

## **5.0 POLICIES ON CONTRACTING AND BIDDING (Adopted September, 1994)**

### **5.1 INTRODUCTION**

This section contains the adopted policies of the Santa Clara County Board of Supervisors for bidding and contracting for goods and services adopted by the Board of Supervisors in September 1994. These policies reflect the Board's commitment to an open and competitive process with individuals and organizations that may do business with the County. It is the intent of the Board of Supervisors that these policies will promote the most cost-effective use of taxpayer dollars while contributing to fairness and equal access to business opportunities in the County.

In addition, these policies provide formal direction to County officials and employees who are involved in awarding and administering County contracts. Recognizing that County discretion is limited by federal and state laws where contracts are awarded for construction projects or where grants may be involved, this manual focuses on areas where the Board has legal discretion.

In adopting these policies, the Board of Supervisors recognizes that periodic reviews of its provisions may be necessary to allow for changes or amendments.

## **5.2 OVERVIEW OF COUNTY CONTRACTING ACTIVITIES**

Santa Clara County annually enters into hundreds of contracts to procure goods and/or services of a wide-ranging variety. All of the agreements are consummated to support a specific County service or program through a reliance on a person or firm who is independent of the County: i.e., an individual who acts under contract as an independent consultant, a private for-profit firm or corporation, a private non-profit organization, or another public agency may contract with the County for the purposes that are described in this manual.

Ensuing sections define specific categories of contracts and bidding processes and outline policies that are pertinent to each section. What those sections do not provide is a concise description of the general scope and purpose of the County's contract process. It is a complex process, as well as one that consumes a large percentage of the County's annual budget. Accordingly, this section is included in the manual to describe the range of agreements that the County enters into during a typical fiscal year.

### **5.2.1 Real Property Leases**

Many County agencies rent or lease office space from private property owners. Generally, these agreements have a firm duration of no more than five years with an option to extend beyond the firm term of the agreement. These type of agreements are needed whenever agencies lack available space in a County-owned facility. On occasion, the County also may rent or lease a facility off site to a private firm or another public agency, in which case the County acts as the landlord under a rental or lease agreement with a tenant.

### **5.2.2 Lease or Rental Agreements on Equipment**

Occasionally, the County will enter into agreements to rent or lease equipment, rather than purchase and own the item(s). Typically, these agreements are considered cost-effective when the equipment is needed for a limited duration or the anticipated useful life of the item, in combination with various other financial considerations, makes renting or leasing preferable to purchasing the item(s).

### **5.2.3 Equipment and Supply Purchases**

The County's annual budget contains appropriations in object 2 accounts for office supplies and in object 4 accounts for the purchase of fixed assets (equipment). Purchase orders, a form of contract, are frequently used to procure these items. It is also common for the County's Purchasing Department to negotiate and execute master purchase agreements, under which County agencies may be guaranteed pricing on specific supplies and equipment. In addition, County agencies may directly negotiate contracts to procure supplies or equipment from an outside vendor. Such agreements are negotiated and executed under the guidelines that are set forth in this manual.

#### **5.2.4 Maintenance Agreements**

Under various circumstances, County staff are trained and assigned to maintain County-owned facilities and equipment. In other instances, the County will contract with independent vendors to maintain County facilities and equipment. Generally, contracts with outside firms are used for maintenance whenever a manufacturer's specifications require such an arrangement, when the maintenance requirements are highly technical or specialized in nature, or when the maintenance requirement is sporadic and therefore incapable of justifying dedicated County staffing. Contract Services -- Legal

The County contracts for the services of independent legal counsel when issues pertinent to a negotiation, arbitration or litigation are specialized in nature, or when a conflict merits the retention of outside counsel, or when the existing workload of the County's attorneys renders it impractical to assign County staff to undertake a particular matter. The County's District Attorney and Public Defender also may contract out for the services of legal counsel whenever circumstances such as conflicts, specialized demands or conflicting work merit such action. The County's judicial officers also may order the retention of court appointed counsel, which generally will result in a contract for the services of an independent legal counsel to represent a defendant for the duration of a particular court case.

#### **5.2.5 Contract Services -- Medical**

County agencies enter into agreements with physicians and various other health professionals, including ambulance and paramedic service providers, to provide specialized medical services in the County and in its hospital and clinic network. The County also contracts with a number of community-based organizations that specialize in providing disease prevention, treatment and medical counseling services to the community. The services of independent contractors are used in lieu of County staff to afford flexibility in meeting fluctuating and specialized workload demands.

#### **5.2.6 Consulting Services -- EDP and Communications Technical Assistance**

The County often contracts for outside technical assistance when new computer and/or communications systems are installed or when existing systems are modified. Contracts with independent technicians also may be required to develop or modify software systems for the County. Annual maintenance contracts on computer hardware and software systems are frequently required because of the specialized nature of the systems and because the manufacturers' warranties often require such arrangements.

#### **5.2.7 Consulting Services -- Fiscal**

The County Board of Supervisors contracts with an independent accounting firm to perform Board commissioned audits of various County operations and to complete independent analyses that may be called for by the Board. The County also contracts with independent accounting firms to complete legally required audits and to prepare the County's annual financial statements. These same firms also may perform various actuar-

ial analyses of County funds and entitlement programs. Consulting Services -- General Management & Operations

The County routinely contracts with independent consultant firms for project-related work that requires varying degrees of expertise and specialization. Examples would include independent operational analyses of County organizations, analyses of management systems, the design and development of new systems (technical and non-technical), personnel-related studies, or specialized training programs. The County also may contract with a firm to manage County-owned property: e.g., the County may retain an outside firm to manage one of the County's parks and recreation facilities. Firms that are retained for these purposes may be under contract for a short duration (e.g., for the limited life of a specific project) or they may be retained for a prolonged period of time and serve the County on an extended basis. Individuals who are retained by firms that contract with the County to provide specific services act as independent agents and not as employees of the County.

### **5.2.8 Consulting Services -- Architect and Engineering**

Whenever County funds are used for a major capital improvement project, the County will contract with architects and engineers to design the structure or system and may also contract with construction project managers to monitor the project and the performance of other independent contractors. Examples of projects that merit this type of contracted work include construction activity on new or remodelled buildings, the design and installation of new or significantly modified systems within existing facilities, the design and installation of build-to-suit improvements on leased facilities, specialized assessments and feasibility studies on facilities and their attendant systems, traffic analyses, environmental impact reports, or various other undertakings attendant to any public works project that may be commissioned by the County.

### **5.2.9 Contract Employees**

Under special circumstances, the County may determine that it is in its best interests to retain an employee under contract rather than hire that person as part of the classified service. See Section 5.2.14 of this manual for policies in this area.

### **5.2.10 Public Works Agreements**

The County may commission a variety of public works projects and fund those projects with federal, state and local tax dollars. Examples of public works projects include transportation improvements (road, rail and airport projects), parks and recreation projects, and water and sewer projects. This type of work requires the preparation of detailed working plans and specifications, and the projects are administered under highly regimented laws, rules and regulations.

### **5.2.11 Human Services Agreements**

The County annually contracts with a large number of independent community-based organizations to provide services to the public. Examples of these type of agreements include medical and counseling services, as previously noted under the “Consulting Services -- Medical” heading of this section. Other examples might include education and counseling services of a non-medical nature, such as job training and placement services. The Board also often approves contracts with independent non-profit organizations which specialize in organizing various paid and/or volunteer services for the elderly, handicapped, disadvantaged or indigent in the community. From time-to-time, the Board also finds that it is in the community's best interest to grant funds (under contract) to support cultural arts projects. In negotiating and executing “Human Services Agreements,” the County may be the provider of service (and receive compensation for the effort) or the recipient.

### **5.2.12 Franchise and Concession Agreements**

By law, the County serves as a franchising authority that grants access and easements on public property within the County's geographical boundaries to public utilities and cable television operators. The utilities and cable operators may be granted exclusive or non-exclusive franchises by the Board of Supervisors. These type of franchises are awarded by the Board of Supervisors under ordinances, which set forth the terms and conditions under which the franchise may operate within the County. While these ordinances constitute a form of contract, they are not the focus of this manual.

Other commonly recognized forms of franchises and concession agreements include leases of County-owned property for various purposes and the granting of concessions or operating permits for enterprises on County-owned property. The County also grants licensed franchises for other limited purposes, such as to provide paramedic and ambulance services within the County. Policies concerning the County's lease of publicly-owned real property are articulated in this manual (see Franchise and Concession Agreements, Agreements on the Use of County-Owned Real Property).

### **5.2.13 Grants and Contracts with Other Public Entities**

The County's law and justice, social services and health services agencies annually enter into agreements for service with other federal and state agencies. Typically, these agreements stipulate that the County will abide by various rules and regulations as a condition of receiving funds to carry out services that are supported in whole or in part by the federal and state governments. The County also may contract with the state and federal governments to provide certain services and may be compensated for those services; e.g., the County houses state and federal prisoners in its jail systems and is compensated for this service. The County also may enter into agreements with other public agencies to form joint powers authorities. These authorities generally are constituted to carry out specific responsibilities that are multi-jurisdictional in nature and reflect regional interests.

These constitute examples of the type of agreements that the County negotiates, executes and administers on a routine basis. Funds to support these activities are appropriated in the annual budget by the Board of Supervisors. Contracts that are administered for the above purposes are negotiated and executed under the policies that are set forth in this manual, subject to exceptions or variations that may be deemed to be appropriate by the Board of Supervisors. Changes in these policies may be approved by the Board of Supervisors subject to a periodic review of the provisions in the manual by the Board's Audit Committee.

#### **5.2.14 Contracting Principles (Adopted 10-28-97; Amended 10-21-08)**

As a condition of the renewal of any contract or the letting of any new contract, any agency or company contracting to deliver services for the County shall comply with the following contracting principles:

- A. All Type I and Type II contracts, as hereinafter defined, shall include a contract provision specifying that the contractor shall comply with all applicable federal, state and local rules, regulations and laws.
- B. In order to assure fiscal responsibility, strength and compliance with these principles, all Type I and Type II contracts shall include a contract provision specifying that the contractor shall maintain financial records that would be adequate to show that County funds were used for purposes consistent with the terms of the service contract.
- C. All Type II contractors shall provide specific information in addition to that which is required of a responsible bidder. The information will be delineated in the contractor selection process document but shall, at a minimum, include the following information pertaining to the actual provision of services and/or expenditures charged to the contract.
  1. Information regarding the wage level, pay range and benefits for positions and job classifications.
    - a. The wage and benefit information for executive, managerial and supervisory positions may be presented as one aggregate figure. For example: "Executive, Managerial and Supervisory wage and benefits costs for this contract are (or in the case of a new program the projected level) \$X for each year of the contract." However, in no instance would an individual be identified by employee name.
    - b. The wage level, pay range and benefit costs for all other positions and job classifications that will be providing actual services and/or expenditures charged to the contract should specify actual distribution (or in the case of a new program the projected level) of wage rates within each pay range by the specific salary level. However, in no instance would an individual salary be identified by employee

name. In the case of single position job classes the information may be aggregated with similar job classes.

For example: “In Job Classification A there are five positions with a pay range of \$X to \$Y. With two employees paid at \$X, two employees paid at \$Y and one paid at \$Z midpoint between \$X and \$Y.”

- c. If medical insurance is provided, a summary of coverage for each plan must be submitted (or in the case of a new program, the projected level). In addition, the County may also request the entire plan document.

The summary must include the total premium cost, the amount of the premium paid by the employer and employee, and any co-payments or other employee costs.

If medical insurance is not provided, the County Agency/Department presenting the contract for approval shall calculate and disclose the costs of providing medical insurance to the employees of the contractor. Costs shall be determined by the County Executive based on a standard cost provided by the Santa Clara Valley Health and Hospital System.

- 2. Length of Service:
  - a. The length of continuous employment with the contractor by job classification (information shall not include employee names).
  - b. In addition, the contractor may submit information detailing the relevant prior experience of employees within each job classification (information shall not include employee names).
- 3. The annual rate of staff turnover.
- 4. The number of hours of training for each position in subject matters directly related to providing services to County residents/clients.
- 5. The number of legal complaints issued by an enforcement agency for alleged violations of applicable federal, state or local rules, regulations or laws and the number of citations, court findings or administrative findings for violations of applicable federal, state or local rules, regulations or laws. The information must include the date, enforcement agency, the rule, law or regulation involved and any additional information the contractor may wish to submit.
- 6. Copies of any collective bargaining agreements or summary of personnel policies covering the employees providing services to the County.

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- D. All Type II contracts shall include a contract provision specifying that in order to determine compliance to these principles as well as the contract, the contractor shall be required to provide the County or its agents, except where prohibited by federal or state laws, regulations or rules, reasonable access, through representatives of the contractor, to facilities, records and employees that are used in conjunction with the provision of contract services.
- E. During the term of any contract all Type II contractors shall provide to the County copies of any financial audits that have been completed. The contractor shall use County funds for County services and shall not use County funds for general employer costs that do not support or otherwise directly relate to the scope of contracted services. Consistent with the financial provisions of the contracts, this shall not preclude the realization of profits or savings.
- F. During the term of any contract, all Type II contractors shall advise the County Department/Agency responsible for monitoring the contract of the issuance of any legal complaint by an enforcement agency, or of any enforcement proceedings by any Federal, State or Local agency for alleged violations of federal, state or local rules, regulations or laws. In addition, the specific contract may include additional provisions regarding notice to the County of specific client/patient service issue complaints.
- G. During the term of any contract, all Type II contractors shall advise the County of the issuance of citations, court findings or administrative findings for violations of applicable federal, state or local rules, regulations or laws.
- H. Violations of this policy may be considered material breaches of any Type I or Type II contract, and may, at the option of the County, constitute grounds for the termination or non-renewal of any such contract, according to its terms. The contractor shall be provided reasonable notice of any intended termination or non-renewal and the opportunity to respond and discuss the County's intended action.

### Definitions

- A. For purposes of this resolution, renewal of any contract shall not include modifications or amendments that do not extend the original length of the contract.
- B. For purposes of this resolution, services shall not include the rental, purchase, sale, lease, lease back or lease purchase of goods. Nor shall the rental, purchase, sale, lease, lease back or lease purchase of any facility or property be included.
- C. For purposes of this resolution, Type I service contracts shall include any of the following in which the County purchases services from:
1. Sole source.
  2. Construction or other work required by law to be contracted out.

3. Individuals and contractors that employ less than twenty-five (25) employees.
  4. Contract which provides for immediate needs necessary to preserve public health, safety or peace and any other emergency work which cannot be handled because staff and equipment have been allocated and the work must be done post haste.
  5. Contract necessary to provide immediate emergency repair of facilities or equipment in order to preserve or provide continuous public, inmate, patient or client services or for the safety and health of the public or employees.
  6. Contract with other public agencies.
  7. Contract of one hundred thousand dollars (\$100,000) or less (excluding contractors where the aggregate of multiple contracts for the same or similar services with the same contractor exceeds \$100,000), except where a labor contract contains a specific provision that requires notice to the County labor organization, then the labor contract provision and threshold dollar amount shall be applied.
  8. Contract with professionals (such as legal, financial, engineering, architectural, management consulting services and physician and medical consulting services) where the primary services contracted for will be provided by those professionals.
  9. Contract requires work to be performed with specialized equipment (such as trucks, cranes and other similar large equipment) including those contracts when the contractor provides an operator for the equipment.
  10. Contract for facility or equipment maintenance except such facility or equipment maintenance provided by County employees at the time of adoption of this resolution (i.e., FY 1998).
  11. Contract is for maintenance services incidental to the purchase (or lease, etc.) of goods or equipment.
  12. Contracts to provide employee benefits pursuant to provisions of County labor contracts.
- D. For purposes of this resolution, Type II service contracts includes all service contracts in which the County purchases services not covered under Definitions I.B. and I.C. of this resolution. Garment rental contracts shall be considered a Type II for the purposes of this resolution.

### Implementation

- A. The County Executive shall direct the preparation and dissemination of any administrative guidelines and directives to County Departments/Agencies as are necessary to implement this resolution as of June 1, 1998. These directives shall include a requirement that each County Department or Agency advise current service contractors of the implementation of this resolution prior to June 1, 1998.
- B. The County Counsel shall develop and disseminate standardized contract provisions that implement this resolution.
- C. This resolution and its requirements shall be a part of, and shall be added to, the previously adopted Board policy on Bidding and Contracting.
- D. The implementation and actual experience under terms of this resolution shall be reviewed by the Board Finance Committee and then the full Board beginning one year after adoption of this resolution. The Board shall affirmatively seek out and consider the input of contractors operating under these contracting principles. In addition, the County Executive shall provide quarterly reports to the Finance and Government Operations Committee

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### **5.3 GENERAL POLICIES AND PROVISIONS (Amended 12-12-00; Amended 1-23-01; Amended 6-5-01; Amended 5-4-04)**

This section describes general contracting and contractor selection policies that are endorsed by the Santa Clara County Board of Supervisors. Most of these policies apply on an across-the-board basis regardless of the type of contract. However, variations in these general policy guidelines may be noted in ensuing sections of this manual where a particular category of agreement or bidding practice is discussed. Where a variation exists, the policy outlined for the particular category of agreement or selection practice will prevail over the more general guidelines that are contained in this section. The terms “contract” and “agreement” are used interchangeably.

Exceptions to the policies in this manual may be approved by the Board of Supervisors or the Director of Procurement on a case-by-case basis.

#### **5.3.1 Contract Approval Requirements: Delegation of Contract Authority (Amended 12-12-00)**

Approval by the Board of Supervisors is required for all contracts and amendments thereto, except as provided in the Ordinance Code or when authority to execute a contract or amendment has otherwise been delegated by the Board to the Director of Procurement or other County officer. All contracts for services with dollar amounts over \$10,000 must be submitted to the Office of Budget and Analysis for approval before the Director of Procurement will execute the Agreement.

Departments/agencies may prepare and schedule a formal agenda item that asks the Board of Supervisors to delegate signature authority on a contract and/or contract amendment(s) to the County Director of Procurement or other County officer. The transmittal conveying the request must explicitly describe the nature and extent of authority requested. Where the requested delegation of authority relates to multiple future contracts and/or to contracts where the contractor is not yet known or the contract amount has not yet been determined, the delegation of authority should occur by resolution so that it may readily be tracked and monitored.

#### **5.3.2 Review of Requests for Proposals (Amended 10-31-00; Amended 5-4-04)**

Generally, departments/agencies issue a Request for Proposal (RFP) or Invitation to Bid (ITB) as defined in Board Policy pursuant to direction that has been given by the Board during its review and adoption of the annual budget or on the basis of a specific agenda item that is acted upon during the fiscal year.

Departments shall provide a list of all RFPs which are being prepared by the Department/Agency to the Chair of each Board policy committee.

A RFP must be submitted for review by the appropriate Board policy committee(s) when the RFP meets any of the following five criteria:

- 1) The RFP will raise significant new policy issues for the Board of Supervisors.
- 2) The RFP represents a new policy direction, not already approved by the Board of Supervisors.
- 3) The RFP is for a new program, not already approved by the Board of Supervisors.
- 4) The RFP reflects a change in the scope originally approved by the Board of Supervisors.
- 5) A Board member requests that the RFP be discussed in Committee.

### **5.3.3 Performance Standards**

It is a policy of the Board of Supervisors that all agreements for service that are executed and administered by the County will include specific standards and criteria for evaluating the performance of the contractor and measuring the quality of the deliverables that are called for in the agreement(s). These standards shall be negotiated and agreed upon by the County and the contractor. Agencies/departments shall be responsible for working with contractors to incorporate such standards and criteria in all agreements regardless of the size of the contract or the category of service. All contracts shall include language that will allow the County to terminate the agreement for cause if the contractor fails to perform on the basis of the terms, conditions and performance standards that are incorporated in the agreement.

### **5.3.4 Evaluation of Contractor Performance (Amended 12-12-00)**

County departments/agencies shall be responsible for evaluating and documenting the performance of contractors on all agreements for service. The initial criteria to determine the intensity of contract monitoring should be the dollar amount of the contract. If the contract is less than \$100,000, self monitoring on an annual basis would be adequate with the contractor providing responses to a series of questions developed by the department specific to the contract. These responses would determine if the contractor was in compliance with the performance standards included in the contract. If the responses are inadequate, department staff would follow up with the contractor to collect additional information and determine what, if any, corrective action might be necessary. The evaluation process shall be based upon the performance standards and criteria that are included in each agreement. These evaluations shall be maintained on file by the contracting department/agency and utilized to evaluate the propriety of entering into contract extensions or future agreements for service with the same contractor. Evaluations shall minimally comment on the following characteristics of the contractor:

- Fiscal accountability
- Completion of work within the given time frame
- Ability and effort to meet performance criteria
- Quality of service
- Recommendation for future contracting with consultant

Failure to meet performance standards will result in the contractor being put on notice. The contractor will be given six months to achieve compliance with the performance standards agreed to in the contract. If after six months, compliance is not achieved, the contract will be terminated and the contract rebid. Department Heads or designees will act as appeal officers if the contractor wishes to appeal contract termination. The appeal will be heard no more than one month following the decision to terminate the contract.

Each department shall provide a contract monitoring status report to the Finance and Government Operations Committee as requested by the Committee, describing the contracts being monitored and comments regarding performance and compliance with financial standards.

#### **5.3.4.1 Insurance and Indemnification (Amended 12-12-00)**

The Department shall review the county's insurance manual to assure that the appropriate indemnification and insurance requirements have been incorporated into each contract and that appropriate evidence of insurance has been provided by the contractor. The provider and the department are both responsible for monitoring expiration dates of insurance policies to assure insurance certificates are current and consistent with the county's requirements.

#### **5.3.5 Equal Opportunity /Nondiscrimination in Contracting (Amended 1-12-99)**

It is the policy of the County of Santa Clara that no party contracting with the County shall discriminate against any subcontractor, employee, or applicant for employment, because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status. It is further the policy of the County that no party contracting with the County shall discriminate in the provision of services under the contract because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

Contracting agencies/departments are responsible for ensuring that this Policy is implemented through inclusion of appropriate contract language in each contract.

#### **5.3.6 Criteria Regarding Length of Contract Term (Amended 12-12-00)**

The term (beginning and ending date) of an agreement will vary by the category of the contract. Human Services Contracts and agreements with architects, engineers, construction project managers and public works contractors tend to be multiple year in nature (see Sections 5.6, 5.7 and 5.8 of this manual). Other forms of consulting services contracts generally do not extend beyond the duration of the project that is undertaken by the consultant and typically last one year or less. Master procurement and maintenance agreements that are negotiated by the Director of Procurement may extend anywhere from one to five years depending upon the nature of the commodities that are purchased and the guarantees

that are afforded on pricing over the period of agreement. Under certain circumstances, the County also may contract for services in a market that is for the most part noncompetitive, in which case a determination may be made to waive the selection process and extend a contract with a vendor over a multiple-year period.

Under any circumstances, the length of a contract term shall be determined based upon the best economic benefit to the County. An appropriate length for a contract term may be determined by considering the following criteria:

- Project schedule
- Contract rate
- Projected need for service

Multiple year agreements shall contain language indicating that the contract(s) may be cancelled in the event the contractor fails to perform or funds are not appropriated by the Board to sustain the agreement from one fiscal year to the next.

### **5.3.7 Extensions of Contract Term**

An extension beyond the contract term may be permitted at the discretion of the Director of Procurement if such an extension is in the County's interest or there is a need to allow additional time for evaluating contract and re-bidding requirements.

### **5.3.8 Adjustments to Dollar Amounts in Contracts (Amended 12-12-00)**

On contracts within the Director of Procurement's authority, increases in the dollar ceiling may be permitted at the discretion of the Director of Procurement provided the amount of the increase does not result in a contract maximum which exceeds that authority. Contracts presented to the Board for approval may contain provisions authorizing the Director of Procurement or the head of the contracting department or agency to amend the contract, including by adjusting the maximum payment thereunder, but only where the transmittal to the Board clearly identifies that requested authority to amend.

### **5.3.9 Segmented or Incremental Contracting Prohibited**

Efforts to segment or split a contract (also commonly referred to as "incremental contracting") into two or more agreements for the purpose of circumventing dollar limits on approval processes shall be prohibited. In order to prevent incremental contracting, contracts for related and interdependent goods or services on a given project shall be consolidated whenever feasible. Managers who knowingly segment a contract to circumvent approval processes shall be subject to disciplinary action.

### **5.3.10 Emergencies (Amended 12-12-00)**

For the purpose of procuring services, commodities and/or equipment through a contract, an emergency shall be defined as a sudden, generally unexpected occurrence or set of cir-

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cumstances that demands immediate action, the absence of which would undermine essential County services or cause an economic loss to the County. Emergency requests shall be justified to the Director of Procurement and/or the County Executive, as required by law and under the Ordinance Code. Sole Source Contracting

It is the policy of the County to solicit bids or proposals for a commodity or service from the most relevant market and to select vendors and providers on a competitive basis. However, Board policy also requires that departments/agencies weigh the cost of conducting a competitive bidding process against the size and dollar amount involved in the agreement in question. In addition, County policy recognizes that there are certain acquisitions that can only be feasibly obtained through a sole source agreement. Sole source acquisitions must be justified in sufficient detail so as to explain the basis for suspending the usual competitive procurement process. See Section 5.15 of this manual for a list of the criteria that should be considered in relation to a sole source procurement process.

### **5.3.11 Sole Source Contracting (Amended 12-12-00)**

It is the policy of the County to solicit bids or proposals for a commodity or service from the most relevant market and to select vendors and providers on a competitive basis. However, Board policy also requires that departments/agencies weigh the cost of conducting a competitive bidding process against the size and dollar amount involved in the agreement in question. In addition, County policy recognizes that there are certain acquisitions that can only be feasibly obtained through a sole source agreement. Sole source acquisitions must be justified in sufficient detail so as to explain the basis for suspending the usual competitive procurement process. See Section 5.15 of this manual for a list of the criteria that should be considered in relation to a sole source procurement process.

### **5.3.12 Selection of Contractor (Amended 12-12-00)**

Vendor selection processes for architects, engineers, construction project managers and contractors who provide services on public works projects may be guided by the policies that are set forth in Sections 5.5 and 5.6 of this manual. The vendor selection process for all other categories of agreement shall be based on a competitive process unless the selection is justified and made on the basis of the sole source criteria that are outlined in this manual.

Selection processes for consultant services where the amount to be paid is less than \$100,000 should, to the extent possible, include consideration of three or more consultants with a written recommendation by the agency/department to the Director of Procurement on a selection. Sole source selections on such contracts must be justified in writing and approved by the Director of Procurement.

Sole source selections on contracts requiring Board approval must be justified in the agenda transmittal accompanying the contract or requested Board delegation of contract authority. In all other cases, a Board transmittal requesting contract approval shall include a synopsis of proposals that were considered and a brief explanation of the selection process that was used.

Contracts shall be awarded to the most responsible and responsive bidder or proposer. A responsible bid or proposal is one that has demonstrably met the following criteria:

- (A) Demonstrated capacity to perform
  - (1) Fiscally
  - (2) Physically
  - (3) With experience
  - (4) On schedule
  - (5) And in consideration of any previous County experience
- (B) Ability to comply with all applicable laws and regulations
  - (1) Licenses
  - (2) Insurance
  - (3) Bonding

A responsive bid or proposal is one which adequately meets all solicitation requirements. To be responsive, the bid or proposal must not constitute a different offer or make substitutions for requirements stated in the solicitation document.

**5.3.13 Local Preference (Amended 1-23-01; Amended 12-9-03; Amended 10-21-08; Amended 4-27-10)**

In the formal solicitation of goods or services, the County of Santa Clara shall give responsive and responsible Local Businesses the preference described below.

“Local Business” means a lawful business with a physical address and meaningful “production capability” located within the boundary of the County of Santa Clara.

The term “production capability” means sales, marketing, manufacturing, servicing, or research and development capability that substantially and directly enhances the firm’s or bidder’s ability to perform the proposed contract. Post Office box numbers and/or residential addresses may not be used as the sole bases for establishing status as a “Local Business.”

In the procurement of goods or services in which price is the determining factor for award of the contract, five percent (5%) shall be subtracted from a bid submitted by a responsive and responsible Local Business in determining the lowest responsive responsible bidder. If application of the 5% results in a Local Business bid being lower than the non-local business, the contract award shall be made to the Local Business at the Local Business’ origi-

nal bid price. If after applying the 5% discount, two or more competing vendors have bid the same price, local businesses shall be given preference.

In the procurement of goods or services in which best value is the determining basis for award of the contract, five percent (5%) of the total points awardable will be added to the Local Business score.

When a contract for goods or services, as defined in this policy, is presented to the Board of Supervisors for approval, the accompanying transmittal letter shall include a statement as to whether the proposed vendor is a Local Business, and whether the application of the local preference policy was a decisive factor in the award of the proposed contract.

This Local Business preference shall not apply to the following:

- (A) Public works contracts,
- (B) Where such a preference is precluded by local, state or federal law or regulation,
- (C) Contracts funded in whole or in part by a donation or gift to the County where the special conditions attached to the donation or gift prohibits or conflicts with this preference policy. The donation or gift must be approved or accepted by the Board of Supervisors in accordance with County policy, or
- (D) Contracts exempt from solicitation requirements under an emergency condition in accordance with board policy, state law and/or the County of Santa Clara Ordinance Code (Section A34-82).

### **5.3.14 Prevailing Wage Guidelines**

Various federal and state statutes require local entities to pay prevailing wages for the contracted services of various labor groups (principally crafts and trades) whenever federal or state funds are used to support certain types of local projects. These requirements typically occur on public works or other forms of major capital improvement projects. There are other instances where the Board of Supervisors of Santa Clara County supports the inclusion of prevailing wage requirements in agreement with outside vendors even though the Board is not legally required to do so. Typically, the Board supports the inclusion of prevailing wage guidelines in contracts when those agreements involve the use of labor groups that are disadvantaged by virtue of their economic status. The Board of Supervisors reserves the right to weigh the necessity of prevailing wage requirements for contracted services on a case-by-case basis and to modify those requirements as the Board sees fit.

### **5.3.15 Vendor Paid Travel Costs**

The following policy was adopted by the Board of Supervisors on June 4, 1996:

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## POLICY ON VENDOR PAID TRAVEL COSTS

No vendor bidding on a County contract will be allowed to pay for the cost of County employees' travel for the purpose of reviewing and evaluating that vendor's proposal.

### **5.3.16 Business Associate Provisions - Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Adopted 1-28-03)**

It is the policy of the Board of Supervisors that:

- (A) All County contracts with Business Associates contain provisions meeting the regulatory requirements under HIPAA; and
- (B) All new contracts with Business Associates contain the County's approved standard Business Associate language or Business Associate language approved as to form and legality by County Counsel; and
- (C) All existing Business Associate contracts be amended in compliance with HIPAA regulations.

### **5.3.17 Environmentally Preferable Purchasing Policy**

#### **5.3.17.1 Purpose**

The County of Santa Clara (the "County") recognizes that the products and services it purchases have human health, environmental, economic and social impacts and it is committed to sustainability through purchasing products and services that will enable it to meet its current needs without compromising the ability of future generations to meet their own needs.

#### **5.3.17.2 Goals**

The County desires to purchase products and services that:

- Have a lesser or reduced effect on human health and the environment when compared to competing products and services that serve the same purpose;
- Reduce the County's consumption of resources;
- Conserve water and other natural resources;
- Preserve biodiversity;
- Minimize the release of greenhouse gases into the environment;
- Improve indoor and outdoor air quality;
- Promote zero waste;
- Advance extended producer responsibility by purchasing from suppliers who offer "take-back" services for their products and packaging at the end of their useful life;

- Minimize exposure to toxic chemicals that pose risks to human health;
- Reduce the impact of packaging and transportation;
- Maximize energy efficiency and the use of renewable energy;
- Meet or exceed sustainability standards established by federal, state and local governments and independent third party organizations;
- Are remanufactured, and refurbished and/or contain recycled content, particularly post-consumer material; and
- Are offered by suppliers who demonstrate in their business practices a commitment to the goals set forth in this policy.

Products and services that meet the goals set forth above are referred to herein as “Environmentally Preferable Products and Services.”

### **5.3.17.3 Policy**

The County shall purchase Environmentally Preferable Products and Services, unless they (1) are not available with reasonable competition, (2) are not available within a reasonable time frame, (3) are not cost-effective or (4) do not perform as required for the County’s intended use.

All County departments and employees shall comply with the terms of this policy and shall use their best efforts to achieve the goals set forth herein.

Nothing in this policy shall be construed as requiring any department or employee to terminate an existing contract to comply with this policy.

### **5.3.17.4 Implementation**

The County shall establish a team to assist with the implementation of this policy (the “EPP Team”). The EPP Team shall be comprised of the Director of Procurement, the Director of the Department of Agriculture and Environmental Management, the Director of the Department of Facilities and Fleet Services, the Chief Executive Officer of the Santa Clara Valley Health and Hospital System and County Counsel, or their respective designees. The County Executive may require the participation of additional departments, in its discretion. The directors or designees, as applicable, shall actively participate as part of the EPP Team to ensure that the County complies with this policy.

(A) The EPP Team shall:

- (1) Formulate a plan to implement this policy;
- (2) Identify Environmentally Preferable Products and Services;
- (3) Develop product-related administrative guidelines;

- (4) Consult with County departments concerning opportunities to purchase Environmentally Preferable Products and Services; and
  - (5) Prepare and submit to the Board of Supervisors an annual report summarizing the implementation of this policy during the previous year; policy related goals for the following year; and recommended changes, if any, to the policy or its implementation.
- (B) The Director of Procurement shall:
- (1) Collaborate with County departments in the development and evaluation of technical and performance specifications of Environmentally Preferable Products and Services;
  - (2) Include Environmentally Preferable Products and Services specification in County solicitations and evaluation criteria, unless they (1) are not available with reasonable competition, (2) are not available within a reasonable time frame, (3) are not cost-effective or (4) do not perform as required for the County's intended use;
  - (3) Develop and implement a strategy to educate suppliers about the policy; and
  - (4) Communicate to suppliers the requirements set forth in this policy with respect to all Environmentally Preferable Products and Services supplied in connection with the performance of any contractual obligations with the County.
- (C) County Departments shall:
- (1) Include Environmentally Preferable Products and Services specifications in County solicitations and evaluation criteria, unless they (1) are not available with reasonable competition, (2) are not available within a reasonable time frame, (3) are not cost-effective or (4) do not perform as required for the County's intended use;
  - (2) Comply with the product related administrative guidelines developed by the EPP Team;
  - (3) Comply with this policy with respect to all products and services purchased, irrespective of the method of acquisition;
  - (4) Collaborate with the Director of Procurement to fulfill the purpose of this policy;
  - (5) Identify one or more liaisons to support the EPP Team to fulfill the purpose of this policy;

- (6) Facilitate department use of Environmentally Preferable Products and Services through internal training, information dissemination, development of internal procedures, and other means;
- (7) Require liaisons and/or appropriate staff to attend and participate in product-specific end user group meetings and environmentally preferable purchasing trainings;
- (8) Participate in the identification, selection and pilot testing, if necessary, of Environmentally Preferable Products and Services; and
- (9) Provide feedback to the EPP Team regarding technical and performance specifications, availability and cost of Environmentally Preferable Products and Services.

## **5.4 COMMODITIES/EQUIPMENT CONTRACTS**

### **5.4.1 Definition**

Commodities/equipment contracts include all contracts for supplies, materials, and equipment. Equipment items are considered and treated as a capital asset if they have a value of \$3,000 or more and have a useful anticipated life of one year or more.

### **5.4.2 Responsibilities**

Agencies/departments are responsible for submitting requests for funds through the annual budget process that are needed to support the procurement of commodities and equipment. Once the Board of Supervisors has appropriated funds for the purposes of the procurement, the request to procure the commodity or equipment shall be processed through and approved by the Director of Procurement.

Refer to the County Purchasing Department's Customer Guide for detailed policies and procedures on these types of procurement activities. Also reference Section 400 of the County Policy and Procedures Manual for additional guidelines on commodity and equipment contracts.

### **5.4.3 Length of Term and Bidding Requirement**

The duration of commodity and equipment contracts vary depending upon the nature of the supply or asset that is purchased. Generally, however, these agreements are specific to a single procurement, wherein a specific bid and ensuing contract leads to a single procurement and the expiration of the contract, or they occur in the form of a master purchase agreement that extends over a multiple-year period, in which case they are re-bid upon the expiration of the agreement. Master purchase agreements generally do not extend beyond a three-year period.

The term of the agreement and provisions for extending it shall be specified in any RFP or ITB that is issued to procure commodities or equipment.

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## **5.5 SERVICE CONTRACTS (Amended 2-10-04)**

### **5.5.1 Definition**

Service agreements described under this section are provided under contract by a firm, an individual or group so that the County may obtain professional or technical assistance which would not be handled by a County employee or group. Architect, engineer, construction project management contracts, and "Human Service Contracts," as defined in ensuing sections of this manual, are excluded from this definition.

### **5.5.2 Contract Criteria**

Outside maintenance, consulting, or assistance for other services may be requested by an agency/department only if one or more of the following conditions exist:

- (A) The work needed is urgent and cannot be met by County employees.
- (B) The work in question is intermittent or irregular and cannot effectively be performed by County employees.
- (C) The work in question demands highly technical or specialized skills that cannot be secured through County employees.
- (D) The work involves the need for an independent opinion, appraisal, audit or similar service.
- (E) An inadequate number of employees are available to accomplish the desired work within the required timeframe.

### **5.5.3 Length of Term and Competitive Selection Requirements (Amended 2-10-04)**

The initial contract term (beginning and expiration) and provisions for allowable extensions shall be specified in any RFP that is issued to solicit consulting or other services as well as any agreement that may emanate from the RFP.

For project-related work, consulting services agreements shall be bid on a project-specific basis and any ensuing contract that results from the selection process shall expire upon the completion of the project. Extensions of agreements for consulting services on a project-specific undertaking shall not be allowed in the absence of a new competitive selection process unless the extension is needed to complete the original project; i.e., an extension shall not be allowed to transfer the consultant from one discrete project to another.

In instances where the County retains the services of a consultant for general management or legal purposes, the agreement may extend anywhere from one to five years before a new competitive selection process is undertaken. However, agreements that extend beyond the one-year period must be authorized by the Board of Supervisors and must be

justified on the basis of unique market forces (e.g. an absence of competition), specialized service requirements (e.g. legal or technical specialization), or unique financial considerations (e.g. a vendor's need to amortize an investment over a period of time in order to provide the service).

Services agreements may not extend beyond a five-year period without a new competitive selection process unless a longer term is specifically approved by the Board based on unique circumstances.

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## **5.6 ARCHITECT-ENGINEER-CONSTRUCTION PROJECT MANAGEMENT CONTRACTS**

### **5.6.1 Definition**

It shall be the policy of the Board of Supervisors of Santa Clara County that selection of contractors by County agencies/departments to provide architectural, engineering, construction project management, land surveying and environmental services shall be on the basis of demonstrated competence and professional qualifications, rather than competitive bidding. It is the policy of the Board that County agencies/departments shall encourage participation of local professional firms in the competition and selection process for County projects.

### **5.6.2 Criteria Regarding Length of Contract Term**

If the services to be completed under a given contract within this category are tied to a specific project, the contract term shall be based upon a reasonable estimate of the time required for the project. This estimate shall be made by the County professionals overseeing the project and shall be subject to negotiation with the contractor.

### **5.6.3 Extensions of Contract Term**

The Director of Procurement shall be authorized to grant contract extensions that involve no cost increase or are within the agency/department head's contract change order authority and are needed for reasons other than delays or problems caused by the contractor.

### **5.6.4 Adjustments to Contract Amount**

Contract increases may be granted by the Director of Procurement to order changes or additions in the work within the limits established by the Uniform Public Construction Cost Accounting Act (PCCAA). Increases necessitated by changes in the project, including changes in the purpose of the project, in tenant, or in use or area of a facility judged by the agency/department head to be significant, shall be submitted to the Board of Supervisors even though the monetary amount of the contract change is within the monetary limits described in PCCAA.

A new procurement shall be considered when there is a major change in scope of the project, or if the change causes a major delay or makes the fee structure inappropriate, or if a reasonable price for a contract change order cannot be negotiated.

### **5.6.5 Vendor Selection -- Major Projects Over \$50,000**

A Review Board process shall be utilized for major projects.

- (A) The Agency Director (County Director of Capital Programs, County Agency or Department Head, or representative) will maintain a current list of qualified pro-

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professional consultant firms and will request the consultants to submit their qualifications. Performance in providing previous services to the County shall be among the criteria that are used to judge qualifications.

- (B) The Director will appoint a review board of qualified professionals, including individuals familiar with the type of project proposed and the nature of the services required, and including at least one professional who is not an employee of the County. The review board will review the qualifications submitted, establish a list of finalists, and interview the finalist firms.
- (C) The Director will negotiate an agreement with the top ranked firm regarding the extent of services, the amount and method of compensation, and other conditions. If agreement cannot be reached, the Director will terminate discussion with the number one selection and open negotiations with the second-ranked firm, and repeat the process until an agreement is negotiated. Upon successful negotiation, the Director shall present the contract for approval by the Board. At its discretion, the Board may accept the Director's recommendations or direct the Director to enter negotiations with a lower ranked firm.
- (D) Alternatively to the process outlined above, the Director may utilize the review board selection process to establish eligible lists of consultant firms from which professional service agreements (PSA's) would be awarded. The eligible lists may be maintained for one or two years depending on the requirements of the agency for various professional services and the availability of appropriately qualified firms. Award of a PSA to an eligible firm shall be for a term of two years, or up to an aggregate fee total of \$500,000, whichever occurs first. Awards of individual project agreements under the terms of the PSA shall not exceed \$250,000.

#### **5.6.6 Vendor Selection -- Projects Under \$50,000**

The Agency Director shall maintain a current file on qualified consultants in each professional discipline. The Director or designate shall select consultants for specific projects based on capability and qualifications, and will be responsible for negotiating the consultant's fee up to a maximum amount of \$50,000. Evaluations of a contractor's performance in providing previous service to the County shall be among the criteria that are used to judge the qualifications of the contractor. Whenever feasible, the selection of a contractor for projects under \$50,000 will be made on a rotational basis.

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## **5.7 PUBLIC WORKS CONTRACTS (Adopted 6-13-95; Amended 9-9-03)**

### **5.7.1 Definition**

The County may enter into public works contracts for the purpose of erecting, constructing, altering, repairing, or improving any public structure, building, road, or other public improvement of any kind. The County has adopted the use of the Uniform Public Construction Cost Accounting Act (UPCCAA) which, along with the Public Contract Code (PCC), guides the preparation and administration of the County's public works contracts.

Questions regarding the UPCCAA and/or PCC in relation to a public works bid or contract should be referred to County Counsel and/or the County Director of Procurement.

### **5.7.2 Administrative Guidelines**

Generally, in the case of a public works contract, the County must prepare complete plans and specifications, advertise for bids, and award the contract to the lowest responsible bidder. This procedure is governed in detail by applicable California law, and the County has little discretion in the application of that law.

The County recognizes its legal obligation to award a public works contract to the lowest bidder who is "responsible"; i.e., the lowest bidder who has the fitness and capacity to perform the work required by the contract. Further, the County recognizes that before rejecting any low bidder as "non-responsible", that bidder must be given a hearing on the issue of its responsibility, and where the County finally finds the bidder non-responsible after that hearing, the County must state its reasons for doing so in writing. It is the County's policy to honor the bidder's rights to such due process in every case.

It is also the County's policy to thoroughly investigate each low bidder's fitness and capacity to perform the contract work, and to act aggressively to reject those bids where the evidence of a bidder's non-responsibility merits that rejection.

### **5.7.3 Contractor Prequalification (Adopted 9-9-03)**

Public Contract Code section 20101, enacted effective January 1, 2001, enables public entities to prequalify contractors (and subcontractors) for bidding on public works projects. The establishment of a uniform system to evaluate the ability, competency, and integrity of bidders on public works projects is in the public interest; will result in the construction of public works projects of the highest quality for the lowest costs; and is in furtherance of the objectives stated in the Public Contract Code for competitive bidding. This policy evidences the County's desire to achieve these goals and implement the process as set forth in the statute.

The Director of the General Services Agency and the Director of the Roads & Airports Department may recommend to the Board, on a project-by-project basis, approval of con-

tractor prequalification and implementation of a standard questionnaire in accordance with the requirements of PCC §20101. The California State Department of Industrial Relations, in collaboration with affected agencies and interested parties, has published model guidelines for rating bidders and drafted a standardized questionnaire for use by public agencies. The County will use the DIR model questionnaire as a guide in drafting its own questionnaire and any deviations from the model are subject to review by County Counsel. The DIR documents and any procedure adopted by the County must meet the requirements of §20101 which are:

- (A) Use of a standardized questionnaire and financial statement including a completed statement of the prospective bidder's experience in performing public works projects;
- (B) Adoption and application of a uniform system to objectively rate bidders on the basis of the completed questionnaires and financial statements; and
- (C) Establish a process that allows prospective bidders to dispute the proposed prequalification rating prior to the closing time for receipt of bids on a project requiring prequalification by the public entity. The required elements of the appeal process are detailed in §20101(d)(1), (2), and (3).

Completed prequalification questionnaires and financial statements as well as information gathered from contractors' references will be evaluated by a review panel established by the appropriate Agency/Department Director. Only contractors determined to be qualified will be provided with bid packages and invited to bid on the particular project subject to the prequalification procedure.

#### **5.7.4 Project Labor Agreements (Adopted 3-1-05)**

A Project Labor Agreement (PLA) is an agreement typically negotiated between a project owner, construction manager or general contractor, and one or more labor organizations prior to award of a construction contract. A PLA is designed to eliminate potential project delays resulting from labor strife, ensure a steady supply of skilled labor on a project, and provide a contractually binding means of resolving worker grievances. Although PLAs can be complex, the basic exchange is that the unions agree not to strike while a project is being built and to use high-speed arbitration to resolve workplace disputes. The owner agrees to require all contractors and subcontractors to accept the PLA's terms.

##### **(A) Purpose**

The purpose of this policy is to promote efficiency of construction operations during the County's construction of capital projects and to provide for the peaceful settlement of labor disputes and grievances without strikes or lockouts, thereby promoting the public interest in assuring the timely and economical completion of projects.

The types of projects that are most amendable PLA usage are large capital projects that have a substantial financial requirement, are technically complex, involve numerous contractors and employees in different trades, have critical time lines for completion, and require a skilled and properly-trained workforce to successfully complete the work in a proper and timely manner.

**(B) Required Analysis**

All capital projects having construction costs exceeding ten million dollars (\$10,000,000) will be analyzed to determine whether usage of a project PLA will further a legitimate government interest of the County. Capital projects having construction costs under ten million dollars (\$10,000,000) may be evaluated if a unique feature or requirement of a project (i.e. time sensitivity in maintaining or providing a vital government service) would benefit from the use of a PLA. When staff determines that a legitimate County interest is furthered by implementing a PLA for a particular capital project, the recommendation will be forwarded to the Board of Supervisors for consideration.

**(C) Conceptual Principles**

The negotiations for each PLA will be guided by the following principles:

- (1) Stipulations will be established that insure there will be no labor-related schedule delays, and that this requirement will be met by the numerous unions working on a project. PLA requirements should be established to manage union-to-union jurisdictional disputes; for agreement to continue work during management-labor disagreements and all other project-related disagreements; for agreement to continue work despite the expiration of collective bargaining agreements; and for financial penalties against a union if it violates this provision of the agreement.
- (2) Procedures will be established for the expeditious and fair resolution of disputes regarding violations of the no strike and no lockout provisions, jurisdictional disputes regarding work assignments, and other alleged violations of the agreement with appropriate and enforceable consequences for those committing the violation.
- (3) PLAs are a risk management tool used to avoid or reduce project costs. Thus, a PLA that has terms that increase project costs contravenes one of the primary objectives of having the PLA. While there is some administrative burden in managing any PLA, the cost of this administrative burden should be de minimus in relation to the overall administrative cost of a project.
- (4) The County will retain its ability to meet all competitive bidding requirements of public law. To this end non-union contractors and non-union employees will not be required to become unionized to work on a PLA project. Additionally, the County retains the ability to select the lowest qualified bidder regardless of the bidder's union status.

- (5) PLAs will only apply to public works projects as defined by the Public Contracts Code that have a published prevailing wage for the crafts involved. PLAs will not apply to regular maintenance or non-construction projects. PLAs will not apply to any work performed by County employees, and will not otherwise interfere with normal County operations.
- (6) PLAs will provide the County with sole discretion to end, delay, and/or suspend any or all portions of the work covered by the PLA and to combine, consolidate, modify, and/or not build any one or more of the portions of work covered by the PLA.
- (7) County contracts will require all contractors performing construction work covered by the PLA (to include sub-contractors of all tiers) to sign the PLA agreed to between the County and the San Benito and Santa Clara Building Trades Council (BTC) and agree to be bound by its provisions with no obligation to sign any other local, regional, or national agreement as a condition of performing work covered by the PLA. Contractors will comply with the PLA and all applicable provisions of local, state, and federal law.
- (8) The PLA will not require any contractor or employee to join any union as a condition of employment or of being awarded a contract under the PLA. Agreements may contain a lawful agency shop clause that will require non-union employees for the period during which they are performing work under the PLA to pay an agency fee.
- (9) The PLA will allow all contractors to use their core workforce, whether union or non-union. The PLA may also require that for any additional workforce required outside the core that contractors will use the Union referral system first, and if the union is unable to supply a worker within a set time period, will be free to hire any worker it so chooses.
- (10) The PLA will give contractors full and exclusive authority over the management of their operations, the choice of materials or design in accordance with the project's contract documents, and the use of equipment provided that staffing levels are consistent with established standards for protecting employees and equipment, that no employee will be required to work in unsafe or hazardous conditions, and that work assignments to BTC unions will follow the Procedural Rules of the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry.
- (11) Contractors will be required to pay hourly wage rates and benefits that comply with the applicable Santa Clara County prevailing wage rate and benefits for all craft employees unless the contractor is obligated to a higher rate by an existing collective bargaining agreement.
- (12) Contractors will contribute to health care, pension, and training trust funds for each of their employees at the rates in accordance with local collective bargaining agreements.

- (13) Contractors will guarantee they will not lock out the project site for any reason during execution of the project work that is covered by the PLA.
- (14) BTC and the unions will guarantee that at no time during the PLA will there be any strikes, work stoppages, hand billing, slowdowns, informational picketing, or “sympathy strikes” at the project site for any reason, including labor disputes due to expiration of current collective bargaining agreements.
- (15) PLAs may recognize the unions as having the sole and exclusive bargaining representatives of all craft employees on the project working within the scope of the PLA. BTC unions may designate stewards and their authorized representatives may have access to project sites so long as they do not interfere with employees and their work.
- (16) PLAs may establish a coordinated set of job site hours for work, overtime, shifts, and holidays.

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## **5.8 HUMAN SERVICES CONTRACTS (Amended 12-12-00)**

### **5.8.1 Definition**

Human services contracts are defined as agreements for services which maintain or improve the social, economic, physical, or mental well-being of persons for whom the County bears such a responsibility.

### **5.8.2 Contract Planning and Coordination**

Agencies/departments shall be responsible for developing and following procedures which provide for the adequate advance planning of human services contracts.

Agencies/departments shall make every reasonable effort to ensure, through agency coordination, that services and funding provided by other County agencies are not duplicated. Agencies/departments that are responsible for oversight of human services contracts and their funding shall share contract inventories and any other information which may be appropriate to the coordination effort with the Office of Budget and Analysis (OBA). Interagency agreements may be utilized to facilitate the coordination effort and avoid duplicating efforts if such efforts are deemed advisable by County departments and OBA.

### **5.8.3 Length of Contract Term and Bidding Requirements**

The initial contract term and provisions for allowable extensions shall be specified in any Request For Proposal (RFP) that is issued to solicit the services. The term of the initial contract shall not exceed three years except where it is known that there are no other potential contractors available to provide the needed service, or economic factors associated with the contractor's provision of service make it impractical to limit the initial term to three years. Contracts shall not be written for more than five years under any circumstance, whether for the original contract term or through renewal or amendment. All Human Services Agreements that extend beyond a one year period shall require Board of Supervisors approval.

Renewal or extension of a contract for more than three years or for longer than the period stipulated in the related RFP, whichever is greater, shall be based upon the following criteria:

- (A) Documented lack of other potential providers.
- (B) Substantial start-up costs for facility, equipment, or technology requirements necessary to deliver acceptable service.
- (C) Other criteria stipulated under sole source guidelines (see Section 5.12).

**5.8.4 Adjustments to Contract Amount (Amended 12-12-00)**

Compensation to a contractor for the provision of services may be adjusted during the contract term by the Board or by the County officer having specific delegated authority to do so when compelling circumstances exist which warrant an increase or decrease in the contract ceiling. Any of the following may provide a basis for proposing monetary adjustments in a contract:

- (A) An unanticipated reduction or augmentation in funding.
- (B) The level/volume of the contractor's services exceeds original projections to the extent that the original contract award is insufficient to compensate the contractor for services provided.
- (C) Governmental requirements for regulations have changed, causing additional costs to the contractor.
- (D) A reallocation of funds from one contractor to another will result in an improved ability to provide desired service levels.
- (E) Unforeseen and uncontrollable cost increases jeopardize the ability of the contractor to continue to provide needed services.

**5.8.5 Vendor Selection on Human Services Contracts Over \$100,000 (Amended 12-12-00)**

The County strives to observe impartiality and ensure that all potential contractors are treated equally. In order to achieve these ends, the Board of Supervisors generally considers the Request For Proposal (RFP) process as the preferred method for procuring human services. When releasing RFP's, evaluating proposals, and preparing contracts for presentation to the Board, the agency/department shall:

- (A) Appropriately advertise the release of the RFP. An information copy of each human service RFP shall be provided to each Board office prior to its release to the public.
- (B) Prepare, before release of the RFP, relevant criteria for evaluating proposals. Such criteria shall relate to specifications described in the RFP, and shall generally be objective in nature although subjective criteria may be included when justified and documented.
- (C) Determine evaluation procedures that will be utilized including site visits and interviews with contractor personnel.
- (D) Orient and utilize an evaluation panel that is composed of persons who are qualified to evaluate proposals, including at least one member of the panel who is not an employee of the County.

- (E) Prepare documentation, including a scoring recap and financial summary, which supports the findings and recommendations of the evaluation panel. A summary of the reasons for the recommendation shall be included in the Board transmittal. The scoring recap shall be made available to Board members upon request.
- (F) Conduct contract discussions with potential providers to advise them of pertinent performance standards and terms and conditions that will be included in the contract, including liability insurance and bond requirements.
- (G) Prepare and submit contracts for approval as to form and legality by County Counsel.
- (H) Submit contracts for review of insurance and bonding requirements by Risk Management.
- (I) Communicate with proposers in writing informing them of the results of the selection process.
- (J) Submit the prepared contract to the Board of Supervisors for review and approval.

#### **5.8.6 Administrative Guidelines**

Departments/agencies shall conduct post-award administration and performance monitoring on all human services agreements. Contracts will be administered in accordance with applicable Federal, State, and local laws, regulations and ordinances. Agencies/departments also will be responsible for providing technical assistance to contractors as necessary.

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## **5.9 FRANCHISE AND CONCESSION AGREEMENTS/ AGREEMENTS ON THE USE OF COUNTY-OWNED REAL PROPERTY**

### **5.9.1 Definition**

The policies on franchise and concession agreements that are described under this section include those agreements where the Board of Supervisors approves a concession and/or a lease of County-owned property to an individual or firm, wherein that individual or firm is authorized pursuant to the agreement to manage a business for specifically described purposes and under limited conditions on the property in question. The policies in this section also cover instances where the Board may grant a licensed franchise to do business in the County; e.g., the Board may license one or more firms to provide paramedic and ambulance services within the County.

This section is not concerned with franchise agreements that may be set forth in ordinances that are adopted by the Board of Supervisors to grant easements and operating permits to public utilities or cable television operators. Nor is this section concerned with defining conditions under which the Board of Supervisors may approve a lease of County-owned property to another governmental entity.

### **5.9.2 Contract Criteria -- Leases and Concessions on Real Property**

All leases of County-owned real property to private firms or individuals, including all concessions that are let to operate privately held businesses on County-owned real property, shall occur pursuant to the formal competitive bidding and sole source criteria that are set forth in this manual.

The bid process and any contract emanating from that bidding process shall minimally account for the following:

- (A) The expected uses and use limitations on the property;
- (B) Rental rates, escalators in the rates, and revenue sharing requirements (if any);
- (C) Lessee and lessor requirements with respect to capital improvements and the maintenance of improvements on the property;
- (D) The length of the agreement and the conditions under which the lease and/or concession will be extended and/or re-bid;
- (E) Performance requirements that are imposed on the lessee and the conditions under which the lease and/or concession may be cancelled for failure to perform;
- (F) The contractor's financial capacity to abide by the agreement with the County as well as the contractor's previously demonstrated experience in providing the service in question.

### **5.9.3 Contract Criteria -- Licensed Operating Franchises**

All licensed concessions that are permitted to operate within the County pursuant to a contract between the County and a private business shall be subject to the competitive bidding and sole source criteria that are set forth in this manual.

The bid process and any contract emanating from the bidding shall minimally account for the following:

- (A) Performance requirements that are imposed on the franchise and the conditions under which the license to operate may be cancelled for failure to perform.
- (B) The length of the franchise and the conditions under which the license to operate may be extended or re-bid.
- (C) The franchise's financial capacity to carry out the terms and conditions in the agreement with the County and the franchise's demonstrated experience and past performance in providing the service in question.

### **5.9.4 Private Use of County-Owned Property -- Fair Market Considerations**

The Board of Supervisors shall seek compensation for a lessee's or concessionaire's use of County-owned property consistent with fair market values that prevail at the time of bidding and contracting. If there are special circumstances, the Board may waive fair market considerations if it determines that such action is needed to support a County-sponsored program and/or subsidize the cost of the lessee's enterprise for the purpose of serving economically or physically disadvantaged persons. Under such circumstances, the Board will strive to maintain a balance between the County's interest in generating revenue and the need to ensure reasonable public access to the service in question.

Conditions calling for a subsidy of an enterprise that is granted a franchise or permit to operate on County-owned land shall be set forth in the agreement between the County and the contractor.

### **5.9.5 Length of Term**

The initial length of a lease of County-owned property, a licensed franchise agreement, or a granted concession shall be determined by the Board's interest, if any, in encouraging the stable provision of services from the enterprise. Under any circumstances, the length of an agreement shall take into account the scope and cost of the lessee's and lessor's initial capital investment. The lease and/or concession agreement shall be structured so as to allow the lessee and lessor to reasonably amortize the cost of capital improvements over a period that is consistent with the anticipated useful life and/or depreciation schedule for the improvements in question.

## **5.10 CONTRACT EMPLOYEES (Amended 12-12-00)**

### **5.10.1 Definition**

A contract employee is defined as an individual who is retained under a standard agreement with a County agency or department for the purpose of assuming a defined set of responsibilities and performing services that are not otherwise provided by a member of the County's classified service. The contract employee may work on a part-time or full-time equivalent basis. Individuals who are employees of a corporation or firm that is under contract to the County are not considered contract employees within the scope of this definition.

The Board of Supervisors prohibits County departments and agencies from entering into standard agreements with contract employees if the intent of the contract is to circumvent the position control process that is administered through the adoption of and amendments to the annual budget, or if the action is in conflict with the County's classified service and collective bargaining processes. Generally, the Board will only approve a department's/agency's use of contract employees when such use is needed to provide specialized skills, address emergency situations or provide assistance to meet an unusual operational requirement.

### **5.10.2 Responsibilities**

Agencies/departments are responsible for justifying the use of contract employees in the transmittal that is used to place the requested action on the Board's agenda or in the cover memorandum that is used to forward the request to the Director of Procurement. In addition, managers who initiate the proposed agreement to retain the services of a contract employee must work with that employee to complete the "Questionnaire for Determining Independent Contractor Withholding Status", the Form DAF-E05(a) (Standard Withholding Form for Standard Agreements), and the Form W-9, "Payer's Request for Taxpayer Identification Number and Certification". Please refer to the County Purchasing Department's Procedures Manual for detailed guidelines in this area.

### **5.10.3 Length of Contract Term and Bidding Requirements (Amended 12-12-00)**

Agreements with Contract Employees shall be evaluated for the purposes of extending, modifying or terminating the contract on an annual basis. These agreements shall be exempt from competitive bidding requirements.

## 5.11 REQUEST FOR PROPOSALS (RFP) (Amended 12-12-00)

### 5.11.1 When to use (Amended 12-12-00)

A Request For Proposal (RFP) is used for solicitation purposes when the County's requirements are not well defined. The solicitation requires the offeror to prepare a written proposal that explains in detail how the offeror plans to meet the County's requirements. Innovative ideas and techniques that the offeror feels may benefit the County may be included in the proposal. Award under this type of solicitation is generally not based absolutely upon the lowest price proposal but upon technical superiority of the offeror's proposal within a reasonable proximity to the proposed prices of other qualified proposers.

### 5.11.2 Format for RFP Documents (Amended 12-12-00)

Sample RFP formats are available from Purchasing. All RFP's shall contain the following elements:

- (A) Requirements Statement -- The requirements statement shall state the County's requirements clearly and concisely. All information presented shall be technically correct and easily understood. The proposal's specifications shall establish standards of quality, quantity, and any other measures necessary for acceptable performance. All services/products to be delivered under the proposed contract shall be stated, including any acceptance criteria. The requirements statement shall also include descriptions, numbers, and formats for oral and/or written reports, as well as the expected period of performance.
- (B) Responsibility Criteria -- This may include references, financial statements, licenses, bonding, insurance, etc.
- (C) Information Regarding Submission of RFP Responses -- This section may include such information as a calendar of milestone events, key dates and times of conferences and progress/status reports, where and to whom proposals are to be submitted, contracts for information purposes, the number of proposals to be submitted, price limitations, format requirements, etc.
- (D) Evaluation Criteria -- The RFP shall state the criteria on which the proposal will be evaluated and may include weighted criteria. These criteria shall be related to specifications set forth in the requirements statement, and shall generally be objective in nature although subjective criteria may be included when justified and documented.
- (E) Terms and Conditions -- Key terms and conditions anticipated to be included in a final contract shall also be stated in the RFP. Examples of terms and conditions that shall be incorporated in RFP's include policies on subcontracting, certification requirements (e.g., non-discrimination), the timing of performance evaluations and the type of criteria that the County will include in a final negotiated contract to assess the contractor's performance. Required warranties and indemnifications also

shall be included in the RFP. Vendors shall be instructed to identify in writing any requested exceptions to the specified terms.

### **5.11.3 RFP Addenda**

If it is determined that amendments to the RFP are necessary, addenda shall be mailed to all firms who received an RFP. Alterations may include additional information, due date changes, etc.

### **5.11.4 Acceptance of Proposals**

Proposals are to be received at the time and place specified in the RFP. All received proposals including those that are late shall be time stamped. RFP's are not publicly opened. Late proposals may be considered if it is determined to be in the best interests of the County, provided the proposal is received and time stamped within twenty-four hours of the scheduled closing time and date. Approval of the agency/department head and, if the proposal is administered by Purchasing, the Director of Procurement shall be required to accept late proposals.

### **5.11.5 Confidentiality of Proposals**

Proposals are to be maintained as confidential working papers until award is recommended.

### **5.11.6 Selection of Evaluation Committees**

Members of evaluation committees shall be selected based on their qualifications and appointed by the requesting agency/department head or designee.

### **5.11.7 Selection of Proposals for Interview**

A preliminary review shall be made of the proposals prior to setting up interviews in order to develop a short list of qualified proposals. The short list shall be comprised of proposals that house technical specifications that meet the needs of the County. Interviews from the short list will then be held with all responsible offerors who submit proposals within a competitive range, price and other relevant factors. Interviews may be waived by the County on the basis of urgency, the complexity of requirements, and the attendant superiority of a particular proposal.

### **5.11.8 Interviews**

Interviews are held to further explain proposals and to give offerors an opportunity to clarify their ability to meet the needs of the County more effectively.

**5.11.9 Synopsis of Proposals for Board Transmittals (Amended 12-12-00)**

A brief synopsis of the evaluation of proposals that are received shall be prepared for all actions requiring selection/approval by the Board of Supervisors and shall be included in the Board transmittal.

**5.11.10 Release of Information and Competing Proposals**

All offerors in a given procurement process shall be given information on the process in the same manner. Offerors shall be allowed to review all of the proposals in a procurement process after a contract has been formally awarded to a selected vendor by the County unless the information that is requested for release has been certified as proprietary by the submitting offeror.

## **5.12 INVITATION TO BID (ITB)**

### **5.12.1 When To Use**

The Invitation To Bid (ITB) is used to obtain supplies, equipment, and certain services in excess of \$25,000 that can be clearly specified and awarded to the lowest responsible and responsive bidder.

### **5.12.2 Pre-Qualification of Bidders**

A two-step bidding process may be used to pre-qualify bidders when the Director of Procurement deems it appropriate. Bidders are pre-qualified by responding to a solicitation for responsibility. This would include information regarding such factors as financial background, industry stability, capacity to perform, lines of credit, manufacturers' authorizations, relevant experience, etc.

Qualified bidders shall then be asked to participate in a price solicitation.

### **5.12.3 Pre-Qualification of Commodities**

Commodities can be pre-qualified either through study and recommendation by a recognized standards committee appointed by the Director of Procurement, or through a two-step bidding process.

The following factors, among others, may be used for pre-qualification:

- Quality of commodities or services
- Experience with the commodities involved
- Maintenance cost
- Economic life cycle cost
- Length of time the commodity has been on the market
- Compatibility of existing equipment
- Available warranties
- General reputation and experience of the bidder
- Evaluation of the bidder's ability to service the County
- Prior knowledge of an experience with the bidder in terms of past performance
- Other legal protection provided in the purchase

### **5.12.4 Format for ITB Document**

ITB's are prepared by Purchasing. All ITB's shall contain the following elements:

- (A) Specifications -- clear, concise specifications must be provided. Frequently, specifications state "brand name or equal." "Brand name" includes identification of products by manufacturer, make and model. Such identification is intended to be descriptive, but not restrictive. Bidders offering an "equal" must submit complete specifications and/or samplers with their bids. Determination of equality shall be at the sole discretion of the County.

If it has been justified and accepted by the requesting agency/department and the Director of Procurement or Standards Committee that only one brand can meet the County's needs, "no exceptions" shall be noted in the specifications.

Documentation for not allowing exceptions must be on file in the Purchasing Office.

- (B) Responsibility Criteria -- responsibility criteria may include such items as references, plan capacity, credit data, financial statements, licenses, bonding, insurance, etc.
- (C) Information Regarding Submission of a Bid -- this includes the time and date for bidders' conference (if appropriate), when and how many bids are to be submitted, contacts for information during the solicitation period, signature requirements on bids, cost/pricing instructions, etc.
- (D) Terms and Conditions -- terms and conditions that will be incorporated in the purchase order/contract shall be stated in the bid.

### **5.12.5 Acceptance of Bids**

Bids must be received prior to or at the time specified in the bid. Late bids shall not be considered and shall be returned unopened to the vendor.

### **5.12.6 Public Bid Opening**

A public bid opening shall be held as soon as possible after bid closing.

### **5.12.7 Reservation to Reject All Bids**

Each ITB shall state the County's right to reject any or all bids and waive any irregularities or informalities therein. The County may:

- Reject all bids when deemed to be in the County's best interest.
- Reject a bid not accompanied by any required bid security or by other data required by bid documents.
- Reject any bid which is in any way incomplete, irregular, amplified, or qualified, or otherwise not in compliance with bid documents in all material respects or reasonable interpretation.

- Waive any informality, irregularity, immaterial defect, or technicality when deemed to be in the County's best interest.

### **5.12.8 Bid Evaluation**

(A) Cost Factors:

- (1) Total bid price (including any discounts), unit or extended price, and administrative costs (if applicable).
- (2) Hourly rates for specified personnel.
- (3) The County's administrative costs.
- (4) Maintenance costs and warranty provisions.
- (5) Life cycle costs, repurchase value, or residual value of equipment after a specified number of years in cases where the residual value can be objectively ascertained.
- (6) Cost and rate of use of consumables.
- (7) Freight, shipping and handling.
- (8) Assembling start-up.

(B) Responsibility Factors:

- (1) General reputation and experience of the bidder.
- (2) Bidder's ability to service the County.
- (3) Financial ability of the bidder to successfully meet the requirements of the contract.
- (4) Prior knowledge of and experience with the bidder in terms of past performance.
- (5) Nature and extent of company data furnished by bidder upon request of the County.
- (6) Size and location of the bidder's warehouse.
- (7) Bidder's ability to meet delivery and stocking requirements.
- (8) Bidder's experience with the commodities or systems.
- (9) Length of time the commodities or systems have been on the market.

(C) Responsiveness Factors:

- (1) Adherence to all conditions and requirements of the bid specifications.
- (2) Quantity and quality of merchandise offered.
- (3) Compatibility with existing commodities or systems.
- (4) Overall completeness of the commodity line offered.
- (5) Delivery or completion date.

(D) Local Preference:

Local Preference guidelines are to be articulated in the ITB.

## **5.13 REQUEST FOR QUOTATION**

### **5.13.1 When To Use**

The Request For Quotation (RFQ) is used to obtain supplies, equipment, and certain services under \$25,000 that can be clearly specified and awarded to the lowest responsible and responsive bidder.

### **5.13.2 Difference Between RFQ and ITB**

All of the policies and procedures that are listed in Section 5.12 (ITB) pertain to RFQ's except the requirement for public bid opening. There is no public bid opening when an RFQ is used.

### **5.13.3 Acceptance of Late Quotations**

Late quotations may be accepted with the approval of the Director of Procurement under the following circumstances:

- (A) No other quotations have been received.
- (B) The quotation has been officially post-marked prior to the closing date and time.

## **5.14 REQUEST FOR INFORMATION**

### **5.14.1 When To Use**

On occasion, the County may issue a Request For Information (RFI) to solicit feedback on utilizing a product for a particular purpose or to elicit suggestions as to approach and methodology from outside vendors and/or contractors. The information requested may take shape in a concept paper that is prepared and submitted to suggest a new or alternative approach to providing a particular service, or it may suggest innovative ways to respond to a special operating or technical requirement.

Issuing an RFI is preferable to using an RFP when the department/agency desires guidance in improving service or in solving a particular problem but is not prepared to develop exact specifications or defined approaches that vendors may then respond to informal proposals that can be evaluated and ranked on the basis of uniform, pre-established, quantitative criteria. Accordingly, an RFI is generally used to solicit suggestions, ideas or potential approaches on a non-competitive and non-binding basis. The information gathered from an RFI may then be used to clarify the County's desired approach, and it may then provide a basis for preparing a subsequently released RFP.

### **5.14.2 Format**

RFI formats can vary significantly depending upon the nature and focus of the solicitation. Generally, however, an RFI will include a summary of the operational or technical issue that is to be addressed along with expectations in relation to the scope, length and timing of the feedback that is requested.

The RFI should explicitly state that is a non-binding solicitation that may or may not lead to a subsequent bid process. A highly innovative and cost-effective response to an RFI also may justify a sole source award of a contract.

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## **5.15 SOLE SOURCE REQUESTS (Amended 12-12-00)**

### **5.15.1 Policy Statement (Amended 12-12-00)**

Sole source justifications are unnecessary during contract renewal/continuation periods that are expressly provided for in a RFP or other procurement process. However, justifications are necessary for continuation of services beyond such periods. The agency/department must submit justification to and obtain approval from the Board of Supervisors or the Director of Procurement, whichever is appropriate given the type of contract and dollar amount in question.

### **5.15.2 Justification for Requesting Sole Source**

The following queries should be reviewed in advance of a decision to prepare and request a sole source contract:

- (A) What capability does the proposed contractor have that is critical to the specific effort and makes the contractor clearly unique compared to other contractors in the same general field?
- (B) What prior experience of a highly specialized nature does the proposed contractor have that is vital to the proposed effort?
- (C) What facilities, staffing, and/or equipment does the proposed contractor have that are specialized and vital to the commodities or services required?
- (D) Does the proposed contractor have a substantial investment that would have to be duplicated at the County's expense by another contractor entering the field?
- (E) If schedules are involved, why are they critical and why can the proposed contractor best meet them?
- (F) If lack of drawings or specifications is a justification for a sole source acquisition, why is only the proposed contractor best able to perform under these conditions? Why are drawings and specifications lacking? How much lead time is required to obtain drawings and specifications suitable for competition?
- (G) Is competition precluded because of the existence of patent rights, copyrights, or secret processes?
- (H) Does this acquisition require compatibility with any existing County equipment?
- (I) What unique characteristic does the equipment or material offered by the proposed contractor possess that is required to meet the County's needs?
- (J) Is competition precluded because of existing equipment maintenance programs/contracts?

### **5.15.3 How To Request**

Sole source justifications shall be included in the agenda transmittal cover memorandum that is included with contracts that are forwarded to the Board or in a separate memorandum if the agreement is forwarded to the Director of Procurement.

## **5.16 CONFLICT OF INTEREST AND DISCLOSURE REQUIREMENTS**

This section defines conflict of interest and disclosure requirements as they relate to the County's bidding and contracting practices. The section outlines California laws that establish disclosure requirements, lists the conditions under which a conflict of interest exists in relation to a public official's or employee's actions, and discusses disqualification requirements. The provisions in this Section apply to all elected officials, appointed officials and commissioners, and employees of the County.

It is a policy of the Santa Clara County Board of Supervisors to promote business practices that facilitate compliance on the part of its members, the County's employees, and any agents that may be acting on behalf of the County with conflict of interest and disclosure requirements. Further, Board policy requires County officials and employees to seek advice from County Counsel whenever they believe that a conflict of interest may occur in relation to a pending action or decision.

### **5.16.1 California Legal Requirements**

California laws on conflict of interest and disclosure requirements principally emanate from a history of common law concepts and, in particular, the California Political Reform Act of 1974. The Act is an initiative measure which, in addition to regulating conflict matters that involve public contracts, seeks to regulate campaign expenditures, lobbying and certain election issues. The Act contains both disclosure and disqualification requirements.

- (A) Disclosure: The Act requires that certain specific County officials (including members of the Board of Supervisors, members of the Planning Commission, the District Attorney, the County Counsel and the County Treasurer) periodically file formal statements disclosing certain of their assets and income. Generally, this includes real property owned within the County, all investments in businesses that do business in the County, all sources of income aggregating \$250 or more that do business in the County, and all gifts valued at \$50 or more. These statements are matters of public record, and are therefore available to the public upon request.

The County, as required by the Act, has enacted a County Conflict of Interest Ordinance which identifies by County department each position within the department that is involved in the County's decision making process, and specifies the types of assets and sources of income that must be reported by the holder of each designated position. Designated employees must also periodically file an appropriate disclosure statement which becomes part of the public record.

Employees in designated positions are routinely informed of their reporting requirements by their management. However, if any employee is uncertain as to their reporting status, or believes that their position should be but is not designated for reporting, should contact their department management.

- (B) Conflict of Interest Defined: A public official or employee has a conflict of interest when:
- (1) The official makes, participates in, or uses his or her official position to influence a government decision;
  - (2) It is foreseeable that the decision will affect the official's economic interest;
  - (3) The effect of the decision on the official's economic interest will be material;
  - (4) The effect of the decision on the official's economic interest will be distinguishable from its effect on the public generally.

It can be difficult to properly apply these four elements to a specific contract action. Any County official or employee involved in a contract action who has any question as to the application of these elements should contact the office of the County Counsel for advice as to the proper course of action. Generally, County officers and employees should avoid even the appearance of impropriety where potential conflicts of interest are concerned.

- (C) Disqualification: When a public official determines that a particular governmental decision will foreseeably and materially effect his or her economic interest in a manner that is different from the effect on the general public, the official has a conflict of interest. In such cases, the official is not counted for purposes of establishing a quorum, and must not vote on, make, participate in, or attempt to influence the decision. This is called disqualification. When an official disqualifies himself or herself from a governmental decision because of a conflict of interest, the reason for the disqualification must be announced (in the case of a member of a voting body), or disclosed in writing (in the case of all other officials).
- (D) Effect on a Contract Made When a Conflict Exists: Such a contract may be void, depending on the circumstances.
- (E) Penalties for Violation of the Act: Violation of the disclosure or conflict provisions of the Act can result in both administrative and criminal penalties.
- (F) Fair Political Practices Commission: This State Commission was established under the Act. Questions regarding the Act can be addressed to the Commission's staff. Complaints concerning violations of the conflict of interest provisions of the Act should be made to the Santa Clara County District Attorney, the Enforcement Division of the Fair Political Practices Commission, or the State Attorney General.

### 5.16.2 California Government Code Sections 1090-1097

Government Code Sections 1090-1097 prohibit county officers and employees from being "financially interested" in contracts "made" by them or by bodies of which they are members, unless those interests are specifically defined in Government Code Section 1091 as "remote" and are disclosed on the record and the individual abstains in the "making" of the

contract. The courts have construed the word "made" in Section 1090 so broadly that anyone who advises or recommends entering into a contract is deemed to have participated in the "making" of the contract.

Generally, compliance with the Fair Political Practices Act will insure compliance with these Code sections. However, there may be cases where compliance with the Act does not insure compliance with Sections 1090-1097. If there is any uncertainty, the County official or employee involved should contact the office of the County Counsel for advice on the proper course of action.

### **5.16.3 Code of Ethics for Board of Supervisors**

The Santa Clara County Board of Supervisors has adopted a Code of Ethics which, among variously prescribed rules of conduct, prohibits a Board member from participating "in a governmental decision in which he or she has a close personal interest which would tend to impair the exercise of independent judgment in the public interest." The same Code also prohibits a Board member from knowingly taking action that would result in a financial conflict of interest. By reference, the Board's adopted Code of Ethics and its sections on personal and financial conflicts are made a part of this manual (see Appendix A-169).

### **5.16.4 Limitation of this Section**

This section is only a summary of the most important law concerning disclosure and conflicts of interest applicable to actions by County officials and employees involving County contracts. The section is not comprehensive as to contract actions, and it does not address other areas of potential conflicts such as holding incompatible offices or engaging in paid activities that are incompatible with County employment. Thus, County officials and employees considering any action that raises an issue of potential conflict of interest should contact the office of the County Counsel for advice as to the proper course of action.

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**5.17 PRO BONO POLICY FOR CONTRACT PROVIDERS OF LEGAL SERVICES (Adopted 10-29-02)**

- (A) A contract for legal services with the County shall include a certification by the contracting firm that the firm agrees to make a good faith effort to provide at least 30 hours of pro bono legal services, during each year of the contract, multiplied by the number of full time attorneys in the firm. The number of hours shall be prorated on a calendar day basis for any contract period that is less than a full year.
- (B) For the purpose of this policy, pro bono legal service means:
- (1) provision of legal services without fee or expectation of fee:
    - (a) to low income individuals, or
    - (b) to charitable, civic, community, governmental or educational organizations in matters that are designed primarily to address the needs of low income individuals;
  - (2) provision of legal services without fee or with substantially reduced fee to groups or organizations seeking to secure or protect civil rights, civil liberties or public rights; or
  - (3) participation in activities without fee to improve the law, the legal system or the legal profession.
- (C) Contracting firms are encouraged to provide pro bono legal services through the Pro Bono Project (which provides pro bono legal services to low income individuals with civil disputes in the County of Santa Clara), or to individuals or organizations within the County of Santa Clara.
- (D) Each contracting firm shall provide the County Counsel with a report on the firm's pro bono activities within 30 days of the end of each contract year, and when submitting the firm's final invoice to the County. The report shall include the number of full time attorneys in the firm, the number of pro bono hours provided by the firm, and, if appropriate, the nature of the pro bono legal services provided.
- (E) If a contracting firm fails to make a good faith effort to meet the requirements of this policy, the failure may be considered by the County in determining whether to renew the firm's existing contract, or whether to award the firm any future contract.
- (F) This policy is not applicable to contracts with a maximum amount payable of less than \$50,000 for each year of the contract.
- (G) This policy is not applicable to contracts with, or appointments made by the judiciary of, an attorney, law firm, or organization for the purpose of providing legal

representation to low or middle-income persons, in either civil, criminal, or administrative matters.

