will deduct the amount of liquidated damages from any monies due Contractor under this contract.
- c) This provision may be invoked at the sole option of the County by notification to the Contractor by certified return receipt mail.
- d) If Contract is delayed by reason of changes or extra services ordered by the County or as a result of the County’s failure to perform or delays cause by the County, the time of performance of this Contract will be extended commensurate with the time required for the extra services, and no liquidated damages will accrue during the period of such extension.
- e) If this Contract is not fully and completely performed within the time set forth herein, the County shall have the right to increase the time for such performance and to waive the liquidated damages. Nothing herein shall be construed as giving the Contractor a right to extra time for performance.

**§3.3-120      Contract Administration**

- (1) All service contracts will be monitored for efficient performance by the project manager/department designee named in the contract documents. The service(s) to be provided will be clearly stated in the contract and it will be the job of the representative to monitor the contractor’s performance to ensure that those services are provided in adherence to all contract requirements and expectations and, where applicable, all funding requirements are satisfied.
- a) All contract deficiencies will be noted in writing to the contractor and sent to the County Procurement Officer or Deputy Purchasing Agent, as appropriate.
  - b) No contractor will be paid in full for any service which has not been satisfactorily performed.

**§3.3-121      Cancellation**

- (1) Any service contract may be canceled or terminated by the department Deputy Purchasing Agents, as appropriate, without approval by the Board of Supervisors.

**§3.3-122      Emergencies**

- (1) Emergencies are defined as those situations where the welfare of County residents is at stake and/or immediate purchasing action is required to prevent serious economic or other hardship to the County. When due to the nature of the emergency, it is not possible or it is impractical to follow competitive bidding requirements, these requirements may be waived by the County Procurement Officer or Deputy Purchasing Agent.

a) Process:

- i. Emergency service purchases of \$1,000 or less may be made using petty cash or purchasing card, in accordance with Section 4.6- Petty Cash Purchases.
- ii. For emergency service purchases over \$1,000 the requestor will contact the County Procurement Officer or appropriate department Deputy Purchasing Agent. The emergency will be described and the County Procurement Officer or Deputy Purchasing Agent may use a purchasing card, when so authorized, or may issue a contract for an amount sufficient to resolve the immediate emergency.
- iii. The requestor will ensure and will confirm with the County Procurement Officer or Deputy Purchasing Agent that the service contractor carries insurance.
- iv. No later than ten (10) working days from the request date, an approved requisition referencing the purchase will be submitted to the County Procurement Officer or Deputy Purchasing Agent. This requisition will be accompanied by a memorandum from the department head or designee briefly detailing the emergency situation. The justification will become a permanent part of the procurement file.
- v. If the emergency occurs on other than normal working hours, the department is authorized to secure the services required and contact the County Procurement Officer or Deputy Purchasing Agent on the next regular business day.
- vi. For emergency purchases exceeding \$200,000, an Agenda Staff Report will be filed with the Board of Supervisors by the department administering the contract as soon as possible, after the service is performed.

- (2) County of Orange Procurement Preference Policy requirement is not applicable to Emergencies.

**§3.3-123      Contract Planning and Coordination**

- (1) The County Procurement Office should evaluate Countywide contract inventories to ensure, where possible, departments are not duplicating efforts and to facilitate collaboration across departments to maximize efficiencies and effectiveness.

**§3.3-124 Contracts for Outside Legal Counsel**

- (1) The Board of Supervisors has sole authority to select outside legal counsel. All department and district requests to employ outside legal counsel (other than CEO/Risk Management counsel and bond counsel) shall be presented to the Board by the Office of County Counsel. The hiring and management of outside legal counsel are governed by the principal policies and procedures titled County of Orange outside counsel policies and procedures adopted by the Board on August 6, 1991, and subsequently amended.

**§3.3-125 HIPAA – Business Associate Language**

- (1) With the passage of the Health Insurance Portability and Accountability Act (“HIPAA”) Protected Health Information (“PHI”) has become a key legal consideration in the drafting of County contracts for departments subject to the HIPAA rules. For services to be performed in situations where either the County or a contractor under contract with the County are creating or working with PHI, the County approved business associate Sections covering HIPAA activities should be included in the governing contracts. Sections approved for use will be available on the County Procurement Office’s intranet website at:

<http://intra2k3.ocgov.com/procurement/>

**§3.3-126 Federal and State Funding**

- (1) Should any portion of the funding for a services contract be derived from federal and/or state funding sources, the solicitation process and selection of vendors must be conducted in accordance with the applicable federal and/or state regulations. In the event of a contradiction between County policy and federal and/or state requirements, the more restrictive method must be followed.
  - a) On federally funded projects, DPAs will be required to consult the System for Award Management (SAM) at SAM.gov to comply with funding source requirements.

**§3.3-127 Hybrid Contract Definition**

- (1) A hybrid contract is a contract which consists of multiple contract type procurements. For example, a contract for the purchase of a commodity and a service is considered a hybrid contract. The solicitation process will be based on the portion with the greater amount; however, each situation should be carefully considered and documented.
- (2) Procurements that are evenly split between commodity and service should be reviewed on a case-by-case basis by the Deputy Purchasing Agent to determine the appropriate solicitation process, which shall be documented and made a permanent part of the procurement folder.
- (3) If the service portion of a hybrid contract exceeds an annual aggregate amount in excess of \$200,000, refer to Section 3.3-102 (1) a) and b) of this manual.

**§3.3-128 County of Orange Procurement Preference Policy Exemption**

- (1) Solicitations directed at non-profit organizations may be exempt from the County of Orange Procurement Preference Policy with approval of the County Procurement Officer, subject to any funding requirements associated with State or Federally funded contracts.

**§3.3-129      Opportunity Buy**

- (1) An “Opportunity Buy” is a situation where necessary services are for sale at significantly reduced rates from what is normally offered in the general market or where an alternative product/service to the one being solicited represents significant cost savings to the County. In the event this situation arises, the Department Head or designee shall prepare a written justification in support of the prompt action taken that shall become part of the permanent procurement file. The justification shall include:
  - a) A detailed description of the services to be provided by the vendor and an explanation of the cost savings achieved;
  - b) Why the recommended vendor is the only one capable of providing the required services with back-up information included to support the justification;
  - c) Comparison of the recommended vendor’s prices or fees to the general market with price and attach quotes for comparable services provided, if available; and,
- (2) County Procurement Officer or designee approval is required for Opportunity Buys exceeding Board thresholds as specified in Section 3.3-102 above. An Agenda Staff Report will be filed with the Board of Supervisors by the appropriate Department Head as soon as possible, after the purchase has been made. The Agenda Staff Report shall include all documentation and justification in support of the purchase.

**§3.3-130      Subcontractors**

- (1) All contracts for goods and services shall include a contract provision requiring the County’s prior express written consent to approve a contractor’s proposed use of a subcontractor. DPA’s shall obtain any documentation necessary from a requesting contractor to confirm a subcontractor’s qualifications to perform any contract or portion thereof, prior to approving a contractor’s request or submitting the request for Board approval. Board approved contracts shall require Board approval of any subsequent contractor requests to use subcontractors.
- (2) If the original solicitation specifically precluded the use of subcontractors, then DPAs shall not consent to any subcontractors.

**§3.3-131      Contractor Monitoring**

- (1) Contract monitoring is the means of providing oversight of the Contract post-procurement and includes Contract compliance, deliverables or services, productivity, fiscal responsibility and records maintenance.
- (2) The level of Contract monitoring varies upon the type of commodities or service(s) contracted. Should funding for contracts derive from sources such as federal and/or state funding sources, the monitoring of contractors (including subrecipients to the extent mandated by applicable funding requirements and regulations such as Uniform Guidance) must be conducted in accordance with the applicable regulations and should be specified in the Contract.

- (3) All contracts for goods and services shall include a provision requiring contractors to remain in compliance and in good standing, maintaining current and active business entity and/or nonprofit registration status, with all applicable federal, state and local registration requirements at the time of execution of the contract through the duration of the term of the contract, and requiring contractors to provide annual confirmation of current and active status through term of the contract. DPAs shall confirm the vendor’s current and active status prior to final execution of the contract. During the term of the contract, County shall annually obtain the relevant documentation and confirm the contractor’s current and active registration status.

## SECTION 3.4

### ARCHITECT-ENGINEER SERVICE CONTRACTS

#### §3.4-101 General Responsibilities

- (1) State and local law, including [Public Contract Code Section 22034](#), [Government Code Section 25502.5](#), [Orange County Codified Ordinances Section 1-8-11 et seq.](#), and [Orange County Codified Ordinances Section 1-4-12 et seq.](#), provide for delegation of authority by the Board of Supervisors to appropriate officials to engage contractors to provide architectural and engineering services within specified dollar limits. Unless otherwise specified, all references in this section to “Director” shall mean the Director of OC Public Works, Sheriff-Coroner or those qualified County officials or department designees identified by the Director of OC Public Works.
- a) The employees designated by the Director to procure A-E service contracts and public works construction contracts shall be trained under the direction of the County Procurement Officer, adhere to the methods, policies and procedures established by the County Procurement Officer and deputized as Deputy Purchasing Agents to exercise the authority delegated to the County Procurement Officer by the Board of Supervisors as authorized by law.
  - b) The Deputy Purchasing Agents shall procure A-E contracts and public works construction contracts at the direction of the Director or his or her designee(s), including overseeing the processes for the selection of architects, engineers, and construction contractors, entering into design and construction contracts on behalf of the County, and handling related protests and appeals, as allowed by statute and in accordance with Sections 3.4, 3.5 and 3.6.
- (2) Notwithstanding the Architect-Engineer (A-E) services as defined in Section 3.3 above, all other A-E service contracts, including those not requiring Board of Supervisors approval, shall be solicited and executed by the Director of OC Public Works, Sheriff-Coroner or those qualified County officials or department designees identified by the Director of OC Public Works, or the Sheriff-Coroner to solicit and execute A-E service contracts in accordance with this CPM, Resolutions of the Board of Supervisors and applicable law.

- (3) It shall be the duty of the Director to procure all A-E service contracts and public works construction contracts and handle related protests and appeals, for the County of Orange, its agencies and departments, and the Orange County Flood Control District, and any other public entity that elects to adopt this section of the CPM. All references to the Board of Supervisors shall also apply to the governing body of any public entity that elects to adopt this CPM. If the Sheriff-Coroner determines it is in the best interests of the County for the Director of OC Public Works to procure a particular contract or type of contract, the Director of OC Public Works shall have the authority to procure such contracts.
- (4) Although the Director has the responsibility to prepare and procure design and construction contracts, the contracting department is responsible for: identifying the scope of the project; budgeting and funding of the project, including and ensuring the project meets any applicable requirements relating to the funding source; providing support to the Director throughout design and construction, inspections, contract compliance, and payment processing; and working with the Director to identify the department's roles and responsibilities for each project.

### **§3.4 - 102      Definition**

- (1) Architect-Engineer (A-E) services for the purposes herein shall mean those services set forth in Government Code Section 4525, subdivisions (d), (e), and (f), include but are not limited to: architectural, landscape architectural, engineering, environmental, land surveying services, and construction project management as well as incidental services that members of these professions may logically or justifiably perform. Environmental services are further defined to mean those services performed in connection with project development and permit processing that facilitates compliance with state and federal environmental laws.
- (2) Services which are considered A-E services may include but are not limited to: investigations; design, plan and specification development; report preparation; cost estimation; shop drawing preparation and review; construction supervision; land survey; CEQA documentation preparation; and regulatory permit application preparation and permit acquisition.
- (3) A-E services may also include other related services, including, but not limited to: archeology, geological and soils engineering, agronomy, limnology, biology, paleontology, construction claims consulting, material testing and inspection, real estate appraisal, and property acquisition services.
- (4) If the service provided is a specialized service and performed by private architectural, landscape, engineering, environmental, land surveying, or construction project management, the contract should adhere to the procurement requirements set forth in this section.

### **§3.4-103      Statute**

- (1) Government Code Section 4525 *et seq.* (Mini-Brooks Act) governs contracts between public entities and private architectural, landscape architectural, engineering, environmental, land surveying, and construction project management firms. These statutes establish a Qualifications-Based Selection (QBS) method that public agencies in California must use to contract for professional services. This method requires that such services be engaged on the

basis of demonstrated competence and qualifications for the types of services to be performed and at a fair and reasonable price. Accordingly, public agencies may not utilize competitive bidding for such services, except in the limited instances where the State or local agency head determines that the services needed are more of a technical nature and involve little professional judgment and that requiring bids would be in the public interest (Government Code §4529). In addition, the procedures adopted to implement the Mini-Brooks Act must assure maximum participation of small business firms as defined in Government Code Section 14837.

### **§3.4-104      Conflicts of Interest**

The acceptance of submittals and execution of contracts with A-E firms are governed by the following restrictions:

- (1) An A-E entity representing a private sector client with an interest in a County project may not also represent the County on the same project; and
- (2) Notwithstanding Paragraph (1), an A-E entity may serve in both design and construction support roles on a given project if those roles were contemplated as part of the same contract.
- (3) In most cases, an A-E entity that prepared design documents, including plans, specifications, cost estimates and reports, for a given project may not bid on that project as a construction contractor or construction manager. This general prohibition extends to sub-consultants of the prime A-E entity. However, an A-E, or its sub-consultants, that provided limited pre-design phase work to assist with scoping a project for bid need not be automatically excluded from bidding on the design-phase work, provided that all of the following conditions are met:
  - a) The A-E in question does not gain a competitive advantage over other bidders, and is not privy to confidential information, due to its pre-design phase services;
  - b) The A-E in question did not assist in preparing the actual bid documents;
  - c) The A-E in question is not involved in evaluating proposals for design-phases services and is not assisting the County in that evaluation; and
  - d) No County personnel or contractors who worked with the A-E in question on pre-design phase services are members of the panel evaluating submissions for design-phase work.

### **§3.4-105      Board of Supervisors Approval**

- (1) “In Counties having a population of 200,000 or more, the Board may authorize the purchasing agent to engage independent contractors to perform services for the County or County officers, with or without the furnishing of material, when the annual aggregate cost does not exceed two hundred thousand dollars (\$200,000).” Government Code Section 25502.5. Therefore, Board of Supervisor approval is required when the annual aggregate cost exceeds \$200,000.
- (2) Approval by the Board of Supervisors is required for all sole source A-E Service contracts that exceed a total annual amount of \$75,000 or a five-year consecutive term, inclusive of any amendments, regardless of dollar amount.

### **§3.4-106      Contractor or Firm Name/Ownership Changes**



- (1) Except as provided herein, Board of Supervisors approval is required for Board awarded contracts where there is a change in a contractor's ownership or control resulting in the assignment of rights and responsibilities from one entity to another.
- (2) Deputy Purchasing Agents are authorized to approve the following changes to Board awarded contracts in the absence of a novation or other release from liability, and upon approval of County Counsel:
  - a) There is a change in the contractor company name only, but there is no change in the company's:
    - i. ownership or control,
    - ii. key staff identified in an existing contract, or
    - iii. tax identification (e.g., EIN).
  - b) There is a proposed assignment of the existing Board awarded contract to a different legal entity based on bankruptcy, merger, sale of the company (as opposed to a mere sale or acquisition of assets), restructuring or dissolution, and the Deputy Purchasing Agent has determined that the proposed assignee is qualified to perform according to the terms of the contract and original solicitation requirements and any key staff identified in the contract remain unchanged.
- (3) Upon approval of County Counsel, Deputy Purchasing Agents are authorized to approve a change in contractor name or ownership for non-Board awarded contracts.

**§3.4-107      Term**

- (1) If the A-E services to be completed under a given contract are related to a specific project, the contract term shall be based upon a reasonable estimate of time required for the project. This estimate shall be made by County staff and shall be subject to negotiation with the A-E entity.
- (2) If the A-E services to be completed are not project-specific, the initial term of the contract term shall not exceed three years, unless otherwise approved by the Board of Supervisors.
- (3) Notwithstanding the provisions of Paragraph (2) above, contracts for A-E services that are not project-specific and were not required to be awarded by the Board of Supervisors, the term of such contracts shall not exceed five (5) years, unless otherwise extended in accordance with Section 3.4-112.

**§3.4-108      Firm Selection Methods**

Selection shall be based on a competitive process with the exception of those covered in Section 5, below. The method used depends upon the scope of work, the services required, the size of the project or potential projects, the complexity of projects, and the time available for selection. A-E services as defined in this section shall not include a DVBE preference. The Director or designee has the discretion to choose which selection method will be utilized. The A-E procurement methods are:

- (1) Request for Qualifications:

The Request for Qualifications (RFQ) method is used primarily for establishing capacity

contracts through a qualification-based selection of A-E services when future services are necessary from numerous firms for an undefined project scope of services as required by A-Es of the same or similar discipline. An RFQ will be advertised and firms will submit a Statement of Qualifications (SOQ).

a) Establishment of the Qualified Vendor List and On-Call Contracts

The firm is required to submit an SOQ in response to an RFQ. A minimum score is established as a pass point for respondents to qualify for inclusion in the Qualified Vendor List (QVL). An evaluation panel scores the respondents' SOQs with all responsive SOQs meeting the minimum pass point, those who meet the minimum will be included in the QVL. The highest scored respondents may, at the discretion of the evaluation panel and based on the County needs, be invited for interviews for determining which firms will be recommended for on-call contracts with specific dollar amounts. The Director may use the QVL for various services as required. The QVL is typically solicited at least once every three to five years to give additional firms an opportunity to participate. At the time A-E services are required:

- i. For contracts up to an annual aggregate cost of \$200,000, a contract may be issued to a QVL firm by negotiating the fee and scope of work, or a task order may be issued against an existing on-call contract awarded from an RFQ.
- ii. For services with an annual aggregate cost of over \$200,000 a contract task order may be issued against an existing on-call contract awarded from an RFQ.
- iii. Contracts over an annual aggregate cost of \$200,000 per year may also be awarded to a QVL firm, by negotiated contract, however, Board of Supervisors approval will be required.

b) Additional Use of Qualified Vendor List

The QVL may also be utilized as the first step of the two-step solicitation process defined in Subsection (4), below. A request to submit proposals on a specific scope of work can be sent to all firms on the QVL and the proposals will be evaluated based on the established criteria set forth in the request.

(2) Request for Proposals

The Request for Proposals (RFP) method is used for projects with a defined scope, such as a one-time well defined project, or for repetitive services with a defined scope. In this method, firms may be required to submit a technical proposal and may be required to submit a price proposal. Proposals by all firms are evaluated by an evaluation panel based on criteria outlined in the RFP. The evaluation panel scores the proposals. The preliminary scores will be tallied and included on the consolidated score sheets. An additional tallied calculation will be conducted with the highest and lowest panelist scores eliminated. The results of this calculation shall be included in the consolidated score sheet as the final score. Final price negotiations may begin with the firm having the highest evaluation scores. The contract may be awarded to one firm for project specific services or for repetitive services that may be required over the term of the contract. The selection and award of these contracts will require approval by the Board of Supervisors when exceeding the thresholds in Section 3.4-105.

(3) Request for Qualifications/Request for Proposals (Two-Step)

The Request for Qualifications/Request for Proposals (RFQ/RFP) method is generally used for larger projects and when the scope of work is complex or unusual or where innovative approaches to the project may be of value. This method requires a firm to submit an SOQ in response to an RFQ. Responding submittals are scored by an evaluation panel, which then prepares a list of the most qualified firms. Those most qualified firms are then invited to respond to an RFP issued by the County. Submitted proposals are then evaluated by an evaluation panel based on the criteria outlined in the RFP and the highest ranked firm is recommended for award to the Board of Supervisors.

(4) Competitive Bidding

If the services needed are of a technical nature, well defined, and involve only limited professional judgment, the Invitation for Bid (IFB) process is allowed. Examples of where the IFB process may be appropriate include, but are not limited to: drafting of as-built or record drawings, drafting of standard plans, certain laboratory testing, and certain survey services. All awards resulting in a contractor receiving more than an aggregate amount of \$200,000 per year of non-Board approved contracts will require Board of Supervisors approval.

(5) Sole Source Contracts:

- a) “Sole source contracts” are contracts that are excused from competitive bidding when (1) the service requested is proprietary, or (2) the County’s business needs require expeditious award of a contract without competitive bidding. Approval by the Board of Supervisors is required for award of all sole source contracts that exceed an annual amount of \$75,000 or a five (5) year consecutive term (Note: firms that are listed on a current Qualified Vendor List have participated in the competitive bidding process, and do not require sole source justification for contract award. However, contracts awarded from a Qualified Vendor List may still require approval by the Board of Supervisors if they exceed the thresholds in Government Code § 25502.5).

(6) One-Time Contracts:

- a) In such cases where firms from an existing Qualified Vendor List cannot be utilized, contracts that do not exceed \$75,000 are considered “one-time” contracts and are not required to be competitively bid nor require a sole source justification for award. Alternate submittals should be obtained to ensure the County has validated firm qualifications and competitive pricing.

**§3.4-109 Guidelines for Selecting Firms from Established Contract Lists**

- (1) For multiple award contracts, the following factors are to be utilized prior to deciding which A-E firm will be requested to perform the necessary services:
  - a) **Expertise:** Applicable expertise of the firm to best perform the specific scope of the services identified.
  - b) **Capacity:** Review of the firm’s necessary staff and equipment availability to perform the specific scope of services identified within the County’s requested time period.
  - c) **Price:** Review of the estimated level of effort and resulting cost to complete the services identified.

- d) **Utilization:** When the above factors are substantially the same, and in the case of equivalent costs for identified services, the County may consider the amount of work each firm has previously performed under the current contract.
- e) **Performance:** If poor performance becomes an issue for a specific firm, that firm may receive fewer requests for identified services to protect the County from resulting quality or safety issues.

**§3.4-110      Quarterly Usage Report**

- (1) A quarterly usage report from the previous quarter will be submitted by the Director to the Board of Supervisors for all On-Call Contracts, via a Board Memo.

**§3.4-111      Amendments**

- (1) Within the limited authority granted by the Board of Supervisors, the Director or Director's designee may amend the contract allowing additional work that is related to, and is of a similar nature to, the original scope, as long as the additional work does not exceed the value of the contract approved by the Board of Supervisors.
- (2) If an increase to an A-E service contract is necessary, the estimated not-to-exceed amount will be agreed upon in writing before beginning the additional work.
- (3) If an A-E service contract has not been approved by the Board of Supervisors, any change to the Contract that increases the annual aggregate amount beyond \$200,000 must be approved by the Board of Supervisors.
- (4) Subject to restrictions set forth in Paragraph (3) above, increases of the A-E service contract amount for services within a contract's existing scope of work may be granted by the Director or Director's designee without Board of Supervisor's approval where the increased amount does not exceed 25 percent of the existing contract price or \$200,000 annually, whichever is less.
- (5) Amendments to an A-E service contract exceeding the Director's authority as described above must be submitted to the Board of Supervisors for approval.
- (6) Amendments to an A-E service contract require Board of Supervisors approval when there is a major change in the scope of the contract or the change would result in a major delay that significantly differs from the original period of performance as agreed upon in the contract.

**§3.4-112      Extensions**

- (1) Notwithstanding Section 3.4-111, at the Director's discretion, with the concurrence of County Counsel and for the sole purpose of completing work already commenced, the Director may extend the term of a Board-awarded or non-Board awarded A-E service contract for a period of not more than one (1) year so long as there is no increase in cost to the County, change in the scope of work, or any other material change to the contract.

**§3.4-113      Insurance**

All recommendations for award of a contract for A-E services shall include information by the appropriate department indicating that either:

- (1) Professional liability insurance is required, County’s professional liability insurance coverage requirements have been met by the A-E firm; or
- (2) Good cause exists to allow the A-E firm to be exempt from the County’s liability insurance requirements, with an explanation justifying the exemption.

**§3.4-114      State and Federal Grant Projects**

- (1) All applicable State or Federal Regulations will be followed for projects involving State or Federal grants. Standard County contract language and procurement documents may be modified as necessary to meet the eligibility requirements for State or Federal programs.
  - a) On federally funded projects, DPAs will be required to consult the System for Award Management (SAM) at SAM.gov to comply with funding source requirements.

**§3.4-115      Prevailing Wage**

- (1) Construction-related work performed under A-E service contracts may meet the definition of “public works” under Labor Code § 1720 et seq. Contracts for A-E services shall include provisions for prevailing wages where mandated by law. Registration with the Department of Industrial Relations will be required, when applicable, pursuant to Labor Code Section 1771.1(a) and 1725.5.

## SECTION 3.5

### PUBLIC WORKS CONSTRUCTION CONTRACTS

#### §3.5-101 General Responsibilities

- (1) State and local law, including [Public Contract Code Section 22034](#), [Government Code Section 25502.5](#), [Orange County Codified Ordinances Section 1-8-11 et seq.](#), and [Orange County Codified Ordinances Section 1-4-12 et seq.](#), provide for delegation of authority by the Board of Supervisors to appropriate officials to engage contractors to provide public works construction projects within specified dollar limits. Unless otherwise specified, all references in this section to “Director” shall mean the Director of OC Public Works, Sheriff-Coroner or those qualified County officials or department designees identified by the Director of OC Public Works. “Director” shall also mean the John Wayne Airport Director for purposes of procurement of one-time public works projects of \$60,000 or less, or the amounts provided by Public Contract Code Section 22032(a) and for the procurement and utilization of Job Order Contracts pursuant to §3.5-114 below.
  - a) The employees designated by the Director to procure A-E service contracts and public works construction contracts, shall be trained under the direction of the County Procurement Officer, adhere to the methods, policies and procedures established by the County Procurement Officer and deputized as Deputy Purchasing Agents to exercise the authority delegated to the County Procurement Officer by the Board of Supervisors as authorized by law.
  - b) The Deputy Purchasing Agents shall procure A-E contracts and public works construction contracts at the direction of the Director or his or her designee(s), including overseeing the processes for the selection of architects, engineers, and construction contractors, entering into design and construction contracts on behalf of the County, and handling related protests and appeals, as allowed by statute and in accordance with Sections 3.4, 3.5 and 3.6.
- (2) Director or designees shall pursue project delivery methods in accordance with the Public Contract Code and methods available through agreements with other governing entities (for example, via a Joint Powers Authority) in order to obtain cost savings for or limit liability of the County.
- (3) The Director or designees shall have the authority to issue change orders. Changes shall not exceed the limits as stated in Public Contract Code Section 20142. The Board of Supervisors may also delegate additional change order authority to individual officials and their designees when approving specific contracts.
- (4) The contracting department is responsible for: identifying the scope of the project; budgeting and funding of the project, including and ensuring the project meets any applicable requirements relating to the funding source; providing support to the Director or designee throughout design and construction, inspections, contract compliance, and payment processing; and working with the Director or designee to identify the department’s roles and responsibilities for each project.

### **§3.5-102      Definition**

- (1) As used in this CPM, “public works,” “public works contract”, “public works construction contract” or “public works project” shall share the same meaning as “public project” as defined in [Public Contract Code Section 22002\(c\)](#). As of the publication of this CPM, “public project” is defined as:
  - a) Public works contract or public works project means any of the following:
    - i. Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility paid for using public funds;
    - ii. Painting or repainting of any publicly owned, leased, or operated facility.
  - b) ”Maintenance work” as defined in [Public Contract Code Section 22002\(d\)](#) is not a public works contract for the purposes of this CPM. Maintenance work includes all of the following:
    - i. Routine, recurring, and usual work for the preservation or protection of any publicly owned or publicly operated facility for its intended purpose;
    - ii. Minor repainting;
    - iii. Resurfacing of streets and highways at less than one inch;
    - iv. Landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems; and
    - v. Work performed to keep, operate, and maintain publicly owned water, power, or waste disposal systems, including, but not limited to, dams, reservoirs, power plants, and electrical transmission lines of 230,000 volts and higher.
- (2) Prevailing wage shall be paid pursuant to [Labor Code Sections 1720](#) *et seq.*

### **§3.5-103      Purpose and Scope**

- (1) The purpose of this section is to provide guidelines for the solicitation and procurement of public works contracts. The scope of this section covers all public works contracts issued by all departments and agencies under the budgetary jurisdiction of the Board of Supervisors.

### **§3.5-104      Statute**

- (1) Public works contracts shall be issued in accordance with the provisions of the [Public Contract Code Sections 22000](#) *et seq.*, also known as the Uniform Public Construction Cost Accounting Act (the Act), and on forms approved for use by County Counsel.
- (2) The provisions of the Act relative to bidding procedures supersede the procedures contained within the code that would otherwise apply to specific projects or public entities.
- (3) Amendments or revisions to the code sections affecting this policy and resulting procedures may

be directly incorporated into this CPM when enacted by the California Legislature without further action of the Board of Supervisors.

**§3.5-105      Contract Methodology**

- (1) On projects with a total value of \$60,000 or less, or the amount provided by Public Contract Code Section 22032(a), the County may complete the work pursuant to [Public Contract Code Section 22032\(a\)](#) utilizing the employees of a public agency by force account, through a negotiated contract, or by purchase order.

**§3.5-106      Design-Bid-Build**

- (1) The Design-Bid-Build method splits construction projects into three (3) distinct phases: (1) design, (2) solicitation and (3) construction. During the design phase, the local agency prepares detailed project plans and specifications using its own employees or by hiring outside architects and engineers, as specified in Section 3. The solicitation and construction phases are specified within this Section.
- (2) [Public Contract Code Sections 20100](#) *et seq.* delineates the requirements and procedures that local officials must follow when awarding public works contracts.
- (3) The County of Orange utilizes the Design-Bid-Build method for construction projects resulting in a Fixed-Price Contract, a Fixed-Price Indefinite Quantity Contract, or a Cost Plus Fixed Fee Contract. When using this method, it is required to utilize the prequalification process per Sections 3.5-115 through 3.5-118.

**§3.5-107      Invitation for Bid (IFB) Process**

- (1) Public works contracts with a value of \$200,000 or less, or the amount provided by Public Contract Code Section 22032(c), may be procured by using informal bidding procedures as set forth in [Public Contract Code Section 22032](#) and [Orange County Codified Ordinances 1-8-10 through 1-8-14](#).
- (2) Unless the product or service is proprietary, all contracts with a value of between \$60,000 and \$200,000 or less, or those amounts provided by [Public Contract Code Section 22032](#), shall be selected using the following informal bidding procedures:
  - a) The Director shall maintain a list of qualified contractors, identified according to categories of work. Minimum criteria for development and maintenance of the contractors list shall be determined by the Director.
  - b) All contractors on the list for the category of work being bid or all construction trade journals specified in [Public Contract Code Section 22036](#), or both, shall be mailed or emailed a notice inviting informal bids unless the product or service is proprietary.
  - c) All mailing of notices to contractors and construction trade journals pursuant to this section shall be completed not less than ten (10) calendar days before bids are due.
  - d) The notice inviting informal bids shall describe the project in general terms and how to obtain more detailed information about the project, and state the time and place for the



submission of bids.

- e) If all bids received are in excess of \$200,000, the Board of Supervisors may, by adoption of a resolution by a four-fifths vote, award the contract, at \$212,500 or less, to the lowest responsible bidder, if it determines the cost estimate of the agency or department was reasonable. These limits shall be equal to the amounts provided by [Public Contract Code Section 22034\(d\)](#) if such amounts are higher than those found herein.
- (3) The Director or designee shall approve plans, specifications, working details for its public works projects, and shall issue contracts for all public works contracts with a value of \$200,000 or less.
  - (4) Regarding public works contracts with a value of more than \$60,000, or the amount provided by Public Contract Code Section 22032(a), which are not Construction Manager at-Risk or Design-Build contracts, the County must award each contract to the lowest responsive, responsible bidder, except under one of the following circumstances:
    - a) The County may award the contract to the bidder of its choice if the two lowest bids are equal per Public Contract Code 22038(b).
    - b) The County may reject any bids presented, furnish a written notice to the apparent low bidder and then:
      - i. Abandon the advertised public works project or re-advertise for bids in the manner described in the Act per Public Contract Code Section 22038(a)(1); or
      - ii. Declare, by passage of a resolution with four-fifths approval of the Board of Supervisors, that the work can be performed more economically by employees of the County, and have the project performed by force account which is work ordered on a construction project without an existing contract on its cost, and performed with the understanding that the contractor will bill the owner according to the cost of labor, materials, and equipment, plus a certain percentage for overhead and profit.
    - c) If no bids are received by formal or informal bid procedure, the County may have the work performed by employees of the County by force account or negotiated contract in accordance with [Public Contract Code Section 22038\(c\)](#).
  - (5) Public works contracts valued at over \$200,000, or over the amount provided by Public Contract Code Section 22032(c), shall be solicited using formal bid procedures as provided by [Public Contract Code 22037](#). The project, plans, and specifications shall be adopted by the Board of Supervisors, unless delegated. The invitation for bids shall be authorized by the Board of Supervisors, unless delegated, and advertised by the Director or designee. The contract shall be awarded by the Board of Supervisors. The approved contract shall be executed by the Board of Supervisors unless the authority has been clearly delegated and authorized to others by the Board of Supervisors.
  - (6) Emergency projects shall be performed in accordance with [Public Contract Code Section 22035 or 22050](#), as applicable.

### **§3.5-108      Change Orders**

- (1) The Director or designee may approve contract cost increases limited to:
  - a) \$5,000 per change for contracts up to \$50,000;
  - b) 10 percent of the original contract amount per change for contracts from \$50,000 to \$250,000; and
  - c) \$25,000 per change for contracts in excess of \$250,000, plus 5 percent of the original contract amount in excess of \$250,000 up to a total maximum amount of \$210,000 in accordance with Public Contract Code Section 20142(b).
- (2) Changes in excess of the limits specified above require Board of Supervisors approval.
- (3) Any material change that significantly alters the contract scope of work will require Board of Supervisors approval. Reallocation of funds from one item of work to another with zero net change in the contract amount only requires Board of Supervisors approval where the character of the work in each item is significantly changed from the original scope.
- (4) The Director or designee shall adhere to County procedures for:
  - a) Reviewing change requests;
  - b) Negotiating change order with the contractor;
  - c) Obtaining legal review and approval of change orders, where appropriate; and
  - d) Preparing written documentation on change orders.

**§3.5-109      State and Federal Grant Projects**

- (1) All applicable State or Federal Regulations will be followed for projects involving State or Federal grants. Standard County contract language and procurement documents may be modified as necessary to meet the eligibility requirements for State or Federal programs.
  - a) On federally funded projects, DPAs will be required to consult the System for Award Management (SAM) at SAM.gov to comply with funding source requirements.

**§3.5-110      Alternate Project Delivery Methods**

- (1) Alternate Project Delivery Methods shall include Design-Build (DB), Progressive Design-Build (PDB), Construction Manager at-Risk (CMAR), and Job Order Contract (JOC).
- (2) It is the policy of the County of Orange to solicit in full and open competition and award contracts that are consistent with the nature and requirements of the specifications or services to be procured utilizing the most efficient and effective project delivery method.
- (3) The purpose of this section is to provide an overview of the County's options and alternate project delivery methods of contracting for construction, architectural, engineering, and construction-related services. The scope of this section covers Architect-Engineering (A-E) service contracts and/or public works construction contracts.

- (4) This section establishes the available options and applicable statutory provisions for alternate project delivery methods for utilization by each County department. Alternate project delivery methods involve utilizing qualifications as the primary criteria for selection of construction services as an “alternate” to a price-based selection (or low bid/Design-Bid-Build).

### **§3.5-111      Design-Build**

- (1) Design-Build (DB) is a qualification-based selection (QBS), in which both the design and construction services for a project are procured at the same time following the QBS and pursuant to statute, the contract is awarded either to the lowest responsible bidder or by best value to a single entity known as the DB Entity. In contrast to Design-Bid-Build, DB relies on a single point of responsibility contract and is used to minimize risks for the project owner and to shorten the delivery schedule by overlapping the design phase and construction phase of a project.
- (2) Chapter 4 commencing with Public Contract Code Section [22160](#) provides the general authority for DB procurement by local agencies. With Board of Supervisors approval, the County may use DB contracts for public works projects in excess of \$1,000,000, except for projects on the state highway system, and may award such contracts either to the lowest responsible bidder or by best value. Best value means a value determined by objective criteria related to price, features, functions, life-cycle costs, experience, and past performance.
- (3) Public Contract Code [Section 22161\(g\)\(1\)](#) defines “project” for the purposes of DB procurement as the construction of a building or buildings and improvements directly related to the construction of a building or buildings, county sanitation wastewater treatment facilities, and park and recreational facilities, but does not include the construction of other infrastructure, including, but not limited to, streets and highways, public rail transit, or water resources facilities and infrastructure. For a county that operates wastewater facilities, solid waste management facilities, or water recycling facilities, “project” also includes those facilities.
- (4) Unless subsequently amended, Public Contract Code [Section 22169](#) provides that the statutes authorizing DB contracting are repealed as of January 1, 2025.
- (5) Pursuant to [Public Contract Code Section 22162.6](#), in addition to those projects permitted to be delivered by DB under [Public Contract Code Section 22161\(g\)\(1\)](#), DB contracts may also be used to deliver the following types of projects in Orange County:
  - a) Flood protection improvements
  - b) Harbor and beach improvements
  - c) Bikeway improvements

The County is limited to no more than one (1) DB project per year valued in excess of \$5,000,000 of the types listed in Subsections (a-c) above. Public Contract Code [Section 22162.6\(c\)](#).

- (6) Pursuant to [Public Contract Code Section 22162.6](#), in addition to the requirements set forth in Section 22164, for a project authorized under Section (5) above, the County shall be responsible for the performance of, and County employees in Orange County Public Works may perform,

project development services, including performance specifications, preliminary engineering, procurement services and the preparation of project reports, and construction inspection services, excluding specialty bridge inspections. The County shall also be the responsible agency for, and County employees in Orange County Public Works may perform, the preparation of documents that may include, but need not be limited to, the size, type, and desired design character of the project, performance specifications covering quality of materials, equipment, and workmanship, preliminary plans, and any other information deemed necessary to describe adequately the needs of the County of Orange.

- (7) Orange County Flood Control District may use the Design-Build project delivery method to design, build and perform projects for flood protection improvements. Public Contract Code [Section 22162.7\(a\)](#). The District may perform no more than twelve (12) such projects with a dollar value greater than \$5 million prior to January 1, 2025. Public Contract Code [Section 22162.7\(c\)](#).
- (8) Pursuant to Public Contract Code Section 22162.7, in addition to the requirements set forth in Section 22164, for a project authorized under Section (7) above, the Orange County Flood Control District shall be responsible for the performance of, and County employees in Orange County Public Works may perform, project development services, including performance specifications, preliminary engineering, procurement services and the preparation of project reports, and construction inspection services, excluding specialty bridge inspections. The County shall also be the responsible agency for, and County employees in Orange County Public Works may perform, the preparation of documents that may include, but need not be limited to, the size, type, and desired design character of the project, performance specifications covering quality of materials, equipment, and workmanship, preliminary plans, and any other information deemed necessary to describe adequately the needs of the Orange County Flood Control District.
- (9) The DB method of project delivery affords a more collaborative approach, which may provide benefits, such as reducing project cost, expediting project completion, or providing design features, not achievable through the design-bid-build process. In addition, DB may yield cost efficiencies by shifting certain liability and risk for cost containment and project completion with the design-builder.
- (10) DB projects must progress in a four-step process: Scope Development, Request for Qualification of DB Entities, Requests for Proposal, and Evaluation of Proposals and Selection of DB Entities:
  - a) **Scope Development**

The County prepares a set of documents defining the scope of the project, generally called performance specifications and plans. These performance specifications and any plans shall be prepared by a design professional duly licensed and registered in California. If the County retains an architect or engineer to assist in the development of the scope or other project-specific documents for a design-build project, that architect or engineer is not eligible to participate in the preparation of a submittal with any DB Entity for that project.
  - b) **Request for Qualification (RFQ) Process**

When utilizing DB, the County shall initially use the RFQ process to identify the most qualified respondents. Only those entities that are selected through RFQ process will be

allowed to submit proposals in response to the County's subsequent DB Request for Proposal. Pursuant to [Public Contract Code Section 22164](#), the RFQ must include:

- i. Identification of the basic scope and needs of the project or contract;
- ii. The expected cost range;
- iii. Methodology that will be used to evaluate the Statement of Qualifications (SOQ) and the procedure for final selection of the DB Entity;
- iv. Significant factors that the agency expects to consider in evaluating qualifications, including technical design and construction expertise, acceptable safety record, and all other non-price related factors; and,
- v. Any other information deemed necessary by the contracting agency to inform interested parties of the contracting opportunity.

**c) Request for Proposal (RFP) Process**

Based on the performance specifications and plans, the County shall prepare an RFP inviting those respondents identified as most qualified through the RFQ process to submit competitive sealed proposals. Pursuant to [Public Contract Code Section 22164\(d\)](#), the RFP must include:

- i. The basic scope and needs of the project, the estimated cost of the project, and other information deemed necessary by the County to inform interested parties of the opportunity;
- ii. The methodology that will be used by the County to evaluate proposals, specifically if the contract will be awarded to the lowest responsive, responsible respondent or whether it will be awarded based on best-value and other criteria, and significant objective factors that the County reasonably expects to consider in evaluating proposals, including cost or price and non-price-related factors; and
- iii. The relative importance of weight assigned to each criteria specifically whether evaluation factors other than cost or price are significantly more than, approximately equal to, or less important than cost or price.

If the County reserves the right to hold negotiations with respondents, it must specify as such in the RFP and must include applicable rules and procedures to be observed by the County to ensure that any negotiations are conducted in good faith.

**d) Evaluation of Proposals and Selection**

Final selection of the DB Entity may be based on either a competitive bidding process resulting in lump-sum bids, with the award being made to the lowest responsible respondent, or based upon best value and other criteria. When the best-value method is selected, competitive proposals must be evaluated using only the criteria and selection procedures identified in the RFP and shall progress as specified by [Public Contract Code Section 22164\(f\)](#). Proposals shall be evaluated by using only the criteria and selection procedures identified in the RFP. Consideration must be given to each of the following: price, technical design, construction experience, life-cycle costs for at least 15 years, skilled labor force availability, and acceptable safety record.

Once the evaluation is complete, the responsive respondents are scored and the recommendation of award of the highest ranked respondent whose proposal is determined and documented to be most advantageous is made to the Board of

Supervisors.

If the County chooses to reserve the right to hold discussions or negotiations with responsive respondents, such right will be specified in the RFP. Applicable rules and procedures to be observed by the County will be published separately or incorporated into the RFP to ensure that any discussions or negotiations are conducted in good faith.

Pursuant to [Public Contract Code Section 22167](#), if the County elects to award a DB contract, retention proceeds withheld by the County from the DB Entity shall not exceed 5 percent if a performance and payment bond, issued by an admitted surety insurer, is required in the solicitation of bids per Public Contract Code.

### **§3.5-112 Progressive Design-Build**

- (1) Progressive Design-Build (PDB) a project delivery process in which both the design and construction of a project are procured from a single entity that is selected through a qualifications-based selection at the earliest feasible stage of the project. The contract is awarded based on best value to a single entity known as the design-build entity (DBE). The Guaranteed Maximum Price (GMP) developed using this delivery process should better reflect the actual cost to construct the project.
- (2) Chapters 4.1 and 4.7 commencing with Public Contract Code Sections 22170 and 22185, respectively, provide the general authority for PDB procurement by local agencies. With Board of Supervisors approval, the County may use PDB contracts for public works projects subject to certain conditions and must award such contracts using a best value determination. Best value means a value determined by objective criteria that may include, but are not limited to, price, features, function, life-cycle costs, experience, and past performance.
- (3) [Section 22170\(d\)](#) defines “design-build project” for the purposes of PDB procurement under Chapter 4.1 as “any project that treats, pumps, stores, or conveys water, wastewater, recycled water, advanced treated water, or supporting facilities using the progressive design-build construction procurement process.” Section 22171 permits a local agency to procure PDB contracts and use the PDB contracting process for up to 15 public works projects in excess of five million dollars (\$5,000,000) for each project.
- (4) Public Contract Code [Section 22174](#) provides that the statutes authorizing PDB contracting under Chapter 4.1 are repealed as of January 1, 2029.
- (5) Section 22185(d)(1) defines “design-build project” for the purposes of PDB procurement under Chapter 4.7 as “any project using the progressive design-build construction procurement process described in this chapter, but does not include projects on state-owned or state-operated facilities.” Section 22185.1 permits a local agency to procure PDB contracts and use the PDB contracting process for up to 15 public works projects in excess of five million dollars (\$5,000,000) for each project.
- (6) Public Contract Code [Section 22185.11](#) provides that the statutes authorizing PDB contracting under Chapter 4.7 are repealed as of January 1, 2030.
- (7) PDB projects must progress in a three-step process: Scope Development, Request for Qualifications, and Evaluation of Proposals and Selection of DB Entities:

a) **Scope Development**

The County prepares a set of documents defining the scope of the project, generally called performance specifications and plans. These performance specifications and any plans shall be prepared by a design professional duly licensed and registered in California. If the County retains an architect or engineer to assist in the development of the scope or other project-specific documents for a design-build project, that architect or engineer is not eligible to participate in the preparation of a submittal with any PDB entity for that project. The performance specifications and plans shall include documentation of the size, type, and desired design character of the project and any other information deemed necessary to describe adequately the local agency's needs, and any other information deemed necessary by the County.

b) **Request for Qualification (RFQ) Process**

When utilizing PDB, the County shall use the RFQ process to select the DBE to execute the project. The RFQ must include:

- i. The performance specifications and plans as described above;
- ii. The expected cost range;
- iii. Methodology that will be used to evaluate the Statement of Qualifications (SOQ) submitted by the Respondents and the procedure for final selection of the DBE;
- iv. Significant factors that the agency expects to consider in evaluating qualifications, including technical design and construction expertise, acceptable safety record, and all other non-price related factors. The County may require that a preliminary cost estimate be included in the contractor's response and consider those costs in evaluating the SOQ; and,
- v. And any other information deemed necessary by the contracting agency to inform interested parties of the contracting opportunity.

The County may also identify specific types of subcontractors that shall be included in the DBE's SOQ.

All the information required above shall be certified under penalty of perjury by the contractor and its general partners or joint venture members.

A contractor shall not be evaluated for selection unless the entity provides an enforceable commitment to the local agency that the entity and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the project or contract that falls within an apprenticeable occupation in the building and construction trades, unless certain requirements as provided for by statute are met.

c) **Evaluation of Proposals and Selection**

Final selection of the DBE must be based upon best value to the County. At the close of the solicitation period, the County shall review the SOQs and may evaluate SOQs based solely upon the information provided in each SOQ received. The County may also interview some or all of the Respondents to further evaluate their qualifications for the project.



Once the evaluation is complete, the responsive respondents are scored and the recommendation of award of the highest ranked Respondent whose proposal is determined and documented to be the best value is made to the Board of Supervisors.

If the County chooses to reserve the right to hold discussions or negotiations with any Respondents, such right will be specified in the RFQ. Applicable rules and procedures to be observed by the County will be published separately or incorporated into the RFQ to ensure that any discussions or negotiations are conducted in good faith.

Pursuant to [Public Contract Code Section 22172.4 and Section 22185.7](#), if the County elects to award a PDB contract, retention proceeds withheld by the County from the DBE shall not exceed 5 percent if a performance and payment bond, issued by an admitted surety insurer, is required in the solicitation of bids per Public Contract Code.

- (8) After selecting a DBE based on qualifications, the County may enter into a contract and direct the DBE to begin design and preconstruction activities sufficient to establish a GMP for the project. Upon agreement of the GMP for the project, the County, at its sole and absolute discretion, may amend its contract with the DBE to contract for the remaining design, preconstruction, and construction activities sufficient to complete and close out the project, consistent with the GMP. In the event that there are unforeseen site conditions, the County may amend its contract with the DBE accordingly and consistent with the guaranteed maximum price, to enable the entity to complete the remaining design, preconstruction, and construction activities sufficient to complete and close out the project.
- (9) If the County and the DBE do not reach agreement on a GMP, or the County otherwise elects not to amend the DBE's contract to complete the remaining work, the County may solicit proposals to complete the project from Respondents that submitted SOQs. The local agency may also, upon written determination that it is in the best interest of the County to do so, formally solicit proposals from other entities, and contract award shall be made on a best value basis.
- (10) Reporting Requirements: The Public Contract Code requires the County to submit a report to the Legislature on the use of the PDB process. Public Contract Code Section 22172.5 requires the report to be submitted no later than January 1, 2028 for PDB use on projects that fall under the definition of a design-build project under Public Contract Code Section 22170(d). Public Contract Code Section 22185.8 requires the report to be submitted no later than December 31, 2028 for PDB use on projects that fall under the definition of a design-build project under Public Contract Code Section

### **§3.5-113      Construction Manager at-Risk**

- (1) Construction Manager at-Risk (CMAR) is an alternate project delivery method which entails a commitment by the Construction Manager at-Risk Entity (CMARE) to deliver the project within a Guaranteed Maximum Price (GMP). The CMARE acts as a consultant to the County in the development and design phases ("preconstruction services") and as a general contractor during construction.
- (2) [SB328 \(2013\)](#) amended [Public Contract Code Section 20146](#), allowing counties to use CMAR for vertical construction. SB 914 (2018) expanded existing statute to allow counties, as well as other public entities for which the members of a county's board of supervisors make up the



membership of the governing legislative body (e.g., the Orange County Flood Control District), to use CMAR to deliver horizontal projects, in addition to vertical projects, subject to some limitations.

- (3) Pursuant to [Public Contract Code 20146](#), A county with approval of the board of supervisors, or a public entity, with approval of its governing body, may utilize CMAR construction contracts for the erection, construction, alteration, repair, or improvement of any infrastructure, excluding roads, and including, but not limited to, buildings, utility improvements associated with buildings, flood control and underground utility improvements, and bridges, owned or leased by the county. A CMAR construction contract may be used only for projects in the county in excess of one million dollars (\$1,000,000) and may be awarded using either the lowest responsible bidder or best value method to a CMARE that possesses or that obtains sufficient bonding to cover the contract amount for construction services and risk and liability insurance as may be required by the county or public entity. Any payment or performance bond written for the purposes of this section shall be written using a bond form developed by the county or public entity.
- (4) CMAR may not be used to construct roads. [PCC 20146\(a\)](#).
- (5) The authority to use CMAR terminates by operation of law on January 1, 2029, unless a later enacted statute deletes or extends that date. Public Contract Code [Section 20146\(h\)](#).
- (6) A CMAR contract is procured through a Request for Proposal (RFP) process, which results in a qualification based, competitively procured contract that guarantees the cost of a project and furnishes Construction Management services, including preparation and coordination of bid packages, scheduling, cost control, value engineering, evaluation, preconstruction services, and construction administration. Unlike DB, when utilizing a CMAR contract the County retains control of the entire design process.
- (7) On a CMAR project, the County typically retains the CMARE before or during design. The CMARE provides a contractor's perspective during design, assists in value engineering, and performs quality control to reduce common design problems such as coordination and constructability issues. The construction documents are divided into separate "trade packages" suitable for competitive bidding as separate contracts. The CMARE selects the trade contractors through procedures established by the County, and is responsible for scheduling, coordinating and completing the project for a GMP.
- (8) The CMARE is typically paid a fixed sum for its preconstruction services and receives a fee, calculated as a percentage of hard construction cost (e.g., labor, materials), for services during construction. The CMARE may also provide site services for the project, such as security and sanitation, and may, in some cases, perform portions of the work. If it does so, payment for that work may be in addition to the fees charged for preconstruction services.
- (9) The overall price for construction of the project, either a lump sum or GMP, is usually established late in the design phase or after all trade contracts have been bid. The price should change only if the County modifies the project, regulatory changes increase the cost of the work, or unexpected site conditions appear. As with other contracting methods, the County may prequalify the CMARE and/or subcontractors or set minimum qualifications requirements (which do not score but merely qualify the CMARE and subcontractors). It is important that a

CMAR contract clearly identifies the risks the County would shift to the CMARE, and that the County's staff is well trained to use the contract to enforce those responsibilities.

- (10) Selection of the CMARE should be by best value, where "best value" means a value determined by objective criteria related to the experience of the entity and project personnel, project plan, financial strength of the entity, safety record of the entity, and price.

**§3.5-114      Job Order Contracts - Contracts for Repair, Remodeling, or other Repetitive Work**

**(1) Annual Job Order Contract**

- a) An individual annual contract for repair, remodeling, or other repetitive work competitively bid through the Invitation for Bid (IFB) process, based on unit prices, including, but not limited to, an annual Job Order Contract (JOC) is a firm fixed price, unit priced, indefinite delivery, indefinite quantity contract designed to accomplish projects as defined in [Public Contract Code Section 20128.5](#). Per statute, these contracts shall not include the performance of design or contract drawing services.
- b) Public Contract Code Section 20128.5 provides the statutory authority for these contracts for repair, remodeling, or other repetitive work only, and may not be used for new construction. Unit-price contracts may only be up to one year in duration.
- c) The Board of Supervisors delegates to the Director the ability to advertise and utilize annual JOCs awarded by the Board of Supervisors to perform activities described in Public Contract Code Section 20128.5.
- d) Per [Public Contract Code Section 20128.5](#), annual JOCs may be awarded up to \$3,000,000 plus an annual Consumer Price Index adjustment based on the California Consumer Price Index published by the California Department of Industrial Relations.
- e) Per Public Contract Code Section 20128.5, annual JOCs may not be used for new construction. Annual JOCs may only be used for repair, remodeling, or other repetitive work to be done according to unit prices. Annual JOCs shall only be awarded to the lowest responsible bidder and shall be based on plans and specifications for typical work provided by the County. "Unit price" as used herein means the amount paid for a single unit of an item of work, and "typical work" means a work description applicable universally or applicable to a large number of individual projects, as distinguished from work specifically described with respect to an individual project.
- f) No task orders may be issued against an annual JOC after expiration of the term of contract; provided, however, that the Director may extend the term of a Job Order Contract for a period of six (6) months for the sole purpose of completing any work or project already ordered prior to the expiration of the original term of the annual JOC when work has already commenced on that work or project. No new task orders may be issued

against an annual JOC after expiration of the original term of the contract, except that work already ordered by task order and commenced prior to expiration of the original term of the annual JOC contract may be modified by supplemental task order so long as (a) the modification does not substantially alter the character of the work already in progress, (b) the changes ordered in all supplemental task orders do not result in an increase in cost of more than 50% in aggregate above that of the original task order, and (c) the supplemental task order does not extend the time to perform the contemplated work beyond six (6) months past the expiration of the original term of the annual JOC.

- g) The annual JOC program is carried out by either developing in house, or contracting out for the professional services for, the development and customization of a Unit Price Book (UPB) and technical specifications for typical work. A UPB includes pre-priced construction tasks that are specifically tailored for the type of work that the County intends to accomplish and includes labor, material and equipment costs. All unit prices incorporate federal labor standards including Davis-Bacon requirements and other Federal and State wage rate requirements, if applicable. A UPB is work-segment based and incorporates local activity, climate, and geographic features. Technical specifications take into account quality of materials and workmanship, performance specifications, and detailed specifications furnished on a project by project basis.
- h) Contractors bid on adjustment factors for work performed during normal working hours and non-normal working hours. These adjustment factors will be applied against the prices set forth in the unit price book and are used to price out fixed price work orders by multiplying the adjustment factors by the unit prices and quantities. Subcontractor's rates are subject to the prime contractor's bid factors. The contractor with the lowest composite factor will be considered the apparent low bidder.
- i) Subcontractors proposed to be used to perform work under a prime contractor's contract must be identified in a potential contractor's bid, if known at time of bid, or must be approved in writing by the County if identified at a later date. All subcontractor costs and labor are subject to the prime contractor's adjustment factor.
- j) After a contract is awarded, the County will conduct a meeting with the contractor to determine the actual work to be done for each project or task order to be performed under the contract. The contractor will be issued a request for task proposal and will be required to develop a proposal for the work required. The contractor will submit its proposal to the County and this proposal will be evaluated. If the contractor's proposed units are found reasonable, a work order may be issued at the agreed-upon units, which when multiplied by the unit price and appropriate contract adjustment factor will establish the firm fixed price for the task order.
- k) California Environmental Quality Act (CEQA): Annual JOCs are awarded to the lowest responsive, responsible bidder based on plans and specifications for typical work. Based on the fact that the County may award an annual JOC without having identified the specific tasks that are to be performed, or their potential environmental impacts, the contracting department must perform a basic CEQA analysis of tasks subsequently ordered under the contract in case those tasks trigger the need for a new CEQA declaration or finding. Applicable CEQA findings must be included in the file for the project.

## (2) Best Value Job Order Contract

- a) An individual annual contract for repair, remodeling, or other repetitive work solicited via a best value construction contracting method, based on unit prices including, but not limited to, a best value Job Order Contract (JOC), is a firm fixed price, unit priced, indefinite quantity contract designed to accomplish applicable projects as defined in [Public Contract Code Section 20155\(e\)](#). Per statute, these contracts shall not include the performance of design or contract drawing services.
- b) Starting January 1, 2025, Public Contract Code Section 20155(e) provides the statutory authority for these contracts for repair, remodeling, or other repetitive work only, and may not be used for new construction. These contracts are annual contracts that may be extended or renewed for two subsequent annual terms. The authority to use Public Contract Code Section 20155(e) shall be repealed on January 1, 2030.
- c) The Board of Supervisors delegates to the Director the authority to advertise and utilize best value JOC awarded by the Board of Supervisors to perform activities described in Public Contract Code Section 20155(e).
- d) Per [Public Contract Code Section 20155\(e\)\(1\)](#) and [\(2\)](#), these contracts may be awarded up to \$3,000,000 adjusted annually to reflect the percentage change in the California Consumer Price Index published by the California Department of Industrial Relations. These contracts may be extended or renewed for two subsequent annual terms and a maximum of six million dollars (\$6,000,000) over the subsequent two terms of the contract. Contract values shall be adjusted annually to reflect the percentage change in the California Consumer Price Index.
- e) Per Public Contract Code Section 20155(e)(1), best value JOC may not be used for new construction. Best value JOC may only be used for repair, remodeling, or other repetitive work to be done according to unit prices. Best value JOC shall only be awarded on the basis of best value and shall be based on plans and specifications for typical work provided by the County. “Unit price” as used herein means the amount paid for a single unit of an item of work, and “typical work” means a work description applicable universally or applicable to a large number of individual projects, as distinguished from work specifically described with respect to an individual project.
- f) No task orders may be issued against a best value JOC after expiration of the term of the contract, including any extensions or renewals; provided, however, that the Director may extend the term of a best value JOC for a period of six (6) months for the sole purpose of completing any work or project already ordered prior to the expiration of the term of the best value JOC when work has already commenced on that work or project. No new task orders may be issued against a best value JOC after expiration of the term of the contract, except that work already ordered by task order and commenced prior to expiration of the term of the best value JOC contract may be modified by supplemental task order so long as (a) the modification does not substantially alter the character of the work already in progress, (b) the changes ordered in all supplemental task orders do not result in an increase in cost of more than 50% in aggregate above that of the original task order, and (c) the supplemental task order does not extend the time to perform the contemplated work beyond six (6) months past the expiration of the term of the best value JOC.

- g) The best value JOC program is carried out by either developing in house, or contracting out for the professional services for, the development and customization of a Unit Price Book (UPB) and technical specifications for typical work. A UPB includes pre-priced construction tasks that are specifically tailored for the type of work that the County intends to accomplish and includes labor, material and equipment costs. All unit prices incorporate federal labor standards including Davis-Bacon requirements and other Federal and State wage rate requirements, if applicable. A UPB is work-segment based and incorporates local activity, climate, and geographic features. Technical specifications take into account quality of materials and workmanship, performance specifications, and detailed specifications furnished on a project-by-project basis.
- h) Per Public Contract Code Section 20155.3, when soliciting best value JOC, the County is required to utilize the prequalification process per Sections 3.5-115 through 3.5-118. Once prospective bidders have been prequalified, a best value JOC is procured through a Request for Proposal (RFP) process as described by Section 4.3. A best value JOC is awarded using the best value method. "Best value" means a procurement process whereby the selected bidder may be selected on the basis of objective criteria for evaluating the qualifications of bidders with the resulting selection representing the best combination of price and qualifications. Per Public Contract Code Section 20155.3(e), adjustment factors submitted by bidders shall not be revealed to the evaluation committee reviewing qualifications prior to completion and announcement of that committee's decision.
- i) The best value criteria shall be applied to the annual contract for construction services, rather than to an individual, specific project. The County shall use the following criteria when soliciting best value JOC: demonstrated management competency, financial condition, labor compliance, safety record, and relevant experience.
- j) Contractors submit pricing for adjustment factors for work performed during normal working hours and non-normal working hours. These adjustment factors will be applied against the prices set forth in the unit price book and are used to price out fixed price work orders by multiplying the adjustment factors by the unit prices and quantities. Subcontractor's rates are subject to the prime contractor's bid factors.
- k) Subcontractors proposed to be used to perform work under a prime contractor's contract must be identified in a potential contractor's bid, if known at time of bid, or must be approved in writing by the County if identified at a later date. All subcontractor costs and labor are subject to the prime contractor's adjustment factor.
- l) After a contract is awarded, the County will conduct a meeting with the contractor to determine the actual work to be done for each project or task order to be performed under the contract. The contractor will be issued a request for task proposal and will be required to develop a proposal for the work required. The contractor will submit its proposal to the County and this proposal will be evaluated. If the contractor's proposed units are found reasonable, a work order may be issued at the agreed-upon units, which when multiplied by the unit price and appropriate contract adjustment factor will establish the firm fixed price for the task order.
- m) California Environmental Quality Act (CEQA): Best value JOC are awarded based on plans and specifications for typical work. Based on the fact that the County may award a best

value JOC without having identified the specific tasks that are to be performed, or their potential environmental impacts, the contracting department must perform a basic CEQA analysis of tasks subsequently ordered under the contract in case those tasks trigger the need for a new CEQA declaration or finding. Applicable CEQA findings must be included in the file for the project.

- n) Reporting Requirements: Before March 1, 2029, the Board of Supervisors will submit a report to the Legislature, as required by Public Contract Code Section 20155.7, detailing the effectiveness and outcomes of the Best Value JOC process.

### **§3.5-115      Prequalification Criteria**

- (1) [Public Contract Code Section 20101](#) authorizes the County to establish procedures to prequalify prospective bidders for the construction of public works projects.
- (2) In order to prequalify, prospective bidders are required to complete and submit standard prequalification documents and provide specified supporting documentation verified under penalty of perjury by the contractor as set forth in this CPM. Only prospective bidders that are prequalified may bid on the project.
- (3) Prequalification cannot be used to score prospective bidders, but only to determine whether they meet minimum project qualification requirements such that they would be eligible to submit proposals for a specific project.
- (4) Purposes of Prequalification:
  - a) To ensure that the County obtains qualified contractors who have the proven capability and the experience to complete projects similar to the project being considered.
  - b) To prevent poor project quality and late delivery (going over budget and/or over schedule) due to the lowest bidder's inexperience or ineptitude.

#### (5) Use of Prequalification:

The County will require prequalification of prospective prime contractors for the following types of public works contract construction bid packages:

- a) Single specific projects identified by Department Heads as suitable for prequalification due to uniqueness or complexity of all or a portion of the project.
  - b) All large projects (estimated construction cost over \$5,000,000). If the Director determines that prequalification is not in the best interests of the County for such a project, then the corresponding request for Board of Supervisors action should recommend proceeding without prequalification and provide a justification.
- (6) Formally bid projects under \$5,000,000 will be prequalified by a streamlined prequalification process, unless the Director determines that prequalification is not in the best interest of the County, then the corresponding request for Board action should recommend proceeding

without prequalification and provide supporting justification.

- (7) Projects involving the use of the state or Federal Funds may not be able to utilize the prequalification process. A review of specific funding source guidelines is necessary to determine allowance or to establish an alternate process.

### **§3.5-116      Prequalification of Subcontractors**

- (1) Nothing in this section shall preclude the County from prequalifying or disqualifying a subcontractor. The Director may prequalify subcontractors as determined to be in the best interest of the County. However, the disqualification of a subcontractor by the County does not disqualify an otherwise prequalified potential prime contractor. If a subcontractor is not qualified, the potential prime contractor will be given an opportunity to replace that subcontractor with another, which may either be a new subcontractor subject to prequalification, or a subcontractor already prequalified by the County, at the prime contractor's discretion.
- (2) Per [Public Contract Code Section 20101\(a\)](#), prospective bidders seeking prequalification are required to submit to the County completed prequalification documents, which include the Prequalification Questionnaire and all the documents required.. This Prequalification Questionnaire and financial statement shall be verified by oath when provided to the County.
- (3) Pursuant to [Public Contract Code Section 20101](#), the submitted Prequalification Questionnaire and financial statement are not public records and are not open to public inspection. They shall be kept confidential to the extent permitted by law. However, the contents may be disclosed to third parties for purpose of verification or investigation of the statements contained therein or in a hearing. Finally, Public Contract Code [Section 20101](#) provides that the names of prospective bidders applying for prequalification status are public records subject to disclosure, and the first page of the Prequalification Questionnaire shall be used for this purpose. Agencies unsure about whether any information is disclosable under the Public Records Act should seek the advice of County Counsel.
  - a) Each prospective bidder will be determined as either qualified to bid as to each bid package for which it requested prequalification or not qualified based on the County uniform rating system. No rating other than a positive or negative qualification determination shall be established by this process. The contracting department will evaluate the completed Prequalification Questionnaire and supporting documents to determine whether the prospective bidder is qualified or not qualified to bid on the bid packages identified in the Prequalification Questionnaire.
  - b) It is mandatory that prospective bidders who intend to submit a bid for any of the identified bid packages provide a Prequalification Questionnaire and any supporting documents requested and are subsequently determined qualified to construct the work required by the bid packages identified on the Prequalification Questionnaire. The County may not accept any bid from a prospective bidder that has not prequalified by this process.
  - c) The County's determination that a prospective bidder is qualified shall apply only to the project(s) identified in the prequalification documents. The Prequalification Questionnaire may request information regarding the prospective bidder's specialized



expertise or demonstrated experience pertaining to the individual project as long as such information will not unnecessarily restrict the pool of qualified prospective bidders to unfairly exclude any otherwise qualified prospective bidders.

- d) While it is the intent of this prequalification policy to assist the County in determining bidder responsibility prior to bid and to aid the County in selecting the lowest responsible bidder, the prequalification of a prospective bidder will not preclude the County from post-bid consideration of whether a prospective bidder has the quality, fitness, capacity and experience to satisfactorily perform the proposed work and has demonstrated the requisite trustworthiness. The Deputy Purchasing Agent may waive minor irregularities and omissions in the information contained in the Prequalification Questionnaire and supporting documents.
- e) The County may modify the prequalification determination assigned to a prospective bidder based on subsequently learned information. Prospective bidders previously deemed qualified then subsequently disqualified will be given notice and an opportunity to be heard consistent with the procedures set forth herein.

### **§3.5-117      Prequalification Standards and Notifications Requirements**

- (1) The prospective bidder's Prequalification Questionnaire must be completely filled out and verified under penalty of perjury and all the required supporting documents must be submitted as required by the Prequalification Questionnaire. The completed Prequalification Questionnaire and supporting documents must be submitted to the County within the timeline described therein.
- (2) The prospective bidder must successfully meet or exceed the passing threshold established by the awarding department in accordance with recommendations promulgated by the California Department of Industrial Relations.
- (3) The prospective bidder must not provide any false or misleading information in the Prequalification Questionnaire and/or supporting documents.
- (4) The prospective bidder's completed Prequalification Questionnaire and supporting documents must comply with the following submittal requirements:
  - a) All supplemental documents are to be submitted on 8½" by 11" sheets and must be organized and identified in accordance with the requirements of the Prequalification Questionnaire.
  - b) Prequalification Questionnaires must be signed under penalty of perjury in the manner designated at the end of the Prequalification Questionnaire by an individual who has the legal authority to bind the prospective bidder on whose behalf the person is signing. See, e.g., [Corporations Code Section 313](#).
  - c) If any information provided by a prospective bidder becomes false or inaccurate subsequent to the submittal of a Prequalification Questionnaire and supporting documentation, the prospective bidder must immediately notify the County and provide updated accurate information in writing under penalty of perjury.
  - d) The completed Prequalification Questionnaire and supporting documents must be submitted to the County per the instructions on the solicitation. Late submittals will not



be considered by the County. Prospective bidders are encouraged to submit the Prequalification Questionnaire and supporting documents as soon as possible so that they may be notified of omissions of information which can be remedied or of their prequalification determination well in advance of bid advertisement for the project.

- e) The County may accept the Prequalification Questionnaire fully electronically through the County's online bidding system, if the instructions for that specific project state that it is a fully electronic solicitation.
- f) Completed Prequalification Questionnaires and supporting documents must be sealed and marked "Confidential" in a suitable envelope and mailed or delivered to the following:

County of Orange  
[DEPARTMENT  
NAME]  
[ADDRESS]  
[CITY, CA. ZIP]  
Attn.: [NAME], DPA

- g) The County will inform prospective bidders, in writing, of the prequalification determination upon receipt and evaluation by the County of the completed Prequalification Questionnaire and supporting documents. If a prospective bidder receives a negative prequalification decision, the County will, in its notification of the decision, advise the prospective bidder of the reasons for that determination.
- h) Joint ventures may prequalify as prospective bidders if (i) at least one of the jointly venturing entities holds the appropriate license at the time that prequalification is conducted, (ii) each of the jointly venturing entities completes the prequalification questionnaire, (iii) the jointly venturing entities, when examined as a whole, meet the prequalification requirements, and (iv) the joint venture is properly licensed at the time of contract award.

**§3.5-118      Prequalification Protest Hearing Procedure**

- (1) Where the prospective bidder has made a timely and complete submittal of prequalification documents that result in a determination that the contractor is not qualified, the prospective bidder can contest the department's decision via administrative hearing.
- (2) To petition for a hearing, the prospective bidder must deliver written notice of its desire to contest the department's decision to County of Orange within seven (7) calendar days of the date of County's notice of determination. Failure to file a timely notice shall result in the prospective bidder's waiver of any and all rights to challenge the prequalification determination, whether by administrative process, judicial process, or any other legal process or proceeding.
- (3) The prospective bidder may request the County to advise it in writing of the basis for the prequalification determination and any supporting evidence that was received from others or adduced as a result of an investigation by the County.
- (4) A Hearing Panel shall be established and consist of three panelists from various County of

Orange infrastructure departments, with a maximum of one (1) panelist from the procuring department.

- (5) The Hearing Panel shall render its decision based on all potentially relevant evidence submitted by either the County or the prospective bidder, including but not limited to, the administrative record and testimonial evidence. The prospective bidder may submit on the record, or provide other evidence, including testimony given under oath, to rebut the department's determination of non-qualification. Such a hearing is conducted in an informal manner, and all relevant evidence is admissible. The department rendering the initial determination may rebut any evidence proffered by the prospective bidder in writing or through its own testimony. Finally, the Hearing Panel may ask questions of either the prospective bidder or department before making its decision.
- (6) If the prospective bidder requests to provide testimony, the hearing shall be conducted within five (5) business days after the County's receipt on notice of appeal and no later than 20 business days prior to the last date of receipt of bids on the project. Within three (3) business days after the conclusion of the hearing, the Hearing Panel will render its decision in writing.
- (7) The decision of the Hearing Panel shall be the County's final administrative decision and any judicial review thereof shall be instituted no later than the time period specified in [Section 1094.6 of the Code of Civil Procedure](#).

### **§3.5-119      Determination of Non-Responsibility**

- (1) A responsive, responsible bidder is "a bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the public works contract" ([Public Contract Code Section 1103](#)). In other words, the term "responsible" in the context of public works bidding is not employed to denote a bidder who is merely generally trustworthy, but also refers to the bidder's ability to perform in accordance with the requirements of the bid solicitation.
- (2) Prior to a contract being awarded by the County, the County may determine that a party submitting a bid or proposal is non-responsible for purposes of that contract. In the event that the County determines that a bidder is non-responsible for a particular contract, said bidder shall be ineligible for the award of that contract.
- (3) Procedures:
  - a) It is important that County Counsel be consulted when a department considers a non-responsibility determination. Because of the particular nature of a non-responsibility finding, the bidder found to be non-responsible is entitled to certain due process protections before a determination of non-responsibility is made.
  - b) The County may take into account numerous factors in determining responsibility, including the financial capabilities of the bidder, the bidder's experience and familiarity with the type of work of the project, the bidder's work on previous projects (including any prior failure to perform), and the bidder's resources and facilities. Non-responsibility is determined on a case-by-case basis, so these factors are merely examples enumerated by the courts, and are by no means an exhaustive list. Because prequalification is a method of determining responsibility prior to bid, basic

considerations may also include those listed in the standard Prequalification Questionnaire, such as whether:

- i. Bidder possesses a valid and current California contractor's license for the project;
- ii. Bidder has sufficient liability insurance and bonding capacity;
- iii. Bidder has current workers' compensation insurance;
- iv. Bidder can provide a financial statement demonstrating the capacity to perform the project;
- v. Bidder has had its license revoked in the past, and the reasons for such revocation;
- vi. A surety has completed a project on behalf of the bidder;
- vii. Bidder is barred from bidding or being awarded a contract under California law;
- viii. Bidder has been debarred by another jurisdiction;
- ix. Bidder or any of its owners, officers, or other principals have been convicted of a crime relevant to the bidder's trustworthiness or ability to perform the contract.
- x. The responsibility of each bidder must be evaluated independently. No consideration can be made of each bidder's relative responsibility among all bidders, so once a finding has been made of the bidders' responsibility all such bidders are deemed equally responsible

**§3.5-120      Notice of Non-responsibility Hearing**

- (1) A bidder subject to a potential finding of non-responsibility for a particular contract shall be given 30 days' advance written notice of the hearing in which that bidder's responsibility is to be determined, sent by the Director and approved by County Counsel, and sent via certified mail to the bidder's last known address (or to the bidder's attorney, if applicable).
  - a) The notice shall include the date, time, and place of the hearing as described above before the Director or designee.
  - b) The notice must specify the basis for the proposed recommendation of non-responsibility and a summary of any evidence to support such recommendation.
  - c) The notice shall advise the bidder that the parties may agree to submit the matter on the basis of documentary evidence only; otherwise, the bidder is required to confirm with the department that the bidder or its representative intends to attend the hearing as described above, and bidder's failure to appear may result in the bidder waiving all rights to a hearing.

**§3.5-121      Non-Responsibility Hearing Procedure**

- (1) The bidder shall be given the opportunity of a hearing at which to contest the County's determination.
- (2) A hearing officer will be designated, who cannot be the same person as the staff who conducted the non-responsibility investigation. It is strongly recommended that the hearing officer be a neutral third party - e.g., not an employee of the County. At the hearing, the burden

of proof is on the department and must be established by a preponderance of the evidence. The hearing is conducted in a relatively informal manner, and the formal rules of evidence do not apply. The hearing officer may consider any relevant information presented at the hearing as described above. County Counsel may provide legal advice to the department and hearing officer.

- (3) The County's administrative record will be considered, so it shall contain adequate evidence of the basis of the County's determination as well as evidence that the bidder has been given adequate notice and opportunity to rebut that determination.
- (4) The Director should designate a Project Manager who will investigate information concerning bidder's non-responsibility, and who will present such findings at the hearing.
- (5) The bidder or its representative will then have the opportunity to present evidence, through witnesses and/or submitted documents, rebutting the County's finding of non-responsibility, as well as evidence that it is qualified to perform the work. In the event the evidence or documentation is new or was unavailable to the County when the non-responsive determination was made, information can still be considered.
- (6) Each party will then have the opportunity to rebut evidence previously presented by the other.
- (7) The Director may ask questions, seek clarification, and request additional information from the parties at any time during the hearing. The hearing officer has discretion to continue the hearing to a later time or date as necessary.
- (8) The Director shall close the hearing after the presentation of all evidence; no evidence submitted after the close of the hearing will be considered unless otherwise specified by the hearing officer.
- (9) The Director shall consider evidence proffered by the department and contractor in rendering its decision.
- (10) The Director will present the proposed decision and recommendation to the Board of Supervisors based on the record of the hearing regarding whether the contractor should be found non-responsible.
- (11) The Director shall give notice to the bidder via certified mail of the proposed decision and recommendation, which will also specify the date, time, and place of the Board of Supervisors hearing.
- (12) The final decision as to non-responsibility lies with the Board of Supervisors. The Board may limit any further hearing to the presentation of evidence not previously presented. The Board can modify, deny, or adopt the recommendation of the Director. The Board of Supervisors' findings are final, and if a finding of non-responsibility is determined, the bidder is ineligible for award of the contract.

**NOTE:** On awarding the contract to the lowest responsible bidder, the Board of Supervisors must also make the finding that any lower bidders were deemed non-responsible and are therefore excluded from consideration.

**§3.5-122      Contract Award and Notice to Proceed**

- (1) Prior to Contract award, DPAs shall conduct due diligence and obtain any documentation necessary to do so.
- (2) Contracts are awarded by the Board of Supervisors and signed by the Director or designee pursuant to the Board of Supervisors' authorization, unless authority to award and sign a contract without further Board of Supervisors action has been appropriately delegated to the Director.
- (3) Upon approval of the contractor's bonds and insurance after award of the contract and on satisfaction of any other prerequisites to the contractor's performance, a Notice to Proceed will be issued which begins the performance period of the contract.

**§3.5-123      Payments**

- (1) The contracting department prepares and processes all documents necessary for preparation and issuance of payments to the contractor in accordance with the terms established in the contract documents.
  - a) Projects less than \$5,000 will be paid in full upon acceptable completion of the work and receipt of an invoice from the contractor and approved by the contracting department.
  - b) Projects from \$5,000 to \$75,000 may be paid by progress payments or by payment upon completion of the work as established in the contract documents. The contracting department will prepare and process payment(s) up to 95 percent of the actual value of the work completed. Not less than 5 percent of the total contract price shall be withheld until the work is complete in accordance with Public Contract Code Section 9203.
  - c) Projects of \$75,000 or more will be paid by progress payments. The contracting department will prepare and process payments up to 95 percent of the actual value of the work completed. Not less than 5 percent of the total contract price shall be withheld until the work is complete in accordance with Public Contract Code Section 9203.
- (2) If, after 50 percent of the project has been completed and the contracting department finds that satisfactory progress has been made, the contracting department may make any of the remaining progress payments in full for actual work completed in accordance with Public Contract Code Section 9203.
- (3) "Complete" shall mean acceptance, as evidenced by a notice of completion, beneficial occupancy accompanied by cessation of labor, a cessation of labor for 100 continuous days or more due to factors beyond the control of the contractor, or a cessation of labor for 30 continuous days following the filing of a notice of completion or a notice of cessation in accordance with Public Contract Code Section 7107.
- (4) At the Directors option, the contracting department may, withhold amounts for up to 30 days in accordance with "Stop Notice Rules" corresponding to work in dispute pending resolution of the dispute in accordance with Public Contract Code Section 7107.

- (5) All funds, including withheld funds, will be paid in accordance with the time frames specified in accordance with Public Contract Code Section 7107.
- (6) The contractor may substitute securities for funds withheld in accordance with the Public Contract Code Section 22300.
- (7) Escrow agreements for security deposit in lieu of retention shall be approved by County Counsel.

**§3.5-124      Liquidated Damages Clause for Use In Public Works Contracts**

- (1) Sample Language: “In accordance with [Government Code Section 53069.85](#), contractor agrees to forfeit and pay to County the sum of (\$ XXX ) per day for each calendar day work is delayed beyond the time allowed, and such sum shall be deducted from any payments due to or to become due to contractor. Contractor will be granted an extension of time and will not be assessed liquidated damages for unforeseeable delays beyond the control of and without the fault or negligence of contractor including delays caused by County.”
- (2) Changes to the standard Liquidated Damages provision may be made upon County Counsel approval.

**§3.5-125      Notice of Completion**

- (1) The contracting department will file a notice of completion for all public works projects (those requiring payment of prevailing wage) of \$5,000 or more; these notices do not need to be approved by the Board of Supervisors. Notices of Completion shall be recorded in the Clerk Recorder’s Office within 15 days of the earlier of (1) acceptance of the project by the Director or (2) cessation of labor on a work of improvement for a continuous period of sixty (60) days. [Civil Code Sections 9200, 9204 and 9208.](#)

**§3.5-126      General Requirements**

- (1) Projects are not to be intentionally split in order to avoid informal or formal bidding or to avoid approval by the Board of Supervisors per Public Contract Code Section 22033.
- (2) All contractors performing public works projects shall be properly licensed in accordance with the requirements of the State of California Contractor’s License Board.
- (3) All contractors performing public works projects shall pay prevailing wages in accordance with the California Labor Code Section 1720.
- (4) All contractors must register with the Department of Industrial Relations, per Labor Code Section 1771.1(a) and 1725.5.

**§3.5-127      Bonds**

- (1) Public Contract Code Section 20129 requires bidder’s security and performance bonds.
- (2) All bids for construction work shall be presented under sealed cover and shall be accompanied

by one of the following forms of bidder's security in an amount not less than 10 percent of the bid:

- a) cash;
  - b) a cashier's check made payable to the County;
  - c) a certified check made payable to the County;
  - d) a bidder's bond executed by an admitted surety insurer, made payable to the County.
- (3) Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the county beyond 60 days from the time the award is made.
  - (4) The person to whom the contract is awarded shall execute a bond to be approved by County Counsel and CEO/Risk Management for the faithful performance of the contract.
  - (5) Civil Code §9554, the labor and materials payment bond must be for at least 100 percent of the total amount of the public works contract.
  - (6) Faithful-performance bonds and labor-and-materials bonds shall be submitted on the forms approved by County Counsel and shall be subject to approval by CEO/Risk Management and County Counsel.

**§3.5-128 Regulatory Permit Approvals**

- (1) This policy applies to all public works construction projects requiring Board of Supervisors approval to advertise or award.
- (2) Any application, plan, permit, letter, report, agreement, waiver, memorandum of understanding or other document requiring approval by an Authority Having Jurisdiction (AHJ) over the project in any capacity. Examples may include Building & Grading Permits, Construction General Permits, Biological Opinions, Waste Excavation Permits, Construction Quality Assurance Plans, Geotechnical Reports, Environmental Impact Reports, Mitigation Monitoring Plans, or Development Agreements.
- (3) Departments shall ensure that all necessary Regulatory Permit Approvals from all AHJs are secured prior to approval of the advertisement by the Director or designee. If an approval has not been secured by the date that the related ASR is due to the County Executive Officer, the ASR is to be delayed.
- (4) In certain cases, a determination may be made to proceed with the advertisement without a regulatory approval, such as when delaying advertisement may jeopardize funding. In these cases, departments shall indicate in the ASR that not all Regulatory Permit Approvals have been secured. The ASR background shall also indicate the following:
  - a) Which Regulatory Permit Approvals have not been secured;
  - b) Why they have not been secured;
  - c) When they are likely to be secured;
  - d) Why the Director recommends proceeding with advertisement prior to approval; and

- e) What the likely risks are of proceeding without approval. At a minimum, cost, scope, and schedule should be addressed.



## SECTION 3.6

### ADDITIONAL POLICIES RELATED TO DESIGN AND CONSTRUCTION SERVICES

#### §3.6-101 Protest & Appeal

- (1) Any Party who alleges an error or impropriety in the solicitation or award of a contract procured pursuant to Sections 3.4 or 3.5 of this policy manual may submit a grievance or protest to the awarding department and the following procedures will apply.
- (2) Prior to the filing of an Agenda Staff Report (ASR) for award of contract for Board of Supervisor approved contracts, the Deputy Purchasing Agent shall issue a Notice of Intent to Award to all interested Parties. This Notice shall initiate the protest period as follows:
  - a) Parties will have five (5) business days from the date of the Notice described above in which to file a protest concerning the award of the Contract.
  - b) Protests relating to a contract award which are received after the five (5) business day deadline will not be considered by the County.
  - c) During the five (5) business day protest period subsequent to the release of the County's Notice of Intent to Award, the solicitation information, including bid summaries, proposals, and final evaluator score sheets with the names of individual evaluators redacted, are subject to public disclosure.
  - d) Upon expiration of the five (5) business day period or proper resolution of a protest/appeal, the department may move forward with the contract award or, if necessary, filing the item for approval by the Board of Supervisors.
- (3) In the event of a timely protest, the County shall not proceed with award of the contract until the Deputy Purchasing Agent renders a decision on the protest, unless the exception in Section (5) below applies.
- (4) Upon receipt of a timely protest, the Deputy Purchasing Agent will within ten (10) business days of the receipt of the protest, issue a decision in writing which shall state the reasons for the actions taken.
- (5) The County may, after providing written justification to be included in the procurement file, make the determination that an immediate award of the contract is necessary to protect the substantial interests of the County. The award of a contract shall in no way compromise the protestor's right to exercise the protest procedures outlined herein.
- (6) If the protestor disagrees with the decision of the Deputy Purchasing Agent, the protestor may submit a written appeal to the Office of the Director requesting an appeal, in accordance with the process stated below.
- (7) If the protestor wishes to appeal the decision of the Deputy Purchasing Agent, the protestor must submit, within three (3) business days from receipt of the Deputy Purchasing Agent's decision, a written appeal to the Office of the Director.

- (8) Within (15) business days, the Office of the Director will conduct a third-party review of all materials in connection with the grievance, assess the merits of the protest and provide a written determination that shall contain their decision.
- (9) The decision of the Director will be final and there shall be no right to any administrative appeals of this decision.

**§3.6-102      Justification of Variance from Engineer's Estimate**

- (1) An engineer's estimate is a point in time estimate based on a defined estimation methodology.
- (2) The County relies on an engineer's estimate prior to bidding out a project, primarily for budgetary purposes. It is also used to determine which procedures should be used for advertising and awarding a project.
- (3) Respondents/Bidders use the engineer's estimate range to determine whether the project is within their capacity to perform and/or ability to obtain bid bonds.
- (4) There is no legal requirement that the County prepare an estimate, nor any prohibition of such a process.
- (5) A cost estimate should be prepared for all projects regardless of size and complexity.
  - a) Cost estimates for projects not requiring Board of Supervisors approval may be completed by the contracting department or contracted out.
  - b) Estimates for projects requiring Board of Supervisors approval shall be prepared by an engineer or third-party estimator.
  - c) A certified engineer's estimate shall be obtained for all capital construction prior to solicitation.
- (6) Methodology for Preparation
  - a) Types of engineer's estimates:
    - i. Unit cost line item (bid history);
    - ii. Cost-based estimating;
    - iii. Combination;
    - iv. Rough Order of Magnitude (Calculations based on industry standards or data such as cost per square foot or cost per acre if and when applicable); and
    - v. Other best practices.
- (7) Methodology/approach should be provided to and reviewed by project staff.
- (8) Engineer's estimates may be provided in-house or contracted out. They should be reviewed and validated by County staff.
- (9) When possible, departments should include a secondary review of their engineer's estimates. This may include other County departments or a contracted professional estimator.

- (10) The final engineer's estimate should be completed in a timely manner to ensure that estimated figures are not adversely affected by market conditions.
- (11) All A-E design contracts should include an engineer's estimate as part of the A-E's Scope of Work as a deliverable.
- (12) Submittals Above/Below the Engineer's Estimate:
- a) Because it is a point in time estimate, it is common for the engineer's estimate to deviate from the submittal.
  - b) When the submittal is either above/below the engineer's estimate, the submittal and the estimate should undergo an additional review. This review shall be performed by a qualified County staff member or by contract with a third party. These reviews and justifications shall depend on the value of the project as follows:
    - i. If a project is above \$200,000, but less than \$1,000,000, the threshold for explaining the difference is 20 percent.
    - ii. If a project is greater than \$1,000,000, the threshold is 10 percent.
    - iii. If a project does not meet one of the above thresholds, no justification is required
- (13) Any review conducted and justification required from the above thresholds shall be discussed in the background of the ASR.
- (14) Release of the Engineer's Estimate
- a) The engineer's estimate may be released when the Notice of Intent to Award is released. It will be included in the body of the ASR in a table which includes all of the submittals with the engineer's estimate included in the list from lowest to highest. In the ASR, it should be stated, that, "The lowest responsive and responsible bid submitted by XXX for this Project is approximately XX% above/below the Engineer's Estimate of \$XXX." An explanation of any deviation over 20 percent, or 10 percent, as indicated by the preceding subsection must be included (e.g., identifying changed economic conditions such as price of fuel, cost of supplies, rental prices, or the competitive bidding environment).

**§3.6-103      Operations & Maintenance Future Costs**

- (1) This policy applies to all public works new construction and major renovation projects requiring Board of Supervisors approval to advertise or award.
- (2) Operations and Maintenance (O&M): The recurring, day-to-day, periodic, or scheduled work required to preserve, control deterioration and provide for the basic operation of a facility. This type of maintenance is routine and is based on frequency schedules, responding to service requests, or through periodic inspection and correction efforts. O&M is typically funded through operational budgets.
- (3) Departments shall ensure that O&M costs for new facilities have been considered and include appropriate staff during the planning and design phases of renovation and new construction

projects. Project operating and maintenance impact estimates shall include the following:

- a) The effect of infrastructure replacement and upgrades required for the facility in the year(s) of occurrence; and
  - b) Projections and funding plans for direct costs to County departments for maintenance, internal services and utilities.
- (4) These O&M costs shall be included in all public works renovation and new construction project ASRs or as part of the attachments to the ASR. The ASR and/or ASR attachments should also indicate if any of the following were conducted:
- a) Industry standards and other locality approaches were considered prior to initiation of infrastructure replacement or upgrades;
  - b) Any County attempts at value engineering;
  - c) Any total life cycle cost analysis conducted; and/or
  - d) Development of an O&M manual was included in the statement of work of the project.

**§3.6-104      Sample ASR Language for Ongoing Maintenance Costs**

- (1) The subject project will require an additional annual maintenance cost of approximately \$ XXX for a period of X years. The above mentioned costs are based on a life cycle cost analysis conducted by staff as shown in Attachment X. Life cycle cost is the sum of all recurring and one-time (non-recurring) costs over the full life span of this asset. It includes total project costs, operating costs, maintenance and upgrade costs, and remaining (residual or salvage) value at the end of ownership or its useful life.”
- (2) “No new operations and maintenance costs are anticipated as a result of his project.”
- (3) “This project is anticipated to reduce annual operations and maintenance costs by approximately \$XXX for a period of X years.” [If appropriate, include language referencing a life cycle cost analysis as in Section (1) above].

**§3.6-105      California Environmental Quality Act (CEQA)**

- (1) The majority of public works projects will require compliance with the California Environmental Quality Act (CEQA) and any projects involving federal funding may additionally require compliance with the National Environmental Policy Act (NEPA). Such requirements must be complied with before approval of the project.
- (2) For projects that do not require approval by the Board of Supervisors:
  - a) The Director or designee shall ensure that they have received a memorandum from the OC Public Works/Development Services Division documenting that the requirements of CEQA have been complied with;
  - b) If a negative declaration or mitigated negative declaration has been prepared, the declaration must be signed by the Director or designee; or
  - c) If OC Public Works/Development Services Division determines that the project is statutorily

or categorically exempt, then it shall provide to the Director or designee a memorandum specifying the exemption and the facts supporting its determination.

- d) The Director or designee shall file the appropriate Notice of Determination or Notice of Exemption, as applicable.

**§3.6-106      Lobbying**

- (1) Capital projects solicited shall not include "no lobbying" verbiage as standard language without express approval of the Board of Supervisors. Capital projects that are greater than \$25,000,000 and involve special circumstances because of the complexity and scope of work may insert the "no lobbying" clause after Board of Supervisors approval is obtained.

**§3.6-107      Public Works Subcontractor Contract Requirement and County of Orange Procurement Preference Policy**

- (1) Unless otherwise required by Federal or State funding, for Public Works Projects estimated to exceed five million dollars (\$5,000,000), 3% of the total project amount must be awarded to the OCLSB/DVBE subcontractor(s).
- (2) Per restrictions in the Public Contract Code, Public Works Procurements shall not include a DVBE preference.

## SECTION 3.7

### REAL ESTATE TRANSACTIONS AND CONTRACTS

#### §3.7-101 General Responsibilities

- (1) The policies of the County of Orange regarding Real Estate are adopted and approved by the Orange County Board of Supervisors and implemented by the Chief Real Estate Officer (CREO) through the CEO Real Estate Department (CEO Real Estate). These policies and procedures shall apply to any Real Estate Contracts involving the County of Orange, and any of its departments (County) or special districts whose affairs and funds are under the supervision and control of the Board of Supervisors, such as the Orange County Flood Control District or Orange County Housing Authority (Special Districts). All references to the Board of Supervisors shall also apply to the governing body of any public entity that elects to adopt this CPM. While other departments may handle certain aspects of real estate transactions (*i.e.*, John Wayne Airport and Orange County Sheriff), this manual is meant to establish clear standards and policies that should be followed in regard to any County Real Estate transactions (*i.e.*, the actual granting or accepting of an interest in real estate on behalf of the County or a Special District), and any deviations shall be specifically approved by the Board of Supervisors unless the Board has delegated authority for such a transaction. As used herein, the term “Real Estate Contracts” shall refer to the legal agreements necessary to effectuate a real estate transaction such as a lease, license, easement, grant deed, or other similar document, but shall not include procurement contracts related to services provided for the transaction nor departmental issued permits, such as County construction permits or encroachment permits. In the event of a question about the applicability of this section to a particular contract, please contact CEO Real Estate.
- (2) All Real Estate Contracts (*e.g.*, leases, licenses, easements, etc., but not departmental issued permits, *e.g.* County encroachment permits), including those not requiring Board of Supervisors approval, shall be transacted through the CREO or those authorized County officials or department designees identified by the Board of Supervisors, CEO, or the CREO to transact Real Estate Contracts consistent with this CPM, Resolutions of the Board of Supervisors and applicable law. In addition, the CREO is authorized to solicit and procure any and all required real estate services and contractors necessary and intended to supplement or support and carry out real estate transactions and contracts on behalf of the County through compliance with other applicable sections of the CPM. Unless otherwise specified, all references hereinafter to “CREO” shall mean all such designated officials or departments.
- (3) The CREO supervises County real estate staff and contractors in conformance with the real estate policy of the County of Orange found herein, Resolutions of the Board of Supervisors and applicable law. In addition, the CREO and CEO Real Estate department coordinate with other County departments on real estate transactions and this CPM is meant to standardize, to the extent possible, the real estate transaction process carried out on behalf of the County of Orange and its departments and Special Districts.
- (4) The CREO and CEO Real Estate will identify policy elements from time to time that need to be amended, added or deleted in order to meet the real estate needs of the County and to stay

in conformance with changes in state law, local ordinances and resolutions.

- (5) County of Orange Procurement Preference Policy requirement is not applicable to Real Estate Solicitations and Transactions, except as directed by the Chief Real Estate Officer in consultation with County Counsel.

**§3.7-102      Delegated Authority**

- (1) State and local law, including but not limited to California Government Code Sections 25520, *et seq.*, Orange County Codified Ordinances Section 1-4-153, *et seq.*, provide for delegation of authority by the Board of Supervisors to appropriate officials to execute certain real estate contracts and engage in real estate transactions. These delegations are limited in scope and substantially reduce administrative processing time, thereby allowing CEO Real Estate to provide enhanced customer service when processing minor real estate transactions.
- (2) In addition to the authorities and responsibilities set out in this policy manual, the CREO is authorized to take specific actions identified under previously issued delegated authority as detailed below. These specific authorities delegated to the CREO, and to any of their designees in writing, are to solicit, award and execute on behalf of the County. These delegations have been authorized and approved by prior actions of the Orange County Board of Supervisors. In addition, the CREO may sub-delegate to other employees of the County of Orange, its offices, or Special Districts.
- (3) CEO Real Estate shall comply with the Board's requirement, per the granting authority, that specific uses of delegated authority be reported to the Board annually via Agenda Staff Report, to keep the Board informed as to the number and types of property transactions that have been executed. It is the responsibility of CREO and CEO Real Estate and each designee acting under delegated authority to maintain records of transactions sufficient to support the annual report to the Board.
- (4) The attached Delegated Authority Chart summarizes the types of real estate transactions and their limits, as established by state statutes and Board authority, that have been granted to the CREO and other select County officers as of the date of this CPM.

Delegated Authority Chart

Revenue Lease/License of County Property	Execute leases/licenses if the monthly rental does not exceed \$15,000 per month and the lease term does not exceed 10 years.	Acquisitions of Real Property Interests for Flood	Approve and accept acquisitions of real property interests not exceeding \$250,000 in value and other criteria are met.	Acquisition Lease/License for County Use	Amend and execute leases/licenses if rental over term of lease/license does not exceed \$10,000 per month and a (5) year term and other criteria are met.	Acquisitions of Real Property Interests for County	Approve and accept acquisitions of real property interests not exceeding \$250,000 in value and other criteria are met.	Collateral Instruments	If instrument is on County's standard form. Instruments are defined as: Estoppels Subornation Non- Disturbance.	Donated Space Agreements for County Use	If agreement is in County's standard form, County's indemnification of donor is limited to \$1,000,000, and agreement is approved by County Counsel and Risk Management.	Authorize Full Reconveyance	Execute requests for reconveyance upon approval of County Counsel and receipt of notification from the Auditor-Controller's Office that all sums due and payable under an installment note have been paid in full.	Grants or Easements of County OCFCO OCDA OCHA Property	If Easement does not exceed \$25,000 in value and is granted to City, County, State or other public agency with County Counsel approval.	Revenue Licenses of Orange County Flood Control District Property	Execute licenses of OCFCO property if the monthly rental does not exceed \$10,000 per month and the license term does not exceed 10 years.	Temporary Right of Entry Permits for Flood or County Use	If permit is required by County or Flood Control District from a public or private entity for ingress and egress, construction staging, and other purposes. Permits may include indemnification of others.
per Resolution No. 19-002 and Minute Order dated January 8, 2019. (Gov. Code 25337)	per Resolution No. 20-040 and Minute Order dated May 5, 2020. (Gov. Code 25350.60)	per Resolution No. 20-016 and Minute Order dated March 10, 2020 (Gov. Code 25350.51)	per Ordinance No. 20-004 and Minute Order dated May 19, 2020 (Gov. Code 25350.60)	per Resolution No. 98-75 and Minute Order dated March 10, 1998.	per Resolution No. 21-031 and Minute Order dated April 13, 2021 (Gov. Code 25355)	per Resolution No. 76-1642 dated November 9, 1976.	per Ordinance No. 3898 and Codified Ordinance Section 1-4-225 (Gov. Code 25526.6).	per Minute Order dated February 25, 2014.	per Resolution No. 08-151 and Minute Order dated December 9, 2008.	NO EXPIRATION	NO EXPIRATION	NO EXPIRATION	NO EXPIRATION	NO EXPIRATION	NO EXPIRATION	NO EXPIRATION	NO EXPIRATION	NO EXPIRATION	NO EXPIRATION
ANNUAL REPORT	ANNUAL REPORT	ANNUAL REPORT	ANNUAL REPORT	ANNUAL REPORT	ANNUAL REPORT	ANNUAL REPORT	ANNUAL REPORT	ANNUAL REPORT	ANNUAL REPORT	ANNUAL REPORT	ANNUAL REPORT	ANNUAL REPORT	ANNUAL REPORT	ANNUAL REPORT	ANNUAL REPORT	ANNUAL REPORT	ANNUAL REPORT	ANNUAL REPORT	ANNUAL REPORT
Chief Real Estate Officer, CEO Director, JWA as designee	Chief Real Estate Officer, CEO	Chief Real Estate Officer, CEO Director, JWA as designee	Chief Real Estate Officer, CEO	Chief Real Estate Officer, CEO	Chief Real Estate Officer, CEO	Chief Real Estate Officer, CEO	Chief Real Estate Officer, CEO	Chief Real Estate Officer, CEO	Chief Real Estate Officer, CEO	Chief Real Estate Officer, CEO	Chief Real Estate Officer, CEO	Chief Real Estate Officer, CEO	Chief Real Estate Officer, CEO	Director, OCPW	Director, OCPW	Director, OCPW	Director, OCPW	Director, OCPW	Director, OCPW

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**§3.7-103      Specific Duties**

- (1) The CREO and CEO Real Estate are authorized to carry out the specific duties listed in the CPM, plus any other ancillary duties consistent with this manual and/or pre-existing delegated authority. In this role, and consistent with applicable law such as Government Code Section 23004, the CREO and CEO Real Estate are authorized to, among other things:
  - a) Solicit and procure any real estate interests necessary for the operation and administration of the County of Orange, and other real property of whatever kind and nature required to conduct County business, except in cases of emergency and as otherwise granted by the Board of Supervisors (see also Government Code Section 25350);
  - b) Advertise and offer for lease or license County or Special District property that has been determined by the County, its departments, and/or its Special Districts to be available for lease or licenses consistent with the CPM and policies and procedures established by the CREO (see also Government Code Section 23004);
  - c) Negotiate and execute all Real Estate Contracts required to conduct County business;
  - d) Sell and dispose of surplus real property no longer required for County and/or Special District use, in accordance with this CPM, Resolutions of the Board of Supervisors and applicable state, federal, and county laws and regulations (see also Government Code Sections 25365, 25526 and 25363);
  - e) Establish policies and procedures to be followed by departments in the solicitation or procurement of real property interests;
  - f) Standardize County real estate forms, including, but not limited to, leases and licenses, for use on behalf of County departments and Special Districts; and
  - g) Review real estate solicitations and contracts being entered into on behalf of the County, its department and Special Districts to ensure consistency.

## SECTION 3.8

### MEMORANDUM OF UNDERSTANDING (MOU)

#### **3.8-101**      **Definition**

- (1) A Memorandum of Understanding (MOU) is an agreement between two or more parties that describes the broad outlines and expectations reached by the parties, which is not otherwise covered by the CPM.
- (2) While parties often do not intend for MOUs to be legally binding, determining the legal effect of an MOU depends on the presence or absence of the legal elements necessary to create a binding contract. California Civil Code Section 1550 provides the essential elements of a contract, including: (1) Parties capable of contracting; (2) Their consent; (3) A lawful object; and (4) A sufficient cause or consideration.
- (3) An MOU under this Section 3.8 does not include agreements pursuant to which an elected county official coordinates the performance of his or her statutory duties on a State or regional level where the agreement does not require the County to pay or indemnify third parties.
- (4) Any interdepartmental agreement between County of Orange departments shall not use the title of MOU and shall instead be entitled “Interdepartmental Agreement” (IA). IAs shall not be construed as legally binding on any department or the County of Orange.

#### **3.8-102**      **Board/CEO Approval**

- (1) Any MOU that would legally bind the County such that Board Approval would otherwise be required under this policy shall require approval by the Board of Supervisors, except as otherwise provided herein. Staff shall consult with County Counsel for any questions concerning the legal effect of an MOU or its terms on the County.
- (2) MOUs shall be approved by the department head or designee. The department head shall direct any legal questions to County Counsel and shall obtain the CEO’s approval of any MOU that the director deems likely to create controversy or liability for the County. The CEO shall then determine whether any further review from County Counsel or approval by the Board of Supervisors is required.
- (3) IAs do not require Board of Supervisors approval unless the CEO determines otherwise.

#### **§3.8-103**      **Approval of Non-Standard Contract Terms**

- (1) Unless Risk Management agrees in writing that the risk to the County is minimal and County Counsel agrees in writing that the legal risk to the County is minimal, approval by the Board of Supervisors is required prior to the execution of any MOU that is otherwise subject to administrative approval and includes non-standard terms in the indemnification contract provisions and/or limits the vendor’s liability.

- (2) Unless County Counsel agrees in writing that the legal risk to the County is minimal, approval by the Board of Supervisors is required prior to the execution of an MOU that is otherwise subject to administrative approval and includes non-standard terms in the governing law or arbitration/dispute resolutions contract provisions.

**§3.8-104      Term**

- (1) The duration will depend upon the County's need, prevailing market conditions, contract start-up costs, and the County's best economic interest.
- (2) In no case shall the term of an MOU exceed five years, except as approved by the Board of Supervisors.
- (3) MOUs that require approval by the Board of Supervisors may not be extended or renewed without approval by the Board of Supervisors.

**§3.8-105      Increases**

- (1) MOUs that require approval by the Board of Supervisors may not be increased without approval by the Board of Supervisors.

## SECTION 3.9

### UNILATERAL PROCUREMENTS

#### §3.9-101 Unilateral Procurement Definition

- (1) A unilateral Procurement is a vehicle to pay for critical, ongoing services provided by exclusive entities within a County geographical area that is not subject to County's standard terms and conditions (i.e., utility services). The payment mechanisms for unilateral procurements include but are not limited to: Procurement card(s), County financial system documents, petty cash, and request for checks.
- (2) The following unilateral procurements are preapproved:
  - a) Utility services: electric, gas, water, telephone
  - b) Cable/Satellite TV companies
  - c) Exclusive franchise trash contracts
  - d) Department of Justice
  - e) US Postal Service
  - f) The Toll Roads/FasTrak
  - g) Publications/Newsprint: Industry related or news periodicals, magazines, trade journals, etc., either in print or electronic/digital subscriptions.
  - h) Memberships
    - i. Memberships procured under this Section are limited to wholesale memberships such as Costco, Sam's Club, Smart & Final, Amazon, etc., memberships in associations formed for a purpose directly related to the primary work of the department, and memberships held exclusively for the purpose of obtaining a periodical, journal, or other reference materials that are directly related to the primary work of the department.
    - ii. Memberships procured under this Section do not include memberships in social, religious and fraternal organizations, professional or occupational organizations (such as accountants in accounting societies, physicians in medical associations, and engineers in engineering associations), or memberships that are included under the County's Personnel and Salary Resolutions.
  - i) Registration Fees
    - i. Amount should be actual expenses paid by the Department to participate in events or conferences for County business.
- (3) In accordance with the competitive bidding policies stated in this manual, if a service/commodity can be provided by another vendor, a solicitation should be conducted.

- (4) Entities not listed above must be approved by the County Procurement Officer or designee on the forms approved and provided by the County Procurement Office and approval must be obtained prior to any services or commodities being provided.

**SECTION 4 – METHODS OF SOLICITATION**

## SECTION 4.1

### REQUEST FOR INFORMATION (RFI)

#### §4.1-101 Definition

- (1) A Request for Information (RFI) is used to obtain price, delivery, other market information, or capabilities for planning purposes. Responses to requests for information notices are not offers and cannot be accepted by County to form a binding contract, unless otherwise specified in the solicitation.

## SECTION 4.2

### INVITATION FOR BID (IFB)

#### §4.2-101 Definition

- (1) Invitations for Bids (IFBs) are competitive bidding documents used for procuring supplies, services, or equipment for which clear specifications can be written and contract award is made generally to the lowest responsive, responsible bidder.
- (2) IFB policies and procedures contained in this Section 4.2 shall apply, except as otherwise required for procurements pursuant to Sections 3.4, 3.5, and 3.6.

#### §4.2-102 Solicitation Document

- (1) The IFB shall include a description and all contractual terms and conditions applicable to the procurement. All invitations for bids will include the following:
  - a) Adequate Public Notice: Adequate public notice will be given to provide potential bidders sufficient time to prepare and submit bids by the due date specified in the invitation for bid.
  - b) Specifications - General: Clear, concise specifications must be included in all bid documents. The specification is a description of the physical or functional characteristics of the commodity, equipment, or service desired. Specifications shall be written to encourage maximum and fair competition. A Statement of Desired Purpose may be included in specifications and only those characteristics essential to the final performance of the product or service will be included. Unless only one brand of commodity or equipment is acceptable due to compatibility or other restrictive requirements, any brand name used in the specifications will be used only for the purpose of establishing descriptive information and will not be used to restrict competitive bidding.
  - c) Proprietary Specification (no substitute): Proprietary specifications shall be used only when the end user has presented justification that only the named product will function in the end use required. Proprietary items will be competitively bid whenever there is more than one vendor from whom the product is available.
  - d) Terms and Conditions: All IFBs will include terms and conditions which will become part of the contract. The County Procurement Officer shall maintain, by type of contract, applicable and appropriate terms and conditions to be included in contracts and shall make these available to departments for inclusion in the contracts they issue.
  - e) Bid and Performance Surety: When required by law or determined to be in the best interest of the County, the County Procurement Officer or the Deputy Purchasing Agent shall include in the terms and conditions a requirement for bid and/or performance surety. A Bid Surety will guarantee that a bidder enters into the contract per its bid, and a performance surety will guarantee that the bidder will carry out the contract per the specifications and terms and conditions set down by the County. Such surety, when required, will not be designed to be restrictive, but will only be in an amount necessary to protect the County's interest. Bidders shall be permitted to provide such surety in the form of a bond, certified or cashier's check, letter of credit, or certificate of deposit



redeemable by the County. Upon award to the successful bidder, all such sureties will be returned to unsuccessful bidders.

- f) Indemnification: Where the County may experience financial or physical risk in the performance of a contract by a vendor, the contract terms and conditions will require that the vendor hold the County harmless from such risk.
- g) Insurance: The County may also require that the successful bidder submit an insurance certificate prior to contract award. Such certificate will be in an amount adequate to protect the County and will name the County as an additional insured.
- h) Criteria for Award: The IFB will include criteria for award. Award will be based on lowest responsive and responsible bidder. The lowest responsive and responsible bidder may be identified using the Reverse Auction process.
- i) Responsiveness: A bidder's responsiveness will be determined in accordance with the requirements set forth in the invitation to bid. No criteria may be used in the determination of a bidder's responsiveness that is not set forth in the IFB. In order to determine lowest responsive bidder, criteria which affect bid price and may be objectively measured, such as discounts, transportation costs, and life cycle cost, may be considered. Award may not be made to a bidder submitting a higher quality item than the minimum required unless the bidder's price is also determined to be the lowest in accordance with the criteria established in the IFB. The unreasonable failure of a bidder to promptly supply information or documents required for bid review may be grounds for "determination of non-responsiveness" made by the appropriate Deputy Purchasing Agent. All findings of non-responsiveness shall be documented and made part of the contract file.
- j) Responsibility: A bidder's responsibility will be determined according to the bidder's ability to successfully carry out the proposed contract. Criteria to be used may include financial capacity, experience, facilities, equipment, and integrity. The County may also consider any of its own past dealings with the bidder.

#### **§4.2-103      Lobbying**

- (1) All IFBs will include as part of their language the following vendor advisory: "The County of Orange does not require and neither encourages nor discourages the use of lobbyists or other consultants for the purpose of securing business."

#### **§4.2-104      Pre-Bid Conference**

- (1) When it is in the County's best interest, a pre-bid conference may be held. The purpose of the conference will be to further define or illustrate the County's needs and/or to answer any questions which may exist on the part of the bidders. The conference shall be hosted by the County Procurement Officer or by the appropriate Deputy Purchasing Agent. Any changes, deletions, additions or clarification to the bid solicitation shall be issued as an Addendum and sent to all prospective bidders. Pre-bid conferences shall not be mandatory for potential bidders unless it is clearly in the County's best interest, and a (5) five business day notice is given.

**§4.2-105      Acceptance of Bids**

- (1) Except as noted below, bids must be:
- a) Received no later than the time specified in the IFB;
  - b) Unconditionally accepted without alteration or correction;
  - c) All bids must be received by someone other than the person who conducted the bid solicitation and must be time and date stamped upon receipt;
  - d) All bids must be kept in a secure, locked location for access by personnel so authorized by the department head; and,
  - e) Bids become public information immediately after the closing date and time.

**§4.2-106      Waivable Informalities**

- (1) When considered in the best interest of the County, certain bid requirements may be waived by the County Procurement Officer or Deputy Purchasing Agent. Such waivers will be only for minor requirements which will not provide a material advantage for one bidder over another. Examples of waivable informalities are:
- a) Failure of a bidder to submit information due to oversight (i.e. descriptive literature) consistent with Section 4.2-107;
  - b) Failure of a bidder to sign or date bid documents; or,
  - c) Failure of a bidder to submit the requested number of bid copies.
- (2) Waivable informalities will be considered on a case by case basis and will occur only when in the County's best interest.

**§4.2-107      Correction, Clarification, or Withdrawal of Bids**

- (1) Correction, clarification, or withdrawal of erroneous bids before or after award shall be permitted by the County Procurement Officer or Deputy Purchasing Agent under the following circumstances:
- a) Where there is a mistake clearly evident from examining the bid document, such as an extension of unit pricing or errors in addition, the bidder should be permitted to correct the error and the bid remain valid;
  - b) Where a bidder alleges a material mistake of fact and there is reasonable proof a mistake was made and the intended bid cannot be ascertained with reasonable certainty, the bidder shall be permitted to withdraw the submitted bid without penalty; and,
  - c) Where a bidder fails to supply information requested in the IFB due to oversight, the bidder should be permitted the opportunity to provide the information. This shall be permitted so long as the information does not affect the bidders' submitted price, specifications or substantive obligations and does not affect the position of the bid relative to others properly submitted.

- (2) Where a bidder committed errors in judgment, the County will not permit withdrawal of the submitted bid without penalty, unless it is determined to be in the best interest of the County.
- (3) Nothing in this Section is intended to prohibit the County from accepting a voluntary reduction in price or more favorable terms from a successful bidder after award, provided that such is not conditioned on a modification or deletion of any conditions required in the IFB which would result in a contract less favorable to the County.

**§4.2-108      Tied Bids**

- (1) When all other factors are determined to be equal, the County Procurement Officer and Deputy Purchasing Agents have the right to request a best and final offer from the tied vendors and award to the lowest.

**§4.2-109      Cancellation of Invitations for Bid/ Reject all Bids**

- (1) An IFB may be canceled and any or all bids may be rejected in whole or in part as specified in the solicitation if it is for good cause and in the best interest of the County. The reasons for such cancellation or rejection shall be made part of the procurement file. Reasons for cancellation or rejection shall be provided upon request to bidders.

**§4.2-110      Award**

- (1) Award will be made to the lowest, responsive, responsible bidder.
  - a) Prior to Contract award, DPAs shall conduct due diligence and obtain any documentation necessary to do so.
  - b) References:
    - i. Reference checks must be conducted prior to contract award.
    - ii. References will be obtained from outside the County of Orange whenever possible.
    - iii. References shall not be provided by the same department conducting the solicitation.

## SECTION 4.3

### REQUEST FOR PROPOSAL (RFP)

#### §4.3-101 Definition

- (1) When it is not in the County's best interest to acquire commodities or services through normal competitive bidding, a contract may be solicited using the Request for Proposal (RFP) method. Such a situation may arise for any number of reasons, including, but not limited to:
  - a) The County's requirements are not well-defined;
  - b) The County is interested in evaluating a range of offers so that it may take advantage of technical innovation and developments in the market place; and,
  - c) Factors such as availability, expertise, and quality override price as a criteria for award.
- (2) RFP policies and procedures contained in Section 4.3 shall apply, except as otherwise required for procurements pursuant to Sections 3.4, 3.5, and 3.7.

#### §4.3-102 Solicitation Document

- (1) RFP will be issued with the intent of providing a competitive process from which the County may select a vendor to satisfy its requirements. The RFP will consist of the following:
  - a) Adequate Public Notice: Adequate public notice shall be given to provide potential respondents sufficient time to prepare and submit proposals by the due date specified in the RFP.
  - b) Requirements Statement: This will be a statement of the County's objectives in issuing the request. It shall explain the County's need as clearly as possible. It shall include any special requirements which the County may have in regard to its overall objectives. Included may be requests for special reports, critical timelines, unique items or services to be provided, cost or pricing data required, duration of service, etc.
  - c) Qualification Statement: The County may include minimum qualification criteria in the RFP. The criteria shall not be used to limit competition, but may be used to assure a certain level of expertise and quality of service.
  - d) Terms and Conditions: The terms and conditions which are intended to become part of the final contract shall be included in the RFP. Included in the terms and conditions are such items as indemnification, contract termination, payment terms, applicable laws, etc. The County Procurement Officer shall maintain, by type of contract, applicable and appropriate terms and conditions to be included in contracts and shall make these available to departments for inclusion in the contracts they issue.
  - e) Instructions: These are items which relate directly to the procedures on how the proposal must be submitted. Included in the instructions are items related to number of submittals required, format, procedure for information clarification, etc.
  - f) Bid and Performance Surety: When required by law or determined to be in the best interest of the County, the County Procurement Officer or the Deputy Purchasing Agent shall include in the terms and conditions a requirement for bid and/or performance surety.

A bid surety will guarantee that respondent enters into the contract as agreed upon, and a performance surety will guarantee that the respondent will carry out the contract requirements according to specifications and terms and conditions set down by the County. Such surety, when required, will not be designed to be restrictive, but will only be in an amount necessary to protect the County's interest. Respondents shall be permitted to provide such surety in the form of a bond, certified or cashier's check, letter of credit, or certificate of deposit redeemable by the County. Upon execution of contract with the successful respondent, all such sureties will be returned to unsuccessful respondent.

- g) Indemnification: Where the County may experience financial or physical risk in the performance of a contract by a vendor, the contract terms and conditions will require that the vendor hold the County harmless from such risk.
- h) Insurance: The County may also require that the awarded respondent submit an insurance certificate prior to contract award. Such certificate will be in an amount adequate to protect the County and will name the County as an additional insured.
- i) Liquidated Damages: When determined to be appropriate by the Deputy Purchasing Agent, a provision for liquidated damages may be included in the contract terms and conditions. Liquidated damages may not be a penalty, but must be an approximation of the County's actual damages. See Liquidated Damages provision under Section 3.3 for Service Contracts.
- j) Evaluation Criteria: The RFP will list the criteria which will be used to evaluate submitted proposals. The factors shall relate to the respondent's ability to satisfy the County's requirements as specified in the proposal. Evaluation criteria may be weighted by having specific values assigned to each criterion. Evaluation criteria may also be listed in order of importance without including values. Only the factors listed as part of the evaluation criteria may be used to determine the successful respondent. Values/weights for evaluation criteria must be included in the RFP. It is recommended cost be included as part of the criteria. When cost is a factor in the evaluation criteria, cost analysis must be conducted, scored, and recorded by the Deputy Purchasing Agent.

#### **§4.3-103      Lobbying**

- (1) All RFPs will include as part of their language the following vendor advisory: "The County of Orange does not require and neither encourages nor discourages the use of lobbyists or other consultants for the purpose of securing business."

#### **§4.3-104      Pre-Proposal Conference**

- (1) When it is in the County's best interest, a pre-proposal conference may be held. The purpose of the conference will be to further define or illustrate the County's needs and/or to answer any questions from potential respondent. The conference shall be facilitated by the County Procurement Officer or by the appropriate Deputy Purchasing Agent. Any changes, deletions, additions, or clarification to the RFP shall be issued as an addendum and sent to all prospective respondents. Pre-proposal conferences shall not be mandatory for potential respondents unless it is clearly in the County's best interest, and a (5) five business day notice is given.

**§4.3-105      Receipt and Acceptance of Proposals**

- (1) Except as noted below, proposals must be:
  - a) Received no later than the time specified in the RFP.
  - b) Unconditionally accepted without alteration or correction;
  - c) All proposals must be received by someone other than the person who conducted the solicitation and must be time and date stamped upon receipt;
  - d) All proposals must be kept in a secure, locked location for access by personnel so authorized by the department head; and,
  - e) If conducted as an electronic solicitation, all proposal materials must be kept in a secured electronic location for access only by authorized personnel until provided to the evaluation committee.

**§4.3-106      Waivable Informalities**

- (1) When considered in the best interest of the County, certain proposal requirements may be waived by the County Procurement Officer or Deputy Purchasing Agent. Such waivers will be only for minor requirements which will not provide a material advantage for one respondent over another. Examples of waivable informalities are:
  - a) Failure of a respondent to submit information due to oversight, consistent with Section 4.3-113;
  - b) Failure of a respondent to sign or date a bid document; or,
  - c) Failure of a respondent to submit the requested number of proposal copies.
- (2) Waivable informalities will be considered on a case by case basis and will occur only when in the County's best interest.

**§4.3-107      Confidentiality**

- (1) Proposals are not to be marked as confidential or proprietary. Proposals submitted in response to a RFP are subject to public disclosure as required by the California Public Records Act. Additionally, all proposals shall become the property of the County. The County reserves the right to make use of any information or ideas in the proposals submitted.
- (2) Regardless of any identification otherwise, including marking some or all pages as "confidential" or "proprietary", information in proposals shall become a part of the public record and subject to disclosure without further notice to the respondent.
- (3) The County shall not in any way be liable or responsible for the disclosure of any such records.

**§4.3-108      Evaluation Committee**

- (1) Proposals shall be evaluated by an evaluation committee. When possible, evaluation committees shall be comprised of an odd number of at least five (5) members. Members shall have no conflict of interest with the selection process. Members of evaluation committees shall be selected based

on their qualifications and expertise related to the subject matter. If only one (1) proposal is received in response to an RFP, the Deputy Purchasing Agent, after verifying that the minimum qualifications have been met, may waive the standard evaluation process and allow project manager/department designee(s), in collaboration with the DPA, to review the proposal against the solicitation evaluation criteria to determine whether to proceed with negotiations and/or contract award.

- a) It is County policy that when practical and appropriate, private citizens with appropriate expertise who are free of any potential conflict of interest will be included on the proposal evaluation committee.
- b) The composition of the selection committee will be determined by the contracting department or by the County Procurement Officer or designee for those contracts issued by the County Procurement Office.
- c) All members of the evaluation committee must certify, under penalty of perjury, that they have no conflict of interest with the selection.
- d) During the evaluation process, evaluators shall not discuss any issues related to the evaluation or selection process with any respondents or their advocates, except in scheduled interviews as discussed below.
- e) A member that serves on the evaluation committee shall not be listed as a reference for the same RFP. If the evaluation committee member is listed as a reference, that member shall be excused from that particular RFP.

**§4.3-109      Presentations/Interviews**

- (1) Interviews must be conducted when the total contract value is anticipated to exceed \$1,000,000, unless otherwise justified and approved by the County Procurement Officer or designee in writing. The evaluation committee will conduct interviews with respondents who have submitted responsive proposals and have scored high enough on the written portion of the RFP.
- (2) When the total contract value is anticipated to not exceed \$1,000,000, the evaluation committee may elect to conduct interviews with respondents who have submitted responsive proposals and have scored high enough on the written portion of the RFP.
- (3) During all interviews conducted under sub-sections (1) and (2) above:
  - a) Respondents shall be given fair and equal treatment with respect to any opportunity for discussion and revision to proposals;
  - b) Discussions with respondents may be documented in writing, and that record will become part of the procurement file;
  - c) In conducting interviews there shall be no disclosure of any information derived from proposals submitted by competing respondents; and,  
  
All members of the evaluation committee must sit in on the interviews with all respondents.

**§4.3-110      Proposal Revisions**

- (1) Revisions may be requested after submissions and prior to award for the purpose of obtaining best and final offers. Late best and final offers will not be accepted.

**§4.3-111**      **Scope of Work Revisions**

- (1) If discussions reveal the need to change the original scope of work, either an addendum detailing the revised scope will be sent to all those submitting proposals, or, if appropriate, the County will issue a revised RFP and begin the solicitation process again. The County Procurement Officer or appropriate Deputy Purchasing Agent shall be the final authority as to which process will be used.

**§4.3-112**      **Evaluation Scores**

- (1) Evaluators shall initially score proposals individually. The initial score sheets containing the evaluators notes and comments shall remain in the possession of the individual evaluators, and at no time shall this information become part of the permanent procurement file or retained as County record.
- (2) Evaluators' individual scores will be discussed with the entire evaluation panel and combined and tallied. The preliminary scores will be tallied and included on the consolidated score sheets. An additional tallied calculation will be conducted with the highest and lowest panelist scores eliminated. The results of this calculation shall be included in the consolidated score sheet as the final score.
- (3) After scores have been tallied and discussed by the panel of evaluators and a recommended proposal(s) determined, a Memorandum of Recommendation that includes the ranking of all proposals based on the aggregate scores, will be signed by the evaluators and made part of the procurement file. The final scores will be recorded on a single consolidated score sheet.
- (4) The aggregate scores will be documented and be part of the procurement file. Furthermore, the finalized individual scoring sheet(s), with evaluators names redacted, will be provided to the Board of Supervisors as an attachment to the Agenda Staff Report (ASR).

**§4.3-113**      **Correction, Clarification, or Withdrawal of Proposals**

- (1) Prior to the time and date set for the receipt of proposals, any respondent may withdraw the proposal or correct any errors in their previously submitted proposal.
- (2) After the time and date set for the receipt of proposals, respondents may not make any changes to their submitted proposals.

**§4.3-114**      **Award**

- (1) Award of contract will be made to the responsible respondent who is ranked the highest. This will be determined by the evaluation committee using the evaluation criteria, which may include proposed cost.
  - a) Contract award, DPAs shall conduct due diligence and obtain any documentation necessary to do so.
  - b) References:
    - i. If a reference check is not part of the RFP evaluation criteria it must be conducted prior to contract award.



- ii. References will be obtained from outside the County of Orange whenever possible.
  - iii. References shall not be provided by the same department conducting the solicitation.
- (2) Should the County Procurement Officer or appropriate Deputy Purchasing Agent fail to concur with the recommendation submitted by the evaluation committee, the County Procurement Officer or appropriate Deputy Purchasing Agent will meet with the evaluation committee members to discuss the reasons for the disagreement.
  - a) No recommendation shall go forward to the Board of Supervisors from the County Procurement Officer or the Deputy Purchasing Agent, unless there is concurrence among the County Procurement Officer or Deputy Purchasing Agent, the using department, and the evaluation committee.

## SECTION 4.3.1

### RFP FOR REAL ESTATE INTEREST

#### §4.3.1-101 Policy

- (1) This Section 4.3.1 shall apply to Requests For Proposals (RFPs) for real estate interests short of fee simple interest (*i.e.*, lease, and licenses, etc.), where existing delegated authority is not applicable. See also, *e.g.* Government Code Section 25537 and Orange County Codified Ordinance Section 1-4-154.
- (2) It is the policy of the County of Orange to solicit competitive bids and proposals for surplus real estate interest short of a fee simple interest, including, but not limited to leases and licenses, except where existing delegated authority applies and dictates a different procedure, or as otherwise provided for herein or in applicable law. In addition, Section 25520, *et seq.*, of the Government Code expresses a legal preference for competitive proposals or bidding, except as otherwise provided for in the law.
- (3) The County and its Special Districts shall receive fair market value for any interest in real property unless there is a specific public purpose and a below market value is authorized by applicable law (see, *e.g.*, California Government Code Section 25365(a)).
- (4) When the CREO, in conjunction with a County department or Special District, identifies surplus County property that may be utilized by another party and is not currently needed for County, or other governmental uses, but is not appropriate for sale, an RFP process shall be used, except for instances where specific delegated authority applies, or applicable law otherwise dictates.

#### §4.3.1-102 Prior to RFP Process

- (1) Prior to engaging in an RFP process for the lease or license of County or Special District property, the CREO and CEO Real Estate shall first determine that the County Property at issue is not needed by a different County department or Special District for a public use. (Note: The disposition of real estate by sale and the Surplus Land Act are addressed in §1.6.1 of the CPM. Leases may require Surplus Land Act compliance. Please consult with County Counsel for assistance.)
- (2) The CREO and CEO Real Estate shall determine if the real property interest at issue is marketable or of such minor value that a direct transaction can be processed by law. California Government Code Section 25526.5 permits the sale of County land without competitive bidding if it is of limited utility or unmarketable (*i.e.*, if competitive proposals would be futile or would not produce any advantage to the County). See also, *Meakins v. Steveland, Inc.*, 68 Cal.App.3d 490, 498 (1977). However, the buyer still must pay fair market value. In the event that the real property interest is minor or unmarketable, the CREO and CEO Real Estate shall coordinate with County Counsel to ensure that the proper procedure is followed for a direct sale, including insuring that the proper findings are made by the Board of Supervisors.
- (3) The CREO and CEO Real Estate shall then comply with any and all legal requirements to ensure that the interest in real property proposed to be conveyed can be done so, including, but not limited to (as applicable), complying with:
  - a) The Surplus Land Act (see §1.6.1-107 of the CPM).

- b) The Park Abandonment Act (see §1.6.1-103 of the CPM ).
  - c) Orange County Codified Ordinances Section 1-4-153, *et seq.*, which allows the Board of Supervisors to grant a lease or license of real property when “bids posted in at least three (3) public places for not less than fifteen (15) days and published for not less than two (2) weeks in a newspaper of general circulation, if any such newspaper is published in the County, or reject all bids.”
  - d) Any other applicable noticing requirements pursuant to applicable procedure and law.
- (4) The CREO and CEO Real Estate shall determine the specific objective of the RFP for the County.

**§4.3.1-103     Process**

- (1) The RFP process to be followed for the leasing and licensing of real estate, shall be consistent with the process outlined in §4.3, above, except that the tasks to be conducted by the County Procurement Officer or the Deputy Purchasing Agent shall be performed by the CREO and CEO Real Estate, and except as further outlined below. Any issues addressed in 4.3, above, and not addressed or revised below shall remain as set forth in 4.3.
- (2) The real estate RFP shall state with specificity the County’s objectives in releasing the RFP (as determined by the CREO and CEO Real Estate in conjunction with the effected department and the applicable Supervisorial District), the use being sought for the property by the County, and if no specific use is being solicited, set forth any constrains on the property, if any, pursuant to zoning or County preference.
- (3) Real estate RFPs will be posted on the County Real Estate website, among other locations, such as the County’s online bidding system, as determined by the CREO and CEO Real Estate to be in the best interest of the County.
- (4) Once an RFP has been released, responses shall be required no sooner than 60 days from the release but may be extended in the reasonable discretion of the CREO and CEO Real Estate.
- (5) After release of the RFP and prior to receipt of proposals:
  - a) Any and all questions regarding the RFP shall be submitted in writing, and responses shall be provided to all potential respondents through an addendum to the RFP.
  - b) No discussion with County department staff involved with the RFP (*i.e.*, CEO Real Estate or any department managing or occupying the applicable property) shall take place while the RFP is posted, except through the project contact identified in the RFP. Any nonpermitted contact with County department staff could result in disqualification of the respondent.
  - c) CEO Real Estate may host a Pre-Proposal Conference if it is deemed useful for the RFP process in the reasonable discretion of the CREO.
- (6) At any time during the real estate RFP process, the CREO reserves the right to:
  - a) Amend the RFP and any proposed key dates, and/or
  - b) Solicit new proposals on the same project, or on a modified project, which may include portions of the original RFP, as the County may deem necessary.
- (7) After receipt of proposals the CREO reserves the right to:

- a) Request clarification of any information contained in a proposal;
  - b) Allow for the correction of errors and/or omissions;
  - c) Accept or reject any and all proposals or any part of any proposal, and to waive minor defects or technicalities in same;
  - d) Disregard all non-conforming, nonresponsive, or conditional proposals;
  - e) Reject any proposal that does not pass the minimum requirements outlined in the RFP;
  - f) Schedule interviews with any or all respondent;
  - g) Select the respondent that will best meet the needs of the County; and/or
  - h) Negotiate the Contract with a primary respondent or alternate respondent as determined through the RFP process.
- (8) Based on the complexity of the Real Estate Contract and transaction contemplated in the RFP, a good faith deposit may be required to be provided by the successful respondent prior to the start of negotiations in the reasonable discretion of the CREO and CEO Real Estate. The good faith deposit will be held by the County subject to the terms and conditions of a letter agreement between the successful respondent and the County, which will specify the terms and conditions upon which such deposit will be forfeited or refunded. In the event that a final Real Estate Contract is negotiated and entered into by the County and a respondent, any amounts remaining from the good faith deposit may be refunded or applied to any required payment under the contract as agreed to by the County and the successful respondent. In any of the following instances the County's staff, attorney, and consultant time and fees during negotiations and in addressing these unanticipated issues may be deducted from the good faith deposit if, during negotiations, successful respondent:
- a) Materially changes the terms of their financial offer;
  - b) Changes the proposed development plan (if any) or schedule; or
  - c) Fails to respond to the County's requests for additional information or clarifications in a timely manner; fails to provide proof of financing, insurance, or bonding; or previously failed to disclose substantive background information (e.g., major civil litigation in regard to prior projects, bankruptcies, criminal convictions, or any other matter that would reflect poorly on the County).

**§4.3.1-104     Protest Process**

- (1) In the event any party believes that the County's solicitation is unfairly restrictive or ambiguous or contains conflicting provisions or the party believes that any resulting Real Estate Contract would be commercially impractical to perform, the party must file a written protest with the CEO Real Estate project contact.
- (2) Protest Procedure: All protests shall be typed under the protestor's letterhead and submitted in accordance with the provisions stated in the RFP. All protests shall include at a minimum the following information:
  - a) The name, address and telephone number of the protestor;
  - b) Signature of the protestor or the protestor's representative;

- c) Solicitation or contract number;
  - d) Detailed statement of the legal and/or factual grounds for the protest; and
  - e) Form of relief requested.
- (3) Protest of RFP Specifications: All protests related to the RFP specifications must be submitted to the CEO Real Estate project contact no later than thirty (30) business days prior to the proposal due date. Protests received after the thirty (30) business day deadline will not be considered by the County.
- a) In the event the protest of the RFP specifications is denied, and the protester wishes to continue in this solicitation process, they must still submit a proposal prior to the close of solicitation in accordance with proposal submittal procedures provided in this RFP.
- (4) Protest of Award of the Real Estate Contract: In protests related to the award of a Real Estate Contract, the protest must be submitted no later than five (5) business days after the Notice of Intent to Award is provided by the CEO Real Estate project contact. Protests relating to a contract award, which are received after the five (5) business day deadline will not be considered by the County.
- a) Protest Process.
    - i. In the event of a timely protest, the County will not proceed with the solicitation or award of the contract until the CREO renders a decision regarding the protest.
    - ii. Upon receipt of a timely protest, the CEO Real Estate project contact will within ten (10) business days of the receipt of the protest, issue a decision in writing which shall state the reasons for the actions taken.
    - iii. The County may, after providing written justification, make the determination that an immediate award of the contract is necessary to protect the substantial interests of the County. The award of a contract shall in no way compromise the protester's right to the protest procedures outlined herein.
    - iv. If the protester disagrees with the decision of the CREO, the protestor may submit a written notice to the Office of the County Procurement Officer requesting an appeal to the Procurement Appeals Board, in accordance with the process stated below.
  - b) Appeal Process.
    - i. If the protester wishes to appeal the decision of the CREO, the protester must submit, within three (3) business days from receipt of the CREO's decision, a written appeal to the Office of the County Procurement Officer pursuant to §1.3-107.
    - ii. Within fifteen (15) business days, the County Procurement Officer will review all materials in connection with the grievance, assess the merits of the protest and provide a written determination that shall contain his or her decision on whether the protest shall be forwarded to the Procurement Appeals Board.
    - iii. The decision of the County Procurement Officer on whether to allow the appeal to go forward will be final and there shall be no right to any administrative appeals of this decision.

**§4.3.1-105      Evaluation Committee**

- (1) The evaluation committee for real estate RFPs under this section shall be comprised of no less than five (5) members who have no conflict or apparent conflict of interest with the selection process or any potential respondents. In addition to the requirements set out in §4.3-108, above, members of evaluation committees shall be selected based on their qualifications and expertise related to the subject matter, and should generally be experienced in real estate, construction (if applicable), finance, development or another area relevant to the RFP as reasonably determined by the CREO and CEO Real Estate.
- (2) The evaluation committee will conduct evaluations of the proposals. The committee will consider the information supplied or not supplied by respondents. If it finds a failure or deficiency in the proposals or any information provided in connection thereto, the evaluation committee may reject said proposal or information or reflect the failure or deficiency in the evaluation.
- (3) CEO Real Estate may request clarifications, or otherwise verify the contents of the proposal, including information about the respondent, development team members (if any), consultants, and sub-consultants. If CEO Real Estate considers clarification or interpretation of the RFP is necessary, a written addendum shall be issued. Any addenda issued will become part of the RFP. Each respondent must follow the directions in the addenda. CEO Real Estate reserves the right to seek publicly available information about the respondents and their development teams, if any.
- (4) Proposals will be evaluated on the basis of the responsiveness of the requirements in this RFP. Proposals will be evaluated on the basis of the following criteria (all or some of the following may be included by CEO Real Estate depending on the subject of the RFP):
  - a) Demonstrated understanding of RFP objectives;
  - b) Quality of the proposed plan, if any;
  - c) Feasibility of proposed plan, if any;
  - d) Composition of the proposed team, if any;
  - e) Relevant experience of team, if any;
  - f) Project schedule and phasing
  - g) Quality of the respondents proposed financing capability and structure;
  - h) Financial offer;
  - i) Proposed option and/or ground lease amendments and exceptions;
  - j) Public benefit (if required);
  - k) Completeness of submittal; and
  - l) Interview, as needed
  - m) Other criteria as needed

**§4.3.1-106      Presentation/Interviews**

- (1) When a real estate RFP is issued, CEO Real Estate will conduct interviews with respondents , as needed. Respondents shall be ready to attend the interview within ten (10) business days of notification. CEO Real Estate may also send written questions and ask for written responses within five (5) business days. The interviews will be evaluated based on the following criteria (all or some of the following may be included by CEO Real Estate depending on the subject of the RFP):
  - a) Presentation / communication skills;
  - b) Project lead / key team members;
  - c) Respondent’s response to questions; and
  - d) Overall understanding of the project and articulation of project vision.
  - e) Other criteria as needed
- (2) Proposals will be scored based on established criteria, which have been weighted and will be assigned points that measure the responsiveness to each identified criterion.

**§4.3.1-107      Evaluation Scores**

- (1) In addition to the scoring process set out in Section 4.3-112, above, evaluators shall score proposals individually, and scoring will be divided into evaluation of the written proposal and the interview. The initial score sheets containing the evaluators’ notes and comments shall remain in the possession of the individual evaluators, and at no time shall this information become part of the permanent procurement file or retained as a County record. Evaluators’ individual scores will be discussed with the entire evaluation panel and combined and tallied after the interviews (if conducted). The total number of points earned for the written proposals and interviews will be combined for each respondent. The preliminary scores will be tallied and included on the consolidated score sheets. An additional tallied calculation will be conducted with the highest and lowest panelist scores eliminated. The results of this calculation shall be included in the consolidated score sheet as the final score.

**§4.3.1-108      Award**

- (1) In addition to the procedure outlined in Section 4.3-114, above, after the RFP evaluation process has produced a ranked slate of respondents, a primary respondent and alternate (if the RFP results in multiple respondents) shall be identified and, in the reasonable discretion of the CREO may be presented to the Board of Supervisors, either in open or closed session, to select the respondent to negotiate the applicable Real Estate Contract for Board approval. The CREO shall also be given authority to negotiate with the alternate respondent if negotiations with the primary respondent do not result in a final contract between the parties.
- (2) After negotiations have been completed with the selected respondent, the Board of Supervisors at a public meeting shall approve the final Real Estate Contract(s).
- (4) In no event shall the County be bound by, or liable for, any obligation with respect to a proposed project by a potential respondent until such time (if at all) a Real Estate Contract between the

County and the respondent, in form and substance acceptable and satisfactory to the sole discretion of County, has been approved by the Board of Supervisors.



**SECTION 4.4**  
**TWO-STEP PROCESS**

**§4.4-101**      **Definition**

- (1) The two-step solicitation process is a method of soliciting services and commodities, except as otherwise applied to contracts procured pursuant to Section 3.4 and 3.5, where a preliminary evaluation of the respondent's qualifications is conducted, and a final evaluation for recommendation of award is made based on the RFP process.
- (2) Two-step sealed bidding may be used when it is determined that:
  - a) Available specifications or purchase descriptions are not sufficiently complete to permit full competition without technical evaluations and discussions to ensure mutual understanding between each bidder and the County of Orange;
  - b) Definite criteria exist for evaluation of technical offers;
  - c) More than one technically qualified source is expected to be available; and
  - d) A fixed price contract will be used.

**§4.4-102**      **Process**

A prequalification process may be conducted prior to the issuance of the RFP, as the first step in a two-step solicitation process, to establish a list of qualified respondents.

- (1) **Step One – Request for Qualifications (RFQ)**
  - a) Step One shall be initiated by an RFQ for respondents to submit a Statement of Qualifications (SOQ). Qualification criteria may include, but is not limited to: financial capacity/stability, company history, capacity to perform, relevant experience, professional licenses/certifications, and any other criteria relevant to services or items being sought. Prequalification requirements will constitute the minimum requirements necessary to fulfill the contract. The RFQ shall be issued in a manner which provides adequate public notice allowing potential respondents sufficient time to prepare and submit responses. The RFQ may contain, but is not limited to, the following information:
    - i. Notice that the procurement process shall be conducted in two steps;
    - ii. A description of the material or service desired using the best information available to the County;
    - iii. A statement that cost will not be included in Step One;
    - iv. The qualification requirements, such as drawings, descriptive literature, proof of licenses/certification, etc.;
    - v. The criteria for evaluating the SOQs;
    - vi. A statement that only SOQs from respondents who are prequalified during step one shall be considered for step two.

(2) Step Two

- a) Except as otherwise required for procurements conducted pursuant to Sections 3.4 and 3.5 herein, upon completion of Step One, the County Procurement Officer or Deputy Purchasing Agent shall conduct a Request for Proposal (RFP) in accordance with Section 4.3. Only those determined to be most qualified in Step One will be invited to participate in Step Two.
- b) References:
  - i. References will be obtained from outside the County of Orange whenever possible.
  - ii. If a reference check is not part of the RFP evaluation criteria it must be conducted prior to contract award.
  - iii. References shall not be provided or accepted by the same department conducting the solicitation.

**§4.4-103      Lobbying**

- (1) All solicitations will include as part of their language the following vendor advisory: “The County of Orange does not require and neither encourages nor discourages the use of lobbyists or other consultants for the purpose of securing business.”

**§4.4-104      Protest Process**

- (1) Protests will only be accepted in Step Two and in accordance with Section 1.3 of this manual, except as otherwise provided in Sections 3.4, 3.5 and 3.6 herein. All protests related to bid or proposal specifications must be submitted to the Deputy Purchasing Agent no later than five (5) business days prior to the close of the solicitation. Protests received after the five (5) business day deadline will not be considered by the County.
  - a) In the event the protest of specifications is denied and the protestor wishes to continue in the solicitation process, they must submit a bid/proposal prior to the close of the solicitation in accordance with the solicitation instructions.
- (2) Protest of Award of Contract: Except as otherwise required in Sections 3.4, 3.5, and 3.6, herein, in accordance with Section 1.3 of this manual, protests related to the award of a contract must be submitted no later than five (5) business days after the notice of intent to award is provided by the Deputy Purchasing Agent.
- (3) Protests received after the five (5) business day deadline will not be considered by the County.

## SECTION 4.5

### SOLE SOURCE REQUESTS

#### **§4.5-101      Policy**

- (1) It is the policy of the County of Orange to solicit competitive bids and proposals for its procurement requirements. A Sole Source procurement may only be used when there is clear and convincing evidence that only one source exists to fulfill the County's requirements, subject to further limitations for procurements pursuant to Sections 3.4, 3.5 and 3.7 that conflict with this section.

#### **§4.5-102      Justification**

- (1) Formal justification for Sole Source procurements is required when competitive solicitation is required. A Sole Source justification will be prepared and signed by the requesting department, the department head or designee, and the Deputy Purchasing Agent. The County Procurement Officer or Deputy Purchasing Agent shall retain a copy of this justification as part of the procurement file. As part of the Sole Source justification, the requestor shall clearly explain:
  - a) A detailed description of the type of contract to be established;
  - b) A detailed description of services/commodities to be provided by the vendor;
  - c) Why the recommended vendor is the only one capable of providing the required services/commodities and includes back-up information to support the justification;
  - d) Identify other sources that have been contacted and explain in detail why they cannot fulfill the County's requirements;
  - e) How the recommended vendor's prices or fees compare to the general market and attach quotes for comparable services and supplies, if available; and,
  - f) How the County would achieve the desired request if the recommended vendor could not provide the product or service.
- (2) Valid Sole Source justifications require strong technological or strong programmatic justifications.
- (3) If a contractor develops a particular expertise through demonstrated past performance which has been investigated and determined to be satisfactory in this area of expertise, then such contractor may be issued a contract for related work, provided that the Sole Source justification requirements outlined in this Section are satisfied. Such contractor may be designated as an exclusive contractor if the County would be adversely affected by bringing in another vendor who would be required to meet the expert contractor's level of expertise and existing knowledge and involvement in a specific project.

#### **§4.5-103      Proprietary Source Requests**

- (1) Proprietary means confidentially owned and controlled. The term may be used to refer to such items as property, computer software, or intellectual property. The vendor owning items that are

proprietary is known as a sole proprietor and there is no other source available from which to purchase the commodities or services.

- (2) Determining if an item is proprietary rests with the Deputy Purchasing Agent and shall be justified in accordance with the policies and procedures outlined in this Section. In the event an item is justified as proprietary, the Deputy Purchasing Agent shall endeavor to negotiate a price that is most advantageous to the County.
- (3) Proprietary Specifications: A proprietary item or service is one that must meet particular restrictive specifications but may be available from a number of sources, e.g., “Brand ‘X’ computers - no substitutions”. A detailed description of the proprietary specification shall be attached to the requisition for approval. The requisition should contain a brief justification for requesting the proprietary specification.
- (4) A detailed description of the proprietary specification shall be attached to the requisition for approval. The requisition should contain a brief justification for requesting the proprietary specification.
- (5) Board Approval: Board approval is required for proprietary commodities and services in accordance with applicable policy as provided in this Section, as well as those that may apply in Sections 3.1, 3.2, and 3.3 of this manual.

#### **§4.5-104      Renewals and Amendments**

- (1) The initial Sole Source Request Form is required for each contract renewal period. A new Sole Source Request Form is required for any contract amendments that change the scope of work or increase the contract value above the established Board thresholds for the appropriate contract types as set forth in Sections 3.1, 3.2, and 3.3.

#### **§4.5-105      Agenda Staff Report**

- (1) Prior to the submittal of an Agenda Staff Report, all Sole Source Justifications requiring approval by the Board of Supervisors shall first be reviewed and approved by the Office of the County Procurement Officer.
- (2) Agenda Staff Reports shall clearly state that the procurement is a Sole Source procurement and also include the Sole Source Justification text in the “Background Section” of the Agenda Staff Report.

#### **§4.5-106      Solicitation Exemption**

- (1) The County Procurement Officer or designee may consider a departmental request to use a Sole Source contract and waive the solicitation requirements for purchases with special circumstances and/or when it is determined to be in the best interest of the County.
- (2) The Board of Supervisors will be notified prior to County Procurement Officer or designee & Chief Financial Officer approvals. The approved exemption on the form(s) provided by the County Procurement Office shall be made part of the procurement file.

**§4.5-107      County of Orange Procurement Preference Policy Exemption**

- (1) County of Orange Procurement Preference Policy requirement is not applicable to Sole Source procurements.

## SECTION 4.6

### PETTY CASH

#### §4.6-101 Definition

- (1) Petty Cash: Funds set aside as a cash reserve in a revolving fund for single expenditures under \$1,000 each made within established policies and controls.

#### §4.6-102 Types of Small Dollar Purchases:

- (1) Petty cash purchases are made directly by County departments using cash established within their revolving petty cash funds. Petty cash funds are to be used in the following manner and in accordance with Auditor-Controller's Accounting Manual:
  - a) The limit on any individual petty cash transaction is \$1,000, including tax, handling charges, etc. Splitting to avoid the \$1,000 limit is a violation of Board policy;
  - b) Petty cash transactions are limited to one per day, per vendor;
  - c) Purchases are to be paid for when received. Purchases where the invoice follows the commodities should be handled by contract; and,
  - d) Petty Cash shall not be used to procure services or commodities that are available on a County contract.

## SECTION 4.7

### COOPERATIVE PROCUREMENT

#### §4.7-101 Definition

- (1) Cooperative Procurement is a strategy used by governmental entities to procure services and commodities from contracts awarded by other governmental entities or cooperative programs to take advantage of volume purchasing discounts and to reduce administrative expenses.

#### §4.7-102 Policy

- (1) Services, commodities and capital assets may be acquired through cooperative contracts that can involve one or more public entities, subject to any limitations for procurements pursuant to Sections 3.4 and 3.5 that are inconsistent with the cooperative purchasing requirements in this Section. Such cooperative procurements may include public procurement contracts, which are made available to or from other public entities or cooperative programs.

#### §4.7-103 Collaborative Procurement

- (1) In accordance with Section 1.1 of this manual, the County Procurement Officer or designee has the authority to identify and use cooperative contracts that would be beneficial for County use.
  - a) The County Procurement Office may pursue competitive cooperative contracts executed by the federal and/or state governments;
  - b) May pursue contracts with other governmental entities in order to obtain cost savings for the County; and,
  - c) Shall make available County cooperative contracts to other government entities and pursue opportunities for collaboration in procurement.
- (2) In the event a cooperative contract identified for use by the County Procurement Office was awarded by a method other than a competitive bid, the County Procurement Office is required to seek review from the Office of County Counsel and County Risk Manager where appropriate, prior to authorizing the use of the contract.

#### §4.7-104 Responsibility

- (1) The County Procurement Office is responsible for identifying and approving cooperative programs. The County Procurement Office may authorize and make use of cooperative contracts and programs including the pricing, terms and conditions of the contract of another public entity provided that:
  - a) Except as permitted pursuant to Section 4.7-104 (3), the initial procurement the County is relying upon shall be consistent with County procurement rules and requirements, which shall include specific descriptions of the commodities, capital assets and/or services available under the cooperative contract; and,
  - b) The vendor holding the contract extends the same pricing, terms and conditions to the County.

- (2) Before deciding whether or not to use the contract of another public entity or program, Deputy Purchasing Agents will review the contract to determine that the use of the contract serves the best interest of the County of Orange and that minimum County procurement requirements have been followed with respects to competitive bidding. Deputy Purchasing Agents shall ensure that all terms and conditions associated with the cooperative agreement to which the subordinate contract will be subject, are reviewed and incorporated as appropriate as part of this review and approval process. Should multiple vendors possess a cooperative contract for the same services/products, a pricing analysis will be conducted to ensure the most advantageous contract is utilized.
- (3) For commodity and capital asset purchases, as defined in Sections 3.1-101 and 3.2-101 respectively, subordinate to cooperative contracts with a contract value of \$250,000 annually or less, the requirement for a “specific description” as stated in Section 4.7-104 (1) a) shall not apply as long as the item and name of the commodity and/or capital asset is listed within the cooperative contract. Such contracts shall be considered to have satisfied the written solicitation requirement in this manual.

**§4.7-105      Board Approval**

- (1) Individual departments utilizing cooperative contracts to purchase services and commodities are required to receive Board approval on individual purchases that exceed the established dollar thresholds for the appropriate contract types as set forth in Section 3 of this manual.

**§4.7-106      Term**

- (1) The duration of a contract executed as a subordinate to a cooperative contract will depend upon the County’s need, prevailing market conditions, contract start-up costs, and the County’s best economic interest.
- (2) With respect to non-Board of Supervisors awarded contracts, in no case will a contract executed as a subordinate to a cooperative contract exceed five (5) years in duration, unless specifically approved by the Board of Supervisors.
- (3) In consultation with County Counsel, Board and Non-Board subordinate contract extensions may be issued by the Deputy Purchasing Agent for up to one (1) year, beyond the fifth year, with County Procurement Officer or designee approval, provided there are no monetary increases (i.e., within the contract’s existing contract amount) or other material changes to the contract.



## SECTION 4.8

### REGIONAL COOPERATIVE AGREEMENTS (RCAs)

**§4.8-101      Definition**

- (1) A Regional Cooperative Agreement (RCA) is a cooperative contract for commonly used services and commodities executed by the Office of the County Procurement Officer to take advantage of the County's economies of scale and reduce the duplication of efforts across the County.

**§4.8-102      Policy**

- (1) At the County Procurement Officer's discretion, the County Procurement Officer may delegate responsibility to other County departments to establish RCAs pursuant to requirements set forth by County Procurement Office.

**§4.8-103      Responsibility**

- (1) County departments are required to use RCAs as stated in Section 1.1.1-102 (2) of this manual.
- (2) The County may allow other public entities to take advantage of RCAs which the County has competitively bid, although the County shall not be a signer on these contracts and shall have no legal liability to either the contracting entities or to third parties as a result of the contracts, including, but not limited to:
- a) Issuing their own contract documents;
  - b) Providing for their own acceptance of the pricing, terms & conditions of the contract;
  - c) Obtaining required certificates of insurance, endorsements and bonds; and,
  - d) Making any payments due to the vendor.
  - e) Limitation of Liability – Orange County: The contracting entities shall hold harmless the County of Orange from all claims, demand actions, or causes of actions of every kind resulting directly or indirectly, arising out of, or in any way connected with the use of County issued cooperative contracts.
  - f) The Deputy Purchasing Agent shall ensure the Contractor maintains a list of the County departments and public entities that have used the County's cooperative RCAs. This list shall report dollar volumes and shall be provided to the Deputy Purchasing Agent upon request.

**§4.8-105      No Usage Guarantee**

- (1) The terms of the RCA shall include a provision indicating that the County of Orange makes no guarantee of usage.

**§4.8-106      Board Approval**

- (1) Individual departments utilizing RCAs to procure services are required to receive Board approval on individual contracts that exceed the established dollar thresholds for the appropriate contract types as set forth in Section 3 of this manual; the County Procurement Officer or designee, at their discretion, may obtain Board approval on behalf of County departments.

**§4.8-107      Term**

- (1) The duration of a RCAs will depend upon the County's need, prevailing market conditions, contract start-up costs, and the County's best economic interest.
- (2) RCAs issued by the Office of the County Procurement Officer may extend beyond five (5) years in duration, without approval by the Board of Supervisors.
  - a) Any department subordinate contracts may be extended to the same duration as the RCAs that are issued by the Office of the County Procurement Officer.

## SECTION 4.9

### REQUEST FOR APPLICATION (RFA)

#### §4.9-101 Definition

- (1) When it is not in the County's best interest to acquire services and commodities through one or more of the other solicitation processes specified in Section 4 of this manual, services and commodities may be solicited using the Request For Applications (RFA) process. Such a situation may arise for any number of reasons including, but not limited to:
  - a) The County's need for services may exceed the available supply of applicants;
  - b) The County's need is to secure as many prospective qualified applicants as possible;
  - c) The County's need is for specialized service by licensed or certified applicants; and/or
  - d) The solicitation may remain open for longer periods of time, or indefinitely to allow qualified applicants to obtain required certifications or meet the minimum requirements set forth in the solicitation.

#### §4.9-102 Requirements

- (1) The RFA shall consist of the following:
  - a) Adequate Public Notice: Adequate public notice shall be given to provide potential applicants sufficient time to prepare and submit applications by the due date specified in the RFA.
  - b) Requirements Statement: This will be a statement of the County's objectives in issuing the solicitation. It shall explain the County's need(s) as clearly as possible. It may include any special requirements which the County may have in regard to its overall objectives, such as requests for special reports, critical timelines, unique services to be provided, cost or pricing data required, duration of service, etc.
  - c) Qualification/Certification Statement: The County will include minimum qualification criteria in the RFA. The criteria will be utilized to ensure a certain level of expertise and/or certification.
  - d) Terms and Conditions: The terms and conditions which are intended to become part of the final contract shall be included in the RFA. Included in the terms and conditions are such items as indemnification, contract termination, payment terms, applicable laws, etc.
  - e) Instructions: These are items which relate directly to the procedures on how the application must be submitted. Included in the instructions are items related to number of submittals required, format, procedure for information clarification, etc.
  - f) Indemnification: Where the County may have exposure to an appreciable risk of financial or property loss as the result of the performance by vendor, the RFA must

specify that the terms and conditions which are intended to become part of the final contract include a requirement that vendor indemnify, defend and hold harmless the County against and from such risk.

- g) Insurance: The RFA must specify that the County may require that prior to the award of a final contract, the selected applicant submit an insurance certificate that will be in an amount adequate to protect the County and will name the County as an additional insured. The RFA must clearly specify the County's insurance requirements as recommended by CEO/Risk Management.
- h) Application Review and Award Criteria: An administrative review of the applications submitted by interested vendors must be performed to ensure they meet the instructions and minimum requirements specified in the RFA. Those applications that meet the instructions and minimum requirements will be considered for contract award. The County department and/or agency issuing the RFA may make contract awards on a continuous basis and up until it has been determined that the needs of the department or agency have been met.

#### **§4.9-103 Lobbying**

- (1) All RFAs will include as part of their language the following vendor advisory: "The County of Orange does not require and neither encourages nor discourages the use of lobbyists or other consultants for the purpose of securing business."

#### **§4.9-104 Pre-Application Conference**

- (1) When it is in the County's best interest, a pre-application conference may be held. The purpose of the conference will be to further define or illustrate the County's needs and/or to answer any questions which may exist on the part of prospective applicants. Any changes, deletions, additions, or clarification to the RFA that may result from the pre-application conference shall be issued as an addendum and sent to all prospective applicants. Pre-application conferences shall not be mandatory for prospective applicants unless it is clearly in the County's best interest and specifically stated in the RFA.

#### **§4.9-105 Receipt and Acceptance of Applications**

- (1) Applications are to be received by the date and time specified in the RFA. Applications shall be unconditionally accepted without alteration or correction. All applications must be received by someone other than the person who conducted the solicitation and must be time and date stamped immediately upon receipt. All applications must be kept in a secure locked location for access by only authorized personnel.
- (2) Late applications may be accepted depending on the best interest of the County. No application will be accepted which is received by the County Procurement Officer or Deputy Purchasing Agent later than 24 hours from the due date and time specified in the RFA. The designated Deputy Purchasing Agent in the RFA, for purposes of administering the RFA, will have sole discretion in deciding to accept late applications. In the event the designated Deputy Purchasing Agency accepts a late application, he or she must also accept all applications that are received within 24 hours of the specified date and time.

#### **§4.9-106 Waivable Informalities**

- (1) When considered in the best interest of the County, certain requirements specified in the RFA may be waived by the County Procurement Officer or the designated Deputy Purchasing Agent in the RFA. Examples of waivable informalities include such items as:
  - a) Failure by an applicant to submit information as a result of clerical error;
  - b) Failure by an applicant to sign or date the application; and/or,
  - c) Failure by an applicant to submit the requested number of application copies.
- (2) Waivable informalities will be considered on a case-by-case basis, and a waiver will be granted only when in the County's best interest.

#### **§4.9-107 Confidentiality**

- (1) The RFA must advise that prospective applicants are not to mark their applications as confidential or proprietary, and that applications submitted in response to a RFA may be subject to public disclosure in accordance with the California Public Records Act. The RFA must also advise that all applications and attached documents shall become the property of the County, and that the County reserves the right to make use of any information or ideas in the applications submitted unless such use is prohibited by law.
- (2) The RFA must advise that regardless of any identification otherwise, including marking some or all pages as "confidential" or "proprietary", information in applications shall become a part of County's record and subject to possible public disclosure without further notice to the applicant.
- (3) The RFA must advise that the County shall not in any way be liable or responsible for the disclosure of any such records.

#### **§4.9-108 Protest Process**

- (1) In accordance with Section 1.3 of this manual, any actual or prospective applicant or contractor who alleges a grievance by an error or impropriety in the solicitation or award of a contract may submit a grievance or protest to the appropriate department Deputy Purchasing Agent administering the RFA.

#### **§4.9-109 Presentations/Interview**

- (1) Interviews may be conducted when deemed necessary to verify an applicant's qualifications/certifications and to verify requirements, as set forth in the RFA, have been met. Such interviews will be conducted by the appropriate County department staff for applicant(s) who have submitted a responsive application.
  - a) Applicants shall be given fair and equal treatment with respect to any opportunity for discussion and revision to their applications;
  - b) Discussions with applicants will be recorded either in writing or digital media, and that record will become part of the procurement file; and
  - c) In conducting interviews, there shall be no disclosure of any information derived from applications submitted by other applicants.

**§4.9-110 Scope of Work Revisions**

- (1) If discussions reveal the need to change the RFA's original scope of work, either an addendum detailing the revised scope will be sent to all those submitting applications, or, if appropriate, the County will issue a revised RFA and begin the solicitation process again. The County Procurement Officer or appropriate Deputy Purchasing Agent shall be the final authority as to which process will be used.

**§4.9-111 Award**

- (1) Prior to Contract award, DPAs shall conduct due diligence and obtain any documentation necessary to do so.
- (2) Award of contract(s) will be made by the Board of Supervisors to applicants whose applications meet the County's requirements. Awards may be made on a continuous basis until the needs of the County have been met. Contract awards shall be submitted for Board of Supervisors (Board) approval in accordance with Section 3.3-102 of this manual.
- (3) All Master Agreements will be submitted to the Board in accordance with Section 3.3-102 of this manual. When requesting Board of Supervisors' approval of a Master Agreement, the initial applicant(s) will also be brought to the Board for approval. The County department or agency may request, in the Agenda Staff Report (ASR), the delegated authority to add future applicant(s) to the Master Agreement without further Board approval, provided the original, Board approved, dollar amount on the Master Agreement is not exceeded.

**SECTION 5 – GLOSSARY**

## SECTION 5

### GLOSSARY

1. Addendum: A written change, addition, alteration, correction or revision to a bid, proposal or contract document.
2. Agenda Staff Report (ASR): A document by which matters are submitted to the Board of Supervisors for consideration during its regular meetings.
3. Amendment: An agreed addition to, deletion from, correction or modification of a document or contract.
4. Appeal: A written notice of disagreement, signed by a person of authority, from a protestor to the County Procurement Officer in appealing a decision of department Deputy Purchasing Agent.
5. Arbitration: A process by which a dispute between two contending parties is presented to one or more disinterested parties for a decision; a process whereby a disagreement is resolved.
6. Architect-Engineer: Services include but are not limited to: architectural, landscape architectural, engineering, environmental, land surveying services, and construction project management as well as incidental services that members of these professions may logically or justifiably perform.
7. Award: The execution of a contract to a vendor.
8. Best Interest: The discretionary rationale used by a procurement official in taking action most advantageous to the jurisdiction when it is impossible to adequately delineate a specific response by law or regulation.
9. Best Practice: A business process, activity or operation that is authorized by the County Procurement Officer.
10. Bid: The offer submitted by a bidder in response to an Invitation for Bid (IFB), a request for quotation, or a two-step solicitation process procedure. A bid includes a cost for commodities or services to be provided per the specifications included in the bid solicitation issued by the County.
11. Bid Bond: An insurance instrument in which a third party agrees to be liable to pay a certain amount of money in the event that a specific bidder, if its bid is accepted, fails to accept the contract as bid.
12. Bid Opening: The formal process through which bids are opened and the contents revealed for the first time to the jurisdiction, other bidders, and, usually, to the public.
13. Bid Surety: A guarantee, in the form of a bond or deposit, that the bidder, if awarded a contract will accept the contract as bid, otherwise the bidder (in the case of a deposit) or the guarantor (in the case of a bond) will be liable for the amount of the deposit or bond, respectively.



14. **Bidders List:** A list maintained by the county's bidding system setting out the names and addresses of vendors of various services and commodities from whom bids, proposals, and quotations can be solicited.
15. **Brand Name:** A name which serves to identify a product of a particular manufacturer; a trade name.
16. **Business Day:** Any day during which normal business operations are conducted.
17. **Calendar Day:** Every day shown on the calendar, including Saturdays, Sundays and holidays.
18. **California Environmental Quality Act (CEQA):** A 1970 California state law which requires state and local government agencies to inform decision makers and the public about the potential environmental impacts of proposed projects or actions that are subject to a discretionary approval before they are approved, and to reduce the environmental impacts of proposed projects or actions to the extent feasible.
19. **Capital Asset:** A tangible property costing \$5,000 or more per unit, including tax, delivery and installation, with a useful life expectancy exceeding one (1) year.
20. **Cash Alternatives:** Gift cards, gift certificates, gift vouchers, etc. to purchase travel and food for non-employee County department clients. receiving services from the County.
21. **Change Order:** See Modification.
22. **Closing Date/Time:** Refers to the date and time for a bid or proposal closing.
23. **Cloud Computing:** The delivery of software/applications/infrastructure and other resources providing remote or on-demand network access to remote servers, or applications hosted on the Internet to conduct business operations. This may include the storage, management, and processing of data (e.g., Platform as a Service (PaaS), allows for the development, management, and delivery of applications without infrastructure, Infrastructure as a Service (IaaS) provides virtualized computing resources over the Internet or Software as a Service (SaaS) functionally delivers software applications over the Internet).
24. **Collusion:** A secret contract or cooperation between two or more persons to accomplish a fraudulent, deceitful or unlawful act.
25. **Commodities:** All supplies and all equipment costing less than \$5,000 per item, including tax and freight, etc., or more than \$5,000 but with a useful life of less than one (1) year.
26. **Competitive Process:** The process by which two or more vendors vie to secure the business of a purchaser by offering the most favorable terms as to price, quality, delivery, and/or service.
27. **Compliance Monitoring:** A process whereby the County Procurement Officer, or designee, selects and audits procurement transactions conducted by departments for the purpose of ensuring that the County procurement process is fair, efficient, and compliant with legal requirements and County policies and procedures.

28. Conflict of Interest: A situation where the personal interests of a contractor, public official and/or designated employee are/is, or appear to be, at odds with the interests of the jurisdiction.
29. Consent Agenda Items: Those agenda items, as identified by the CEO and the Board of Supervisors, which are placed in the section of the Board of Supervisors agenda for approval as a group of items. Items on the Consent Calendar may be pulled by the Board, County staff, or a member of the public for discussion and individual Board action.
30. Construction: Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility paid for using public funds; Painting or repainting of any publicly owned, leased, or operated facility.
31. Construction Manager at Risk (CMAR): an alternate project delivery method which entails a commitment by the Construction Manager (CM) to deliver the project within a Guaranteed Maximum Price (GMP).
32. Consultant: A person or firm who provides professional or expert advice and/or recommendations.
33. Consumer Price Index (CPI): The Consumer Price Index measures the overall change in consumer prices based on a representative basket of goods and services over time.
34. Contingency: A Board of Supervisors authorized percentage or specific amount of money which can be added to the base contract amount to provide for small changes to the contract without returning to the Board for approval. The percentage granted will not be based on the total amount of the contract, as it may accumulate in the second and third years, etc., of the contract, but will be based on the initial contract amount.
35. Contract: A legally enforceable agreement between two or more parties to do or not do a certain thing, which meets the requisite statutory elements of: (a) Parties capable of contracting, (b) Consent, (c) A lawful object and (d) A sufficient cause or consideration. Cal. Civ. Code §§ 1549-1550.
36. Contract Administration: The management of various aspects of contracts to assure that the contractor's total performance is in accordance with the contractual commitments and that the contractor's obligations are fulfilled.
37. Contract Award: The act of executing a final signed contract between the County and a vendor.
38. Contract Extension: An action to extend a contract term upon written mutual agreement by both parties.
39. Contract Renewal: A renewal clause allows a contract to continue for a defined term.
40. Contract Task Order: A contract for A-E services that includes, price, and scope for the performance of tasks during the period of the A-E On-Call contract.
41. Contractor: A vendor having a contract with a governmental body.

42. Cooperative Procurement: A strategy used by governmental entities to procure services and commodities from contracts awarded by other governmental entities or programs to take advantage of volume purchasing discounts and reduce administrative expenses.
43. County of Orange Procurement Preference Policy: An initiative approved by the Orange County Board of Supervisors to encourage local small businesses and disabled veteran businesses to compete in new solicitations released by the County of Orange.
44. Debarment: A shutting out or exclusion, through due process, for cause, e.g., a bidder from a list of qualified prospective bidders.
45. Department of Industrial Relations (DIR): A California state agency that monitors state labor laws.
46. Deputy Purchasing Agent: An employee of the County of Orange appointed by a department head who is trained and certified/deputized under the direction of the County Procurement Officer to act in the capacity of the County Procurement Officer to procure commodities and/or services for the department.
47. Design-Bid-Build: A procurement method for construction projects resulting in a Fixed-Price Contract, a Fixed-Price Indefinite Quantity Contract, or a Cost Plus Fixed Fee Contract, and is required to utilize the prequalification process
48. Design Build: A qualification-based selection (QBS), in which both the design and construction services for a project are procured at the same time following the QBS.
49. Designated Employees: Those employees of the County of Orange who are required to file conflict of interest statements because those employees, in the course of their employment make or participate in the making of decisions which may potentially have a material effect on the financial interest of the employees.
50. Director: Shall mean all such designated officials or departments.
51. Discount: An allowance or deduction from a normal or list price extended by a seller to a buyer to make the net price more competitive.
52. Discussion Agenda Items: Those agenda items, as identified by the CEO and the Board of Supervisors, which are placed in the section of the Board of Supervisors agenda for discussion and individual Board action. All items requiring the Board to select from a slate or a list of recommendation options, among others, are placed on the Discussion Calendar.
53. Dispute: A difference between a contractor and a jurisdiction over performance or other elements of a contract calling for appropriate administrative action with the intent of achieving a remedial result.
54. Electronic Waste (E-Waste): An electronic device powered by electricity or a battery that has a printed circuit board or video display attached that has reached the end of its useful life and is being discarded by the user. Examples include: televisions, computers, computer peripherals and components, hard drives, CD/DVD drives, printers, facsimile machines, copiers and wireless phones and devices.

55. Emergency: Those situations where the welfare of County residents is at stake and/or immediate procurement action is required to prevent serious economic or other hardship to the County.
56. Equal or Equivalent: A phrase used to indicate the acceptability of products of similar or superior function.
57. Equipment: Personal property of a durable nature which retains its identity throughout its useful life.
58. Evaluation Committee: A committee which advises and assists in proposal evaluation and award of contract.
59. Evaluation Criteria: Those criteria set forth in the solicitation and used by the evaluation committee to score and rank respondents.
60. Express Warranty: Any affirmation of fact or promise made by a seller to a buyer which relates to the commodities and becomes part of the basis of the bargain.
61. Findings: The identification of facts or documentations which are not in compliance with procurement policy, procedures, or Best Practices.
62. Firm Bid: A bid that binds the vendor until a specified time of expiration of the bid.
63. Firms: A business that provides professional or technical advice or expertise which will supplement departmental expertise or advice or where an independent opinion or audit is required.
64. Fixed Price Contract: A contract which provides for a firm price under which the contractor bears the full responsibility for profit or loss.
65. Force Account: Use of internal (County) labor.
66. Formal Advertising: The placement of a notice in a newspaper or other publication according to legal requirements to inform the public that the government is requesting proposal/bids on a specific solicitation.
67. Formal Bidding: As to formal bids referenced in Sections 3.5, formal bids are those in excess of \$ the Board of Supervisors threshold, requiring a four-fifths ( $\frac{4}{5}$ ) vote for the award the contract, The project plans and specifications shall be adopted by the Board of Supervisors, unless delegated. For all other procurements, formal bids are those that require a competitive bid solicitation process for contracts/purchases exceeding the oral/written quote dollar thresholds. All formal solicitations will be advertised via the County's bidding system. This process may or may not requiring require a Public Bid Opening with the date, time and location set forth in the bid solicitation.
68. Government Code: The general laws of the State of California as applied to the County of Orange and other governmental entities.

69. **Gratuity:** A payment, loan, subscription, advance deposit of monies, services or anything of more than nominal value presented or promised for consideration of a procurement decision or recommendation.
70. **Guarantee:** To warrant, stand behind, or ensure performance or quality of services or commodities.
71. **Horizontal:** A road maintenance project, such as paving, slurry seal, etc. in reference to construction or maintenance projects.
72. **Human Services:** Services which maintain or improve the social, economic, physical, or mental well-being of persons for whom the County bears such a responsibility.
73. **Hybrid Contract:** A contract which consists of multiple procurement types.
74. **Incremental Contracting:** Contracting in small segments to avoid solicitation requirements or Board of Supervisors approval.
75. **Indemnification:** Protection against incurred loss, damage, or hurt, usually by monetary compensation.
76. **Informal Bidding:** A process of procurement that does not exceed of the Board of Supervisors thresholds to require Board approval.
77. **Insurance:** A contractual relationship where an insurance company agrees, for a premium paid, to reimburse the insured or other party for a loss to a specified subject caused by designated hazards or risks.
78. **Interviews:** A process facilitated by the Deputy Purchasing Agent during a solicitation, between the evaluation committee and prospective contractor who responded to the solicitation.
79. **Invitation for Bid (IFB):** The solicitation process used for competitive sealed bidding for the purchase of equipment, materials, supplies, services, and construction, for which clear specifications can be written.
80. **Job Order Contract (JOC):** A contract for repair, remodeling, or other repetitive work based on unit prices, which is a firm fixed price, competitively bid, unit priced, indefinite quantity contract designed to accomplish applicable projects. JOC may be solicited via low-bid/IFB or best value.
81. **Liquidated Damages:** Liquidated damages clauses are enforceable if: (1) damages are difficult to ascertain or estimate at the time the contract is formed; and (2) the amount is a reasonable forecast of compensatory damages in the case of breach. Specifically, if the liquidated damages amount significantly exceeds the amount of damages prospectively probable, the liquidated damages clause may not be enforceable. Thus, liquidated damage clauses may be included in service contracts when the County could suffer financial loss due to delays in performance. Consistent with legal requirements, the amount of damages listed in the contract must be a “reasonable forecast” of the County’s actual damages.
82. **Lobbyist:** Any person who receives compensation of \$500.00 or more in any calendar month for engaging in lobbying activities or is employed by his or her employer and receives compensation of

\$500.00 or more in any calendar month for engaging in lobbying activities, as defined in Article 5 Sec. 1-1-80 of the Orange County Codified Ordinances.

83. **Maintenance Work:** Routine, recurring, and usual work for the preservation or protection of any publicly owned or publicly operated facility for its intended purpose, including: minor repainting; resurfacing of streets and highways at less than one inch; landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems; work performed to keep, operate, and maintain publicly owned water, power, or waste disposal systems, including, but not limited to, dams, reservoirs, power plants, and electrical transmission lines of 230,000 volts and higher.
84. **Modification:** A non-material change that does not require signatures of contracting parties.
85. **Negotiation:** The discussion or correspondence between the County and a contractor in order to develop a contract with terms and conditions that serve the best interest of the County.
86. **One-Time Contract:** Procurements for particular commodities or services which cover a particular need. These types of procurements are distinguished from annual or blanket contracts which cover a continuing need of an item or service.
87. **Opportunity Buys:** A situation where necessary commodities, capital assets, or services are for sale at significantly reduced rates from what is normally offered in the general market or where an alternative product to the one being bid represents significant savings.
88. **Original Contract Term:** The period of time first specified in the contract at the time the contract was initially established.
89. **Payment Bond:** A legal contract, a type of bond, that guarantees certain employees, subcontractors, and vendors are protected against non-payment.
90. **Performance Bond:** A bond issued by a bank or other financial institution, guaranteeing the fulfillment of a particular contract.
91. **Petty Cash:** Funds set aside as a cash reserve in a revolving fund for single expenditures under \$1,000 each made within established policies and controls.
92. **Pre-Bid/Pre-Proposal Conference:** A meeting set up between the County parties issuing a solicitation and the potential bidders/respondents for the purpose of clarifying the solicitation and answering any questions.
93. **Prequalification:** A process used prior to solicitation of bids to determine if potential vendors have the ability to fulfill the contract requirements for which the solicitation will be issued and/or to determine if the potential vendors products will meet the cost and performance criteria required to meet the County's needs.
94. **Prevailing Wage:** The California Department of Industrial Relations determines that the general prevailing rate of per diem wages for a particular craft, classification, or type of worker is uniform throughout an area, the director issues a determination enumerated county by county, but covering the entire area.

95. Procurement Appeals Board: A body comprised of County department senior management and a member of the public chaired by the County Procurement Officer for the purpose of hearing vendor protests to a specific County procurement process.
96. Procurement Council: A committee of County employees appointed by department heads and chaired by the County Procurement Officer to discuss procurement issues and make recommendations regarding County-wide procurement policies and procedures.
97. Proposal: The document submitted by a respondent in response to a Request for Proposal (RFP). A proposal includes a detailed description of the commodities or services to be provided to the County per the scope of work included in the Request for Proposal (RFP), including, but not limited to cost, time frame for completion of work or delivery of commodities, and method of accomplishment of services.
98. Proprietary Product: A proprietary item or service is one that must meet particular restrictive specifications but may be available from a number of sources, e.g., “Brand ‘X’ computers - no substitutions”.
99. Protest: A written objection of grievance from an actual or prospective bidder who alleges an error or impropriety in the solicitation or award of a contract.
100. Public Bid Opening: The process of opening and reading bids at the time and place specified in the solicitation and in presence of anyone who wishes to attend.
101. Public Contract Code: Statutory authority applicable in one respect or another to virtually all public entities in California in relation to certain procurements. Pursuant principally to the California Public Contract Code, with limited exceptions, public agencies have a duty to publicly bid certain contracts, particularly construction contracts.
102. Public Works Procurements: Contracts procured via Sections 3.4 or 3.5 of this CPM.
103. Public Works Project: Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility paid for using public funds; painting or repainting of any publicly owned, leased, or operated facility.
104. Qualified Vendor List (QVL): A list of qualified A-E firms that have been deemed responsive through the Request for Qualification (RFQ) process.
105. Real Estate Contracts: Legal instruments necessary to effectuate a real estate transaction such as a lease, license, easement, grant deed, or other similar document, but shall not include procurement contracts related to services provided for the transaction nor departmental issued permits, such as County construction permits or encroachment permits. This includes acquiring, leasing, licensing constructing, operation, and maintaining County-owned or County-occupied facilities and assets. Contracts concerning the purchase or use of County owned or private sector parking spaces are considered real estate contracts.
106. Regional Cooperative Agreement (RCA): A cooperative contract for commonly used services and commodities executed by the Office of the County Procurement Officer or designee to take

advantage of the County's economies of scale and reduce the duplication of efforts across the County.

107. Rejection of Bid(s): The non-acceptance of submitted bid(s).
108. Request for Information (RFI): A request for information is used to obtain price, delivery, other market information, or capabilities for planning purposes. Responses to request for information notices are not offers and cannot be accepted by the County to form a binding contract unless otherwise specified in the solicitation.
109. Request for Proposal (RFP): The solicitation method that includes a scope of work and terms and conditions used to secure proposals for services or commodities not clearly defined by the County in terms of exact specifications or manner of delivery of services or where price is not the sole selection criteria.
110. Request for Qualifications (RFQ): A solicitation method that describes the project or services required and solicits qualifications from potential vendors or contractors for purposes of evaluating those qualifications for screening or for award of contract.
111. Responsible Bidder: A bidder who has the capability in all respects to perform in full the contract requirements and who has the integrity and reliability which will assure good faith performance.
112. Responsive Bidder: A bidder whose bid conforms in all material respects to the terms and conditions, the specifications and other requirements of the solicitation.
113. Retroactive Contract: When goods and services have been ordered, performed or delivered without a contract in place.
114. Requesting Department: A County agency, which requests goods and services procured by the Deputy Purchasing Agent.
115. Reverse Auction: Procurement process by which bidders submit decreasing incremental offers openly and in real-time and where the award is based on the lowest pricing from a responsive and responsible bidder.
116. Services: The furnishing of labor, time or effort by a contractor involving the delivery of a specific performance.
117. Sole Source: A procurement of a commodity or service to the only known capable vendor, occasioned by the unique nature of the requirement, the vendor, or market conditions.
118. Sole Source Justification: A document submitted by department staff for approval to contract with a particular party without competitive bidding.
119. Solicitation: A good faith effort to obtain a bid or proposal for the provision of commodities or services.
120. Specifications: A description of what is requested to be procured.



121. Statement of Qualifications (SOQ): A submitted response to a Request for Qualifications.
122. Subcontractor: A vendor who is performing work on behalf of the contractor.
123. Surplus County Department Property: Tangible supplies, materials or equipment to which the County acquired title by means of purchase, donation, grant, or other lawful means, that a County department has determined is no longer needed by the department.
124. Surplus County Property: Surplus County Department Property that the County Procurement Officer or designee has determined is not needed for public use by any other County department.
125. Task Order: A contract for Job Order Contracts that includes, price, and scope for the performance of tasks during the period of the contract.
126. Terms and Conditions: A general reference applied to the provisions under which bids/proposals must be submitted and which are applicable to most contracts.
127. Terms of Payment: Methods and timelines by which the County must render payment under a contract.
128. Two Step Solicitation: A method of soliciting services and commodities where a preliminary evaluation of the respondent's qualifications is conducted, and a final evaluation for recommendation of award is made based on the RFP process.
129. Unauthorized Expenditure: Procuring goods and/or services without a fully approved requisition i.e. final and budget requisition approval.
130. Unilateral Procurement: A vehicle to pay for critical, ongoing services provided by exclusive entities within a County geographical area that is not subject to County's standard terms and conditions (i.e., utility services). The payment mechanism for unilateral procurements include, but are not limited to: Procurement card(s), County financial system documents, request for checks, etc.
131. Value Analysis: An organized effort to analyze the function(s) of products, systems specifications and standards, and practices and procedures, intended to satisfy the required function(s) in the most economical manner.
132. Vertical: Construction projects that include constructing a building or performing work to a building or structure.
133. Waiver of Bid(s): A process authorized by law or rule whereby the County Procurement Officer or Deputy Purchasing Agents may procure items without competitive solicitation procedures because of unique circumstances related to a particular need or procurement.
134. Waiver of Mistake or Informality: The act of disregarding errors or technical nonconformities in the bid/proposal which do not go to the substance of the bid/proposal and will not adversely affect the competition between bidders/respondents.
135. Warranty: A representation of utility, condition, and durability made by a bidder or respondent for a product offered.