

5.0 POLICIES ON SOLICITING AND CONTRACTING (Adopted 2-28-12; Amended 11-26-13; Amended 11-17-15)

5.1 INTRODUCTION

This Chapter of the Board's Policy Manual contains the policies relating to the County of Santa Clara's solicitation and contracting processes. These policies reflect the Board of Supervisors' commitment to:

- establishing an open and competitive process for individuals and organizations that do business with the County;
- ensuring fairness and equal access to business opportunities in the County;
- promoting the most cost-effective use of taxpayer dollars and County resources in its contracting and solicitation processes; and
- increasing social and environmental awareness and responsibility and environmental sustainability in the County.

By implementing these policies, the Board's goal is to ensure that Agencies/Departments comply with applicable laws, regulations, and contractual obligations and follow industry best practices that result in the best outcome for the County. These policies set the framework by which the County, County Agencies/Departments, County officials and County employees should conduct their solicitation and contracting processes.

The County Executive's Office of Countywide Contracting Management ("OCCM") is responsible for reviewing these policies on an annual basis to ensure that they continue to comply with the Board's goals. Any proposed changes to these policies must be discussed with County Counsel and the Director of Procurement, prior to bringing the proposed changes to the Board for approval.

Procedures and guidelines related to some of these policies are contained in the OCCM's Administrative Guidelines, which may be issued from time to time, the Procurement Department's County Contracting Manual, and/or other procedures that may be developed by other Agencies/Departments relative to a particular subject area. These Guidelines, the Contracting Manual and procedures must be consistent with the policies contained in this Chapter, and all Agencies/Departments are required to follow these Guidelines, Contracting Manual and procedures, if applicable. If there is a conflict between any of the procedures or guidelines developed by Agencies/Departments and the County's contracting Manual and/or the Administrative Guidelines, the Administrative Guidelines and Contracting Manual shall govern.

5.2 CONFLICTS OF INTEREST, DISCLOSURE AND DISQUALIFICATION REQUIREMENTS AND ETHICAL BUSINESS PRACTICES

5.2.1 Overview

This section addresses the conflicts of interest, disclosure, disqualification requirements and ethical business practices that relate to soliciting and contracting in the County.

5.2.2 Policy

It is the policy of the Board to promote business practices that facilitate compliance with conflicts of interest, disclosure and disqualification laws and requirements pertaining to Board members, other elected officials, appointed officials, commissioners and committee members, and County employees, contractors, consultants and agents, in their solicitation and contracting processes, and to ensure that the County conducts its contracting and solicitation processes in a legal and ethical manner while aiming to achieve the best outcome for the County.

5.2.3 Background

Public entities, public officials, public employees and contractors are required by law to engage in fair and ethical business practices in their public procurement process. The County is accountable to the taxpayers on how public funds are spent.

5.2.4 Purpose

The purpose of Section 5.2 is to establish a policy that safeguards against favoritism, fraud, and corruption and that prevents the misuse of public funds. Employees who knowingly fail to follow this policy may be subject to legal and/or disciplinary action.

5.2.5 Application of the Policy

5.2.5.1 Conflicts of Interest, Disclosure and Disqualification Requirements

Laws establishing conflict of interest, disclosure and disqualification requirements create the framework for how the County should conduct its soliciting and contracting processes. Examples of the legal requirements include, but are not limited to:

- (A) County officers (elected or appointed), employees, and consultants must not make contracts in which they are financially interested, unless the financial interest at issue falls under an exception approved by County Counsel.
- (B) Certain County officials are required to disclose assets, income, business positions and/or real property that may be materially affected by their official actions. In

appropriate circumstances, such officials are disqualified from acting in order to avoid a conflict of interest.

- (C) A Board member is prohibited from participating “in a governmental decision in which he or she has a close personal interest that would tend to impair the exercise of independent judgment in the public interest.” “Personal interest” includes interest arising from blood or marriage relationships or very close personal associations that would constitute a conflict of interest under common law. This prohibition is found in the County’s Ordinance Code and is different from the financial interest test under the California Government Code.
- (D) A Board member is prohibited from taking action that would result in a financial conflict of interest.
- (E) A public official must not serve two masters at the same time and must exercise the powers conferred on him or her with disinterested skill, zeal, and diligence and primarily for the benefit of the public.

5.2.5.2 Ethical and Best Business Practices

Examples of practices that are prohibited and not consistent with best public procurement practices include:

(A) Segmenting or Splitting Contracts

Efforts to segment or split a contract (also commonly referred to as “incremental contracting”) into two or more contracts for the purpose of circumventing dollar limits or approval processes or other requirements are prohibited. To prevent incremental contracting, contracts for related and interdependent goods or services on a given project must be consolidated whenever feasible.

(B) Awarding Contracts to Unqualified Entities or Individuals

Agencies/Departments are prohibited from awarding contracts to any entity or individual that does not meet the required solicitation criteria for the award. If no entity or individual meets the required solicitation criteria, the Agency/Department must reevaluate its needs and the solicitation process that was conducted and engage in another solicitation process, if appropriate, that will result in the award of the contract to a qualified entity or individual. This prohibition includes the award of contracts to family members, friends or business associates who do not meet the established criteria for a given procurement process but are given an unfair advantage based on their pre-existing relationship with the County or an employee. In order to prevent these types of unfair awards, County employees and agents are required to disclose to their supervisor(s) any relationship to potential contract awardees as soon as they learn of such a relationship.

(C) Circumventing the Solicitation Process

Agencies/Departments are prohibited from selecting an inappropriate solicitation method as explained in Section 5.6 of this chapter, in order to circumvent the process, cut corners, or award the contract to a particular entity or individual.

(D) Contractor Conflict of Interest

A contractor that is awarded a contract to assist the County with drafting the selection requirements and/or criteria for a particular solicitation is prohibited from being awarded a contract resulting from that solicitation or any subsequent solicitation that is required, suggested, anticipated, or otherwise related to the original solicitation, unless the contractor was awarded a contract to do both the drafting of the selection requirements and criteria for the solicitation and performing the work resulting from that particular solicitation.

(E) County Employee's Travel Expenses

If a County employee has to travel to review and evaluate a vendor's proposal, the vendor bidding on that County contract is prohibited from paying the travel expenses of the County employee.

(F) Prohibition on Supervision

No County employee may negotiate or supervise a contract between the County and the employee's former private sector employer, or supervise work to be performed by the former private sector employer, within one year of leaving that employer. These restrictions do not prevent the County employee from providing information to the County, unless otherwise prohibited.

(G) Former County Employees

A former County employee is prohibited from engaging in certain activities related to a judicial, quasi-judicial or other legal proceeding if the subject contract of the proceeding is one in which the former employee participated, unless it falls within an exception approved by County Counsel.

(H) Accepting Gifts

County employees that are involved in the making of a contract, including monitoring the contract, are prohibited from accepting gifts from the contractor under that contract, unless it falls under an exception approved by County Counsel. These gifts include, but are not limited to, tickets to events hosted by the vendor.

5.2.5.3 Compliance with Policy

To ensure compliance with this policy, if a County official or employee is considering an action, matter or decision that may raise any issues related to conflict of interest, disclo-

tures or disqualification, that individual should contact the Office of the County Counsel immediately for advice. To avoid violation of any of these laws or practices, County officials and employees must complete all required documentation and make all required disclosures, as well as refrain from participating in the decision-making process if there is a conflict of interest issue. Failure to comply with the applicable laws may result in the imposition of administrative, civil and/or criminal penalties on the individual. Also, a contract may be deemed void or voidable and/or a solicitation canceled due to violation of these laws.

5.2.6 Applicable Legal Authority

The applicable legal authority for this Section includes, but is not limited to the following:

California Government Code Sections 1090 - 1099; 81000, et seq. (known as the Political Reform Act of 1974)

County of Santa Clara Ordinance Code Division A3; Sections A25-601 and A25-800 2

California Code of Regulations Section 18700, et seq.

5.3 CONTRACTING AUTHORITY

5.3.1 Overview

This section addresses who has authority to enter into contracts on behalf of the County.

5.3.2 Policy

It is the policy of the Board that Agencies/Departments conduct their contracting and solicitng processes pursuant to the contracting authority established by state law, County Ordinance Code, resolution, or express action of the Board.

5.3.3 Background

The County has the power to make contracts that are necessary for the proper exercise of its powers.

5.3.4 Purpose

The purpose of Section 5.3 is to establish the policy of the Board relating to contracting authority in the County.

5.3.5 Application of the Policy

5.3.5.1 Authority of the Board

The Board of Supervisors is the only body that has authority to enter into contracts and issue solicitations on behalf of the County, unless contracting authority has been specifically delegated to someone other than the Board pursuant to state law, County Ordinance Code, resolution, or express action of the Board.

The Board of Supervisors has delegated contracting authority by ordinance, Board resolution or other express Board action to Directors of certain Agencies/Departments. Because an Agency/Department is not a separate legal entity with contracting powers, however, even if the Board delegated authority to enter into a contract to an Agency/Department, the contracting entity is still the County and the contract should identify the County as the contracting party.

Board Contracts

Unless specifically delegated by law, ordinance, resolution or Board action, Agencies/Departments are required to bring all contracts to the Board for: (1) signature, (2) termination, and (3) amendments to the term, scope of services/products being procured, or the County's financial obligation. An amendment to the scope of services/products refers to a change that affects the performance of the contract. Agencies/Departments have authority to take all other actions related to the contract without obtaining further Board approval, for example, changes that are clerical, non-substantive, or not material to the performance of the contract. Such changes by Agencies/Departments must be approved by the Office of the County Counsel and Office of the County Executive.

As a limited exception, if an Agency/Department needs to have a contract executed, terminated, or amended to change the term, scope of services/products being procured, or the County's financial obligation, but it does not have sufficient time to obtain Board approval, then the Agency/Department must ask the County Executive to take the necessary action. The County Executive pursuant to this delegation has the authority to bind the County.

If an Agency/Department needs to increase the County's financial obligation during the time that the Board is not available, and terminating the contract or taking other actions is not an option available to the Agency/Department, the County Executive also has the authority to increase the financial obligation, provided that the increase is the minimum amount necessary to bridge the gap until Board approval can be obtained and that one of the following applies:

- (1) An unanticipated reduction in non-County funding of the contract.
- (2) 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, and this increase in level or volume could not have been anticipated by the Agency/Department.

- (3) Governmental requirements for regulations changed, causing additional costs to the contractor.
- (4) A reallocation of funds from one contractor to another will result in an improved ability to provide desired service levels.
- (5) Unforeseen and uncontrollable cost increases jeopardize the ability of the contractor to continue to provide needed services, and these cost increases could not have been anticipated by the Agency/Department.

If an Agency/Department needs to extend the term of the agreement during the time that the Board is not available, the County Executive has the authority to extend the term only for the minimum amount of time necessary until further Board approval can be obtained. If the County Executive executes, terminates or amends a contract during the time that the Board is not available, the Agency/Department shall then bring the subject contract to the next Board meeting for Board action.

Memoranda of Understanding (MOUs)

All no-cost MOUs and any amendments thereto must be brought to the Board for review and approval following approval by County Counsel as to form and legality. If the Board is not available or an Agency/Department does not have sufficient time to obtain Board approval, then the Director of Procurement has the authority to review and approve no-cost MOUs on behalf of the Board and has the authority to bind the County.

If there is a dollar value associated with the MOU, then the applicable signature authority for goods and related services, professional services, and non-professional services applies.

5.3.5.2 Authority of Director of Procurement

The California Government Code provides for the employment of a County purchasing agent, who may then be authorized to execute contracts for goods, equipment, and services on behalf of the County. The Government Code and Public Contracts Code specify areas where the Board may authorize the purchasing agent to execute these contracts. The County's Director of Procurement serves as the County's purchasing agent. Unless prohibited under applicable laws or policies, the Director of Procurement can carry out his or her functions described herein by engaging in an electronic procurement process. The Director shall also be responsible for establishing an electronic procurement policy that governs how electronic procurement is conducted in the County.

The Director of Procurement may also designate his or her purchasing authority, provided that clear directions are set forth for the designation. Under such a designation, the Director of Procurement still retains the authority and is ultimately accountable to the Board.

All contracting that is conducted pursuant to the authority delegated to the Director of Procurement must conform to all applicable Board policies. The Director of Procurement shall submit to the Finance and Government Operations Committee at the end of each fiscal year or as otherwise requested a report of all new contracts in the preceding year.

If an amendment to a contract executed by the Director pursuant to the authority described below will exceed the Director's authority, such amendments must be taken to the Board of Supervisors for execution.

In addition to the authority granted by the County of Santa Clara's Ordinance Code, the Board authorizes the Director of Procurement to do the following:

- (1) Enter into, renew, amend, terminate and/or take any and all necessary action related to the purchase, lease, or license of supplies, materials, equipment, software, or other personal property required by any County Agency/Department, or any other public agency contracting with the County, including supplies, materials or equipment required for the construction or repair of County roads and bridges. The authority to enter into click wrap, click-through, shrink-wrap license agreements for custom off-the-shelf software and license agreements for open source software or freeware is covered under this delegation.
- (2) Enter into, renew, amend, terminate and/or take any and all necessary action related to contracts for Non-Professional Services where the cumulative value of the contract does not exceed \$300,000 per budget unit for each contract.
- (3) Enter into, renew, amend, terminate and/or take any and all necessary action related to contracts for Professional Services. Each such contract must be with the same contractor for the same type of services and the maximum financial obligation for that contract, including any amendments, must not exceed \$300,000 per budget unit.
- (4) Enter into, renew, amend, terminate and/or take any and all necessary action related to contracts for services (for example, installation, project management, implementation, technical consultation, maintenance or system design) related to a current or past technology acquisition made by the Director of Procurement, provided the total dollar value, including any amendments or options, does not exceed \$500,000 per fiscal year, per contract, following review by County Counsel as to form and legality.
- (5) Award contracts for public projects up to the maximum dollar amount(s) set forth in the Public Contract Code.
- (6) Purchase all official badges and necessary identifying equipment for detectives and investigators of the Office of the District Attorney, for Deputy Sheriffs, for the County's motorcycle officers and motor police, and all other

insignia of other County law enforcement officers that may be necessary in the performance of their duties.

- (7) Dispose of County surplus personal property by selling, leasing or using other forms of disposal.
- (8) Enter into, renew, amend, terminate and/or take any and all necessary action related to emergency contracts.
- (9) Enter into, renew, amend, terminate and/or take any and all necessary action related to Non-Disclosure Agreements (NDAs) on behalf of all Agencies/ Departments, following review and approval by County Counsel as to form and legality.
- (10) Enter into, renew, amend, terminate and/or take any and all necessary action related to revenue contracts and intergovernmental agreements, provided that the maximum contract value for each such contract, including any amendments, does not exceed \$300,000.

5.3.5.3 Delegated Authority to Agencies/Departments

Agencies/Departments have the authority to enter into, renew, amend, terminate and/or take any and all necessary actions related to a contract if this authority has been delegated by law, ordinance or Board action. An Agency/Department seeking delegation from the Board must first demonstrate why such a delegation is necessary and in the best interest of the County. Most of these delegations have an expiration date and further Board action is required to modify contracts beyond the scope or maximum dollar authority of the original delegation.

Unless otherwise provided, execution of contracts by Agencies/Departments under a specific delegation of authority from the Board is subject to approval by the Office of the County Executive and approval by the Office of the County Counsel as to form and legality. Also, as part of the authority delegated to the Agency/Department to enter into an agreement, Agencies/Departments also have the authority to enter into ancillary agreements, such as but not limited to Non-Disclosure Agreements, indemnity agreements and Business Associate Agreements, if such agreements have been reviewed and approved by County Counsel as to form and legality and approved by the Office of the County Executive. Agencies/Departments also have the authority to enter into Business Associate Agreements when there is no existing underlying agreement, subject to review and approval by County Counsel as to form and legality and approval by the Office of the County Executive.

Agencies/Departments shall submit to the Finance and Government Operations Committee at the end of each fiscal year or as otherwise requested a report of all new contracts executed pursuant to delegated authority in the preceding year.

5.3.6 Applicable Legal Authority

The applicable legal authority for this Section includes, but is not limited to the following:

California Government Code Sections 23004, 23005, 25500-25009; 31000

County of Santa Clara Ordinance Code Sections A34-78 - A34-91

Charter of the County of Santa Clara Article III, Section 300

Uniform Public Construction Cost Accounting Act

Public Contract Code Sections 20101; 20122; 22032

5.4 COUNTY CONTRACTING ACTIVITIES (Amended 5-19-15)

5.4.1 Overview

This section provides an overview of the County's contracting activities and sets forth the policy requirements for contracting activities in the County.

5.4.2 Policy

It is the policy of the Board that Agencies/Departments conduct their contracting activities in conformance with the County's specific requirements for such activities.

5.4.3 Background

The County contracts with individuals, private for-profit firms and corporations, private non-profit organizations, and other public agencies for various products and services. In this Chapter of the Board Policy Manual, these entities may be referred to as contractors, vendors, or suppliers.

5.4.4 Purpose

The purpose of Section 5.4 is to establish a policy that describes the requirements for contracting activities in the County.

5.4.5 Application of the Policy

5.4.5.1 Definitions

(A) County Contract

A contract is an agreement between the County and a non-County entity or individual that contains a promise or set of promises or the mutual obligations of the

parties. Agencies/Departments, however, cannot contract with each other. Although Agencies/Departments may enter into intra-agency agreements and letter agreements describing arrangements reached between the departments, such intra-County documents are not contracts enforceable by an Agency/Department against another.

A document need not be titled “contract” or “agreement” to be considered a contract. Examples of contracts include, but are not limited to, a legally-binding MOU with a non-County entity, an amendment to a contract, a field purchase order, and Non-Disclosure Agreements. A document can be considered a contract even if there is no exchange of money.

(B) Grants

Funds provided by a government or other organization (grantor) for specified purposes to an eligible recipient (grantee). Grants are usually conditional upon certain qualifications, for example, use, maintenance of specified standards, and/or a proportional contribution by the grantee or other grantor(s).

(C) Goods and Related Services

Goods and Related Services refer to the goods, materials, software, equipment, and related services (such as delivery, installation, maintenance, consulting and warranty services) procured by the County, such as furniture and office supplies.

(D) Professional Services

Professional Services are any technical or consultant services that provide support to and facilitate department operations and the governmental functions of the County administration/management, program management or innovation. Professional services for purposes of the County’s procurement process include, but are not limited to the following: (1) Licensed Professional services, such as Physicians, Psychologists, Marriage and Family Therapists; (2) Consulting Services; (3) Trainer Services; (4) Medical Services; (5) Legal Services; (6) Information Technology and Communications Consulting Services; (7) Fiscal Consulting Services; and (8) Human Services.

Professional Services are typically not furnished with the acquisition of goods and materials.

(E) Architect-Engineer-Construction Project Management Services

- (i) “Architectural, landscape architectural, engineering, environmental, and land surveying services” includes those professional services of an architectural, landscape architectural, engineering, environmental, or land surveying nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform;

- (ii) “Construction project management” means those services provided by a licensed architect, registered engineer, or licensed general contractor which have the requisite expertise and experience for management and supervision of work performed on state construction projects; and
- (iii) “Environmental services” means those services performed in connection with project development and permit processing in order to comply with federal and state environmental laws.

(F) Non-Professional Services

Non-Professional Services are all services not within the scope of the definitions of Professional Services, Architect-Engineer-Construction Project Management and Goods and Related Services above. They are non-technical or non-consultant services that provide support to and facilitate department operations.

Non-Professional Services for the purposes of the County’s contracting process include, but are not limited to the following: (1) Laboratory Services; (2) Courier Services; (3) Equipment Maintenance Services; (4) Maintenance and Repair Operations Services; (5) Laundry Services; (6) Landscape Services; (7) Garbage and Recycling Services; (8) Records Retention and Destruction Services; and (9) Printing Services.

Non-professional services may be rendered with or without furnishing of goods and materials.

If an Agency/Department needs assistance in identifying the appropriate category of services being procured, it should consult with the Procurement Department.

5.4.5.2 Types of County Contracts

The County enters into numerous contracts annually, majority of them being contracts to procure goods and/or services. These include contracts with contractors that specialize in providing services to the public including, but not limited to the following: education and counseling services of a nonmedical nature; job training and placement services; disease prevention; paid and/or volunteer services for the elderly, handicapped, disadvantaged or indigent in the community; health, educational, or personal growth and improvement services; social welfare and self-help for the elderly, handicapped, disadvantaged or indigent in the community; and treatment services. For example, the County contracts with different organizations, such as Community Based Organizations (CBOs), to provide human services to the public. Human services refer to services that maintain or improve the social, economic, physical, or mental well-being of persons for whom the County bears such a responsibility. Funding for these contracts may come from grants and/or County funds.

The County also enters into revenue contracts and contracts for services with other federal and state agencies. Typically, the contracts with the federal and state agencies 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, or with other public agencies to form joint powers authorities (JPAs). JPAs are generally formed to carry out specific responsibilities that are multi-jurisdictional in nature and reflect regional interest.

5.4.5.3 Form of County Contracts

The form of document used for a County contract will vary depending on the type of transaction, the source of the authority and/or the total value of the contract. For example, a standard form agreement that contains the County's mandatory contract provisions may be appropriate for a low-value consulting services contract. Agencies/Departments should consult with County Counsel, Procurement Department and/or OCCM on the appropriate form to use for a particular contract.

5.4.5.4 Length of Term of Contracts

The length of the contract term (beginning and ending date) may vary depending on the type of contract, but the term must not be more than 5 years, unless the contract falls under one of the exceptions below and the exception is approved by the required authority. The maximum 5-year term includes any amendments to the contract term.

An Agency/Department must obtain prior approval of the exception. If the exception is for a Board contract or contract pursuant to a delegation, the Agency/Department must submit written justification to OCCM demonstrating that an exception is warranted. If the exception is for a contract that falls within the Procurement Director's authority, then the Agency/Department must submit written justification to the Procurement Director demonstrating that an exception is warranted. If an exception is approved, the Agency/Department can proceed with awarding the contract. If an exception is approved by the OCCM, Agencies/Departments will not be required to ask the Board to approve the exception, but must attach the OCCM approval to any legislative file submitted to the Board requesting approval of a contract based on such exception.

The 5-year maximum term for contracts does not apply to the contracts where Board Policy or other Board action provides for a different maximum term.

The exceptions to the maximum 5-year term are:

- (1) When the funding source for a contract provides that the contract term must exceed five years. Such funding sources may include the State or Federal government or an outside funding source (private or foundation grant);
- (2) When the County "piggybacks" on another jurisdiction's contract that is more than five years or that is subsequently extended for more than the initial five-year term;

- (3) When a specific law, code or regulation requires that a particular type of contract includes certain contract term(s) that exceed 5 years;
- (4) Contracts for goods, which includes equipment, that have a lifespan that exceeds five years and the benefits to the County of exceeding a five-year term outweigh the benefits of creating and executing a new contract after five years;
- (5) Contracts for technology software or hardware that have a lifespan exceeding five years and the benefits to the County of exceeding a five-year term outweigh the benefits of creating and executing a new contract after five years;
- (6) Proprietary maintenance contracts;
- (7) Contracts for project-specific professional services where the length of the project is expected to exceed five years;
- (8) Revenue contracts;
- (9) Contracts with other governmental entities; and
- (10) When an Agency/Department is otherwise able to justify that it is in the County's best interest to exceed the maximum 5-year term requirement. For example, an Agency/Department is able to demonstrate that the financial and/or programmatic impact on the County would be significant if the contract term does not exceed the maximum 5-year term requirement.

5.4.5.5 Monitoring, Administration, and Evaluation of Contracts

Monitoring, administration and evaluation of County contracts are essential to promoting the most cost-effective use of taxpayer dollars and County resources and to ensuring that the County receives the goods and/or services for which it contracts.

Although the method used to monitor, administer and evaluate a contract will depend on the type of contract, Agencies/Departments are required to develop performance standards and implement a process that incorporates monitoring, administration and evaluation of contracts. For example, self-monitoring and self-reporting may be appropriate for certain contracts.

Agencies/Departments must also document their performance evaluations of contractors. The retention period for this documentation should be the same as the retention period for the subject contract. These performance evaluations may be used by Agencies/Departments to evaluate the propriety of entering into contract extensions or future agreements with the same contractor. The Board or Board Committees may also request copies of evaluations from time to time.

5.4.5.6 Contract Payment Terms

Wherever possible, payment terms should be tied to performance or level of effort, and expense reimbursements for consulting contracts must be consistent with the County's travel policy, unless it is a fixed price contract, in which case no expense reimbursement above the fixed price is authorized. All consultant contracts where travel and per diem cost or other identified direct cost are reimbursed must also be consistent with the County's travel policy, unless such costs are included in either a fixed unit price or a firm fixed price. This policy does not require the County to pay for travel and does not prohibit Agencies/Departments from negotiating better terms for the County than what is contained in the County's travel policy.

5.4.5.7 Contract Coordination

Agencies/Departments must make every reasonable effort to ensure that services provided by and funding provided to contractors by other Agencies/Departments are not duplicated. Intra-agency agreements may be utilized to facilitate the coordination of effort and to avoid duplicating efforts if deemed advisable by Agencies/Departments and OCCM. Agencies/Departments that are responsible for oversight of human services contracts and their funding shall share contract inventories and any other information that may be appropriate to assist with the coordination effort with OCCM.

5.4.6 Applicable Legal Authority

The applicable legal authority for this Section includes, but is not limited to the following:

California Government Code Sections 4525, et seq.

5.5 GENERAL CONTRACT POLICIES AND PROVISIONS (Amended 11-4-14; Amended 12-16-14; Amended 12-13-16; Amended 3-14-17)

5.5.1 Overview

This section describes the contracting policies and provisions that should be included in County contracts, subject to approval from County Counsel.

5.5.2 Policy

It is the policy of the Board that all County contracts include certain policies and provisions in order to ensure that the County's interests, including financial interests, are protected and that the County complies with applicable laws. This section also reflects the Board's commitment to increasing social and environmental awareness and responsibility in the County.

5.5.3 Background

The County has identified certain contract provisions that generally should be included in all its contracts to ensure that the County's interests are protected. From time to time, the Board has also adopted policies that Agencies/Departments are required to incorporate into County contracts.

Most of the policies apply on an across-the-board basis regardless of the type of contract. Variations in this policy may be noted in other sections of this policy where a particular category of contract or procurement practice is discussed. Where a variation exists, the policy outlined for the particular category of contract or selection practice will prevail over the more general guidelines that are contained in this section.

5.5.4 Purpose

The purpose of Section 5.5 is to establish a policy that addresses the provisions and policies that Agencies/Departments are required to include in all County contracts.

5.5.5 Application of the Policy

5.5.5.1 Legal Review by County Counsel

All contracts must be reviewed and approved by County Counsel as to form and legality. This does not include standard template agreements, such as the County's Standard Service Agreement Form, because they have already been reviewed and approved by County Counsel. Attachments to the Standard Service Agreement Form, such as a statement of work, must not conflict with the terms and conditions of the Agreement Form. If an Agency/Department determines there is a potential conflict, it should ask County Counsel to review the Agreement Form and relevant attachment(s). If Agencies/Departments make changes to the Agreement Form, including attaching additional terms and conditions, then the Agreement Form needs to be reviewed and approved by County Counsel.

All contract templates must include a date on the template that indicates the last time the terms and conditions were reviewed and approved by County Counsel. County Counsel shall periodically review such templates.

5.5.5.2 Contract Review

All Agencies/Departments are required to have a review process for their contracts to ensure compliance with any applicable policies and laws and to protect the interests of the County. This process should include an acquisition planning phase that gives the Agency/Department sufficient time to conduct any necessary market research and complete the process in a timely and efficient manner.

5.5.5.3 Mandatory Contract Provisions

Unless otherwise provided, County contracts and solicitations must contain certain mandatory provisions adopted by the Board, which are incorporated herein and made part of Board Policy by this reference. If an Agency/Department has been delegated authority for a particular contract and the Agency/Department has questions related to the inclusion of the mandatory contract provisions, that Agency/Department must work with County Counsel and OCCM to resolve those questions. These mandatory provisions and the required language for these provisions are maintained by OCCM.

5.5.5.4 Mandatory Policy Provisions

The Board has also adopted the following policies that must be incorporated in all County expenditure contracts, unless otherwise provided. If an Agency/Department has been delegated authority for a particular contract and the Agency/Department has questions related to the inclusion of the mandatory policy provisions, that Agency/Department must work with County Counsel and County Executive to resolve those questions. There may be other policy provisions, which apply to some County contracts that are included in other sections of the Board Policy Manual. Agencies/Departments should consult with County Counsel to ensure that all applicable policies are incorporated into the contracts.

Equal Opportunity/Nondiscrimination

No party contracting with the County will 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 with respect to recruitment, selection for training including apprenticeship, hiring, employment, assignment, promotion, layoff, rates of pay or other forms of compensation. It is further the policy of the County that no party contracting with the County may 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.

It is the policy of the County that parties contracting with the County must comply with all applicable federal, state, and local pay equity laws, including, but not limited to, the Federal Equal Pay Act, Title VII of the Civil Rights Act of 1964, the California Fair Pay Act, and the California Fair Employment and Housing Act. A potential contractor that has submitted a formal bid to provide goods and/or services to the County may be disqualified if the potential contractor has been found, by a court, arbitrator, arbitral panel, or a final administrative action of an investigatory government agency, to have violated applicable pay equity laws in the five years prior to the submission of a bid to provide goods and/or services. A current contractor found by a court, arbitrator, arbitral panel, or final administrative action of an investigatory government agency to have violated applicable pay equity laws, in the five years prior to or during the term of the contract with the County, may be in material breach of its contract with the County if the violation is

not fully disclosed and/or satisfied per County guidelines and contract requirements. Such breach may serve as a basis for contract termination and/or any other remedies available under law, including a stipulated remediation plan. Pay equity violations disclosed by a contractor or potential contractor will be assessed on a case-by-case basis in light of the totality of the circumstances, including whether the violation is serious, repeated, willful, and/or pervasive, the size of the contractor, and any mitigating factors.

Beverage Nutritional Criteria

It is the policy of the Board that County funds that are being used to purchase food and beverages on behalf of the County must not be used to purchase beverages that do not meet the County's nutritional beverage criteria. These criteria may be waived in the event of an emergency or in light of medical necessity. The criteria for waiver are set forth in the Administrative Guidelines for this section.

No Smoking

It is the policy of the County that all contractors and their employees, agents and subcontractors who will have any contact with County property pursuant to a contract with the County must comply with the County's No Smoking Policy set forth in Board Policy 3.47.

Contracting Principles

It is the policy of the Board that all entities that contract with the County to provide services where the contract value is \$100,000 or more per budget unit per fiscal year and/or as otherwise directed by the Board, must be fiscally responsible entities and must treat their employees fairly.

To ensure compliance with these contracting principles, all contractors must: (1) comply with all applicable federal, state and local rules, regulations and laws; (2) maintain financial records, and make those records available upon request; (3) provide to the County copies of any financial audits that have been completed during the term of the contract; (4) upon the County's request, provide the County reasonable access, through representatives of the Contractor, to facilities, financial and employee records that are related to the purpose of the contract, except where prohibited by federal or state laws, regulations or rules.

The factors the County considers in determining compliance with its contracting principles include, but are not limited to: wage levels, pay ranges, benefits for all positions and job classifications, medical insurance for employees, annual rate of staff turnover, number of hours of training for each position in subject areas directly related to the contract, number of legal complaints issued by an enforcement agency against the contractor 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 related to treatment of employees or the contractor's fiscal condition, and any collective bargaining agreements or personnel policies covering the contractor's employees.

Agencies/Departments must work with County Counsel to incorporate applicable provisions related to these principles into County contracts. Any violation of these principles by a contractor may be considered a material breach of the contract, and at the option of the County, constitute grounds for the termination or non-renewal of the contract, according to its terms.

Wage Theft Prevention

It is the policy of the County that all parties contracting with the County must comply with all applicable federal, state, and local wage and hour laws, including, but not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and any Minimum Wage Ordinance enacted by the County or any city within the County of Santa Clara. A potential contractor that has submitted a formal or informal bid to provide goods and/or services to the County may be disqualified if the potential contractor has been found, by a court or by final administrative action of an investigatory government agency, to have violated applicable wage and hour laws in the five years prior to the submission of a bid to provide goods and/or services. A current contractor found by a court or by final administrative action of an investigatory government agency to have violated applicable wage and hour laws, in the five years prior to or during the term of the contract with the County, may be in material breach of its contract with the County if the violation is not fully disclosed and/or satisfied per County guidelines and contract requirements. Such breach may serve as a basis for contract termination and/or any other remedies available under law, including a stipulated remediation plan.

5.5.5.5 Living Wage Provisions in County Contracts (Adopted 12-16-14; Amended 12-13-16)

Basic Wage and Benefit Standards

Employees of County Contractors, and their Subcontractors, who provide Direct Services within the geographic boundaries of Santa Clara County, as part of a County Services Contract, as those terms are defined in the County's Living Wage Ordinance, shall be compensated at least pursuant to the following standards for their work as part of the County Service Contract:

- As of the adoption date of this Policy, \$19.06 per hour shall be a minimum hourly wage, adjusted annually for cost of living using the identical methodology to that used by the City of San Jose, as follows: The rates will be reviewed each year, no later than the 10th of February, to determine if any adjustment should be made based on any change as of December 31st of the previous year in the federal poverty level standard or the geographic cost of living differential provided by the Economic Research Institute's Geographic Assessor. If either standard has changed the County shall recalibrate the wages by multiplying the federal poverty level standard for a family of 3 by said geographic cost of living differential. If neither standard has changed, the Consumer Price Index for all urban consumers (CPI-U) in the San Francisco-Oakland-San Jose regional

area (United States Department of Labor, Bureau of Labor Statistics) shall be reviewed. If the CPI-U has increased by at least 1%, the wage rate shall be adjusted by the same percentage change in the CPI but not to exceed 3%.

- Employers who contribute to affordable individual health coverage for the employee shall have \$2.00 credited toward compliance with the minimum wage. Employers who contribute at least \$2.00 per hour to a retirement plan for the employee shall have another separate \$2.00 credited toward compliance with the living wage. Therefore, employers may qualify for none, one, or both credits.
- The resulting living wage is maintained by the Office of Countywide Contracting Management and available for reference online at <http://www.sccgov.org/livingwage>.
- Employees shall receive at least one hour of compensated time off earned per 20 hours worked, up to a maximum of 12 days earned per year, which may be used for the employee's own sickness or to care for an ill family member or designated person. If the employee has no spouse or registered domestic partner, the employee may designate one person as to whom the employee may use compensated time off to aid or care for the person. Paid sick days, paid vacation days, and paid personal days shall count toward the required compensated time off, if those days may be used for such illness situations.
- The employer shall offer paid time off for employees required to report for jury duty, up to at least five days per year. These Basic Wage and Benefit Standards do not apply to volunteers, interns, on-call and per diem wages, reimbursements by stipend, hourly wages not paid by County Service Contracts, or employees working for less than 5 hours per week as part of the County Service Contract.

Basic Job Security Standards

Employees of County Contractors, and their Subcontractors, who provide Direct Services within the geographic boundaries of Santa Clara County, as part of a County Services Contract, shall enjoy the following protections at work:

- Employers shall not retaliate against workers who request their rights under the Living Wage Ordinance or Board Policy 5.5.5.5.
- The employer shall follow the same policies regarding background checks and review of possible contact with the criminal justice system that are followed by the County with County employees providing similar services. Specifically, the employer shall not ask an applicant for employment to disclose, orally or in writing, information concerning the applicant's conviction history, including any inquiry about conviction history on any employment application, until the employer has determined the applicant meets the minimum employment qualifications, as stated in any notice for the position. This requirement shall not prevent the employer from conducting a conviction history background check after determining the applicant meets the minimum employment qualifications. This qualification-assessment-first requirement shall not apply to a position for which the employer is required by law to conduct a conviction history background

check, to a position within a criminal justice agency as defined in Section 13101 of the Penal Code, or to any individual working on a temporary or permanent basis for a criminal justice agency on a contract basis or on loan from a governmental entity.

- Employers shall not retaliate against an employee for engaging in lawful efforts to unionize their workforce.

Limitations of Board Policy 5.5.5.5

This policy will apply only to contracts for Direct Services developed pursuant to a formal Request for Proposals process which is initiated on or after July 1, 2015, or any Formal or Informal Competitive Procurement process which is initiated on or after March 1, 2017.

This policy does not apply to the following types of contracts:

- Contracts with community-based nonprofit contractors. This section of the Policy will be changed by the Board upon review and vetting of a non-profit specific Policy.
- Contracts and grants that provide the County with revenue, or where reimbursement to the contractor is linked to a match from another entity, whether or not the revenue is through the County to another entity or utilized directly by the County.
- Compensation contracts with providers who charge the County health system for medical, mental health, and substance abuse services rendered to clients for whom the County has a legal responsibility to provide reimbursement for services.
- Contracts with other governmental entities.
- Contracts with employees of the County, dependent agencies of the County or their employees.
- Contracts under \$100,000 for the term of the contract, unless the Contract is amended, extended, or renewed, such that the amendment, extension or renewal will result in a total expenditure exceeding \$100,000 for the underlying contract and any amendments, extensions, and renewals, in which case the amended, extended, or renewed contract is a new "Service Contract," as defined in the living wage ordinance, from the date of the amendment, extension, or renewal.
- Contracts with IHSS workers.
- Contracts for "public works" as defined under California Labor Code Sections 1720 and 1720.2, and subject to payment of prevailing wages under the California Labor Code.
- Contracts for which the law prohibits such limitations. In addition, parties subject to the Living Wage Ordinance and this policy may by collective bargaining agreement provide that such agreement shall supersede the requirements of the Ordinance and this policy.

5.5.5.6 Contract Execution

Electronic Signatures

It is the policy of the County to allow the use of electronic signatures in lieu of manual or ink signatures to execute contracts, provided the electronic signatures are appropriate, comply with applicable laws, and have been approved by County Counsel. The type of electronic signature used in the County must be approved by County Counsel and OCCM. This policy applies to all County Agencies/Departments and governs the use of electronic signatures in the County.

Definition of Electronic Signatures

An electronic signature is an electronic sound (e.g., audio files of a person's voice), symbol (e.g., a graphic representation of a person in JPEG file), or process (e.g., a procedure that conveys assent), attached to or logically associated with a record, and executed or adopted by a person with the intent to sign the record.

Use of Electronic Signatures

Unless otherwise prohibited by law or County policy, an electronic signature shall have the same force and effect as a contract executed with an original ink signature. Agencies/Departments may use electronic signatures to execute all County contracts and related documents, provided the electronic signatures are appropriate, available, comply with applicable laws, and have been approved by County Counsel.

Electronic Copies of Signed Contracts

Unless otherwise prohibited by law or County policy, an electronic copy of a signed contract shall have the same force and effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format.

Guidelines and Procedures

Administration may develop guidelines and procedures and provide training related to the use of electronic signatures and electronic copies of signed contracts in the County. These guidelines and procedures should include adequate controls to ensure integrity, security, confidentiality and accountability in the process and to eliminate or reduce abuse and unauthorized actions. Agencies/Departments are responsible for ensuring that County contracts include a provision reflecting this policy, where applicable.

5.5.6 Applicable Legal Authority

The applicable legal authority for this Section includes, but is not limited to the following:

Davis-Bacon and Related Acts

California Labor Code Section 1771, et. seq.

5.6 PROCUREMENT PROCESS (Amended 5-19-15)

5.6.1 Overview

This section describes the policies related to contractor selection that Agencies/Departments are required to follow in their solicitation and contracting process, unless otherwise provided.

5.6.2 Policy

It is the policy of the Board that the County conduct an open, fair and full competitive solicitation process for the procurement of goods and/or services, with exemptions for certain goods, services and classes of procurement, and case-by-case exceptions, subject to an approval process.

This policy does not address the use of Field Purchase Orders, Direct Pay or P-cards.

5.6.3 Background

The County solicits services and goods and related services by conducting one of the following types of procurement, which are described in this section: (1) Formal Competitive Procurement, (2) Informal Competitive Procurement, and (3) Non-Competitive Procurement.

The formal competitive procurement requirements of this policy may be satisfied through conducting either (a) Formal Bidding, or (b) Competitive Negotiated Procurement.

Formal Bidding refers to a competitive procurement process in which prospective vendors respond to a solicitation for bids, for example, an Invitation to Bid (ITB). On the other hand, Competitive Negotiated Procurement refers to a procurement process in which prospective vendors respond to a solicitation for pricing and other information, and the negotiation of contract terms occurs prior to contract award, for example, a Request for Proposals (RFP).

The County of Santa Clara may also act as the lead agency in a cooperative purchasing process provided that the process complies with County's Board of Supervisors' Policy on Soliciting and Contracting and any other applicable laws. Cooperative purchasing occurs when two or more public agencies identify a common need and combine their requirements into a single solicitation.

In addition to the processes described above, the County utilizes other solicitation methods to acquire goods and related services, professional services and non-professional services, some of which are described in this policy. The County's Contracting Manual includes a description of the different solicitation methods and guidance on when to use a particular method. These solicitation methods must also adhere to the policies contained herein. Unless otherwise prohibited under applicable laws or policies, Agencies/Depart-

ments can engage in an electronic procurement process to conduct the procurement process described herein.

5.6.4 Purpose

The purpose of Section 5.6 is to promote the efficient procurement of services, and goods and related services from contractors doing business with the County.

5.6.5 Application of the Policy

5.6.5.1 Solicitation Process

In order to ensure a successful solicitation process, Agencies/Departments are required to engage in advance acquisition planning after identifying a need to ensure that the selected solicitation process will result in the best outcome for the County. Agencies/Departments must also maintain proper documentation reflecting how the process was conducted, as well as justification for the selection of a contractor, and they must ensure that employees involved in the contracting process are adequately trained.

(A) Review and Approval of Solicitations

(1) Review Process

(a) RFPs and Request for Grant Applications (RFGAs)

OCCM and the Procurement Department should develop a process by which RFPs and RFGAs are reviewed and approved before being issued. The purpose of this process is to ensure that the soliciting and contracting processes being utilized by Agencies/Departments result in the most cost-effective use of taxpayer dollars and County resources, while ensuring that Agencies/Departments are following the guidelines and procedures established in the Administrative Guidelines and County Contracting Manual.

Proposed RFPs and RFGAs for Goods and Related Services and Non-Professional Services are reviewed by the Procurement Department.

(b) Informal Competitive Procurement

Prior to engaging in an informal competitive procurement process, an Agency/Department must first obtain advance approval from the Director of Procurement. The written justification to the Director of Procurement seeking approval must explain why a formal competitive process is not appropriate for the services being procured. If an Agency/Department receives approval to engage in this process, the Agency/Department will still need to explain to the signature author-

ity how the Agency/Department selected the 3 or more vendors to participate in this informal process.

(2) Reports to the Board

An Agency/Department is required to submit to the Board a report of all RFPs and RFGAs it plans to issue prior to the anticipated issuance date of these documents. Therefore, an Agency/Department must wait until after informing the Board of the RFP or RFGA to issue the document. If an Agency/Department is not able to present the report prior to issuance, it is required to do so at the first Board meeting following the issuance of the RFP or RFGA. The purpose of the report is to keep the Board informed of what is being solicited in the County. The information that should be contained in the report is outlined in the Administrative Guidelines.

(B) Formal Competitive Procurement

(1) Goods and Related Services and Non-Professional Services

Goods and related services and non-professional services are acquired by the Procurement Department. This policy requires competitive procurement of goods and related services and non-professional services, with exemptions for certain goods, services, and classes of procurement, and an approval process for case-by-case exceptions. It is the policy of the Board of Supervisors that the County shall procure goods and related services and non-professional services on a competitive basis.

(2) Professional Services

As with all County contracting, Agencies/Departments are required to engage in competitive procurement for the acquisition of professional services, unless another method of procurement is required for that particular type of service. If an Agency/Department determines an exemption or exception applies, then the Agency/Department is required to comply with the policy set forth in Section 5.6.5.l(D) below.

(3) Grant Applications

Board review and approval are required for competitive grant applications and any resulting contracts that have a total value of over \$250,000. If the Board is not available to approve a grant application or an agreement, the County Executive has authority to approve such applications and agreements, and the Agency/Department is required to bring the subject contract to the next Board meeting for Board action. If the application has a value of \$250,000 or less, the County Executive has the authority to review and

approve the grant applications and execute the resulting grant agreements, following review and approval by County Counsel as to form and legality.

(C) Informal Competitive Procurement

(1) Goods and Related Services and Non-Professional Services

Procurement of up to a total contract value of \$100,000 in goods and related services and non-professional services where the procurement is made in accordance with the policies and procedures set forth by the Director of Procurement and provided that the Director of Procurement determines that the price or cost to the County is fair and reasonable.

(2) Professional Services

This process may be used to procure professional services with a contract value of no more than \$100,000 per budget unit per fiscal year, unless a particular method of procurement is required for that type of service. The term for the contracts resulting from the solicitation must not exceed five years. A contract with cumulative totals exceeding \$300,000 which began with an informal competitive procurement process will be subject to formal competitive procurement. Also, if the cumulative total for a Professional Services contract will exceed \$300,000 within a 5-year period and each year did not exceed more than \$100,000 per budget unit per fiscal year and the Director of Procurement executed the original contract and any amendments to the contract, the Agency/Department is required to obtain approval from the Board. Agencies/Departments utilizing this process must send the solicitation document to a minimum of 3 vendors. The solicitation document for this process is not required to be posted or made public.

(D) Non-Competitive Procurement

(1) Exemptions to Competitive Procurement

There are limited exemptions to competitive procurement. If an Agency/Department determines that an exemption applies, the Agency/Department must obtain prior approval of the exemption. If the exemption is for a Board contract or contract pursuant to a delegation, the Agency/Department must submit written justification to the OCCM demonstrating that an exemption applies. If the exemption is for a contract that falls within the Procurement Director's authority, then the Agency/Department must submit written justification to the Procurement Director demonstrating that an exemption applies. If an exemption is approved, the Agency/Department can proceed with awarding the contract or engaging in a process to select a contractor. If an exemption is approved by the OCCM, Agencies/Departments will not be required to ask the Board to approve the exemption, but must attach the OCCM approval to any legislative file submitted to the Board requesting approval of a contract based on such exemption.

Where a request for an exemption to competitive procurement is denied, the procurement shall be conducted through the use of the appropriate process.

The following are exemptions to competitive procurement:

- (a) **Utility Services:** The item or service to be procured is from a utility company where service connections are allowed only in geographically-defined service territories or where the work involves a utility system and only the utility company itself is allowed to perform the work.
- (b) **Educational Services:** Procurement of educational services from a nonprofit institution. “Educational services” are services for instruction or training to employees or clients; “educational services” do not include consulting services for evaluation or non-instructional activities.
- (c) **Intergovernmental Agreements:** Agreements exclusively with the State of California, the federal government, or other governmental entities within the State of California. All parties to these agreements must be governmental entities. These agreements are categorically exempt and do not require pre-approval by OCCM or Procurement.
- (d) **Standard Commercial Off-the-Shelf Software Packages (COTS) or Hardware Products, Maintenance, Installation Assistance and Training:** Procurement of software or hardware products, which may include maintenance, installation assistance and training, that are ready-made, available for sale to the government and to the general public, and designed to be easily integrated into existing systems without the need for extensive customization. COTS software can either be installed on the County computers or delivered over the internet as software. Hardware products are self-contained appliances that include pre-installed software and that are minimally configurable, and may include maintenance and/or associated installation assistance and training. Installation assistance may be on-site or remotely provided and is of limited duration not to exceed 40 hours or 5 working days.
- (e) **Equipment/Hardware Services:** Maintenance Services Agreements provided by the equipment/hardware manufacturer or dealers/distributors as a result of a Life Cycle Cost Purchase determination or which are not available from a satisfactory alternate source as determined by the Director of Procurement.
- (f) **Software, Software Licenses and Maintenance Services:** Where the County has procured software, including operating systems, for its use, procurement of the continuing maintenance and upgrades of the

software, and renewal of software licenses, from the developer or manufacturer.

- (g) Newspapers and Publications Services: Notices and publication services used to post notices required by law, or the purchase of newspapers or publications sold by one vendor.
- (h) No cost memoranda of understanding (MOUs) or revenue agreements that are “non-exclusive.” “Non-exclusive” means that County participation in the MOU or revenue agreement does not prevent the County from entering into similar agreements on similar terms and that sufficient County resources are available to meet demand from others who may be interested.
- (i) Limited Extensions During Pending Protest: Extension of existing contracts where the goods and/or services provided under the existing contract are the subject of an ongoing procurement and the results of that procurement have been protested in accordance with Board Policy Protest Procedures.
- (j) Open Source, Freeware, and Maintenance Services: Where contract licensing agreements have been reviewed and approved by County Counsel, the County’s Information Technology Governance Council, and the Director of Procurement.
- (k) Contracts with law firms, expert witnesses, consultants and investigators hired by the County through its County Counsel’s Office to assist in legal matters.
- (l) Contracts with (i) retirees or previous employees performing duties similar to those performed during the time the individual was a County employee, (ii) individuals to temporarily cover vacant positions, and (iii) individuals hired according to the merit system process, which is a competitive process, but is governed under County Ordinance Sec. A25-34, relating to the Personnel Department – Merit System Rules, as opposed to the Procurement process.

(2) Exceptions to Competitive Procurement

The competitive procurement requirements of this policy may not apply if, under the particular circumstances of the procurement, an exception is warranted. If an Agency/Department determines that an exception applies, the Agency/Department must obtain prior approval of the exception. If the exception is for a Board contract or contract pursuant to a delegation, the Agency/Department must submit written justification to the OCCM demonstrating that an exception applies. If the exception is for a contract that falls within the Procurement Director’s authority, then the Agency/Department must submit written justification to the Procurement Director demonstrating

that an exception applies. If an exception is approved, the Agency/Department can proceed with awarding the contract or engaging in a process to select a contractor. If an exception is approved by the OCCM, Agencies/Departments will not be required to ask the Board to approve the exception, but must attach the OCCM approval to any legislative file submitted to the Board requesting approval of a contract based on such exception.

Board-initiated exceptions: If a Board member initiates an action whereby an exception to competitive procurement is likely to occur (e.g., through a Budget Inventory Item or Board Referral identifying a particular vendor), the Board member shall request Board approval of the use of the exception to competitive procurement at the same time as the request for approval of the related item. Board members are encouraged to use the forms and guidelines provided by the OCCM in bringing forward such requests. Board approval of such an exception is a sufficient basis for use of the exception in the contracting process by an Agency/Department, the Procurement Director, and the OCCM.

Where a request for an exception to competitive procurement is denied, the procurement shall be conducted through the use of the appropriate process.

The following examples are illustrative of circumstances that may be considered in authorizing case-by-case exceptions to this policy.

- (a) Sole Source and Single Source procurements are used in the procurement of products or services. They should only be utilized when justified and necessary to meet the County's needs and when the procurement needs warrant award on a sole source or single source basis. Sole source and single source requests must be supported by evidence that due diligence has been performed in an objective market analysis to arrive at the determination. Although the sole source and single source procurements are exceptions to competitive procurement, Agencies/Departments must still aim to make the process as competitive as is practicable under the circumstances.

- (i) *Sole Source:* A Sole Source Procurement is a sourcing method used to procure a product or service without competition when it has been determined that there is only one source for the required product or service that is capable of meeting the requirements of the acquisition as defined in the Scope of Work or specifications.

Sound procurement practice requires that a Sole Source procurement occur if it has been determined that there is only one source for the required product or service and not as an attempt to contract with a favored service provider or for a favored product.

- (ii) *Single Source:* A Single Source Procurement is a sourcing method used to procure a product or service from one source, without

soliciting competition, even though there are other vendors that can provide the product or service. The County must determine and establish that a situation exists that makes the application of all requirements of competitive sealed bidding or competitive sealed proposals impracticable or contrary to the public interest. Costs associated with a competitive bidding process is not sufficient to justify a single source.

Agencies/Departments must show through documentation that the selection of the source was based on an objective basis and justifiable reason, and the source selected is the most advantageous for the County to fulfill a given requirement as defined in the Scope of Work or specifications and the competitive bidding or competitive proposal process would be contrary to the public interest or would adversely impact the County.

- (b) Competition is precluded because of the existence of patent rights, copyrights, secret processes, control of the basic raw material(s) or similar circumstances, and there is no equivalent item or service.
- (c) Absolute Compatibility Related to Goods:
 - (i) The procurement is for replacement parts or components for equipment, and no information or data is available to ensure that the parts or components obtained from another supplier will perform the same function in the equipment as the part or component to be replaced;
 - (ii) The procurement is for replacement parts or components for equipment, and the replacement parts or components would compromise the safety or reliability of the product, or would void or invalidate a manufacturer's warranty or guarantee; or
 - (iii) The procurement is for upgrades, enhancements or additions to hardware or for enhancements or additions to software, and no information or data is available to ensure that equipment or software from different manufacturers or developers will be as compatible as equipment or software from the original manufacturer(s) or developer(s).

5.6.5.2 Local Preference Policy

In a formal solicitation of goods or services, the County shall give 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, provision of

services, or research and development capability that substantially and directly enhances the firm's or bidder's ability to perform the proposed contract. Agencies/Departments should work with County Counsel to determine whether the business has meaningful production capability within the County. Post Office box numbers, residential addresses, a local sales office without any support and/or a local subcontractor hired by the contractor may not be used as the sole basis for establishing status as a "Local Business."

In the procurement of goods or services using an Invitation to Bid or another solicitation method 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 bid, the contract award shall be made to the Local Business at the Local Business' original 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 - for example, a Request for Proposals - 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 for approval, the accompanying transmittal document 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. The local preference policy may only be applied based on the entity submitting a bid or proposal and not a subcontractor or business partner.

This Local Business preference shall not apply to the following:

- (1) Public works contracts;
- (2) Where such a preference is precluded by local, state or federal law or regulation;
- (3) 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 in accordance with County policy; or
- (4) Contracts exempt from solicitation requirements in accordance with Board policy, state law and/or the County of Santa Clara Ordinance Code.

5.6.5.3 Protest Process

It is the policy of the County that contractors have a process in which they can submit a protest to an award of a contract to another contractor or to otherwise challenge any steps taken during a solicitation process that the contractor believes constitutes an abuse of process by County officials or evaluation team members, misconduct or impropriety by

County officials or evaluation team members, or abuse of discretion by County officials or evaluation team members.

The protest process should be made known to the vendors as part of the solicitation process.

The decision resulting from the established protest process shall be the final decision of the County.

5.6.5.4 California Public Records Act

Under the California Public Records Act (CPRA), the County must give the public access to information in its possession, subject to certain exemptions. If information relating to the solicitation and/or contracting process is requested, including documents received from contractors, Agencies/Departments are required to contact County Counsel immediately and prior to responding to the CPRA, in accordance with Ordinance Code Division A17.

5.6.6 Applicable Legal Authority

The legal authority that applies to this section includes, but is not limited to the following:

California Government Code Sections 6250 – 6276; 25508

County of Santa Clara Ordinance Code Division A17

5.7 PUBLIC WORKS CONTRACTS

5.7.1 Overview

This section discusses public works contracts and the unique requirements for such contracts.

5.7.2 Policy

It is the policy of the Board that all public works contracts comply with applicable laws and administrative codes, including the Public Contract Code (PCC) and Uniform Public Construction Cost Accounting Act (UPCCAA), which was adopted by the County.

5.7.3 Background

The County enters into public works contracts for the purpose of erecting, constructing, altering, repairing, or improving real property or any public structure, building, road, or other public improvement of any kind. The UPCCAA, PCC and State Controller's decisions guide the preparation, solicitation, award, and administration of the County's public works contracts.

The County may commission a variety of public works projects and fund those projects with federal, state and local funds. Examples of public works projects include building construction and remodels, transportation improvements (roads, sidewalks, bikeways, rail, parking lots, and airport projects), utilities projects, parks and recreation projects, and water and sewer projects. This work typically requires the preparation of detailed work plans and specifications, and the projects must be carried out in accordance with complex laws, rules and regulations, including, but not limited to building codes, Labor Code, Government Code, Business and Professions Code, Public Contract Code and California's Environmental Quality Act.

5.7.4 Purpose

The purpose of Section 5.7 is to establish the policy for soliciting and contracting related to public works.

5.7.5 Application of the Policy

5.7.5.1 Authority

The Director of Procurement has the authority to administer the solicitation, award and contract management of Minor Public Works contracts, which are contracts valued at a certain maximum statutory limit established by the State Controller. The Director of Procurement's authority includes the ability to amend the contract value of Minor Public Works contracts up to the maximum statutory limit in order to allow for payment of incidental changes or additions to the work necessitated by unforeseen conditions or requirements. Contract value increases that are beyond the maximum statutory limit and the authority of the Procurement Director must be submitted to the Board of Supervisors for approval.

5.7.5.2 Method(s) of Solicitation

Generally, in the case of a public works contract, the County must prepare complete plans and specifications or performance specifications sufficient to describe the desired construction services and result, advertise for bids, and award the contract to the lowest responsive and responsible bidder. This procedure and the type of solicitation method used are governed in detail by applicable California law, and the County has little discretion in the application of that law.

Further, the County recognizes that before rejecting any low bidder as "not-responsible," that bidder must be given a hearing on the issue of its responsibility before a panel or an individual designated by the Board. If the bidder is found to be not-responsible at the hearing, then the County must state its reasons for this finding 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 responsibility merits rejection.

The type of solicitation method used will depend on the value of the contract. Therefore, Agencies/Departments must consult with the Procurement Department or the Facilities and Fleet Department to determine the appropriate method of solicitation. Regardless of the value of the contract, Agencies/Departments are required to engage in competitive pricing.

Agencies/Departments must issue a new solicitation when there is a major change in scope of the project or if the change causes a major delay, or a change to the schedule that makes the fee structure inappropriate, or if a reasonable price for a contract change order cannot be negotiated. Questions regarding the UPCCAA and/or PCC in relation to a public works bid or contract should be referred to County Counsel.

5.7.5.3 Contractor Prequalification

Public Contract Code (PCC) Section 20101 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 cost; 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 set forth in statute.

The Director of the Facilities and Fleet Department, the Director of the Roads and Airports Department, the Director of the Parks and Recreation Department, or the Director of Facilities for the SCVHHS, may recommend to the Board, on a project-by-project basis, approval of contractor prequalification and implementation of a standard questionnaire in accordance with the requirements of PCC Section 20101. The County will use the California State Department of Industrial Relations (DIR) model questionnaire as a guide in drafting its own questionnaire; 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 PCC Section 20101. 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 or designee. Only bidders determined to be qualified will be provided with bid packages and invited to bid on the particular project subject to the prequalification procedure.

5.7.5.4 Project Labor Agreements (Amended 4-26-16)

A Project Labor Agreement (PLA) is an agreement typically negotiated between a project owner 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. Pursuant to a PLA, an 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 amenable to 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) Threshold for Use of PLA

All projects estimated to have a construction component exceeding two million dollars (\$2,000,000), shall include a PLA in order to further the County's interests, i.e., time sensitivity in maintaining or providing a vital government service. The PLA must be forwarded to the Board of Supervisors at the time the Board is requested to approve and adopt plans and specifications. The Office of the County Executive may recommend to the Board of Supervisors individual exemptions.

For capital projects having construction costs at or below two million dollars (\$2,000,000), agencies/departments may also evaluate whether there is a unique feature or requirement of a project (i.e., time sensitivity in maintaining or providing a vital government service) that would benefit from the use of a PLA. When staff determines that a 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) Targeted Hiring

All County funded construction projects determined to benefit from a Project Labor Agreement (PLA) shall include a hiring program for underrepresented individuals in the field of local construction. The hiring program, shall include established utilization rates for hours to be performed by underrepresented workers who are graduates from a State and/or County approved pre-apprenticeship programs.

An underrepresented worker is an individual who prior to commencing work on a project, is a current or past County client, including but not limited to clients of Social Services, Reentry, and Foster Care.

The hiring program shall not be included where prohibited by federal or state law or if its inclusion would jeopardize state or federal funding available for the project.

5.7.6 Applicable Legal Authority

The applicable legal authority for this Section includes, but is not limited to the following:

Uniform Public Construction Cost Accounting Act

Public Contract Code Sections 20101; 20122; 22032

5.8 ARCHITECT-ENGINEERS-CONSTRUCTION PROJECT MANAGEMENT AND OTHER RELATED CONTRACTS

5.8.1 Overview

This policy covers the soliciting and contracting requirements for architect-engineers-construction consulting, project management and related services contracts.

5.8.2 Policy

It is the policy of the Board that all solicitation and award of Professional Service Agreements (PSAs) and Professional Service Contracts (PSCs) for architect, engineer, and other related services are awarded and administered in accordance with all applicable laws.

5.8.3 Background

The County contracts with firms and individuals to assist the County with its project development and administration of construction contracts. This includes analysis, planning, surveying, design and construction, and inspection to directly and indirectly support construction of new or remodeled 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, or various other undertakings attendant to any public works project that may be requested by the County. Professional firms are also used to develop documents and assist with ensuring compliance with the California Environmental Quality Act.

5.8.4 Purpose

The purpose of Section 5.8 is to establish the policy for selecting and contracting with entities for professional architectural and engineering, and related professional services including construction project managers, landscape architects, environmental scientists, archeologists, biologists, arborists, surveyors, and inspectors.

5.8.5 Application of the Policy

5.8.5.1 Authority

All contracts for services covered in this section that have a cumulative total value of more than \$300,000 per budget unit must be approved and signed by the Board of Supervisors, unless otherwise delegated. If the value is \$300,000 or less per budget unit, the Director of Procurement has the authority to approve selection and execute the contract.

5.8.5.2 Method(s) of Solicitation

Architects, engineers, landscape architects, environmental, land surveying services and related services under this section, must be selected using a Qualification Based Selection (QBS) procedure. Selection shall be done on the basis of “demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required.” These selection procedures assure that these services are procured on the basis of demonstrated competence and qualifications for the types of services to be performed and “at a fair and reasonable price to the public agencies.”

If an Agency/Department determines that the QBS does not apply because, for example, the services needed are not included in the professions described above, then they may use another solicitation method that is appropriate, as described in Section 5.6 of this Policy.

(A) Professional Consultant Selection - Contracts Valued at Over \$300,000 and On-Call Consultants

A Review Board process shall be used to select professional consultants required during the planning, design and construction phases of major projects.

- (1) The Agency/Department Director or designee will periodically solicit a current list of qualified 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 considered in compiling the list.
- (2) The Agency/Department 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. If possible, at least one professional who is not an employee of the County or of the Department requiring the services should be included on the board. The Review Board will review the qualifications submitted, establish a list of finalists, and interview the finalist firms. The list may be maintained for up to two years.
- (3) The Agency/Department Director will negotiate an agreement with the top-ranked firm regarding the extent of services, the amount and method of compensation, and other conditions, subject to Board approval. If an agreement cannot be reached, the Agency/Department Director will terminate discus-

sion with the top-ranked firm and open negotiations with the second-ranked firm, and repeat the process with suitably qualified firms until an agreement is negotiated. Upon successful negotiation, the Agency/Department Director or designee shall present the contract for approval to the Board. At its discretion, the Board may accept the Agency/Department Director's recommendations or direct the Agency/Department Director to enter negotiations with a lower-ranked firm.

- (4) Alternatively to the process outlined above, the Agency/Department Director may utilize the Review Board selection process to establish eligible lists of consultant firms from which Professional Service Agreements (PSAs) would be awarded. These types of contracts should be used for miscellaneous work and not significant capital projects or buildings. The eligible lists may be maintained for one or two years depending on the requirements of the Agency/Department for various professional services and the availability of appropriately qualified firms. 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. Award of a PSA to an eligible firm for miscellaneous projects shall be for a term not to exceed five years, and no more than a cumulative total value of \$1,000,000.

(B) Professional Consultant Selection - Contracts Valued at \$300,000 or Less

The Agency/Department Director shall periodically solicit qualified consultants for professional services. The Agency/Department Director or designee shall convene an internal Review Board to evaluate consultants for specific or miscellaneous projects based on capability and qualifications. This Review Board should consist of at least two qualified County staff familiar with the type of project proposed and the nature of the services required. The Agency/Department Director will be responsible for final selection and negotiating the consultant's fee.

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. Award of a Professional Services Contract (PSC) to an eligible firm or consultant for such projects shall be for a term not to exceed five years, and the value shall be no more than \$300,000 per budget unit for each contract. The Board or the Director of Procurement has authority to execute PSCs.

5.8.6 Applicable Legal Authority

The applicable legal authority for this Section includes, but is not limited to the following:

Government Code Section 4525, et seq.

5.9 REAL PROPERTY, FRANCHISE AND CONCESSION CONTRACTS (Adopted 2-28-12; Amended 3-16-12; Amended 9-10-13; Amended 6-24-14; Amended 8-5-14)

5.9.1 Overview

This section describes the different types of real property, franchise and concession contracts entered into by the County and applicable legal requirements relating to these contracts.

5.9.2 Policy

It is the policy of the Board that all real property, franchise and concession contracts entered into on behalf of the County comply with applicable laws, while recognizing the unique nature of such contracts. Sections 5.4 and 5.6 of this Chapter do not apply to these contracts. The policies governing those contracts are described in this section.

5.9.3 Background

The County enters into different types of real property, franchise and concession contracts including lease, rental, franchise, and concession agreements. The County may act as the landlord, tenant, lessor, lessee, or franchisor.

5.9.4 Purpose

The purpose of Section 5.9 is to establish a policy of the Board relating to the soliciting and contracting processes for real property, franchise and concession contracts.

5.9.5 Application of the Policy

5.9.5.1 Leases or Rentals

Prior to any request for the lease or purchase of property for use by a County Department or Office, the requesting Department or Office shall develop and present to the Office of the County Executive, the Director of Facilities and Fleet, the Director of Parks and Recreation or the Director of Roads and Airports, as applicable, (each a "Property Managing Department") a written plan demonstrating the fiscal, operational and management objectives associated with the need for the property and its intended use (short term or long term, as applicable), and shall work with the Property Managing Department to develop Project Specifications and Performance Standards ("Specifications") for the lease or purchase of the property, identifying at a minimum:

- (1) All key and material deliverables;
- (2) The performance, industry and other standards to be achieved or applied to measure and determine successful project completion (including achieve-

ment of Department fiscal, operational and management goals) for the period of intended property use; and,

- (3) A financing mechanism to be used to cover or recapture the costs of the Property Managing Department to administer, manage and oversee the project improvements.

Using the requesting Department's written plan and other relevant information, the Property Managing Department will develop an analysis to determine the cost/benefit of leasing versus purchasing the property.

(A) County as the Lessee/Tenant

From time to time, the County enters into rental or lease contracts with public or private entities for County use of real property. No other Office or Department other than a Property Managing Department is authorized on behalf of the County to negotiate or enter into a rental or lease contract with public or private entities for County use of real property. The Budgetary Contingency mandatory provision that allows the County to terminate the agreement if it does not have sufficient funds to sustain the agreement shall not apply to real property rental or lease agreements. Where a lease, rental contract or agreement for County use of a facility, parking structure, building, space or other property involves or may potentially involve any construction, alteration, renovation or improvement to the facility, structure, building, space or property, then said lease, rental contract or agreement shall include, at a minimum, terms and conditions that address the following:

- (1) Payment of prevailing wage.
- (2) A requirement that the landlord (where needed/negotiated) obtain a minimum of three (3) competitive bids from prospective contractors for performance of work under the lease, and/or provide cost schedules for instances of landlord self-performance.
- (3) A provision identifying by title the County's representative from the applicable Property Managing Department authorized to agree to any property improvements or new construction, and to negotiate, approve, enter into and sign any and all amendments, change orders, fee or cost increases, other modifications to the scope of work or terms of the lease or rental contract on behalf of the County.
- (4) Where applicable, as determined by the Property Managing Department, implement and incorporate by reference the County's Project Specifications and Performance Standards ("Specifications"), including the development, and incorporation by reference, of a mutually acceptable implementation work plan that meets the Specifications and which contains at a minimum:
 - (a) All tasks to be completed.

- (b) Critical Path Milestones (including Milestone start and finish dates).
- (c) Detailed description of Landlord action items.
- (d) Detailed description of County action items.
- (e) Detailed description of third party action items.
- (f) Dates and frequency of status meetings and reports.
- (g) Method and process for content, submission, review, approval and authorization of Change Orders.
- (h) Definition of material change in project scope.
- (i) The fee and cost structure, including any fees and costs associated with changes in project scope.
- (j) Definition of “Project Acceptance” or “Completion of Work” to include method and means for validating and reviewing completion of performance, and identification of the County representative from the applicable Property Managing Department authorized to make this determination.
- (k) Process for correction of defects or other modifications needed to achieve or demonstrate “Project Acceptance.”
- (l) Process for post-project acceptance corrections of defects and alterations.
- (m) Warranty period and coverage after completion of work.
- (n) Identification of authorized and unauthorized pass-through charges.
- (o) Invoicing and payment process.
- (p) Method and process for dispute resolution concerning completion of work plan.

(B) County as the Lessor/Landlord

The County may rent or lease a County facility to a private firm or another public entity, in which case the County acts as the landlord under a rental or lease agreement with a tenant. The County may also allow Community Based Organizations or other County contractors holding valid County contracts to utilize County owned property on a loan basis in lieu of purchasing or leasing similar property with contract funds to perform the services, or for the benefit of the program under the valid contract provided the agreement meets the requirements of Section 5.9.5.6.

(C) County as the Lessor/Landlord and Lessee/Tenant

Agencies/Departments cannot contract with each other. When one Agency/Department desires to “rent” real property from another Agency/Department, however, and one of the two Agencies/Departments operates through use of general funds and the other operates with restricted funds, the Facilities and Fleet Department (FAF) is responsible for coordinating the arrangement, obtaining approval for this arrangement, including Board approval, if applicable, and preparing the “rental agreement.” FAF will coordinate with County Counsel to ensure that the rental costs satisfy the requirements of United States Office of Management and Budget Circular A-87, to the extent it is applicable. Nothing in this policy is to be construed to supersede the duties or authority of the Board-appointed County Road Commissioner with respect to the Road Fund’s real property assets.

5.9.5.2 Franchise or Concessions

The County enters into franchise and concession agreements when the Board approves a concession and/or a lease of County-owned property to an individual or firm. Under this type of agreement, the individual or firm is authorized to manage a business for specifically-described purposes and under limited conditions on the County property in question. This also applies when the Board grants a license to do business in the County. For example, the Board may license one or more firms for the limited purpose of providing paramedic and ambulance services within the County.

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 nonexclusive franchises by the Board. These types of franchises are awarded by the Board by ordinance, which sets forth the terms and conditions under which the franchise may operate within the County. The term of any lease or concession agreement, including any extensions, shall be limited to a total of 30 years, after which a competitive bid must be undertaken for a new lease or concession agreement. All lease or concession agreements shall require a security deposit or performance bond in accordance with the County’s financial risk at stake in the agreement.

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.

All franchise and concession contracts must incorporate the following conditions:

- (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; and

- (C) The franchisee's financial capacity to carry out the terms and conditions in the agreement with the County and the franchisee's demonstrated experience and past performance in providing the service in question.

The Board 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 soliciting and contracting. Using the process and criteria provided for in Section 5.9.5.6 below, 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 (1) economically or (2) physically disadvantaged persons or for other reasons as determined by the Board. 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 an agreement between the County and the contractor.

5.9.5.3 Authority

Subject to certain restrictions and exceptions, (1) the Director of the Facilities and Fleet Department (FAF), (2) the Director of the Roads and Airports Department (Roads), and (3) the Director of the Parks and Recreation Department (Parks) have authority to enter into rental or lease agreements on behalf of the County. This includes a facility rental by a Department. Agencies/Departments should consult with the appropriate department (FAF, Roads, or Parks) or County Counsel to determine which exceptions and restrictions apply.

5.9.5.4 Method(s) of Solicitation

All leases of County-owned real property to private firms or individuals, including all concessionaires that are allowed to operate privately held businesses on County-owned real property, must occur pursuant to a formal competitive bidding or sole source criteria that are set forth in this policy and Ordinance Code Division A21.

The bid process for real property leases and any contract emanating from that bidding process must 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; and

- (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.

5.9.5.5 Use of Commercially Licensed Real Estate Brokers and Agents

The use of or payment by the County or any Department of the County of a licensed real estate broker for any real property transaction is not required.

5.9.5.5.1 Payment of Commission by County to Buyer's Agent

If the County is selling or leasing County-owned property, and it wants to pay any part of the commission of a licensed real estate broker serving as the procuring agent of the buyer or lessee ("Buyer's Agent"), then the County will comply with the requirements of Section 25527 et seq. of the Government Code.

5.9.5.5.2 Payment of Commission by County to County's Agent

When the County is acquiring or disposing of real property by sale or lease, a licensed real estate broker may be used by the County as County's agent ("County's Agent") provided the terms of the real estate broker agreement have been approved by the Board of Supervisors prior to entering into the agreement.

For the sale or lease of County-owned real property, the County may, at its discretion, require in the real estate broker agreement that County's Agent share a percentage of its commission with the Buyer's Agent in which case the requirements of Section 25527 et seq. of the Government Code shall be followed.

5.9.5.5.3 Payment of Commission by Third Party

If the County has engaged the services of a licensed real estate broker (as the procuring cause) for the disposition by sale or lease of County-owned real property, and the commission will be in excess of \$100,000 and paid by a third party, then the commission must be approved by the Board of Supervisors in advance of the payment unless due to the nature of the transaction prior approval is not possible.

If the County engages the services of a licensed real estate broker (as the procuring cause) for the acquisition by purchase or lease of real property for County use, and the commission will be in excess of \$200,000 and paid by a third party, then the commission must be approved by the Board of Supervisors in advance of the payment unless due to the nature of the transaction prior approval is not possible.

5.9.5.5.4 Real Estate Broker Selection

In addition to all other requirements of this Section 5.9.5.5, if any County Department intends to enter into an agreement with a licensed real estate broker to serve as County's exclusive agent for the purchase or lease of real property for County use or for the sale or lease of County-owned real property, then the Department shall select a broker from the

list(s) of brokers available through the Facilities and Fleet Department’s Office of Property Management (“OPM”), or OPM designee, which list(s) shall be valid for five (5) years and generated through a request for qualifications process administered, updated, modified and managed by the OPM, or OPM designee.

5.9.5.6 Below Fair Market Value (Amended 12-8-15)

(A) Intent

Non-profit or volunteer groups or organizations and public agency uses of County property at below fair market value (“BFMV”) rent or fee can sometimes be justified due to the important public benefit or services provided through such use. Such uses can be justified through demonstrated need and accountability in compliance with the spirit and intent of County ordinances and other applicable law, including but not limited to Government Code Section 26227. These public purpose uses can provide benefit to County residents by increasing the scope and diversity of services and benefits available Countywide.

(B) Managing the Relationship

The County manages these relationships through a variety of County departments and agencies. Generally, the responsibility for managing the day-to-day use of County Property resides primarily within the County Executive’s Office of Asset and Economic Development, the Facilities and Fleet Department, the Parks and Recreation Department and the Roads and Airports Department.

(C) Below Fair Market Value Agreements

Except as allowed herein or in Section 5.9.5.6 (D) and (E) or where otherwise expressly allowed by applicable law or County ordinance, the County shall not enter into any below fair market value agreements (“BFMV Agreement”) for the use of County real property or space (“County Property”). In addition, except as expressly allowed by applicable law, the County shall not enter into BFMV Agreements with any for-profit business, person, entity, partnership or other group or organization.

- (1) Without first having to comply with any other provision of Board Policy Chapter 5.9 and without first obtaining Board of Supervisors approval, each of the Directors of the Roads and Airport Department, Facilities and Fleet Department, Parks and Recreation Department and Office of Asset & Economic Development are hereby delegated the authority to negotiate, amend, enter into and execute leases, licenses and other space use agreements or contracts for the use of County facilities, space or real property at or below fair market value with any third party if (1) the term of the agreement is less than 12 months, (2) the rent or fee for the use is less than \$10,000 per month, (3) the agreement is non-renewable, (4) the agreement has been reviewed as to form and legality by County Counsel and has been approved by the Office

of the County Executive, (5) the use serves a public purpose, and (6) the department with the delegation has complied with all other applicable provisions of the Ordinance Code or law pertaining to such use (by way of example and not limitation, County Ordinance Code A21-20.b).

(D) Below Fair Market Value Justification

For purposes of this section, a below fair market value justification will require the following:

- (1) an appraisal or an economic opportunity evaluation. If an economic opportunity evaluation is performed it should include, if needed, consideration of the following: lease vs. sale economics, net present value comparisons, marketing options, market trends, proposed timing for use, minimum bid recommendations, development pro-forma, title encumbrances (restrictive easements or bond financing encumbrances) or a discussion of the non-applicability of any of these elements if that is the County staff's determination. If the property is a park, then the analysis in this section (D)(1) is not required;
- (2) a determination that the proposed use is consistent with the County's goal of serving the public purpose;
- (3) a preliminary assessment of whether CEQA is applicable and has been satisfied;
- (4) a determination that the proposed use would be in the public interest and would not substantially conflict or interfere with the County's use of the space or the use of other County properties;
- (5) the proposed user has demonstrated that the fee or rent at fair market value is not economically feasible and the proposed below fair market fee or rent is otherwise justified for the intended use. An effort should be made to quantify the public benefit associated with the grant of a below fair market fee, rent or payment, including any savings to the County; and,
- (6) the proposed user has demonstrated that it has the financial and operational ability or expertise to perform the public service or provide the benefit contemplated.

(E) Approving the Below Fair Market Value Agreement

Prior to entering into any BFMV Agreement, the BFMV Agreement shall:

- (1) be in writing, and subject to review and approval by County Executive (or designee) and review and approval by County Counsel as to form and legality; and,

(2) be subject to the Board of Supervisors approval.

(F) Effective Date

This Section 5.9.5.6 shall apply from the date of adoption and shall not be retroactive.

5.9.5.7 Uses of Property Not Belonging to County (Adopted 12-8-15)

(A) Without first having to comply with any other provision of Board Policy Chapter 5.9, the Board of Supervisors delegates to the County Executive or designees the authority to negotiate, amend, enter into and execute leases, licenses and other space use agreements or contracts for the use of facilities, space or property belonging to another if (1) the term of the agreement is ten (10) days or less, (2) the rent or fee for the use is less than \$7,500, (3) the agreement is non-renewable, (4) the use serves a public purpose, (5) the department with the delegation has complied with all other applicable provisions of the Ordinance Code or law pertaining to such use, (6) an executed copy of the agreement is provided to the Director of the Facilities and Fleet Department, and (7) an off-agenda memo is sent to the Board of Supervisors with a summary and a copy of that agreement.

(B) Effective Date

This Section 5.9.5.7 shall apply from the date of adoption and shall not be retroactive.

5.9.6 Guidelines/Procedures

Additional information may be found in the OCCM's Administrative Guidelines Manual, the County's Contracting Manual and any other applicable procedures developed for this subject area.

5.9.7 Applicable Legal Authority

The applicable legal authority for this Section includes, but is not limited to the following:

County of Santa Clara Ordinance Code Division A21

California Government Code Section 25525, et seq.

Board Resolution Authorizing the Directors of the Facilities and Fleet Department, Parks and Recreation Department, and Roads and Airports Department to execute and amend leases and license of Real Property for use by the County, dated May 22, 2007.

5.10 [RESERVED]

5.11 INFORMATION TECHNOLOGY (IT) PRODUCT AND SERVICE CONTRACTS

5.11.1 Overview

This Section addresses Software, Hardware, Maintenance, and IT Services.

5.11.2 Policy

It is the policy of the Board that the procurement of IT Product and Service is consistent with applicable laws, while achieving economies of scale and ensuring appropriate support models are established so that the County's IT is consistent with industry standards and practices, and is capable of handling the ever-changing information technology industry and the multiple variations provided by software, hardware, maintenance and IT service providers.

5.11.3 Background

The County contracts with different entities to procure Software, Hardware, Maintenance, and IT Services.

(A) Examples of products include, but are not limited to:

- (1) Commodity software and maintenance/upgrade agreements, including office productivity products, such as email, word processing, and presentation products;
- (2) Commodity hardware, such as servers, microcomputers, Smartphones, tablets, and printers;
- (3) Enterprise software solutions, such as a financial or payroll systems;
- (4) Shared software solutions, such as applications shared by a sub-group within the County, such as the Law and Justice Community;
- (5) Business-specific software applications that only address a specific business need, such as an electronic health record system;
- (6) Software products that provide capabilities that are available for free or with minimal maintenance fees; and
- (7) Hardware products and maintenance that meet countywide infrastructure or department-specific needs.

(B) Examples of services include, but are not limited to:

- (1) Business analysis, system/application design, development, implementation, project management, technical consulting, training or maintenance.

5.11.4 Purpose

The purpose of Section 5.11 is to ensure that all IT Product and Service contracts are:

- (A) Consistent with County policies and procedures;
- (B) Procured through requests and methods of procurement that have been reviewed and approved as defined in the County's IT Product and Service Contracting Guidelines;
- (C) Appropriate for County business purposes only;
- (D) In alignment with established County IT Principles and Standards Guidelines developed by the County Chief Information Officer or designee and the County Information Technology Council, to achieve economies of scale, to ensure appropriate support models are established, and to be consistent with industry standards and practices;
- (E) Comply with all applicable laws, including but not limited to laws related to security, privacy, confidentiality, HIPAA, discrimination, copyrights, trademarks, and accessibility under Section 508 Amendment to the Rehabilitation Act of 1973; and
- (F) Follow the exemption procedures within the County's IT Product and Service Contracting Guidelines.

5.11.5 Application of the Policy

5.11.5.1 Administration

The policies and guidelines covered by the Information Technology Product and Service Contracting Policy will be developed and managed by a governance committee or council reporting to the County's Executive Governance Steering Committee assigned to oversee the management of Information Technology in the County.

- (A) The responsible committee or council, in conjunction with the Procurement Department and County Counsel's Office, is responsible for, but not limited to, the:
 - (1) Development and ongoing management of the County's IT Principles and Standards;

Development and on-going management of the County's IT Product and Service Contracting Guidelines;

- (2) Development and on-going management of the County's IT Principles and Standards Guidelines;
- (3) Development and on-going management of requirements to establish Master contracts for Countywide use;
- (4) Oversight and guidance to assist in the development of requirements and appropriate solicitation methods as defined in the County IT Product and Service Contracting Guidelines; and
- (5) Other responsibilities and tasks as identified by the Executive Governance Steering Committee.

5.11.5.2 Method(s) of Solicitation

The Information Technology industry and contracting approaches change rapidly. In order to maintain appropriate methods of solicitation, guidelines are provided and managed on an ongoing basis in the County IT Product and Service Contracting Guidelines. These guidelines must be consistent with this Chapter of the Board Policy, the Administrative Guidelines and the County's Contracting Manual.

5.11.6 Applicable Legal Authority

The applicable legal authority for this Section includes, but is not limited to the following:

California Government Code Sections 23004, 23005, 25500 – 25009; 31000

County of Santa Clara Ordinance Code Sections A34-78 – A34-91

Charter of the County of Santa Clara Article III, Section 300 Section 508

Amendment to the Rehabilitation Act of 1973

5.12 LEGAL SERVICES CONTRACT

5.12.1 Overview

This policy addresses the legal services procured by the County from outside legal counsel.

5.12.2 Policy

It is the policy of the Board that the County enters into contracts for legal services under certain circumstances and that certain conditions may be placed on the outside legal counsel providing such services.

5.12.3 Background

The County contracts with outside legal counsel for legal services when issues pertinent to a negotiation, arbitration or litigation are specialized in nature that cannot be handled by the Office of the County Counsel, or when a legal 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. A court may also order the retention of a court-appointed counsel, which generally will result in a contract for the services of an outside legal counsel to represent a County party for the duration of a particular court case.

5.12.4 Purpose

The purpose of Section 5.12 is to establish the policy of the Board related to the retention of outside legal counsel and the conditions governing such an arrangement.

5.12.5 Application of Policy

5.12.5.1 Approval Process

Prior to retaining outside legal counsel, agencies and departments must first ask County Counsel to prepare a written certification to the County Executive that the Office of the County Counsel is unable to provide legal services to the Agency/Department on the matter at issue and it has no objections to the Agency/Department hiring the proposed outside legal counsel.

5.12.5.2 Pro Bono Policy

- (A) A contract for legal services with the County must include a written representation by the contracting firm that the firm will make a good faith effort to provide at least 12 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 can be pro-rated 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 a fee or with a 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 a 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 must provide the County Counsel with a report on the firm's pro bono activities within 30 days of the end of each contract year, or contract term if less than a year, and again when submitting the firm's final invoice to the County. The report must 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 demonstrated good faith effort to meet the requirements of this policy, such a failure constitutes a breach of the agreement and may also be considered by the County in determining whether to renew the firm's existing contract, or whether to award the firm any future contracts.
- (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 for the purpose of providing legal representation to low or middle-income persons, in civil, criminal, or administrative matters.
- (H) These services cannot include the representation of a client, directly or indirectly, in any action or complaint filed in any forum against the County or its agents or employees. This restriction does not apply to administrative proceedings to obtain or maintain public benefits or services for clients.

5.12.6 Applicable Legal Authority

The applicable legal authority for this Section includes, but is not limited to:

County of Santa Clara Ordinance Code Section A22-16

5.13 CONTRACTING WITH INDIVIDUALS (Amended 5-19-15)

5.13.1 Overview

This section addresses contracting with individuals who will assume a defined set of responsibilities and/or perform services for the County.

5.13.2 Policy

It is the policy of the Board that the County contract with individuals to assume certain responsibilities and/or perform services when such contracts will result in the best outcome for the County.

5.13.3 Background

Under certain circumstances, the County may determine that it is in its best interest to contract with an individual. Individuals may enter into contracts with the County as a contract employee or as an independent contractor. Individuals under contract may work on a part-time or full-time equivalent basis.

5.13.4 Purpose

The purpose of Section 5.13 is to establish a policy that describes when the County may contract with individuals.

For purposes of this section, this policy does not apply to individuals who are employees of a corporation or firm that has a contract with the County.

5.13.5 Application of Policy

5.13.5.1 Contract Employee vs. Independent Contractor

A determination must be made whether an individual retained pursuant to contract is a contract employee or an independent contractor. Agencies/Departments should contact OBA or County Counsel for advice in making this determination.

5.13.5.2 Solicitation/Approval Process

Unless an exception or exemption applies, Agencies/Departments are required to engage in competitive procurement to hire an individual pursuant to contract. If an Agency/Department believes that an exemption or exception applies, the Agency/Department must comply with the policy set forth in Section 5.6.5.1(D) above.

Generally, the Board will only approve an Agency/Department's use of contracts for individuals when such use is needed to provide specialized skills, address emergency situations or provide assistance to meet an unusual or temporary operational requirement.

Agencies/Departments are prohibited from hiring individuals pursuant to a contract if the intent 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 agreements/processes.

5.13.6 Applicable Legal Authority

The applicable legal authority for this Section includes, but is not limited to the following:

County Charter Article VII, Section 701

5.14 CONTRACTING DURING AN EMERGENCY

5.14.1 Overview

This section describes the type of contracting permitted during an emergency, and its limitations.

5.14.2 Policy

It is the policy of the Board that the County's ability to contract during an emergency is not limited while ensuring that County's actions still comply with applicable laws.

5.14.3 Background

The purpose of procuring professional and non-professional services, or goods and related services, an emergency is a sudden, generally unexpected occurrence or set of circumstances that demands immediate action, the absence of which would undermine essential County services or cause a significant economic loss to the County. An emergency does not include an urgency that results from an Agency/Department's delay in engaging in a solicitation process to procure services or goods.

5.14.4 Purpose

The purpose of Section 5.14 is to establish a policy of the Board that describes the contracting authority during an emergency and the limitations on such authority.

5.14.5 Application of Policy

In an emergency, Agencies/Departments are required to submit a written request with sufficient justification to the Board of Supervisors, Director of Procurement or the County Executive to forego the normal bid solicitation and contracting process for goods and services.

All emergency procurement and contracts that are approved without the benefit of a public meeting must be brought by the County Executive, or the Director of Procurement, if it is not within the Director's authority, to the Board of Supervisors, as soon as practicable, for ratification at a public meeting.

Emergency purchases to repair or replace a public facility shall be made in accordance with County Ordinance Code Section A34-82.

5.14.6 Applicable Legal Authority

The applicable legal authority for this Section includes, but is not limited to the following:

County of Santa Clara Ordinance Code Section A34-82

