

May 7, 2018

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To: WIOA Subrecipients of the Orange County
Development Area

From: Brian Rayburn
Interim Director 

Subject: Procurement
Information Notice No. 17-OCDB-20
Supersedes Information Notice 12-OCWDA-13

PURPOSE

This policy provides the guidance and establishes the procedures regarding procurement for goods and services with Workforce Innovation and Opportunity Act (WIOA) funds.

This policy supersedes Information Notice 12-OCWDA-13 (Procurement) dated May 15, 2013.

REFERENCES

- WIOA (Public Law 113-128)
- Title 2 Code of Federal Regulations (CFR) Part 200: "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (Uniform Guidance)
- Title 2 CFR Part 2900: "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (Department of Labor [DOL] Exceptions)
- Title 20 CFR WIOA, "DOL; Final Rule"
- Title 34 CFR WIOA, "Joint Rule for Unified and Combined State Plans, Performance Accountability, and the One-Stop System Joint Provisions; Final Rule"
- California State Contracting Manual, Subject: Chapter 5: "Competitive Bidding Methods" (April 2015)
- Workforce Services Directive WSD16-10, Subject: Property - Purchasing, Inventory, and Disposal (November 10, 2016)
- WSD16-05, Subject: WIOA Closeout Requirements (July 29, 2016)
- WSD16-14, Subject: Selection of AJCC Operators and Career Services Providers (December 19, 2016)
- WSD16-16, Subject: Allowable Costs and Prior Written Approval (February 21, 2017)
- 2017 County of Orange Contract Policy Manual
- WSD17-08, Subject: Procurement of Equipment and Related Services (March 14, 2018)


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EFFECTIVE DATE

This policy is effective immediately upon issuance.

BACKGROUND:

On December 26, 2013, the U.S. Office of Management and Budget (OMB) issued the Uniform Guidance under Title 2 CFR Part 200, in order to streamline the guidance on administrative requirements, cost principles, and audit requirements for federal awards. The Uniform Guidance consolidated multiple, previously separate, sets of OMB guidance into one combined set of rules. On December 19, 2014, the DOL adopted the Uniform Guidance and issued DOL Exceptions under Title 2 CFR Part 2900.

The Uniform Guidance provides fiscal and administrative guidance for the administration of the WIOA program, including specific requirements for purchasing goods or services as related to equipment. While the format and wording of the Uniform Guidance and DOL Exceptions vary slightly from OMB's previous circulars, the intent of the federal government is consistent. The intent is to ensure that purchases of goods or services are approved and performed through fair and open competition.

POLICY AND PROCEDURES

Definitions

Contract – A legal instrument by which a subrecipient purchases property or services needed to carry out the project or program under a federal award. This term does not include a legal instrument, even if the non-federal entity considers it a contract, when the substance of the transaction meets the definition of a federal award or subaward (Uniform Guidance Section 200.22).

Contractor – An entity that receives a contract (Uniform Guidance Section 200.23).

Conflict of interest – An employee, officer, agent, or any member of the organization that has interest in a financial gain or tangible benefit and who participates in the selection, award, or administration of a contract supported by a federal award (Uniform Guidance Section 200.318[c][1]).

Cost Analysis – An element-by-element review and evaluation of the estimated or actual cost to determine the probable cost to the contractor.

Equipment – tangible personal property (including information technology systems) having a useful life of more than one year and an per unit acquisition cost of which equals or exceeds the lesser of the capitalization level established by the non-federal entity for financial statement purposes, or \$5,000 (Uniform Guidance Section 200.33).

Firewall – An established policy or procedure that acts as a barrier or protection against an undesirable influence, outcome, or authority. Examples of firewalls include but are not limited to organizational arrangements that provide clear separation of duties and

responsibilities, reporting hierarchy of managers and staff that provide clear separation between job duties and responsibilities, and conflict of interest/confidentiality/disclosure agreements.

Information Technology Systems – Information technology systems means computing devices, ancillary equipment, software, firmware, and similar procedures, services (including support services), and related resources (Uniform Guidance Section 200.58).

Invitation for Bid (IFB) – A type of solicitation document used in a formal competitive bidding process, which contains a detailed statement of what the agency is attempting to purchase. An IFB is used to obtain simple, common, or routine services that may require personal or mechanical skills. Qualifying bidders compete solely on the basis of cost (California State Contracting Manual).

Labor Surplus Area Firm – The Department of Labor maintains a listing of areas of the nation where the average unemployment rate is 20% higher than the national unemployment rate. A listing and other Information on labor surplus areas can be found at www.doleta.gov/programs/lisa.cfm.

Micro-Purchase Threshold – Fiscal threshold set by Federal Acquisition Regulation (currently \$3,500 per Federal Acquisition Regulation [FAR] 48 CFR Subpart 2.1). The threshold is periodically updated based on inflation.

Pass-through Entity – A non-federal entity that provides a subaward to a subrecipient to carry out part of a federal program (Uniform Guidance Section 200.74).

Price Analysis – The process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit. This process determines whether the price is fair and reasonable.

Procurement – All stages of the process of acquiring property or services, beginning with the process for determining a need for property or services and ending with contract completion and closeout.

Questioned costs – Any cost or procurement that is questioned by an auditor, pass-through entity or awarding agency representative. Purchases can be questioned due to possible violations of statutes and regulations, inadequate documentation or possible unreasonable costs (Uniform Guidance Section 2900.3).

Request for Proposal (RFP) – A type of solicitation document, used in a formal competitive bidding process where an invitation is presented for suppliers to submit a proposal on a specific commodity or service. The RFP process brings structure to the procurement decision and is meant to allow the risks and benefits to be identified clearly up front. The RFP is used to obtain complex services in which professional expertise is needed and may vary and/or where different methods and approaches may be applied during performance. (California State Contracting Manual).

Request for Quote (RFQ) – A type of solicitation document, used in a formal competitive bidding process, mainly when the specifications of a product or service are already known and when price is the main or only factor in selecting the successful bidder.

Simplified Acquisition Threshold – Fiscal threshold set by Federal Acquisition Regulation (currently \$150,000 per FAR Subpart 2.1). The threshold is periodically updated based on inflation.

Subaward – An award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract (Uniform Guidance Section 200.92).

Subrecipient – A non-federal entity that receives a subaward from a pass-through entity to carry out part of the federal program, but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other federal awards directly from the federal awarding agency (Uniform Guidance Section 200.93).

Supplies – All tangible personal property other than equipment. A computing device is a supply if the acquisition cost is less than the lesser of the capitalization level established by the nonfederal entity for financial statement purposes or \$5,000, regardless of the length of its useful life (Uniform Guidance Section 200.94).

General Procurement Policy Requirements

The guidance in this directive applies to all purchases of equipment (goods) and related services for the operation and support of the WIOA program or for the benefit of WIOA participants. The procedures and guidelines described in this directive are to be used by all subrecipients using WIOA funds to make a purchase.

The OCDB shall follow the procurement requirements contained in the County of Orange Contract Policy Manual (CPM), or EDD Directive WSD17-08, Subject: Procurement (March 14, 2018), whichever is more restrictive

All subrecipients shall follow the procurement requirements contained in the County of Orange CPM, or EDD Directive WSD17-08, whichever is more restrictive, unless the subrecipient's own written procurement policies and procedures are more restrictive, in which case those must be followed. If subrecipients may also use their own documented procurement procedures as long as they are consistent with applicable state and local laws and regulations and the procurements conform to the applicable standards in Uniform Guidance Sections 200.318 through 200.326.

In order for a subrecipient's policy and procedure to apply, they must be written and include, but are not limited to, the following:

- Procedures to administer contracts and ensure contractors perform in accordance with the terms, conditions and specifications of contracts.
- A written code of conduct and clearly established firewalls for employees engaged in the award agreements or administration to avoid any internal or external conflict of interest.
- Procedures that detail the requirement for a review of prospective procurements to avoid purchase of unnecessary or duplicate items.
- Procedures that promote the use of shared resources and other agreements for common goods and services, as well as the use of federal excess and surplus property wherever possible.
- Standards to ensure that awards are made only to responsible contractors. The awarding agency standards should address integrity, compliance with public policy, past performance, and contractor resources (technical and financial) for prospective contractors.
- Procedures should document each significant step in making an award. The documentation should include: rationale for method of procurement, selection of agreement type, selection or rejection criteria, and the basis for the contract price, including the independent agency estimate of price.
- Procedures which details the settlement of all procurement issues, including those related to source evaluation, protests, claims, and disputes.
- Procedures to utilize small, minority, or women owned business or labor surplus area firms whenever possible.
- Procedures for analysis of lease versus purchase alternative to determine the most economical and practical procurement (Uniform Guidance Section 200.323).
- Procedures for conducting a price or cost analysis for every procurement action that exceeds the Simplified Acquisition Threshold. The extent of the analysis should depend on factors of the procurement, but at minimum include an estimated cost of the purchases before bids or proposals are sought (Uniform Guidance Section 200.323).

Each subrecipient's written procurement policies must be established and available for review by the OCDB, Employment Development Department (EDD) or the DOL. These policies may be self-certified.

Additional WIOA Requirements

In addition to the requirements of Uniform Guidance Sections 200.318 through 200.326, the following requirements apply to procurements and agreements funded under the WIOA:

- All procurement contracts between local boards and units of government must be conducted on a cost-reimbursement basis (DOL Final Rule Section 683.200[c][4]).

- If a fixed amount award with a governmental or nonprofit agency results in revenues in excess of actual costs incurred, the excess revenues are considered to be program income (DOL Final Rule Section 683.200[c][7]). Any fixed amount awards should reference this requirement. For more information regarding program income refer to the directive Program Income (WSB 15-25)
- Local workforce investment plans must contain the competitive process used to award contracts funded under the WIOA and training services outside the Individual Training Account (ITA) (DOL Final Rule Section 679.560[b][15]).
- The procurement requirements do not apply to the identification of eligible training providers. The process for identification of eligible training providers for training services under the WIOA is described in DOL Final Rule Section 680, Subpart B. The state is responsible for the development and maintenance of a state-wide training provider list. While not a federal requirement, each grantee should have a formal agreement for services when a training provider is to deliver services. This may be in the form of a purchase order, contract, voucher, or other mechanism that provides for payment information and may be incorporated or referenced in the individual ITAs.

Reasonable Costs

All WIOA procurements must be “necessary and reasonable” in the operation of the WIOA programs and conform to the following:

- Consistent with uniform guidance and established policies and procedures.
- Similar costs must be considered either direct or indirect costs.
- Costs must be determined with generally accepted accounting principles.
- Costs must not be used as cost sharing or matching requirements.
- Costs must be adequately documented.

Procurements may benefit other non-WIOA/organizational operations as long as the procurement is necessary to WIOA program and the cost can be distributed in proportion of use. If the procurement benefits multiple WIOA projects the cost should be allocated based on relative benefit. If the relative benefit cannot be determined, a reasonable and documented method may be used. Costs cannot be shifted to additional programs to overcome fund deficiencies or to avoid federal restrictions (Uniform Guidance Section 200.405).

Prior Approval

Written prior approval from the OCDB is required for equipment and related services under the following criteria:

- Procurements with a per-unit cost that exceeds \$5,000.
- Related procurements with cumulative costs that exceed \$5,000 within the same fiscal year.

- Procurements resulting in improvements to land, buildings, or equipment which exceed \$5,000.

Approval will be based on the reasonableness and allowable criteria (as outlined above), availability of funds, and other considerations. Written approval will include the timeframe or scope of the agreement (Uniform Guidance Section 200.407). Public exigency or emergency resulting in an immediate procurement need waives the requirement for prior approval, however, approval should be sought afterwards to conform of the appropriate use of WIOA funds.

Ongoing procurement costs such as subscriptions, maintenance, license, support costs or procurement which are otherwise paid annually will be considered approved after the initial approval if the cost remains constant or decreases.

Procurements under \$5,000 which have additional or unexpected charges within the same 12 month period which causes the total cumulative cost to exceed \$5,000 can be submitted for Retroactive Approval through the prior approval process. The Retroactive Approval should be requested before the cumulative charges exceed \$5,000. Cumulative charges are only applicable for procurements of a single or set of similar or connected goods or services (e.g. servers and related infrastructure or computers and computer memory for equipment).

For further guidance on prior approval and approval process, please contact the OCDB and refer to Workforce Services Directive *Allowable Costs and Prior Written Approval* (WSD16-16).

Procurement Methods

All procurement actions are to be conducted in a manner that provides for “full and open competition” (Uniform Guidance 200.319). No procurement transaction will contain any requirements that restrict competition, unfairly promotes a single contractor or product, places excess burden on a contractor, or presents an organizational conflict of interest.

The type of purchase method is generally determined by the “per transaction” value of the procurement and the type of good or service being purchased. “Per transaction” is a single solicitation for a single item (e.g., copy machine), group of related items (e.g., office furniture), or a specified service (e.g., staff training). Purchases are not to be broken down into smaller components to avoid more stringent procurement requirements.

Within the context of open competition, there are five procurement methods by which subrecipients may procure goods or services; micro purchase, small purchase, sealed bids, competitive proposals, and noncompetitive proposals.

Micro Purchase

The micro purchase procurement method is used when the “per transaction” value of a purchase is less than the micro-purchase threshold (currently \$3,500 per Federal Acquisition Regulation [FAR] 48 CFR Subpart 2.1). The micro-purchase threshold is periodically updated based on inflation. To the extent practicable, micro-purchases must be distributed equitably among qualified suppliers. Although micro-purchases are not required to receive written prior or purchase approval, they must still be documented. If locally imposed thresholds are smaller, OCDB and all subrecipients will adhere to the lower threshold.

Small Purchase

The small purchase procurement method may be used when the “per transaction” value of a purchase of equipment or services is less than the Simplified Acquisition Threshold (currently \$150,000 per FAR Subpart 2.1). The Simplified Acquisition Threshold is periodically updated based on inflation. Informal quotations are used for small purchase procurements, in lieu of the more expensive and time consuming sealed bid or competitive proposal methods. If locally imposed thresholds are smaller, OCDB and all subrecipients will adhere to the lower threshold.

Price as determined by a price analysis is generally the main factor when determining awards. However, other factors such as availability, delivery time, current stock, and location can be taken into consideration.

Proper documentation for a small purchase includes the following:

- The reason for selecting the small purchase method.
- The subrecipient’s estimate of the potential purchase price.
- A description of the goods or services being purchased, including the quantity and any additional criteria used to determine the procurement decision.
- All providers contacted/considered and the prices offered using current catalogs, price lists, prior sales receipts, or formal quotes depending on the amount of the purchase.
- Why the provider was selected, including how the provider met any additional criteria, and the price analysis.
- Copy of the purchase document (sales receipt, contract).

Sealed Bids

The sealed bid procurement method is generally used when the “per transaction” value of the good or service to be purchased will be more than the Simplified Acquisition Threshold, and its nature can be precisely defined. The desired procurement must have a complete, adequate and realistic specifications or purchase description.

The sealed bid process requires the issuance of an Invitation for Bid (IFB). The IFB must be publicly solicited or advertised to an adequate number of known suppliers, provide sufficient time to respond, and clearly state specifications, bidding processes, and dates. The IFB defines the quantity, timeframes, product requirements, specifications, and pertinent attachments of the good or service being purchased. Contractors are notified of the purchase requirements and submit a sealed bid to a specified location by a specified date and time.

A diligent effort should be made to secure at least three competitive bids. The responsible bidder (a bidder that can meet the technical requirements of the procurements) that submits the lowest bid will be awarded the contract. The lowest bid should be calculated with factors such as discounts, transportation, and life cycle costs. Any bidder that falls outside of the parameters will normally have their bid rejected. Award of a firm fixed-price or fixed unit price contract by written notice is sent to the lowest responsible bidder. Bids may be rejected with sound and documented rationale. If only one bid is obtained and that bidder is deemed to be responsible, then the noncompetitive process may be used.

Proper documentation for a sealed bid purchase includes the following:

- The reason for selecting the sealed bid method.
- The subrecipient's estimate of the potential purchase price.
- A copy of the IFB.
- Bids received.
- Determination of the responsibility of the bidder.
- Why the provider was selected.
- Copy of the award document.

Competitive Proposals

This method is typically used when the "per transaction" value of the good or services will be more than the Simplified Acquisition Threshold, but its nature cannot be defined as precisely as required by the sealed bid method. Competitive proposals are specifically used when factors other than price are important in the selection decision or if the technical requirements or specifications are of a functional nature or unclear.

The competitive proposal procurement method is generally used when conditions for a sealed bid cannot be met. The Request for proposal (RFP) must be publicly solicited or advertised to an adequate number of known suppliers. A RFP should be issued that defines quantity, timeframes, product requirements, specifications, and the evaluation factors used along with their importance. Contractors submit a proposal based on the purchase requirements of the RFP to a specified location by a specified date and time to be evaluated.

All proposals should be considered on the merits of the proposal and a written review of technical evaluations should be retained for each. The review committee then makes a final recommendation as to which proposal(s) best meets the stated requirements. Careful documentation of the successful bidder selection should be maintained for reference. A public notice of intent to award should be issued followed by the award and the execution of the contract. If only one proposal is obtained and that proposal is deemed to be responsible, then the noncompetitive proposal method may be used.

If less than three bids are received during a competitive process, justification must be written explaining the limited participation. The justification should include firms and individuals contacted. These documents should be kept in the agency's contract file and submitted with procurement requests, if applicable.

Proper documentation for a competitive proposal purchase includes the following:

- The reason for selecting the competitive proposal method.
- The subrecipient's estimate of the potential purchase price.
- A copy of the RFP.
- Proposals received.
- The scoring criteria and the evaluation/scoring sheets for each proposal, including determination of the responsibility of the bidder and the cost analysis.
- Why the provider was selected.
- The public notice of intent to award.
- Copy of the award document.

Noncompetitive Proposals

Noncompetitive proposals may only be used under certain limited circumstances. The reason for selecting this method along with the justification for the provider selection must be carefully documented and maintained. Per Uniform Guidance Section 200.320(f), the purchase must be infeasible under one of the other methods discussed above, and one of the following conditions apply:

- The good or service is available from only one source.
- Public exigency or emergency creates an immediate procurement need (e.g., a flood or fire requires the immediate availability of services).
- The federal awarding agency or pass-through entity authorizes the specific noncompetitive procurement (upon a formal request for approval).
- Competition is determined inadequate. This usually occurs after a sealed bid or competitive process has been used and there are insufficient bidders.

Proper documentation for a noncompetitive proposal purchase includes the following:

- The reason for selecting the method, including why the procurement was infeasible under one of the other procurement methods and which of the additional conditions the procurement met.

- The estimate of the potential purchase price.
- A copy of the RFQ/IFB/RFP.
- A determination of the responsibility of the bidder.
- Why the provider was selected.
- Copy of the award document.

Procurement Method Review

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 year.

COMMODITIES	
Cost Limits	Minimum Bids/Quotes Needed
\$10,000 or less	Minimum of one solicitation, written or oral
\$10,001 to \$25,000	Minimum of two solicitations, written or oral
Above \$25,000	Written solicitation issued on through a bidding system

Capital Assets are tangible property costing \$5,000 or more per unit, including tax, delivery and installation, with a useful life expectancy exceeding one year.

CAPITAL ASSETS	
Cost Limits	Minimum Bids/Quotes Needed
\$5,000 to \$25,000	Minimum of two solicitations, written or oral
Above \$25,000	Written solicitation issued on through a bidding system

Service contracts encompass all contracts for services either with or without materials.

SERVICE CONTRACTS	
Cost Limits	Minimum Bids/Quotes Needed
\$50,000 or less	Minimum of one written solicitation
Above \$50,000	Written solicitation issued on through a bidding system

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 subrecipient bears such a responsibility.

HUMAN SERVICES CONTRACTS	
Cost Limits	Minimum Bids/Quotes Needed
\$50,000 or less	Minimum of one written solicitation
Above \$50,000	Written solicitation issued on through a bidding system

Procurement Purchase Approval and Review Timeline

Written approvals must be obtained by the subrecipients prior to the purchase of procurements valued over \$5,000. To obtain purchase approval, subrecipients must complete the Procurement – Request for Approval to Charge WIOA Funds (Attachment 1) and submit it with any other required paperwork, to their assigned OCDB Contract Administrator or Project Manager via email. Procurement requests should be received no less than 15 calendar days before the requested procurement action is scheduled to occur (DOL Exceptions Section 2900.16).

Procurement requests will include the following:

- Description of goods or services to be purchased (item[s] name and description)
- Estimated total cost (dollar amount of total cost)
- Description of item(s) (detailed description of procurement, including functionality and use)
- Reasons for procurement (detailed justification of procurement and why the procurement is necessary to WIOA operations)
- Procurement methods and lease-option sharing considerations:
 - What procurement method was used and why
 - Quote or proposal and other documents as required by the procurement method
 - Justification of why a lease or property sharing cannot be used
 - Why the chosen provider or contractor was selected over other alternatives
- Cost (description of how the cost was determined, including any associated fees)
- Location (where the procurement item will be located or operated)

Approval can take a month once submitted to EDD so it is crucial that requests are submitted timely. See the table below of approval process and timeline. A decision letter will be mailed to the OCDB's Director at the end of the review process. The OCDB will then inform the subrecipient.

Step	Approver	Approval Criteria	Timeframe
1	OCDB Contract Administrator or Project Manager	<ul style="list-style-type: none"> • Proposed procurement is reasonable, allowable and necessary • Cost sharing review 	Up to 10 business days
2	EDD Regional Advisor or Project Manager	<ul style="list-style-type: none"> • Proposed procurement is reasonable, allowable and necessary • Cost sharing review 	Up to 10 business days
3	Information Technology and Program Accountability Section	<ul style="list-style-type: none"> • Technical review of proposed procurement • Proposed procurement 	Up to 6 business days

	(ITPAS) manager (if the procurement involves computer or Information Technology [IT] equipment, software, subscriptions or contracts)	cannot be provided by state or local partners Cost sharing review	
4	Financial Management Unit	<ul style="list-style-type: none"> • Proposed procurement is reasonable and allowable • Availability of funds • Procurement method review 	Up to 14 business days

Once the procurement has been approved via an approval letter, the WIOA funds account may be charged for the purchase. If a procurement is denied, the subrecipient will receive notification specifying the reason for the denial. If a procurement request is not approved and property is charged, the subrecipient may incur a disallowed cost. Subrecipients can appeal a denial of procurement through the OCDB, which will then be submitted to the Chief of the Central Office Workforce Services Division.

Questioned and Disallowed Costs

Funds used for procurements that are determined by an auditor, the cognizant agency, the pass-through entity or authorized awarding agency representative to be unallowable will be returned to the federal government (Uniform Guidance Section 200.345). Such unallowable procurements are defined as questioned costs in DOL Exceptions Section 2900.3. Questioned costs could result from the following:

- Procurements that violate statute, regulations, or terms and conditions of award.
- Procurements without support documentation.
- Procurements with unreasonable costs.

For further guidance on the disposition of disallowed costs, please refer to Workforce Services Directive WIOA Closeout Requirements (WSD16-05).

Required Contract Clauses

Contracts entered into by subrecipients may be fixed price or cost reimbursement, depending on the method of procurement and goods or services being procured. Each agreement funded by federal funds must contain the following contract clauses referred to in Uniform Guidance Appendix II to Part 200, as appropriate:

- A. All contracts in excess of the simplified acquisition threshold must address administrative, contractual, or legal remedies in instances where contractors

violate or breach contract terms. The clause must also provide for sanctions or penalties, as appropriate.

- B. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-federal entity, including the process for exercising the clause and the basis for settlement.
- C. Compliance with Equal Employment Opportunity provisions identified in 41 CFR Part 60.
- D. Compliance with the Davis-Bacon Act (40 U.S.C. 3141–3144 and 40 U.S.C. 3141-3148) for prime construction contracts in excess of \$2,000.
- E. Compliance with the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701- 3708) for contracts in excess of \$100,000 that involve the employment of mechanics or laborers.
- F. Compliance with Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants (37 CFR Part 401) for any small business or nonprofit organization.
- G. Compliance with the Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387) for any contract in excess of \$150,000.
- H. A provision requiring that contracts must not be issued for any entity listed on the Excluded Parties List System in the System for Award Management (SAM)
- I. Compliance with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) for contractors bidding over \$100,000.
- J. Compliance with Section 6002 of the Solid Waste Disposal Act and 40 CFR part 247 for items in excess of \$10,000.

It should also be included in all applicable agreements that, regardless of the procurement method, anyone who provides WIOA services must abide by the WIOA equal opportunity and nondiscrimination provisions of Section 188 and 29 CFR Part 38.

The Uniform Guidance applied to all federal awards made on or after December 26, 2014.

Therefore, beginning with WIOA Program Year 2015-16 funds, all subrecipients of this funding must adhere to the Uniform Guidance, DOL Exceptions, and corresponding WIOA administrative requirements.

ACTION

Bring this policy to the attention of all affected staff and all relevant parties.

INQUIRIES

If you have any questions regarding this policy, please contact your Contract Administrator (714) 480-6500.

ATTACHMENTS

- Attachment 1 – Request for Approval to Charge WIOA Funds
- Attachment 2 – 2017 County of Orange Contract Policy Manual



PROCUREMENT REQUEST FOR APPROVAL TO CHARGE WIOA FUNDS



This form should be used for purchases of equipment and related services for the operation and support of the WIOA program or for the benefit of WIOA participants. Requests should be submitted to Contract Administrators or Project Managers for all procurements exceeding \$5,000 or if approval is required. Additional documentation (e.g., quotations, cost analyses, bid summaries) may be required. Please contact your Contract Administrator or Project Manager with any questions. Procurement requests should be received no less than 15 calendar days before the requested procurement action is scheduled to occur.

Date: _____

Subrecipient Name: _____

Item or Property to be Purchased: _____

Estimated Total Cost of Procurement: \$ _____

Anticipated Procurement Date: _____

- Procurement Method: Small Purchase Sealed Bid (IFB)
 Competitive Proposal (RFP) Noncompetitive Proposal
- Procurement Type: Purchase Lease/Rent Subscription/Contract
 Service Property Sharing

Description, function, and justification of procurement

Reason for procurement method and type, including lease option or property sharing considerations

Why provider was selected

Cost, including any maintenance, installation, taxes, or fees associated with the procurement

Authorized Representative and Title
(Please print)

Signature

2017

CONTRACT POLICY MANUAL





COUNTY OF ORANGE

CONTRACT POLICY MANUAL

Adopted by the
Orange County Board of Supervisors
June 6, 2017

Effective: August 1, 2017

MICHELLE STEEL
CHAIRWOMAN
SECOND DISTRICT

ANDREW DO
VICE CHAIRMAN
FIRST DISTRICT

TODD SPITZER
SUPERVISOR
THIRD DISTRICT

SHAWN NELSON
SUPERVISOR
FOURTH DISTRICT

LISA A. BARTLETT
SUPERVISOR
FIFTH DISTRICT

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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.

§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 purchasing 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 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 purchasing shall discharge their duties in accordance with high ethical standards by practicing their profession with integrity, honesty, truthfulness 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 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 Authority**

- (1) The authority to execute the contract types listed below has been delegated by the Board of Supervisors to the respective department head or their authorized representatives. Those positions in these departments will not be required to be deputized by the County Procurement Officer, but may avail themselves of the training opportunities provided by the Office of the County Procurement Officer.
 - a) Real Property Contracts
 - b) Public Works Contracts*
 - c) Architect Engineering*
 - d) Human Services Contracts

* For policies related to these type of contracts, refer to Design and Construction Procurement Policy Manual - <http://www.ocpublicworks.com/civicax/filebank/blobdload.aspx?BlobID=62794>

- (2) Human Services contracts as referenced in Section 3.4-101 shall abide by the Contract Policy Manual unless state and federal laws or regulations prevail.

§1.1-106 Delegation of Authority

- (1) In this capacity, the County Procurement Officer will delegate this 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.
 - 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.
 - c) Delegation of purchasing authority to the Deputy Purchasing Agents delineated in this manual is subject to approval of department heads, who may, at their discretion, require approval by higher authority levels within their departments.

§1.1-107 Authority to Procure

- (1) No purchase of personal property, services or commodities 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 goods purchased, or the approval/processing of invoices for payment for their department.

§1.1-108 Specific Duties

- (1) Except 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 policy 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, materials, supplies, furnishings, equipment, livestock, 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) Approve and confirm emergency purchases;
- d) Encourage the procurement of “environmentally preferable” products in all solicitations, where practical, that are executed by the County in accordance with current state and/or federal regulations;
- e) 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,
- f) 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 for County-wide procurement of services and commodities for department;
 - b. Establish policies and procedures to be followed by departments in the procurement of services and commodities;
 - 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 “vendors 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 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 department head or designee with recommendations for corrective action to ensure the integrity and efficiency of County procurement processes;
- 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; and,
- s. Carry out the other duties and responsibilities as defined in this manual.

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, department heads shall be fully responsible for the procurement of all services and commodities required for those operations under their direction.
 - 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 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 for 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 and commodities for the County.
- (2) Deputy Purchasing Agents are required to use cooperative contracts issued by the office of the County Procurement Officer or provide valid written justification detailing the reasons for not using available contracts in the procurement file.
- (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 Purchasing 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;
 - 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, proposer or contractor 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.

§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 or contract 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 Bid/Proposal Specifications

- (1) 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 bid or proposal. 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 prior to the close of the solicitation in accordance with the bid/proposal submittal procedures provided in the bid/proposal.

§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 the proposed contract award is provided by the Deputy Purchasing Agent.
 - a) Protests relating to a proposed contract award which are 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 lodging 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) In accordance with §4.3-109 of this manual, immediately upon completion of negotiations with the top-ranked vendor(s), but 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 a Contract* to all participating vendors.
 - 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 which are 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 lodging 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 renders 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 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 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.

§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 managers. 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 connection whatsoever with the solicitation or bid 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 general 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 Appointment

- (1) Upon approval by the County Procurement Officer and the department head, County employees may serve a one (1) year term on the Procurement Appeals Board. The County Procurement Officer shall also include a member of the public whenever reasonably possible.

§1.4-106 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 of interest with the protest being heard.

§1.4-107 Procedures/Support

- (1) 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.

§1.4-108 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 **Scope**

- (1) It shall be the duty of the County Procurement Officer to review, on an annual basis, the procurement records and processes of all County departments. This monitoring will be done on a sample basis. The monitoring of the department procurement records will be conducted to facilitate the procurement process in accordance with County policies 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 shall select procurement records from each department on a regularly scheduled basis for compliance monitoring. Selected records will span the range of the procurement process. Records will be monitored using the following performance measures:
 - a) compliance with legal and procurement processes outlined in this manual;
 - b) compliance with Board policy set forth in this manual;
 - c) cost effectiveness of services and commodities acquired;
 - d) timeliness of procurement process;
 - e) operational efficiencies of processes used; and,
 - f) other policies or best practices as determined by the County Procurement Officer

§1.5-103 **Process**

- (1) The review process is intended to be educational and will be used as a forum to provide guidance, policy clarification and to discuss best practices. As part of the review process, department being reviewed will be expected to make necessary corrections to bring the file folders into compliance.
- (2) Upon completion of the review, the County Procurement Officer or designee shall meet to discuss the discoveries with the appropriate Deputy Purchasing Agent and Purchasing Manager.
- (3) A final written report will be submitted to the appropriate Purchasing Council member that will include, where appropriate, a summary of the discoveries and recommendations for corrective action.
- (4) The County Procurement Officer shall, on an annual basis, submit a report to the Purchasing Council that contains general discoveries 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 **Definition**

- (1) Surplus County Property is defined as all tangible supplies, materials or equipment to which the County acquired title by means of purchase, donation, grant, or any other lawful means of acquisition that is determined to no longer be useable or required by the department in possession thereof.

§1.6-102 **Policy**

- (1) Codified Ordinances of the County of Orange, Title 1, Division 4, Article 2, Section 1-4-36, requires that Surplus County Property be reported to the Office of the County Procurement Officer who may then transfer such an item to a surplus pool to be maintained under the supervision of the County Procurement Officer for reassignment and reuse by County departments.

§1.6-103 **Disposal of Surplus County Property**

- (1) The method used by departments to dispose of Surplus County Property must be approved by and coordinated with the County Procurement Officer or designee. Internal reuse of Surplus County Property by County departments is the preferred method of disposal.
- (2) Disposition Methods – Surplus County Property shall be disposed of in one of the following preferred methods:
 - a) internal transfer to a claiming department
 - b) donation of computers and related equipment with a fair market value less than \$5,000 per lot to the Department of Education, special districts, and not-for-profit organizations
 - c) auction (non-electronic items)
 - d) e-waste recycling (electronic items)
 - e) direct sale by department
 - f) sale by County Procurement Officer or designee
 - g) recycling
 - h) trash

§1.6-104 **Receipt of Fair Market Value**

- (1) In the event that property is not transferred in the methods in “a” or “b” above, every attempt will be made to receive fair market value for the property.

§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.

SECTION 1.7
PURCHASING CARDS

§1.7-101 **Definition**

- (1) Under the direction of the CEO, the County Procurement Officer shall oversee and administer the County's Purchasing Card Program. Purchasing cards are County credit cards issued to County of Orange employees authorized by department heads to make purchases on behalf of the department in accordance with established Purchasing Card Program policies and procedures, as well as, applicable procurement policies and procedures.

§1.7-102 **Authorized Use**

- (1) The Purchasing Card is imprinted with the County of Orange logo and the cardholder's name. Cards may be used to purchase 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) subject to possible referral to the County District Attorney; and be
 - d) subject to further disciplinary action as authorized by applicable County procedures.

§1.7-103 **Responsibilities**

- (1) Program Administrator: Each department shall have a Purchasing Card Program Administrator. The Program Administrator is responsible for all aspects of their department participation in the Purchasing Card Program. The Program Administrator works closely with the County Procurement Officer or designee to answer questions perform contract administration, account application coordination, card issuance and cancellation, and administrative training.
- (2) Authorized Signer: Department employee 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 purchases. Billing Officials cannot also be cardholders.
- (4) Approving Official: Department employees authorized to approve payments for purchases made by department cardholders.
- (5) Cardholders: County of Orange employees authorized to make Purchasing Card purchases 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 Purchasing Card Program Policies and Procedures, use of County issued Purchasing 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 and approved by the County Procurement Officer.
 - b) Single Purchase Limit per Card: Each card is established with a single transaction limit to ensure adherence to competitive bidding requirements.
 - c) Merchant Code Blocking: Every County issued Purchasing Card is blocked to prohibit the Cardholder from making purchases from certain types of vendors.
- (2) Department heads may impose additional restrictions on goods or services that may not be purchased using the Purchasing Card.

§1.7-105 Adherence to Procurement Policy

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

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) Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the employee's duties is a breach of public trust.
- (2) Title 1, Article 2, Division 3 of the Codified Ordinances of the County of Orange prohibits the donation and receipt of gifts to public officials. This article is referred to as the Orange County Gift Ban Ordinance. The Board of Supervisors has found that the receipt of gifts by public officials from persons who do business with the County erodes public confidence in the impartiality of decisions made by those officials.
- (3) Violation of the County of Orange Gift Ban Ordinance may constitute a misdemeanor, and any employee found in violation shall be subject to discipline, including, in appropriate cases, termination of employment.
- (4) To the extent that violations of the ethical standards of conduct constitute violations of the state of California 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.
- (5) 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 year following termination of the former official or employee from County employment."

§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: “An 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 or member of his or her immediate family, or on:
 - 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.
 - 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 ten percent interest or greater.”
- c) Section 1090: “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.
- d) 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.”
- e) 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.
- f) 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 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 bid 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, or physical disability.

SECTION 2.2

ETHICS IN PUBLIC CONTRACTING - CONTRACTORS

§2.2-101 Conflict of Interest

- (1) Upon County Counsel approval, the County shall request client lists, disclosure statements, or any other information it may require to determine if the proposer has a conflict of interest which:
 - a) May be detrimental to the County's interest and, therefore, would cause the County not to enter into a contract; or
 - b) May arise during the performance of the required services and, therefore, would provide reason for termination with cause.
- (2) 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 with cause.
- (3) By participating in any solicitation, bidders/proposers agree to furnish the required information as requested and accept the County's decision as final.

§2.2-102 Vendor/Contractor Code of Conduct

- (1) Vendors shall independently and honestly prepare and submit bids without collusion or otherwise obtaining information about a competitor's bid or proposal.
- (2) Vendors and prospective contractors 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, voidance of current or future contracts.

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) 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.
 - b) 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.
 - c) 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.
 - 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, to assess the risks involved in the contract and to seek review/approval from the County's Risk Manager or authorized designee when a vendor takes exceptions to the following County terms:
 - a) Standard Insurance Requirements;
 - b) Indemnification; or,
 - c) Limitation of Liability
- (2) Indemnification: Contractors doing business with the County will indemnify the County against loss arising from patent violations, copyright violations, unauthorized use of materials, wrongful acts, injuries to persons or property, and other loss which may result from contractor performance.
- (3) Insurance: Insurance will be required where the County may suffer risk of loss due to the nature of the work being performed. Such situations include, but are not limited to, contractors performing

work on County property, contractors who are in possession of valuable County property, contractors who are operating motor vehicles in the performance of their contract duties, and contractors who are handling hazardous waste. It will be the obligation of each department to research and include in the contracts the appropriate insurance requirements for each applicable circumstance.

- (4) **Bid and Performance Bonds**: Bid 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.
- (5) **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 Risk Identification

- (1) Examples of significant risk activities are: transportation of hazardous materials, tunneling and excavation, new construction of buildings over four stories and/or any activity that potentially could cause pollution to the environment. For additional information refer to the *Insurance Requirements and Reference Manual* maintained on the County Risk Management website - <http://www.ocgov.com/gov/risk>

§2.3-104 Responsibility

- (1) The County Risk Manager or authorized designee and the Office of County Counsel collaboratively review bonds, limitation of liability provisions and indemnification provisions. The County Risk Manager or authorized designee is responsible for assessing and determining the appropriate levels of insurance.

SECTION 2.4

ENFORCEMENT OF CHILD SUPPORT OBLIGATIONS

§2.4-101 Policy

- (1) In order to enhance the child support collection efforts of the County of Orange Department of Child Support Services, all contractors shall be required to provide data regarding major owners of the business and to certify compliance with all federal and state reporting requirements for child support enforcement regarding its employees. Violation of these requirements shall constitute a breach of contract or shall result in the contract not being awarded to the selected contractor.

§2.4-102 Required Contractor Data and Certification - Contract Provision

- (1) In order to comply with the policy above, **all contracts** entered into by the County of Orange shall require the following contractor data and certification.
 - a) In the case of an individual contractor, his/her name, date of birth, Social Security number, and residence address;
 - b) In the case of a contractor doing business in a form other than as an individual, the name, date of birth, Social Security number, and residence address of each individual who owns an interest of 10 percent or more in the contracting entity;
 - c) A certification that the contractor has fully complied with all applicable federal and state reporting requirements regarding its employees; and,
 - d) A certification that the contractor has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply.
- (2) It is expressly understood that this data will be transmitted to governmental agencies charged with the establishment and enforcement of child support orders and for no other purposes.
- (3) This data and certification may be required after contract award; after the contractor has been selected, but prior to final award of contract; or with bids/proposals, as provided for below.

§2.4-103 Timely Submittal of Contractor Data and Certifications

- (1) If an agency/department chooses to request the child support enforcement data and certification from contractors after award of contract, the contract shall contain the following language:
 - a) “In order to comply with child support enforcement requirements of the County of Orange, within 30 days of award of contract, contractor agrees to furnish the required contractor data and certifications to the contract administrator, County Purchasing Agent or the agency/department deputy County Purchasing Agent.”
 - b) “Failure of the contractor to timely submit the data and/or certifications required above or to comply with all federal and state reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the contract. Failure to cure such breach

within 60 calendar days of notice from the County shall constitute grounds for termination of the contract.”

- (2) If an agency/department chooses to request the child support enforcement data and certification from contractors after the contractor has been selected, but prior to final award of contract, the bid/proposal solicitation shall contain the following language:
 - a) “In order to comply with child support enforcement requirements of the County of Orange, within ten days of notification of selection for award of contract but prior to official award of contract, the selected contractor agrees to furnish the required contractor data and certifications to the contract administrator, County Purchasing Agent or the agency/department Deputy Purchasing Agent.”
 - b) “Failure of the selected contractor to timely submit the data and/or certifications required above or to comply with all federal and state reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment may result in the contract being awarded to another contractor, or, in the event a contract has been issued, shall constitute a material breach of the contract. Failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the contract.”

- (3) If an agency/department chooses to request the child support enforcement data and certification from contractors with their bids/proposals, the bid/proposal solicitation instructions shall contain the following language:
 - a) “In order to comply with child support enforcement requirements of the County of Orange the required contractor data and certifications must be submitted with the bid/proposal.”
 - b) “Failure of a bidder/proposer to submit the data and/or certifications required above shall result in the bid/proposal being deemed non-responsive and the bidder/proposer may be disqualified from being considered for contract award. Subsequent to issuance of the contract, failure to comply with all federal and state reporting requirements for child support enforcement or failure to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the contract. Failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the contract.”

§2.4-104 Exemptions

- (1) The following contract processes will be exempt from the Child Support Enforcement requirements:
 - a) Cooperative Agreements;
 - b) Purchasing Card purchases;
 - c) Petty Cash purchases;
 - d) Contracts with another public entity; and,
 - e) Purchases requiring verbal bids only.

- (2) In addition, when a contract is issued with a non-profit organization that has no owner, the contract will be exempt from the owner's personal information requirements.

§2.4-105 Waivers

- (1) The County Purchasing Agent is authorized to grant waivers to the Child Support Enforcement requirements in the following circumstances:
 - a) When the only vendor(s) available to provide the goods or services refuses to comply with the requirements;
 - b) In an emergency as defined in this manual; or,
 - c) When it is clearly in the best interest of the County and the reason for granting the waiver is clearly documented and maintained on file in the office of the County Purchasing Agent.

§2.4-106 Data Transmission

- (1) The contract administrator, County Purchasing Agent or agency/department Deputy County Purchasing Agent shall forthwith transmit data received from contractors under the provisions of this section to the County of Orange Department of Child Support Services, and shall not use or disclose the data for any other purposes.

SECTION 2.5

PURCHASING REQUISITIONS

§2.5-101 **Definition**

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

§2.5-102 **Policy**

- (1) In compliance with 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 Purchasing Agent 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 his 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 his deputies, assistants or employees within the department.

§2.5-103 **Procedure**

- (1) An approved/signed requisition shall be forwarded to the County Procurement Officer or appropriate Deputy Purchasing Agent for processing 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 services and commodities for the County.

§2.5-104 **Process**

- (1) Approved County requisitions shall be processed and executed in accordance with the procurement policies contained in this manual, as well as, those procedures established by the County Procurement Officer to be followed by departments in the procurement of services and commodities.

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 year. Included in the definition of commodity contracts covered in this Section are the following:
- a) 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.
 - b) Publications/Newsprint: Contracts to receive periodicals, magazines, trade journals, etc., either in print or electronic/digital subscriptions.
 - c) Software/Licenses (Retail): Contracts for proprietary software licenses where the software publisher grants the use of one or more copies of software under the end-user license contract (EULA), but ownership of those copies remains with the software publisher. These types of purchases typically include terms which define the uses of the software and number of users allowed.
 - d) Subscriptions/Databases: Contracts for access to on-line information or databases 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 contractor and are limited to the digital exchange of information for a predetermined fee.
 - 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.

§3.1-102 **Solicitation Considerations**

- (1) Solicitations for certain 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, what is the cost of liability insurance?

§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 4.7 of this manual, in no case shall a commodity contract exceed five (5) years in duration, unless the contract is temporarily extended from the original contract term for a period of up to one year as set out in Section 3.1-104 of this manual.
- (2) All contracts will include a provision for cancellation by the County due to lack of funds, termination of requirement, or prices which no longer reflect reasonable market prices.

§3.1-104 Contract Extensions

- (1) Contracts of less than five (5) years duration may be extended for up to one (1) year without approval by the Board of Supervisors. This extension may be issued by the Deputy Purchasing Agent, without Board of Supervisors approval provided there are no monetary increases that exceed the average annual value of the prior year of the contract and if it is determined to be in the best interest of the County.

§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:
 - 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 solicitation, written or oral
 - b) Contracts \$10,001 to \$25,000 over the life of the contract Minimum of two solicitations, written or oral
 - c) Contracts above \$25,000 over the life of the contract Written solicitation issued on County's bidding system

- (2) 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.

§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 accessible after the bids close.

§3.1-108 Retroactive Contract Amendments/Changes

- (1) In general, retroactive contracts or contract overruns are not permitted, and if they occur they are invalid unless ratified by the Board of Supervisors, or unless one or more of the following exemptions applies:
 - a) Contracts with a total value <\$500.
 - b) Contracts with a total value between \$500 and \$9,999 that have the approval of the County Procurement Officer and Chief Financial Officer on the form(s) approved and provided by the County Procurement Office.
 - c) Contracts with a total value of \$10,000 and above 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 such as Public Works and Human Services Contracts.
 - b) Telephone Services Requests and Emergency Contracts in any amount.

- c) Modifications for computer hardware/software maintenance to add licenses and/or users.

§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 purchasing practices and approved by 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 intentionally split to avoid approval by the Board of Supervisors or to bypass competitive bidding requirements.

§3.1-112 Secondary Awards

- (1) Awards may be made to secondary, and, in some cases, third and fourth vendors when there is a reasonable possibility of supply disruption and having an alternate source is clearly in the County's best interest.
 - a) Primary award will go to the lowest responsive and responsible bidder; secondary award will go to the second lowest responsive and responsible bidder, etc.
 - b) For any commodity requirement, the primary contractor will always be contacted first and, only if that contractor is unable to provide the required commodity within the time required, will the secondary contractor, etc., be contacted.

§3.1-113 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.

§3.1-114 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) Emergency and immediate commodity requirements of up to \$1,000 may be handled through Petty Cash or purchasing card, in accordance with Section 4.6 – Small Dollar Purchases.
- b) For emergency requirements exceeding \$1,000, the requestor will contact the County Procurement Officer or the appropriate department Deputy Purchasing Agent. The emergency will be described and the County Procurement Officer or Deputy Purchasing Agent may, if so authorized, use the purchasing card or may issue a purchase order number for an amount sufficient to resolve the immediate emergency.
- c) No later than ten (10) business days from the request date, a purchasing request referencing the purchase will be submitted to the County Procurement Officer or Deputy Purchasing Agent by a department employee authorized to approve purchase requests.
- d) This request 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 goods required and contact the County Procurement Officer or Deputy Purchasing Agent on the next regular working day for issuance of a purchase contract.

§3.1-115 Multi-Department Contracts and County Procurement Office (CPO) Cooperative Contracts

- (1) Multi-Department Contracts: are those which are issued for use by multiple County departments which use like commodities and would benefit from the contract pricing resulting from economies of scale. County departments listed on the contracts may order directly off multi-department contracts.
- (2) CPO Cooperative Contracts: are executed by the office of the County Procurement Officer and are available for use by departments throughout the County. Terms and conditions are established under a cooperative contract and departments may issue individual purchase documents/orders against the cooperative contract, identifying the goods they wish to purchase.

§3.1-116 Board Approval – Sole Source Commodity Contracts

- (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 intentionally Sole Sourced to avoid the bidding requirements contained in this Section. Refer to *Section 4.5 – Sole Source and Proprietary Requests* for additional policy concerning Sole Source purchases.

§3.1-117 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 commodity contract that includes non-standard terms in the following contract provisions:

- a) Indemnification;
- b) Limitation of Liability;
- c) Governing Law; or,
- d) Arbitration/Dispute Resolutions

§3.1-118 Contractor Name/Ownership Changes

- (1) Board approval is not required for contractor name changes when control of the contracted entity remains unchanged, or when an assignment of the County contract occurs pursuant to a sale, merger, or other change in ownership of the contracted entity, and County Counsel determines that the assignment does not require Board approval.
- (2) In all cases where the result of the assignment is that the contracted entity has been released from further performance under the County contract, Board approval shall be required.

§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 duly authorized 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,
 - d) For Opportunity Buys exceeding \$1,000,000, 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.

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 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 purchase used equipment, such equipment may be purchased 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 purchase 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 purchase of unbudgeted Capital Assets which cost more than \$50,000 each.
- (2) Budgeted Capital Assets:
 - a) Budgeted Capital Assets within the budgeted amount approved by the Board require no further Board approval prior to purchase.
 - 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.
- (3) Sole Source Capital Assets:
 - a) Approval by the Board of Supervisors is required prior to the purchase of a Sole Source Capital Asset costing more than \$75,000. Purchases may not be intentionally 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 any Capital Asset contract that includes non-standard terms in the following contract provisions:
 - a) Indemnification;
 - b) Limitation of Liability;
 - c) Governing Law; or,
 - d) Arbitration/Dispute Resolutions

§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, what is the cost of liability insurance?

§3.2-106 Vendor Selection

- (1) With the exception of Sole Source purchases, selection of vendors for Capital Assets shall be based on the competitive process. Solicitations shall be made as follows:

- | | |
|--|--|
| a) Contracts \$5,000 to \$25,000 over the life of the contract | Minimum of two solicitations, written or oral |
| b) Contracts above \$25,000 over the life of the contract | Written solicitation issued on County's bidding system |

(2) Awards will be made to the lowest responsive and responsible bidder or, in the case of negotiated procurement, the vendor with the most responsive proposal as determined by the County.

§3.2-107 Public Bid Opening

- (1) A public bid opening will be held at a time and place announced in the bid solicitation for purchases exceeding \$100,000.
- 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 accessible after the bids close.

§3.2-108 Retroactive Contract Amendments/Changes

- (1) In general, retroactive contracts or contract overruns are not permitted, and if they occur they are invalid unless ratified by the Board of Supervisors, or unless one or more of the following exemptions applies:
- a) Contracts with a total value <\$500.
 - b) Contracts with a total value between \$500 and \$9,999 that have the approval of the County Procurement Office & Chief Financial Officer on the form(s) approved and provided by the County Procurement Office.
 - c) Contracts with a total value of \$10,000 and above shall require approval by the Board of Supervisors.
 - d) Modifications for computer hardware/software maintenance to add licenses and/or users.
- (2) Retroactive contracts in the following categories shall also be exempt from Board of Supervisors approval:
- a) Contracts governed by separate rules and regulations such as Public Works and Human Services contracts.
 - b) Telephone Services Requests and Emergency contracts in any amount.
 - c) Modifications for computer hardware/software maintenance to add licenses and/or users.

§3.2-109 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 appropriate Deputy Purchasing Agent.
 - a) For emergency procurement of Capital Assets costing less than \$75,000 emergency procedures under §3.1-114, 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 purchase; and
 - c) The County Procurement Officer or department Deputy Purchasing Agent will issue a Purchase Order number for an amount sufficient to resolve the immediate emergency.
 - d) If the item cost is over \$75,000, a Purchasing Request with written 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 Purchase Request. This justification should become a permanent part of the procurement file.
 - f) If the requested Capital Asset is unbudgeted, the item will be filed for approval by the Board of Supervisors when the item exceeds \$25,000.

SECTION 3.3

SERVICE CONTRACTS

§3.3-101 Definition

- (1) Service contracts encompass all contracts for services either with or without materials. Included in the definition of service contracts covered in this Section are the following:
 - a) 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 software, and software licenses or other types of end-user contracts.
 - b) 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, software maintenance, etc.
 - c) Personnel or employee-related services: Services which provide benefit or assistance directly to employees, including such services as vending machines, temporary employment, security, etc.
 - 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) 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.
 - f) 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.
 - g) Software Maintenance: Software maintenance as a service 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. Software maintenance as a service includes person-to-person communications regardless of the medium used to communicate: telephone support, on-line technical support, customized support, and/or technical expertise which are changed commercially.
- (2) Service contracts for County procurement purposes do not include contracts for public works, architects and engineers, and real property contracts.

§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 \$100,000 – Approval by the Board of Supervisors is required for all service contracts where for any year of the contract, the annual value to any one contractor exceeds \$100,000.
 - b) Multi-Year Contracts Exceeding \$500,000 – Approval by the Board of Supervisors is required for all service contracts where the total contract value exceeds or is anticipated to exceed \$500,000 when future contract years are taken into consideration.
 - c) 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 two (2) year consecutive term, regardless of dollar amount. Contract may not be intentionally split to avoid this policy.
 - i. Renewal of Sole Source Service Contracts - Sole Source Service Contracts that exceed \$75,000 may not be renewed, without approval by the Board of Supervisors. For additional information and guidelines refer to *Section 4.5 – Sole Source and Proprietary 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 \$100,000 or less that includes non-standard terms in the following contract provisions:
 - a) Indemnification;
 - b) Limitation of Liability;
 - c) Governing Law; or,
 - d) Arbitration/Dispute Resolutions

§3.3-104 Contractor Name/Ownership Changes

- (1) Board approval is not required for contractor name changes when control of the contracted entity remains unchanged, or when an assignment of the County contract occurs pursuant to a sale, merger, or other change in ownership of the contracted entity, and County Counsel determines that the assignment does not require Board approval.
- (2) In all cases where the result of the assignment is that the contracted entity has been released from further performance under the County contract, Board approval shall be required.

§3.3-105 Term of Contract

- (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, 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 twelve (12) months in accordance with Section 3.3-106 in this manual.
- (4) Prior to recommending renewal or extension of an existing contract, the department will document that performance of the contractor has been satisfactory.

§3.3-106 Contract Extensions

- (1) Service Contracts of less than five (5) years duration may be extended for up to one (1) year without approval by the Board of Supervisors. This extension may be issued by the Deputy Purchasing Agent, without Board of Supervisors approval provided there are no monetary increases that exceed the average annual value of the prior year of the contract and if it is determined to be in the best interest of the County.
- (2) Service Contract extensions that exceed \$100,000 per year require approval by the Board of Supervisors.

3.3-107 Contract Renewals

- (1) Applicable to all service contracts with a value that exceeds \$100,000 per year.
 - a) All renewals are subject to Board of Supervisors approval. For renewals already approved by the Board prior to the fourth year of a contract, the Deputy Purchasing Agent or Board authorized designee may execute the renewals of service contract, under the same scope, pricing, terms and conditions without further Board of Supervisors action. Contracts renewals for years four and five must return to the Board for approval, regardless of prior Board actions.
 - b) In the event the total service contract amount for all contract years exceeds \$750,000, the Agenda Staff Report (ASR) shall be filed on the Board’s “Discussion Calendar”.

§3.3-108 Contract 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 bid or proposal 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 \$50,000 or less
over the life of the contract | Minimum of one written solicitation |
| b) Contracts above \$50,000
over the life of the contract | Written solicitation issued on County’s
bidding system |
- (2) Awards in Invitation for Bid solicitations will be made to the lowest responsive and responsible bidder as defined in Section 4.2-103 of this manual. In the case of a negotiated procurement (RFP), award shall be made to the vendor with the most responsive and responsible proposal as detailed in Section 4.3-117 of this manual.

§3.3-110 Public Bid Opening

- (1) In accordance with Section 4.2-111, a public bid opening will be held at a time and place announced in the bid solicitation for purchases for services exceeding \$100,000 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 accessible after the bids close.

§3.3-111 Retroactive Contract Amendments/Changes

- (1) In general, retroactive contracts or contract overruns are not permitted, and if they occur they are invalid unless ratified by the Board of Supervisors, or unless one or more of the following exemptions applies:

- a) Contracts with a total value <\$500.
 - b) Contracts with a total value between \$500 and \$9,999 that have the approval of the County Procurement Officer and Chief Financial Officer on the form(s) approved and provided by the County Procurement Office.
 - c) Contracts with a total value of \$10,000 and above shall require approval by the Board of Supervisors.
- (2) Retroactive contracts in the following categories shall also be exempt form Board of Supervisors approval;
- a) Contracts governed by separate rules and regulations such as Public Works and Human Services Contracts.
 - b) Telephone Services Requests and Emergency Contracts in any amount.
 - c) Modifications for computer hardware/software maintenance to add licenses and/or users.

§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, contract increases may not exceed 10% of the original contract amount or \$10,000, whichever is less, unless authorized/approved by the County Procurement Officer on the form(s) approved and provided by the County Procurement Office. The department Deputy Purchasing Agent may also increase 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.

§3.3-113 Contingency Amounts

- (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 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 intentionally split to avoid approval by the Board of Supervisors or to bypass competitive bidding requirements.

§3.3-116 Secondary Awards

- (1) Awards may be made to secondary, tertiary, and other non-primary sources when there is a reasonable possibility that one service contractor will not be able to satisfy all the County's requirements, as follows:
 - a) Primary award will go to the lowest responsive and responsible bidder;
 - b) Secondary award will go to the second lowest responsive and responsible bidder, etc.
- (2) For any contract service requirement, the primary bidder will always be contacted first and, only if it is unable to provide the required service, will the secondary bidder, etc., be contacted.

§3.3-117 Indemnification

- (1) Where appropriate, contractors will indemnify the County from any liability occurring as a result of their work product or contract performance.

§3.3-118 Insurance

- (1) All service contractors performing work on County property will provide the Deputy Purchasing Agent administering the contract with a certificate of insurance and required endorsements.
- (2) The amount of the insurance will be determined by the County's risk of loss based upon the work being done.

§3.3-119 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.

§3.3-120 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.

§3.3-121 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.
 - 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.

§3.3-122 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.

§3.3-123 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.
 - a) Process:
 - i. In accordance with *Section 4.6 – Small Dollar Purchases*, Emergency service requirements of \$1,000 or less may be handled through Petty Cash or purchasing card, when so authorized.
 - ii. For those emergency requirements 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 the purchasing card, when so authorized, or may issue a purchase order number 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 sufficient and appropriate insurance.
 - iv. No later than ten (10) working days from the request date, a purchasing request referencing the purchase will be submitted to the County Procurement Officer or Deputy Purchasing Agent by an department employee authorized to approve purchase requests. This request 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 \$100,000, 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.

§3.3-124 Multi-Department and County Procurement Office (CPO) Cooperative Contracts

- (1) Multi-Department Contracts: are those which are issued for use by multiple County departments which use like services and would benefit from the contract pricing resulting from economies of scale. County departments listed on the contracts may order directly off multi-department contracts.

- (2) CPO Cooperative Contracts: are available for use by departments throughout the County. Terms and conditions are established under a cooperative contract promulgated by the Office of the County Procurement Officer. In accordance with Section 4.6 of this manual, other County departments or local public entities may then issue individual subordinate contracts against the cooperative contracts, identifying the services and commodities they wish to purchase.

§3.3-125 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.

§3.3-126 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/>

<http://www.ocgov.com/gov/risk>

SECTION 3.4

HUMAN SERVICES CONTRACTS

§3.4-101 Definition

- (1) 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. 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.

§3.4-102 Responsibility

- (1) Human services contracts with local, state and/or federal funding shall be solicited and executed in accordance with the provisions of this Contract Policy Manual. In the event of a contradiction between county policy and state and/or federal rules and regulations, the state and/or federal rules and regulations shall take precedence.
- (2) The departments responsible for providing human services will also be directly responsible for human services contracts, including the responsibility for:
 - a) issuing solicitations;
 - b) accepting or rejecting proposals;
 - c) developing and administering the proposal evaluation process;
 - d) selecting proposal evaluation committee members; and,
 - e) making the final selection recommendation for contract issuance or forwarding the recommendation to the Board of Supervisors for final selection.
- (3) The procurement/contract administrator staff in these departments will not be required to be deputized by the County Procurement Officer, but may avail themselves of the training opportunities provided by the Office of the County Procurement Officer.

§3.4-103 Emergencies

- (1) Emergencies are defined as those situations where the welfare or safety of County residents is at stake and/or immediate purchasing action is required to prevent serious economic or other hardship to the County. In the event funding source regulations do not exist, Section 3.3-123 of this manual shall govern.

§3.4-104 Contract Planning and Coordination

- (1) At the discretion of department heads, every reasonable effort shall be made to ensure, through interdepartmental coordination, that services and funding provided by other County departments are not duplicated.
- (2) County departments responsible for human services contracts and their funding should compare contract inventories at least once annually and share appropriate information which will assist such coordination efforts.
- (3) Interdepartmental contracts may be used if required by funding source regulations or deemed advisable by the affected County departments.

§3.4-105 Contracts

- (1) Contracts will be developed, implemented, and evaluated in accordance with County policy, applicable law and good business practice.
- (2) In the event County policy conflicts with rules and regulations of the funding source, the funding source rules and regulations shall take precedence over the provisions contained in this Section.
- (3) Further, the provisions within Section 3.3 of this manual shall also apply to human services contracts to the extent they are not inconsistent with the funding source rules and regulations or the provisions within this Section.
- (4) Contracts requiring approval by the Board of Supervisors must be approved as to form by County Counsel.

§3.4-106 Competitive Bidding

- (1) The competitive bid process and selection of vendors will be conducted in accordance with applicable state and federal regulations and county policy. In the event of a contradiction between the county policy and state and/or federal regulations, the state and/or federal regulations shall take precedence.

§3.4-107 Protest Process

- (1) Human Services solicitations and contract awards shall follow County protest procedure as set out in Section 1.3 of this manual unless alternative procedures are approved in writing by County Procurement Officer.

§3.4-108 Board Approval

- (1) The Board of Supervisors must approve all human services contracts in excess of \$100,000 per year, regardless of the contract duration.

- (2) Board approval shall be required for the Sole Source human services contracts that exceed an annual amount of \$75,000 or two (2) year consecutive term, regardless of dollar amount. Contract may not be intentionally split to avoid this policy.
 - a) Renewal of Sole Source human service contracts may not be renewed without approval by the Board of Supervisors. For additional information, refer to Section 4.5 – Sole Source and Proprietary Requests.

§3.4-109 Contractor Name/Ownership Changes

- (1) Board approval is not required for contractor name changes when control of the contracted entity remains unchanged, or when an assignment of the County contract occurs pursuant to a sale, merger, or other change in ownership of the contracted entity, and County Counsel determines that the assignment does not require Board approval.
- (2) In all cases where the result of the assignment is that the contracted entity has been released from further performance under the County contract, Board approval shall be required.

§3.4-110 Term of Contract

- (1) The initial contract term and provision for allowable extensions must be specified in the Request For Proposal (RFP), if used. Generally, the term of a contract should not exceed three years, unless otherwise approved by the applicable funding source rules and regulations. Exceptions to this general rule may include, but not be limited to:
 - a) Circumstances where substantial start-up costs are necessary for facility, equipment or technological requirements in order to deliver services.
- (2) In no case shall a human services 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 twelve (12) months in accordance with Section 3.3-106 in this manual.
- (3) Prior to recommending renewal or extension of an existing contract, the department will document that performance of the contractor has been satisfactory.

§3.4-111 Contract Renewals

- (1) Applicable to all contracts with a value that exceeds \$100,000 per year.
 - a) All renewals are subject to Board of Supervisors approval. For renewals already approved by the Board prior to the fourth year of a contract, the Deputy Purchasing Agent or Board authorized designee may execute the renewals of service contract, under the same scope, pricing, terms and conditions without further Board of Supervisors action. Contracts renewals for years four and five must return to the Board for approval, regardless of prior Board actions
 - b) In the event the total service contract amount for all contract years exceeds \$750,000, the Agenda Staff Report (ASR) shall be filed on the Board’s “Discussion Calendar”.

§3.4-112 Contract Pricing

- (1) Human services contracts shall determine cost pricing as it deems to be the best interest of the County. Generally human services contracts will utilize the Cost Reimbursement method under which allowable and reasonable costs incurred by the contractor in performance of the contract and reimbursed in accordance of the terms of the contract.
- (2) Human services contracts may also be written with one of the following preferred basis for reimbursement:
 - a) Fee for Service;
 - b) Actual Cost; or,
 - c) Negotiated Rates

§3.4-113 Adjustments to Contract Amount

- (1) Decreases: The department head or designee 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, contract increases may not exceed 10% of the original contract amount or \$10,000, whichever is less, unless authorized/approved by the County Procurement Officer on the form(s) approved and provided by the County Procurement Office. The department head or designee may also increase 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.

§3.4-114 Contingency Amounts

- (1) When requesting approval for award of a human 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 as set forth in the contract.
 - d) The use of the contingency amount is subject to approval requirements established by the County Procurement Officer.

§3.4-115 Vendor Selection

- (1) Except where applicable state and/or federal regulations dictate otherwise and with the exception of Sole Source human services contracts as defined in Section 4.5 of this manual, selection shall be based on the competitive process. Solicitations shall be made as follows:
 - a) Contracts \$50,000 or less over the life of the contract Minimum of one written solicitation
 - b) Contracts above \$50,000 over the life of the contract Written solicitation issued on County’s bidding system

§3.4-116 Retroactive Contract Amendments/Changes

- (1) In general, retroactive contracts or contract overruns are not permitted, and if they occur they are invalid unless ratified by the Board of Supervisors, or unless one or more of the following exemptions applies:
 - a) Contracts with a total value <\$500.
 - b) Contracts with a total value between \$500 and \$9,999 that have the approval of the County Procurement Officer and Chief Financial Officer on the form(s) approved and provided by the County Procurement Office.
 - c) Contracts with a total value of \$10,000 and above shall require approval by the Board of Supervisors.
- (2) Retroactive contracts in the following categories shall also be exempt form Board of Supervisors approval;
 - a) Contracts governed by separate rules and regulations such as Public Works and Human Services Contracts.
 - b) Telephone Services Requests and Emergency Contracts in any amount.
 - c) Modifications for computer hardware/software maintenance to add licenses and/or users.

§3.4-117 Commodity Purchases

- (1) Provisions within Section 3.1 of this manual shall also apply to human services commodity purchases to the extent they are not inconsistent with the funding source rules and regulations or the provisions within this Section.

§3.4-118 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/>

<http://www.ocgov.com/gov/risk>

§3.4-119 Public Notice

- (1) Public notices for human services solicitations must be posted prior to the release of the solicitations in accordance to the applicable funding source requirements.

SECTION 3.5

UNILATERAL AND HYBRID CONTRACTS

§3.5-101 Unilateral Contract Definition

- (1) A unilateral contract is defined as follows:
 - a) When there are exclusive providers of a necessary service or commodity within a geographic area and the vendor will not sign the County's contract, e.g. utility services and third party courier services; or,
 - b) When one vendor has the exclusive authority for a necessary service and the vendor will not sign the County's contract, e.g. the Department of Justice for fingerprint services.
- (2) The following entities are preapproved for unilateral contract:
 - a) Utility services: electric, gas, water, telephone
 - b) Third party courier services: UPS, FedEx, DHL, etc.
 - c) Cable/Satellite TV companies
 - d) Exclusive franchise trash contracts
 - e) Department of Justice
 - f) US Postal Service
 - g) The Toll Roads/FasTrak
- (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 on the forms approved and provided by the County Procurement Office and approval must be obtained prior to any services or commodities being provided.

§3.5-102 Hybrid Contract Definition

- (1) A hybrid contract is a contract which consists of multiple procurement 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 solicitation process, which shall be documented and made a permanent part of the procurement folder.

SECTION 4 – METHODS OF SOLICITATION

SECTION 4.1

REQUEST FOR INFORMATION (RFI)

§4.1-101 Definition

- (1) A Request For Information (RFI) is used when the government does not presently intend to award a contract, but needs 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 government to form a binding contract.

§4.1-102 Procedure

- (1) When required by the County and determined to be in its best interest, a general RFI may be sent to vendors and may precede the RFP process. The RFI may be a way of determining appropriate proposers and is generally in the format of a business letter, clearly and concisely identifying the needs or services the County desires to obtain. Contents of the RFI Letter should at minimum contain the following:
 - a) Description of good or services being requested and, if applicable, target population to be served;
 - b) Term of the contract. This includes initial term and options to renew for additional terms, if applicable;
 - c) Deadline for submitting requested information;
 - d) Location where requested information is to be sent/faxed;
 - e) Amount of available funds, if applicable; and,
 - f) Anticipated date the RFP will be available, if applicable.

SECTION 4.2

INVITATION FOR BID (IFB)

§4.2-101 Definition

- (1) Invitations for Bids (IFBs) are competitive bidding documents used for acquiring supplies, services, or equipment for which clear specifications can be written and contract award is made generally to the lowest responsive, responsible bidder.

§4.2-102 Protest – IFB:

- (1) Protest of Bid Specifications: In accordance with Section 1.3 of this manual, all protests related to bid specifications must be submitted to the Deputy Purchasing Agent no later than five (5) business days prior to the close of the bid. 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 prior to the close of the solicitation in accordance with the bid submittal procedures provided in the bid.
- (2) Protest of Award of Contract: In accordance with Section 1.3 of this manual, protests related to the award of a contract based on the IFB, the protest must be submitted no later than five (5) business days after the notice of the proposed contract award is provided by the Deputy Purchasing Agent.
- (3) Protests relating to a proposed contract award which are received after the five (5) business day deadline will not be considered by the County.

§4.2-103 IFB Document

- (1) The IFB shall include a purchase 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 will be included in all 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 supplier 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 determined to be in the best interest of the County, the County Procurement Officer or the Deputy Purchasing Agent may 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.
- i) Responsiveness: A bidder's responsiveness will be judged according to 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 award file.
- j) Responsibility: A bidder's responsibility will be judged 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.

§4.2-104 Vendor Advisory

- (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.”

§4.2-105 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 proposers. Pre-bid conferences shall not be mandatory for potential bidders unless it is clearly in the County’s best interest.

§4.2-106 Acceptance of Bids

- (1) Except as noted below, bids must be:
 - a) Received no later than the time specified in the IFB. Late bids shall not be considered and shall be returned to the bidder unopened unless authorized for acceptance and approval by the County Procurement Officer or Deputy Purchasing Agent with written justification;
 - 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. When only one (1) bid is received in response to a solicitation, if that bid is received within 24 hours of the time specified in the IFB and if it is in the County’s best interest, the County Procurement Officer or Deputy Purchasing Agent may accept that bid.

§4.2-107 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 4.2-108;
 - 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.

§4.2-108 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 furnish 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.

§4.2-109 Tied Bids/Local Preference

- (1) When all other factors are determined to be equal, preference shall be given to firms having a legitimate place of business within Orange County. The County Procurement Officer and Deputy Purchasing Agents have the right to award tie bids only by performing a re-solicitation of the tied firms.

§4.2-110 Cancellation of Invitations for Bid/Reservation to 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 contract file. Reasons for cancellation or rejection shall be provided upon request to bidders.

§4.2-111 Public Bid Openings

- (1) A public bid opening will be held at a time and place announced in the bid solicitation for purchases exceeding \$100,000, subject to the guidelines for each contract type as detailed in Section 3 of this manual.
 - 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 accessible after the bids close.

§4.2-112 Award

- (1) Award will be made to the lowest responsive responsible bidder.

SECTION 4.3

REQUEST FOR PROPOSAL (RFP)

§4.3-101 Definition

- (1) When it is not in the County's best interest to acquire goods 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.

§4.3-102 RFP Process

- (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 proposers 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 determined to be in the best interest of the County, the County Procurement Officer or the Deputy Purchasing Agent may include in the terms and conditions a requirement for bid and/or performance surety. A bid surety will guarantee that proposers enter into the contract as agreed upon, and a performance surety will guarantee that the proposer 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. Proposers 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 proposer, all such sureties will be returned to unsuccessful proposers.
- 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 successful proposer 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 proposer'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 proposer. Values/weights for evaluation criteria must be established and submitted to the County Procurement Officer or appropriate Deputy Purchasing Agent prior to distribution of the proposals to the evaluation committee. It is recommended cost be included as a criteria. When cost is a factor in the evaluation criteria, cost analysis must be conducted and recorded in the evaluation process in accordance with procedures set forth by the County Procurement Officer.

§4.3-103 Prequalification of Proposers

- (1) The County reserves the right to prequalify proposers when deemed to be in the best interest of the County. Prequalification may be done as the first step in a two-step bidding process. The process for selection shall be conducted in a competitive manner using the County's standard solicitation methods, to ensure participation by all interested vendors.

- (2) Proposers will be prequalified by responding to a Request for Qualifications (RFQ) or equivalent solicitation, which will include a request for information related to the proposers' ability to fulfill the contract conditions.
 - a) Qualification criteria may include:
 - i. financial capacity/stability;
 - ii. company history;
 - iii. capacity to perform;
 - iv. relevant experience; and,
 - v. any other criteria relevant to the services and commodities being sought by the County.
- (3) Prequalification requirements will be reasonable and will constitute the minimum requirements necessary to fulfill the terms of the contract.

§4.3-104 Vendor Advisory

- (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."

§4.3-105 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 which may exist on the part of proposers. 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 RFP shall be issued as an addendum and sent to all prospective proposers. Pre-proposal conferences shall not be mandatory for potential proposers unless it is clearly in the County's best interest.

§4.3-106 Receipt and Acceptance of Proposals

- (1) Proposals are to be received by the date and time specified in the RFP. Proposals shall be unconditionally accepted without alteration or correction. All proposals must be received by someone other than the person who conducted the solicitation and must be time and date stamped immediately upon receipt. All proposals must be kept in a secure locked location for access by only authorized personnel.
- (2) Late proposals may be accepted or rejected depending on the best interest of the County. No proposal 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 solicitation. The appropriate Deputy Purchasing Agent will have sole discretion in deciding to accept or reject late proposals. If a late proposal is accepted, however, all proposals received within 24 hours of the specified date and time will be accepted.

§4.3-107 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 proposer over another. Examples of waivable informalities are:
 - a) Failure of a proposer to submit information due to oversight;
 - b) Failure of a proposer to sign or date a bid document; or,
 - c) Failure of a proposer 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.

§4.3-108 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 permitted 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 proposer.
- (3) The County shall not in any way be liable or responsible for the disclosure of any such records.

§4.3-109 Protest – RFP

- (1) In accordance with Section 1.3 of this manual, any actual or prospective proposer 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 RFP.
- (2) Release of Proposal Information: In accordance with §1.3-105, immediately upon completion of negotiations with the top-ranked vendor(s), but prior to the filing of an ASR for award of contract, the Deputy Purchasing Agent shall send a "notice of intent to award" to all participating vendors and a copy to the Clerk of the Board.
 - a) Vendors will then have five (5) business days from the date of the notice in which to obtain proposal documents that are available for disclosure, including final score sheets with the names and notes of individual evaluators redacted.
 - b) Upon expiration of the five (5) day period, the department may move forward with the contract award or as necessary, filing the item for approval by the Board of Supervisors.

§4.3-110 Evaluation Committee

- (1) All proposals shall be evaluated by an evaluation committee. Evaluation committee shall be comprised of an odd number of at least a minimum of three (3) or more members who 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.
 - 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 using department or by the County Procurement Officer for those contracts issued by the County Procurement Office.
 - c) All members of the evaluation committee must sign a form certifying, under penalty of perjury, that they have no conflict of interest with the selection process.
 - d) During the proposal evaluation process, evaluators shall not discuss any issues related to the evaluation or selection process with any proposed contractors or their advocates, except in scheduled proposer interviews as discussed below.

§4.3-111 Proposer Interviews

- (1) Proposer interviews must be conducted when the total contract value is anticipated to exceed \$1,000,000. The evaluation committee will conduct interviews with proposers who have submitted responsive proposals and have scored high enough on the written portion of the RFP to remain eligible for the contract award.
- (2) When the total contract value is anticipated to not exceed \$1,000,000, the evaluation committee may elect to conduct interviews with proposers who have submitted responsive proposals and have scored high enough on the written portion of the RFP to remain eligible for the contract award.
- (3) During all interviews conducted under sub-sections (1) and (2) above:
 - a) Proposers shall be given fair and equal treatment with respect to any opportunity for discussion and revision to proposals;
 - b) Discussions with proposers will be recorded either in writing or digital media, 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 proposers; and,
 - d) All members of the evaluation committee must sit in on the interviews with all proposers. An exception may be made with the approval of the Deputy Purchasing Agent if in the best interest of the County.

§4.3-112 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.

§4.3-113 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.

§4.3-114 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.
- (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).

§4.3-115 One Proposal Received

- (1) If only one (1) proposal is received in response to a RFP, an evaluation of the proposal must be conducted by the evaluation panel in accordance to 4.3-110. The County Procurement Officer or appropriate Deputy Purchasing Agent may either recommend award, or, resolicit, whichever is in the County's best interest.

§4.3-116 Errors in Proposals

- (1) Prior to the time and date set for the receipt of proposals, any proposer 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, proposers may not make any changes to their submitted proposals.

- (3) After the receipt of best and final offers, a proposer may be permitted to withdraw its proposal without penalty if evidence is provided of a material error and the fulfillment of the contract by the proposer would create unconscionable hardship or financial loss.

§4.3-117 Award

- (1) Award of contract will be made to the responsible proposer whose proposal best meets the County's requirements. This will be determined by the evaluation committee using the evaluation criteria, which should include proposed cost.
- (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 4.4

TWO-STEP SEALED BIDDING

§4.4-101 Definition

- (1) Two-step sealed bidding is a method of soliciting bids which permits preliminary evaluation based on a proposal's technical merit and the qualifications of the bidder/proposer and a final evaluation based on price.
- (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 Two-Step Bidding Process

- (1) Phase One
 - a) Two-step sealed bidding shall be initiated by the issuance of an invitation to submit technical offers. A technical offer is a document that lists and defines all of the technical requirements of the project and explains the approach and plan to address the County's needs. The invitation to submit offers shall be issued in a manner which provides adequate public notice allowing bidders sufficient time to prepare and submit responses. The invitation to submit technical offers shall contain the following information:
 - i. Notice that the procurement shall be conducted in two phases;
 - ii. A description of the material or service desired using the best information available to the County;
 - iii. A statement that unpriced technical offers only shall be considered in Phase One;
 - iv. The requirements for the technical offers, such as drawings and descriptive literature;
 - v. The criteria for evaluating technical offers;
 - vi. The closing date and time for receipt of technical offers and the location where offers should be delivered or mailed;
 - vii. A statement that discussions may be held; and,
 - viii. A statement that only bids based on technical offers determined to be acceptable in Phase One shall be considered for award.

- b) The County Procurement Officer or the department Deputy Purchasing Agent may hold a conference with the potential bidders before submission of the technical offers or at any time during the evaluation of unpriced technical offers.
- c) The invitation to submit technical offers may be amended after the submission of the unpriced technical offers. The amendment shall be distributed only to bidders who submitted unpriced technical offers, and those bidders shall be permitted to submit new unpriced technical offers or to amend offers already submitted. If an amendment materially changes the intent of the procurement, the invitation to submit technical offers shall be canceled or reissued.
- d) Unpriced technical offers shall be due at the time and date specified. The contents of unpriced technical offers shall be disclosed only to County personnel having a legitimate interest in them or persons assisting in their evaluation.
- e) Late technical offers may be accepted or rejected depending upon the best interest of the County. No technical offer will be accepted which is received later than 24 hours from the original due date. The County Procurement Officer or appropriate Deputy Purchasing Agent will have sole discretion in deciding which late technical offers will be accepted or rejected.
- f) Unpriced technical offers shall be evaluated solely in accordance with the criteria set forth in the invitation to submit technical offers. Offers shall be determined to be either acceptable for further consideration or unacceptable. A determination that an unpriced technical proposal is unacceptable shall be stated in writing explaining the basis for the determination. A record of the rejection will be retained in the procurement file. Unsuccessful bidders shall be notified in writing by the County Procurement Officer or Deputy Purchasing Agent, and the bidder shall not be afforded the opportunity to amend its technical offer.
- g) Discussions may be held with any bidder who submits an acceptable or potentially acceptable technical offer. During discussions, there shall be no disclosure of any information derived from one un-priced technical offer to another bidder. After discussions the County Procurement Officer or Deputy Purchasing Agent shall establish a closing date for receipt of final technical offers and shall notify in writing bidders submitting acceptable or potentially acceptable offers of the closing date. A record will be kept of discussions and made part of the procurement file.
- h) At any time during Phase One, offers may be withdrawn without penalty.

(2) Phase Two

- a) Upon completion of Phase One, the County Procurement Officer or Deputy Purchasing Agent shall issue an Invitation for Bid (IFB) or Request for Proposal (RFP) solicitations. These solicitations documents shall be issued only to bidders whose technical offers are determined to be acceptable in Phase One.
- b) Award will be made to the lowest responsive and responsible bidder.

§4.4-103 Requests for Information

- (1) When required by the County and determined to be in its best interest, a general request for information sent to vendors may precede this process. The request for information will be a way of determining appropriate bidders and will be considered part of the two-step procurement process.

§4.4-104 Vendor Advisory

- (1) All invitations for bid 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.”

§4.4-105 Protest – Two-Step Sealed Bidding

- (1) Protest of two-step sealed bidding: In accordance with Section 1.3 of this manual, all protests related to bid specifications must be submitted to the Deputy Purchasing Agent no later than five (5) business days prior to the close of the bid. 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 prior to the close of the solicitation in accordance with the bid submittal procedures provided in the bid.
- (2) Protest of Award of Contract: In accordance with Section 1.3 of this manual, protests related to the award of a contract based on the two-step sealed bidding, the protest must be submitted no later than five (5) business days after the notice of the proposed contract award is provided by the Deputy Purchasing Agent.
- (3) Protests relating to a proposed contract award which are received after the five (5) business day deadline will not be considered by the County.

SECTION 4.5

SOLE SOURCE AND PROPRIETARY 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.

§4.5-102 Sole Source Justification

- (1) Formal justification for Sole Source procurements is required when competitive bid guidelines require pricing from competing firms. A Sole Source justification will be prepared by the user department and approved by the department head or designee. The County Procurement Officer or Deputy Purchasing Agent shall retain a copy of this justification as part of the contract 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 accomplish this particular task if the recommended vendor could not provide the product or service.
- (2) Valid Sole Source justifications require strong technological or strong programmatic justifications. Sole Source justifications are not required for purchases where no competitive solicitation is required.
- (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 awarded a subsequent 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 party owning items that are proprietary is known as a sole proprietor and there is no other source available from which to purchase the goods 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) 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 Section 3 of this manual.

§4.5-104 Emergency Requests

- (1) Sole Source requests may be approved based upon emergency situations in which there is not adequate time for competitive bidding. For additional policies regarding Emergency Requests, refer to the appropriate contract type within Section 3 of this manual.

§4.5-105 Commodities – Sole Source Requests

- (1) Approval by the Board of Supervisors is required prior to the execution of a Sole Source commodity contract costing more than \$250,000 annually.

§4.5-106 Capital Assets – Sole Source Requests

- (1) In addition to the Board approval requirements stated in Section 3.2 of this manual, approval by the Board of Supervisors is required prior to the purchase of a Sole Source Capital Asset item costing more than \$75,000.

§4.5-107 Service Contracts – Sole Source Requests

- (1) Approval by the Board of Supervisors is required for the following:
 - a) Sole Source service contracts that exceed total annual amount of \$75,000;
 - b) Sole Source service contracts that exceed a two (2) year consecutive term, regardless of dollar amount. Contracts may not be intentionally split to avoid this policy; and,
 - c) Renewal of Sole Source Service Contracts where the annual cost exceeds \$75,000.

§4.5-108 Human Services – Sole Source Requests

- (1) Sole Source requests for human service contracts will be guided by the regulations of the funding source. Sole Source requests for any human service contract, as described in 3.4 of this manual that exceeds \$75,000 in value, will require Board Approval.

§4.5-109 Contract Renewals

- (1) A new Sole Source/Proprietary Request Justification Form is required for each contract renewal period.

4.5-110 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.
- (3) A signed copy of the Sole Source Justification, as described in Section 4.5-102, shall also be attached to the Agenda Staff Report.

§4.5-111 Negotiation

- (1) With approvals as required, a contract shall be negotiated with the designated Sole Source vendor to achieve a contract that is advantageous to the County of Orange.

SECTION 4.6

SMALL DOLLAR PURCHASES

§4.6-101 Definition

- (1) Small dollar purchases are purchases made for items which fall below the dollar limits established for competitive bidding in accordance with Section 3 of this policy manual.

§4.6-102 Types of Small Dollar Purchases

- (1) Petty Cash: Petty cash purchases are purchases made directly by using departments using cash established within their revolving petty cash funds. Petty cash funds are to be used in the following manner:
 - a) The limit on any individual petty cash transaction is \$1,000, including tax, handling charges, etc. Splitting purchases to avoid the \$1,000 limit is a violation of Board policy;
 - b) Petty cash transactions are limited to one per day per vendor location;
 - c) Petty cash may not be used to procure services where individuals will be working on County property unless the vendor has shown proof of insurance;
 - d) Purchases are to be paid for when received. Purchases where the invoice follows the goods should be handled by purchase order; and,
 - e) Petty Cash shall not be used to purchase services or commodities that are available on a County contract.
- (2) Purchasing Card: Purchasing card purchases are made only by those employees authorized by their department head to make Purchasing Card purchases in accordance with established program policies as provided for in Section 1.7, as well as, those procedures established by the County Procurement Officer.
- (3) Small Dollar Purchases for Services: When using the small dollar purchase system for services, it is imperative that normal insurance requirements be followed and that the County be properly indemnified.

SECTION 4.7

COOPERATIVE PURCHASING

§4.7-101 Definition

- (1) The Cooperative Purchasing Program authorizes departments and local government entities to purchase products and services from contracts awarded by the Office of the County Procurement Officer.

§4.7-102 Policy

- (1) Services and commodities may be acquired through cooperative contracts that can involve one or more public departments. Such cooperative purchasing may include public procurement contracts which are made available to or from other local public entities.

§4.7-103 Responsibility

- (1) The County Procurement Office is responsible for identifying and executing all cooperative contracts for use by County departments. The County Procurement Office may authorize and make use of cooperative contracts, including the pricing, terms and conditions of the contract of another public department provided that:
 - a) The initial procurement the County is relying upon is consistent with County purchasing rules and requirements; 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 department, Deputy Purchasing Agents will conduct an analysis of 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.
 - a) Vendor Selection
 - i. Contracts \$75,000 or less over the life of the contract Minimum of one written quote

 - ii. Contract above \$75,000 over the life of the contract Multiple quotes are required when commodities and/or services are available from multiple cooperative contract sources.

- (3) The County may also allow local schools, cities, and other public entities to take advantage of contracts 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 purchase documents;

- b) Providing for their own acceptance of the pricing, terms & conditions of the contract;
 - c) Obtaining required certificates of insurance and bonds; and,
 - d) Making any payments due to the vendor.
- (4) 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.

§4.7-104 Contractor Requirements

- (1) The contractor is required to maintain a list of the entities that have used the County’s cooperative contract. This list shall report dollar volumes and shall be provided to the Deputy Purchasing Agent upon request.

§4.7-105 No Usage Guarantee

- (1) While cooperative departments may use these contracts, the County of Orange makes no guarantee of usage.

§4.7-106 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.

§4.7-107 Term of Cooperative Contract

- (1) The duration of a County cooperative contract will depend upon the County’s need, prevailing market conditions, contract start-up costs, and the County’s best economic interest.
- (2) Term: With respect to non-Board of Supervisors awarded contracts, in no case will a County cooperative contract exceed five (5) years in duration, unless specifically approved by the Board of Supervisors.
- a) With respect to Board of Supervisors awarded contracts, the initial term of a service contract shall not exceed three (3) years, unless otherwise approved by the Board.
 - i. Contract Renewals: Applicable to all service contracts with a value that exceeds \$100,000 per year.

1. All renewals are subject to Board of Supervisors approval. For renewals already approved by the Board prior to the fourth year of a contract, the Deputy Purchasing Agent or Board authorized designee may execute the renewals of service contract, under the same scope, pricing, terms and conditions without further Board of Supervisors action. Contracts renewals for years four and five must return to the Board for approval, regardless of prior Board actions.
 2. In the event the total service contract amount for all contract years exceeds \$750,000, the Agenda Staff Report (ASR) shall be filed on the Board's "Discussion Calendar".
- b) County cooperative contracts issued by the Office of the County Procurement Officer that are subordinate to non-County cooperative programs may be executed in accordance with the term of the overriding contract and where appropriate, may extend beyond five (5) years in duration, without approval by the Board of Supervisors.
- i. Any department subordinate contracts may be extended to the same duration as the County cooperative contracts that are issued by the Office of the County Procurement Officer.
- c) County cooperative contracts issued by department Deputy Purchasing Agents that are subordinate to non-County cooperative programs may be executed in accordance with the term of the overriding contract and may not extend beyond five (5) years in duration, without approval by the Board of Supervisors.

§4.7-108 Collaborative Purchasing

- (1) In accordance with Section 1.1 of this manual, the County Procurement Officer has the authority to identify and make use of other governmental department cooperative contracts that would be beneficial for County use.
 - a) The County Procurement Office may pursue both competitive and negotiated cooperative contracts executed by the state and/or federal 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 purchasing.
- (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.

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. Alternate Bid: A bid submitted in knowing variance from the specifications, terms, conditions or provisions of the solicitation. Such a bid is acceptable only when the variance is deemed to be immaterial.
4. Amendment: An agreed addition to, deletion from, correction or modification of a document or contract.
5. 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.
6. 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.
7. Award: The presentation of a purchase contract or contract to a bidder or proposer.
8. Best Interest: The discretionary rationale used by a purchasing 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 bidding procedure. A bid includes a cost for goods 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 suppliers 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. Calendar Day: Every day shown on the calendar, including Saturdays, Sundays and holidays.
17. Capital Asset: A tangible property costing \$5,000 or more per unit, including tax, delivery and installation, with a useful life expectancy exceeding one year.
18. Change Order: See Modification.
19. Closing Date/Time: Refers to the date and time for a bid or proposal closing.
20. Collusion: A secret contract or cooperation between two or more persons to accomplish a fraudulent, deceitful or unlawful act.
21. 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 year.
22. 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.
23. Compliance Monitoring: A process whereby the County Procurement Officer selects and reviews procurement transactions conducted by departments for the purpose of ensuring that the County purchasing process is fair and efficient.
24. Confirming Order: A purchase order written and sent to a vendor to verify that an order which was transmitted orally is authorized.
25. 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.
26. 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.
27. Consultant: A person or firm who provides professional or expert advise and/or recommendations.
28. 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.

29. Contract: (1) A deliberate verbal or written agreement between two or more competent persons to perform or not to perform a specific act or acts; also, an agreement. (2) All types of government agreements, regardless of what they may be called, for the procurement or disposal of supplies, services or construction.
30. Contract Administration: The management of various facets of contracts to assure that the contractor's total performance is in accordance with the contractual commitments and that the contractor's obligations to the purchaser are fulfilled.
31. Contract Award: The final signed agreement on the terms and conditions of a contract between a buyer and seller.
32. Contract Extension: An action to extend a contract termination date upon written mutual agreement by both parties.
33. Contract Renewal: A renewal clause allows an agreement to continue for a defined period.
34. Cooperative Contract: County cooperative contract promulgated by either the Office of the County Procurement Officer or a contract issued by a separate County department or other public entity approved for use by the County Procurement Officer. Departments or other local public entities may issue individual subordinate contracts against the cooperative contracts, identifying the services they wish to purchase.
35. Contractor: Any person or firm having a contract with a governmental body.
36. Debarment: A shutting out or exclusion, through due process, for cause, e.g., a bidder from a list of qualified prospective bidders.
37. 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 goods and/or services for the department.
38. 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.
39. 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.
40. Discoveries: The identification of facts or documentations which are not in compliance with procurement policy or best practice.
41. 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.

42. 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.
43. 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.
44. Emergency: 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.
45. Equal or Equivalent: A phrase used to indicate the acceptability of products of similar or superior function.
46. Equipment: Personal property of a durable nature which retains its identity throughout its useful life.
47. Evaluation Committee: A committee which advises and assists in proposal evaluation and award of contract, usually employed for high technology procurements and the purchase of services.
48. Evaluation Criteria: Those criteria set forth in the Request for Proposal (RFP) and used by the evaluation committee to score and rank proposers who respond to the procurement solicitation.
49. Express Warranty: Any affirmation of fact or promise made by a seller to a buyer which relates to the goods and becomes part of the basis of the bargain.
50. Firm Bid: A bid that binds the bidder until a stipulated time of expiration of the bid.
51. Fixed Price Contract: A contract which provides for a firm price under which the contractor bears the full responsibility for profit or loss.
52. Force Account: Use of internal (County) labor.
53. 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 bids on a specific purchase it intends to make.
54. Formal Bid Process: The competitive bid process requiring a public bid opening with the date, time and location set forth in the bid solicitation.
55. Gratuity: A payment, loan, subscription, advance deposit of monies, services or anything of more than nominal value presented or promised for consideration of a purchasing decision or recommendation.
56. Guarantee: To warrant, stand behind, or ensure performance or quality, e.g., a supplier in relation to his product.

57. 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.
58. Hybrid Contract: Is a contract which consists of multiple procurement type purchases.
59. Incremental Contracting: Contracting in small segments to avoid competitive bid requirements or Board of Supervisors approval.
60. Indemnification: Protection against incurred loss, damage, or hurt, usually by monetary compensation.
61. Informal Bid: An unsealed competitive offer conveyed by letter, telephone, telegram, or other means and under conditions different from those required for formal bidding.
62. Insurance: A contract between a certified insurance firm and the County which provides for a monetary payment in the event of loss, accident, or death; also, a contract between a contractor for the County working on County property and an insurance firm, naming the County as an additional insured, for the purpose of reimbursing the County for any loss incurred due to the nature of the work being performed by the contractor.
63. Invitation for Bid (IFB): The solicitation document used for competitive sealed bidding for the purchase of equipment, materials, supplies, services, and construction, for which clear specifications can be written.
64. Lead Time: The period of time from date of order to date of delivery during which the buyer must reasonably allow the vendor to prepare goods for shipment; the period of time needed to process purchase requisitions for bid/proposal solicitation and award of contract.
65. 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.
66. 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.
67. Milestones: Designated steps of the planned acquisition which usually signify a completion of a requirement or delivery of materials.
68. Modification: A written order signed by the County Procurement Officer or Deputy Purchasing Agent, directing the contractor to make changes to the original contract. A change made to a document in the County System of Records. This type of change is distinguished from an amendment which requires signatures of both parties.

69. Multi-Department Contracts: Those contracts issued by the County Procurement Officer or department Deputy Purchasing Agents for the purchase of services and commodities, which may be used by more than one department of the County under the condition that the department is named on the contract as an authorized user.
70. Negotiation: The discussion or correspondence between the County and the preferred contractor in order to develop a contract with terms and conditions that serve the best interests of the County.
71. One-Time Purchases: Purchases for particular goods or services which cover a particular need. These types of purchases are distinguished from annual or blanket contracts which cover a continuing need of an item or service.
72. Opportunity Buys: 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 savings.
73. Performance Surety: See Bid Surety.
74. 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.
75. Pre-Bid/Pre-Proposal Conference: A meeting set up between the County parties issuing a bid/proposal solicitation and the potential bidders/proposers for the purpose of clarifying the bid/proposal solicitation and answering any questions the bidders/proposers may have.
76. Prequalification: A process used prior to solicitation of bids to determine if potential bidders have the ability to fulfill the contract requirements for which the solicitation will be issued and/or to determine if the potential bidders' products will meet the cost and performance criteria required to meet the County's needs.
77. 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.
78. Proposal: The executed document submitted by a proposer in response to a Request for Proposal (RFP). A proposal includes a detailed description of the goods 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 goods, and method of accomplishment of services.
79. Proposer Interviews: Sessions conducted by the proposal evaluation committee for the purpose of interviewing proposers who submitted acceptable proposals within competitive range for clarification to assure full understanding of and responsiveness to the solicitation requirements.
80. Proprietary Product: An item or service that must meet particular restrictive specifications, but may be available from multiple sources.
81. 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.

82. **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.
83. **Procurement Council:** A committee of County employees appointed by department heads and chaired by the County Procurement Officer to discuss purchasing issues and make recommendations regarding County-wide purchasing policies.
84. **Real Property Contracts:** Includes acquiring, leasing, licensing constructing, operation, and maintaining County-owned or County-occupied facilities and assets. Agreements concerning the purchase or use of County owned or private sector parking spaces are considered real property contracts.
85. **Rejection of Bid(s):** The non-acceptance of submitted bid(s).
86. **Retroactive Contract:** An unauthorized purchase or commitment made to a supplier/vendor without an approved written contract in place prior to delivery of any goods and/or services.
87. **Request for Information (RFI):** A request for information is used when the government does not presently intend to award a contract but needs 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.
88. **Request for Quote (RFQ):** A small order amount purchasing method. Generally used for small orders under a certain dollar threshold. A request is sent to suppliers along with a description of the commodity or services needed and the supplier is asked to respond with a price.
89. **Request for Proposal (RFP):** The solicitation document which includes a scope of work and terms and conditions used to secure proposals for services or goods 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.
90. **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.
91. **Responsive Bidder:** A bidder whose bid conforms in all material respects to the terms and conditions, the specifications and other requirements of the solicitation.
92. **Services:** The furnishing of labor, time or effort by a contractor involving the delivery of a specific performance.
93. **Sole Source:** An award for a commodity or service to the only known capable supplier, occasioned by the unique nature of the requirement, the supplier, or market conditions.
94. **Sole Source Justification:** A document submitted by department staff for approval to contract with a particular party without competitive bidding.
95. **Solicitation:** A **good faith** effort to obtain a bid or proposal for the provision of goods or services.

96. Specifications: A description of what the purchaser seeks to buy, and consequently, what a bidder/proposer must be responsive to in order to be considered for award of a contract.
97. Standard: A characteristic or set of characteristics for an item that, for reasons of performance level, compatibility or interchangeability with other products, etc., is generally accepted by producers and by users of the item as a required characteristic of all items for the designed purpose.
98. Steering Committee: A committee which assists in contract administration usually in a management or consulting contract.
99. Subcontractor: Any person undertaking part of the work under the terms of the contract, by virtue of a separate contract between the contractor and subcontractor.
100. Supplier: An actual or potential contractor; a vendor.
101. Surplus Property: Inventory not needed by the owning department or by other departments at the present time or in the foreseeable future.
102. Terms and Conditions: A general reference applied to the provisions under which bids/proposals must be submitted and which are applicable to most purchase contracts.
103. Terms of Payment: Methods and timelines by which the County must render payment under a purchase contract.
104. Unilateral Contract: used when there are exclusive providers of a necessary service or commodity within a geographic area, or when one vendor has the exclusive authority for services necessary to the County.
105. Using Department: A unit of the County which utilizes good and services procured by the Deputy Purchasing Agent.
106. 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.
107. Vendors List: See Bidders List.
108. 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 bidding procedures because of unique circumstances related to a particular need or procurement.
109. 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/proposers.
110. Warranty: A representation of utility, condition, and durability made by a bidder or proposer for a product offered.