



CONTRACT POLICY MANUAL 2012



Orange County



COUNTY OF ORANGE

CONTRACT POLICY MANUAL

Adopted by the
Orange County Board of Supervisors

July 24, 2012

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SECTION 1 – GENERAL RESPONSIBILITIES

SECTION 1.1

OFFICE OF THE COUNTY PURCHASING AGENT

§1.1-101 Statute

- (1) Title 3, Division 2, Part 2, Chapter 5, Article 7 (Secs. 25500 et seq.) of the California Government Code authorizes the County Board of Supervisors to employ a County Purchasing Agent to perform certain duties on behalf of the County. These duties are defined in Government Code §25501 and the Codified Ordinances of the County of Orange, Title 1, Division 4, Article 2, Sections 1-4-12 through 1-4-38.

§1.1-102 Policy

- (1) The County Purchasing Agent shall establish methods and procedures necessary for the proper functioning of County purchasing in an efficient, transparent and economical manner.
- (2) Unless, otherwise authorized by the County Board of Supervisors, all County procurement contracts shall be solicited and executed in accordance with the provisions of this Contract Policy Manual.

§1.1-103 Ethical Statement

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

§1.1-104 Scope

- (1) It shall be the duty of the County Purchasing Agent to purchase for the County of Orange, its offices, and any special district whose affairs and funds are under the supervision and control of the Board of Supervisors all material, supplies, furnishings, equipment, livestock, and other personal property of whatever kind and nature.

§1.1-105 Contracts Outside Scope of Authority

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

§1.1-106 Delegation of Authority

- (1) In this capacity the County Purchasing Agent will delegate this authority to other employees of the County of Orange, its offices, or any special districts whose affairs and funds are under the supervision and control of the Board of Supervisors.
 - a) These employees shall be those designated by agency/department heads, and shall be trained under the direction of the County Purchasing Agent and deputized as Deputy Purchasing Agents to perform in the County Purchasing Agent's capacity.
 - b) The delegation of authority by the County Purchasing Agent to Deputy Purchasing Agents in no way grants authority to persons who have not been authorized by agency/department heads.
 - c) Delegation of purchasing authority to the Deputy Purchasing Agents delineated in this manual is subject to approval of agency/department heads, who may, at their discretion, require approval by higher authority levels within their agencies/departments.

§1.1-107 Authority to Procure

- (1) No purchase of personal property by any person other than the County Purchasing Agent or Deputy Purchasing Agents shall be binding upon the County, or constitute a lawful charge against any County funds, except in emergencies and as may be otherwise provided through action by the Board of Supervisors.
- (2) Employees responsible for procuring goods and services on behalf of the County will not also be responsible for approving requisitions for purchases; receiving the goods purchased, or the approval/processing of invoices for payment for their agency/department.

§1.1-108 Specific Duties

- (1) Except where statutes or ordinances dictate otherwise, the County Purchasing Agent and Deputy Purchasing Agents are authorized to carry out the specific duties listed in this policy manual plus any additional duties as provided by resolution of the Board of Supervisors, Codified Ordinances of the County of Orange, or laws of the state of California. The County Purchasing Agent and Deputy Purchasing Agents are authorized to:
 - a) Unless otherwise directed by the Board of Supervisors, be the only individuals responsible for the solicitation and purchase of all materials, supplies, furnishings, equipment, livestock, and other personal property of whatever kind and nature, except in cases of emergency and as may be otherwise provided through action by the Board of Supervisors;
 - b) Negotiate and execute all Service Contracts, as detailed in Section 3.3 of this manual;
 - c) Negotiate and execute all equipment service contracts and lease purchase agreements;
 - d) Approve and confirm emergency purchases;
 - e) Develop contracts for use by individual agencies/departments to order commonly used items on an as-needed basis;

- f) Encourage the procurement of “environmentally preferable” products in all bids and solicitations, where practical, that are executed by the County in accordance with current state and/or federal regulations
- g) Review specifications written for the acquisition of goods and services to ensure that they are not unnecessarily restrictive and provide the County with the benefits of open and fair competition; and
- h) Maintain a procurement process which is fair, effective, and efficient.

§1.1-109 Responsibilities of the County Purchasing Agent:

- (1) The County Purchasing Agent or authorized designee is responsible for the following:
 - a) Soliciting bids/proposals for cooperative contracts for County-wide procurement of goods and services and for multi-agency contracts with more than five agency/department users;
 - b) Establish procedures to be followed by agencies/departments in the procurement of goods and services;
 - c) Establish procedures to be followed by agencies/department for the use of a Purchasing Card Program to promote efficiencies for low dollar purchases;
 - d) Maintain the “vendors list”, as may be required, for use by agencies/department purchasing units for solicitation of bids and proposals;
 - e) Verify, on a periodic basis, that each Deputy Purchasing Agent obtains insurance certificates for agency/department purchasing contracts;
 - f) Identify other governmental agency cooperative purchasing agreements, that may be executed by local jurisdictions outside of the County of Orange, that would be beneficial for County use and where appropriate, make these agreements available for use by each agency/department in accordance with Section 4.6 of this manual;
 - g) Pursue cooperative agreements with the state and other governmental agencies and organizations in order to obtain cost savings for the County and where appropriate, make these agreements available for use by each agency/department in accordance with Section 4.6 of this manual;
 - h) Sell personal property and dispose of personal property, which includes electronic equipment, subject to the 2007 County “E-Waste Policy,” no longer required for County use, in accordance with applicable state and federal regulations;
 - i) Manage a centralized program for the reuse of working electronic equipment to foster reuse by other agencies/departments, including non-profit organizations.
 - j) Assist in identifying new advancements in technology and other innovations in public sector procurement that would be beneficial for County use and, working with the County’s Chief Information Officer (CIO), as appropriate, implement these innovations for County-wide use;
 - k) Develop training materials and conduct training programs for Deputy Purchasing Agents, their supervisors, and others, as designated by agency/department heads that ensures a County-wide procurement process which is fair, effective and efficient, and ensures the integrity of the County’s procurement process;

- l) Deputize those trained in the procurement process when assured that they are adequately trained to perform with the delegated authority of the County Purchasing Agent;
- m) Provide assistance on a consultative basis, as requested by agency/department heads or their designees, in the development of solicitations and contracts and the handling of vendor protests;
- n) Review solicitations and contracts when so requested by agency/department personnel;
- o) Develop and implement a compliance monitoring plan with performance measures to review the procurement documents prepared by the Deputy Purchasing Agents, and to report to the appropriate agency/department head or designee with recommendations for corrective action to ensure the integrity and efficiency of County procurement processes;
- p) Chair the Purchasing Council;
- q) Convene and Chair the Procurement Appeals Board; and
- r) Carry out the other duties and responsibilities as defined in this document.
- s) Encourage County involvement in public procurement organizations in an effort to promote the public procurement profession through education and peer networking.
- t) Amend this manual to include additional Board policy, as directed by the Board of Supervisors or the County Executive Officer.

SECTION 1.1.1

DEPUTY PURCHASING AGENTS

§1.1.1-101 Policy

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

§1.1.1-102 Scope

- (1) Except as otherwise provided for in this manual or as directed by the Board of Supervisors, only those employees who are trained and deputized by the County Purchasing Agent and authorized by their agency/department head or designee, have the authority to procure goods and services for the County.
- (2) Deputy Purchasing Agents are required to use cooperative contracts and multi-agency contracts issued by the office of the County Purchasing Agent or provide valid written justification detailing the reasons for not using available contracts in the purchasing file.
- (3) Deputy Purchasing Agents may utilize other cooperative agreements issued by other governmental jurisdictions that have been approved and made available for use by the County Purchasing Agent in accordance with Section 4.6 of this manual.

§1.1.1-103 Specific Duties

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

SECTION 1.2

PURCHASING COUNCIL

§1.2-101 Definition

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

§1.2-102 Specific Duties

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

SECTION 1.3

PROTEST

§1.3-101 Policy

- (1) Any actual or prospective bidder, proposer or contractor who alleges an error or impropriety in the solicitation or award of a contract may submit a grievance or protest to the appropriate agency/department Deputy Purchasing Agent.
- (2) The provisions within this section do not apply to County Public Works contracts, as defined in Section 3.6 herein.

§1.3-102 Procedure

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

§1.3-103 Protest of Bid/Proposal Specifications

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

§1.3-104 Protest of Award of Contract – Invitation For Bid (IFB)

- (1) In accordance with 4.1 of this manual, protests related to the award of a contract based on the Invitation For Bid (IFB) or Statement of Qualification (SOQ) process, protest must be submitted no later than five (5) business days after the notice of the proposed contract award is provided by the Deputy Purchasing Agent.
 - a) Protests relating to a proposed contract award which are received after the five (5) business day deadline will not be considered by the County.

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

- (1) In accordance with §4.2-110 of this manual, immediately upon completion of negotiations with the top-ranked vendor(s), but prior to the filing of an Agenda Staff Report (ASR) for award of contract, the Deputy Purchasing Agent shall send a *Notice of Intent to Award a Contract* to all participating vendors and submit a copy to the Clerk of the Board.
 - a) Vendors will have five (5) business days from the date of the notice in which to file a protest concerning the award of the Contract.
 - b) Protests relating to a proposed contract award which are received after the five (5) business day deadline will not be considered by the County.
 - c) During the five (5) business day period, RFP information, including the final evaluator score sheets with the names of individual evaluators redacted, are subject to public disclosure.
 - d) Upon expiration of the five (5) business day period or proper resolution of a protest/appeal, the department may move forward with the contract award or if necessary, filing the item for approval by the Board of Supervisors.

§1.3-106 Protest Process

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

§1.3-107 Appeal Process

- (1) If the protester wishes to appeal the decision of the Deputy Purchasing Agent, the protester must submit, within three (3) business days from receipt of the Deputy Purchasing Agent's decision, a written appeal to the Office of the County Purchasing Agent.
- (2) Within fifteen (15) business days, the County Purchasing Agent will review all materials in connection with the grievance, assess the merits of the protest and provide a written determination that shall contain his or her decision on whether the protest shall be forwarded to the Procurement Appeals Board as described in Section 1.4 of this manual.
 - (3) The decision of the County Purchasing Agent on whether to allow the appeal to go forward will be final and there shall be no right to any administrative appeals of this decision.

SECTION 1.4

PROCUREMENT APPEALS BOARD

§1.4-101 **Definition**

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

§1.4-102 **Purpose**

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

§1.4-103 **Policy**

- (1) The County Purchasing Agent has the authority to establish a Procurement Appeals Board. The Procurement Appeals Board will meet to hear vendor protests that have not been resolved at the agency/department level.
 - a) Upon receipt of written determination by the County Purchasing Agent that a hearing is to be convened, the protester and the County agency/department will be given advanced notice of at least ten (10) business days prior to the hearing date, time and location.
 - b) No postponement of the hearing shall be granted, unless good cause is shown by the party seeking the postponement. Whether or not good cause exists shall be in the sole discretion of the County Purchasing Agent.

§1.4-104 **Composition**

- (1) The Procurement Appeals Board will be chaired by the County Purchasing Agent or designee. The County Purchasing Agent has the authority to request participation on the Procurement Appeals Board by specific County managers. The Procurement Appeals Board shall be comprised of:
 - a) One (1) Deputy County Counsel to serve as legal counsel to the Procurement Appeals Board.
 - b) Three (3) Administrative or executive managers from various County agencies/departments. The County personnel selected for the Procurement Appeals Board shall have no connection whatsoever with the solicitation or bid being protested.
 - c) One (1) Member of the Public - The County Purchasing Agent shall also include a member of the public whenever reasonably possible. The non-County Procurement Appeals Board member shall be familiar with general public procurement processes and ethical standards, including applicable state and county laws and ordinances, and shall be available on short notice so that protests can be resolved quickly.

§1.4-105 Appointment

- (1) Upon approval by the County Purchasing Agent and the agency/department head, County employees may serve a one (1) year term on the Procurement Appeals Board. Members may serve on a one-time basis or elect to serve a term that meets the best interests of their respective agency/department. The County Purchasing Agent will have the authority to grant term renewals, if approved by the agency/department head and the member.

§1.4-106 Conflict of Interest – Procurement Appeals Board

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

§1.4-107 Procedures/Support

- (1) The County Purchasing Agent may adopt administrative procedures as may be necessary in the execution of the Procurement Appeals Board functions. Any administrative support to the Procurement Appeals Board will be provided by the Office of the County Purchasing Agent.

§1.4-108 No Right To Administrative Appeal

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

SECTION 1.5

COMPLIANCE MONITORING

§1.5-101 Scope

- (1) It shall be the duty of the County Purchasing Agent to review, on an annual basis, the procurement records and processes of all County agencies/departments. This monitoring will be done on a sample basis. The monitoring of the agency/department procurement records will be conducted to facilitate the procurement process and will not be construed to place responsibility for agency/department procurement on the County Purchasing Agent.

§1.5-102 Specific Duties

- (1) The County Purchasing Agent shall select procurement records from each agency/department on a regularly scheduled basis for compliance monitoring. Selected records will span the range of the procurement process. Records will be monitored using the following performance measures:
 - a) compliance with legal and procurement processes outlined in this manual;
 - b) compliance with Board policy set forth in this manual;
 - c) cost effectiveness of goods and services acquired;
 - d) timeliness of procurement process;
 - e) operational efficiencies of processes used; and
 - f) other measures as determined by the County Purchasing Agent

§1.5-103 Process

- (1) Upon completion of the review, the County Purchasing Agent or designee shall meet to discuss the findings with the appropriate Deputy Purchasing Agent and purchasing manager.
- (2) A final written report will be submitted to the appropriate Purchasing Council member that will include, where appropriate, a summary of the findings and recommendations for corrective action.
- (3) The County Purchasing Agent shall, on an annual basis, submit a report to the Purchasing Council that contains general findings and identifies areas that may require changes to ensure a procurement process that is fair, effective, efficient, and in compliance with legal requirements and Board of Supervisors policy

SECTION 1.6

SURPLUS COUNTY PROPERTY

§1.6-101 **Definition**

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

§1.6-102 **Policy**

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

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

- (1) The method used by agencies/departments to dispose of surplus county property must be approved by and coordinated with the County Purchasing Agent or designee. Internal reuse of Surplus County Property by County agencies/departments is the preferred method of disposal.
- (2) Disposition Methods – Surplus County Property shall be disposed of in one of the following preferred methods:
 - a) internal transfer to a claiming agency/department
 - b) direct sale by agency/department
 - c) sale by County Purchasing Agent/designee
 - d) donation of Computers and related equipment with a fair market value less than \$5,000 per lot to the Department of Education, OC Special Districts, and Not-for-Profit Organizations
 - e) auction (material value)
 - f) recycling
 - g) waste

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

- (1) In the event that property is not transferred within the County and must be disposed of in another manner, every attempt will be made to receive fair market value for the property.

§1.6-105 **Board Approval**

- (2) Approval from the Board of Supervisors is required prior to the donation of any Surplus County Property with an estimated market value that exceeds \$5,000.

SECTION 1.7

PURCHASING CARDS

§1.7-101 **Definition**

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

§1.7-102 **Authorized Use**

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

§1.7-103 **Responsibilities**

- (1) Program Administrator: Each agency/department shall have a Purchasing Card Program Administrator. The Program Administrator is responsible for all aspects of their agency/department's participation in the Purchasing Card Program. The Program Administrator works closely with the County Purchasing Agent or designee to answer questions, perform contract administration, account application coordination, card issuance and cancellation, and administrative training.
- (2) Authorized Signer: Agency/department employee authorized to request new cards, modifications to card limits, cancel cards, assign Approving Officials.
- (3) Billing Officials: Agency/department employee responsible for managing the billing, payment and approval processes for agency/department purchases. Billing Officials cannot also be cardholders.
- (4) Approving Official: Agency/department employees authorized to approve payments for purchases made by department cardholders.
- (5) Cardholders: County of Orange employees authorized to make Purchasing Card purchases on behalf of their assigned agency/department in accordance with established program policy and procedures and applicable procurement policies and procedures.

§1.7-104 Controls

- (1) In addition to other internal controls and procedures as detailed in the Purchasing Card Program Policies and Procedures, use of County issued Purchasing Cards are subject to the following controls:
 - a) 30-Day Purchase Limit per Card: Each card is established with a monthly, not-to-exceed amount predetermined by the Cardholder's department and approved by the County Purchasing Agent.
 - b) Single Purchase Limit per Card: Each card is established with a single transaction limit to ensure adherence to competitive bidding requirements.
 - c) Merchant Code Blocking: Every County issued Purchasing Card is blocked to prohibit the Cardholder from making purchases from certain types of vendors.
- (2) Agencies/department heads may impose additional restrictions on goods or services that may not be purchased using the Purchasing Card.

§1.7-105 Adherence to Procurement Policy

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

SECTION 2 – GENERAL RULES AND PROCEDURES

SECTION 2.1

ETHICS IN PUBLIC CONTRACTING - COUNTY EMPLOYEES

§2.1-101 Policy

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

§2.1-102 "Arm's Length" Principle

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

§2.1-103 General Standards of Ethical Conduct

- (1) Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the employee's duties is a breach of public trust.
- (2) Title 1, Article 2, Division 3 of the Codified Ordinances of the County of Orange prohibits the donation and receipt of gifts to public officials. This article is referred to as the Orange County Gift Ban Ordinance. The Board of Supervisors has found that the receipt of gifts by public officials from persons who do business with the County erodes public confidence in the impartiality of decisions made by those officials.
- (3) Violation of the Orange County Gift Ban Ordinance may constitute a misdemeanor, and any employee found in violation shall be subject to discipline, including, in appropriate cases, termination of employment.
- (4) To the extent that violations of the ethical standards of conduct constitute violations of the state of California Government Code, they shall be punishable as provided therein. Such sanctions shall be in addition to any other remedies which the County may pursue in its interest.
- (5) The Code of Ethics and Commitment to County Public Service adopted by the Board of Supervisors states, "A public official or employee shall not meet or confer with a former County official or employee who is acting as a lobbyist within one year following termination of the former official or employee from County employment."

§2.1-104 Conflict of Interest

- (1) The State of California Government Code addresses conflicts of interest as follows:
 - a) Section 87100: "No public official at any level of state or local government shall make, participate in making, or in any way attempt to use his official position to influence a

governmental decision in which he knows or has reason to know he has a financial interest.”

- b) Section 87103: “An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or member of his or her immediate family, or on:
 - i. Any business entity in which the public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more.
 - ii. Any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.
 - iii. Any source of income, other than gifts or other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars (\$500) or more in value provided to, received by or promised to the public official within twelve months prior to the time when the decision is made.
 - iv. Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.
 - v. Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within twelve months prior to the time when the decision is made.
 - vi. For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official’s agents, spouse, and dependent children own directly, indirectly, or beneficially a ten percent interest or greater.”
- c) Section 1090: “Members of the legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.
- d) As used in this Section, ‘district’ means any agency of the state formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.”
- e) Any employees who, in the course of their employment, make, or participate in the making of, decisions which may potentially have a material effect on a financial interest of the employees are deemed ‘designated employees’ and are required to complete a Statement of Economic Interests (Form 700) on an annual basis, when they assume employment with the County, and when they terminate employment with the County.
- f) Upon discovery of an actual or potential conflict of interest, an employee shall promptly file a written statement of disqualification with the County Purchasing Agent or appropriate Deputy Purchasing Agent and shall withdraw from further participation in the transaction involved. The employee may, at the same time, request through his

agency/department head an advisory opinion from County Counsel as to what further participation, if any, the employee may have in the transaction.

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

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

§2.1-106 Use of Confidential Information

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

§2.1-107 Purchase of Surplus Material and Equipment

- (1) For any employee who participates in the decision to put materials or equipment in surplus status, it shall be a breach of ethical standards for that employee or any members of that employee's immediate family to offer to purchase the same through sealed bid, auction, or any other manner, or request that acquisition be made on his or her behalf by another person or persons.

§2.1-108 Auction Techniques

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

§2.1-109 Purchase for Personal Use

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

§2.1-110 Equal Opportunity

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

SECTION 2.2

ETHICS IN PUBLIC CONTRACTING - CONTRACTORS

§2.2-101 Conflict of Interest

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

SECTION 2.3

SURETY AND INDEMNIFICATION

§2.3-101 Definitions

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

§2.3-102 Policy

- (1) It is County policy for Deputy Purchasing Agents, as well as those individuals with the delegated authority to issue contracts on behalf of their agency/department, to seek review/approval from the County's Risk Manager or authorized designee when a vendor takes exceptions to the following County terms:
 - a) Standard Insurance Requirements
 - b) Indemnification
 - c) Limitation of Liability
- (2) Indemnification: Contractors doing business with the County will indemnify the County against loss arising from patent violations, copyright violations, unauthorized use of materials, wrongful acts, injuries to persons or property, and other loss which may result from contractor performance.
- (3) Insurance: Insurance will be required where the County may suffer risk of loss due to the nature of the work being performed. Such situations include, but are not limited to, contractors

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

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

§2.3-103 Risk Identification

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

§2.3-104 Responsibility

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

SECTION 2.4

ENFORCEMENT OF CHILD SUPPORT OBLIGATIONS

§2.4-101 Policy

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

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

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

§2.4-103 Timely Submittal of Contractor Data and Certifications

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

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

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

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

§2.4-104 Exemptions

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

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

§2.4-105 Waivers

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

§2.4-106 Data Transmission

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

SECTION 2.5

PURCHASING REQUISITIONS

§2.5-101 Policy

- (1) In compliance with Orange County Codified Ordinance Sec. 1-4-26 - Requisition Procedure, each of the following provisions shall apply:
 - a) All purchases, rentals and contracts shall be made only upon receipt of proper written/authorized requisitions, the forms of which shall be supplied by the Purchasing Agent to the several offices of the County.
 - b) No purchase order shall be issued unless approved budget appropriation is shown according to the budget procedure established by the Auditor-Controller and the County Executive Officer.
 - c) The head of any County office, department or institution or his duly designated assistant is hereby authorized to draw requisitions for purchases for such office, department or institution in accordance with current budget accounts.
 - d) Such head may delegate such authority to one or more of his deputies, assistants or employees within the department.

§2.5-102 Procedure

- (1) An approved/signed requisition shall be forwarded to the County Purchasing Agent or appropriate Deputy Purchasing Agent for processing in accordance with County procurement policies and procedures. Only those employees who are trained and deputized by the County Purchasing Agent have the authority to procure goods and services for the County.

§2.5-103 Process

- (1) Approved County Requisitions shall be processed and executed in accordance with the procurement policies contained in this manual, as well as, those procedures established by the County Purchasing Agent to be followed by agencies/departments in the procurement of goods and services.

SECTION 3 - TYPES OF CONTRACTS

SECTION 3.1

COMMODITIES

§3.1-101 Definition

- (1) Commodities include all supplies and equipment, equipment rentals and leases, certain types of software and software licenses costing less than \$5,000 per unit, including tax and freight, and those costing \$5,000 or more with a useful life expectancy of less than one year. Included in the definition of commodity contracts covered in this section are the following:
 - a) Equipment – Operating Rental/Lease: These contracts are in essence an extended rental agreement under which the owner of the equipment allows the County to operate or otherwise make use of the equipment in exchange for periodic lease payments. These types of contracts are “Operating leases” and are characterized by short-term, cancelable terms. The lessor bears the risk of obsolescence and depreciation of the equipment. Operating leases are generally preferable when the county needs the equipment for a short period of time such as for minor office equipment, printers, copiers, and light-duty vehicles and related equipment. Not included in the definition are long-term, "capital," non-cancelable leases.
 - b) Publications/Newsprint: Contracts to receive periodicals, magazines, trade journals, etc., either in print or electronic/digital subscriptions.
 - c) Software/Licenses (Retail): Contracts for proprietary software licenses where the software publisher grants the use of one or more copies of software under the end-user license agreement (EULA), but ownership of those copies remains with the software publisher. These types of purchases typically include terms which define the uses of the software and number of users allowed.
 - d) Subscriptions/Databases: Contracts for access to on-line information or databases to be used to enhance or support a County program or project. Contracts of this type involve no on-site visits or work by a contractor and are limited to the digital exchange of information for a predetermined fee.

§3.1-102 Solicitation Considerations

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

- f) Maintenance - Are service and spare parts readily available? Are maintenance contracts available?
- g) Life cycle cost - What is the total cost of ownership including initial acquisition cost, cost of operating supplies, cost of maintenance, cost of required space, residual value, etc.?
- h) Liability insurance - If the item is being installed by vendor, what is the cost of liability insurance?

§3.1-103 Term of Contract

- (1) The length of all contracts for commodities shall be based upon the County’s best interest. Consideration will be given to product availability, price volatility, and expectation of need. Except for contracts defined under Section 4.6 of this manual, in no case shall a commodity contract exceed five (5) years in duration, unless the contract is temporarily extended from their original contract term by six (6) months to allow time for re-bidding the project.
- (2) All contracts will include a provision for cancellation by the County due to lack of funds, termination of requirement, or prices which no longer reflect reasonable market prices.

§3.1-104 Contract Pricing

- (1) Contracts will be written so that pricing is controlled and monitored during the contract period. This may be done in several ways, including:
 - a) A contract may show a firm price for the contract period.
 - b) A contract may show a percentage increase which will occur during the contract period.
 - c) A contract’s prices may be tied to an index, such as the Consumer Price Index, during the contract period.

§3.1-105 Vendor Selection

- (1) With the exception of sole source purchases as defined in Section 4.4 of this manual, selection of vendors for commodities will be based on the competitive process. Solicitations shall be made as follows:

a) Contracts \$3,000 or less	Minimum of one solicitation, written or oral
b) Contracts \$3,001 to \$10,000	Minimum of two solicitations, written or oral
c) Contracts \$10,001 or over	Written solicitations to bidders on appropriate bidders’ list. Written bids must be received by due date. Facsimiles or other electronically transmitted bids may be acceptable if received by due date.
- (2) For commodities obtained through the IFB solicitation method as detailed in Section 4.1, awards in all cases will be made to the lowest responsive and responsible bidder.

§3.1-106 Public Bid Opening

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

§3.1-107 Retroactive Contract Amendments/Changes

- (1) In general, retroactive contracts or contract overruns are not permitted, and if they occur they are invalid unless ratified by the Board of Supervisors, or unless one or more of the following exemptions applies:
 - a) contracts with a total value <\$500
 - b) contracts governed by separate rules and regulations such as Public Works and Human Services Contracts
 - c) telephone Services Requests and Emergency Contracts in any amount
 - d) modifications for computer hardware/software maintenance to add licenses and/or users
- (2) Except with regard to the provisions of this section, County staff may not authorize or implement any contract amendment/changes prior to the finalization and approval of written contract documents by the County Purchasing Agent or appropriate Deputy Purchasing Agent.
- (3) Notwithstanding any other applicable legal governance, this provision shall apply to all County contract amendments/changes exceeding \$10,000 or 10% of the original contract amount, whichever is less.
- (4) Any purported authorization of contract changes by County staff that lacks Board approval may not be relied upon by any contractor, vendor or any other party.

§3.1-108 Contract Increases

- (1) A contract's total expenditure may not increase by more than 30 percent of the original estimate upon which it was bid, unless it is demonstrated to be in the best interest of the County and reflective of good purchasing practices.

§3.1-109 Multiple Awards

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

§3.1-110 Incremental Contracting

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

§3.1-111 Secondary Awards

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

§3.1-112 Commodity Substitutions

- (1) If a commodity in the contract is temporarily unavailable, with user agency/department concurrence the vendor may provide a substitute item, if the item is of equivalent or better quality and the price is the same or less than the price of the contract item.

§3.1-113 Emergencies

- (1) Emergencies are defined as those situations where the welfare of County residents is at stake and/or immediate purchasing action is required to prevent serious economic or other hardship to the County. When, due to the nature of the emergency, it is not possible or it is impractical to follow competitive bidding requirements, these requirements may be waived by the County Purchasing Agent or Deputy Purchasing Agent.
 - a) Emergency and immediate commodity requirements of up to \$1,000 may be handled through Petty Cash or purchasing card, in accordance with Section 4.5 – Small Dollar Purchases.
 - b) For emergency requirements exceeding \$1,000 the requestor will contact the County Purchasing Agent or the appropriate agency/department Deputy Purchasing Agent. The emergency will be described and the County Purchasing Agent or Deputy County Purchasing Agent may, if so authorized, use the purchasing card or may issue a purchase order number for an amount sufficient to resolve the immediate emergency.
 - c) No later than ten (10) business days from the request date, a purchasing request referencing the purchase will be submitted to the County Purchasing Agent or Deputy Purchasing Agent by an agency/department employee authorized to approve purchase requests.
 - d) This request will be accompanied by a memorandum from the agency/department head or designee briefly detailing the emergency situation. The justification will become a permanent part of the purchasing file.

- e) If the emergency occurs during other than normal business hours, the agency/department is authorized to secure the goods required and contact the County Purchasing Agent or Deputy Purchasing Agent on the next regular working day for issuance of a purchase contract.
- f) For Opportunity Buys exceeding \$1,000,000, an Agenda Staff Report will be filed with the Board of Supervisors by the appropriate agency/department head. The Agenda Staff Report shall include all documentation and justification in support of the purchase.

§3.1-114 Multi-Agency Contracts and Cooperative Contracts

- (1) Multi-agency contracts are those which are issued for use by multiple County agencies/departments which use like commodities and would benefit from the contract pricing resulting from economies of scale. County agencies/departments listed on the contracts may order directly off multi-agency contracts.
- (2) Cooperative Contracts: Are executed by the office of the County Purchasing Agent and are available for use by agencies/departments throughout the County. Terms and conditions are established under a cooperative contract and agencies/departments may issue individual purchase documents/orders against the cooperative contract, identifying the goods they wish to purchase.
- (3) The County Purchasing Agent shall be responsible for the issuance of all cooperative contracts and all multi-agency contracts with six or more users for use by County agencies/departments. These contracts shall be available for use by all County agencies/departments at the discretion of the agency/department head.

§3.1-115 Board Approval – Sole Source Commodity Contracts

- (1) Approval by the Board of Supervisors is required prior to the execution of a Sole Source Commodity Contract which costs more than \$250,000 annually. Commodity contracts may not be intentionally sole sourced to avoid the bidding requirements contained in this section. Refer to *Section 4.4 – Sole Source and Proprietary Requests* for additional policy concerning sole source purchases.

§3.1-116 Approval of Non-Standard Contract Terms

- (1) Unless Risk Management agrees in writing that the risk to the County is minimal and County Counsel agrees in writing that the legal risk to the County is minimal, approval by the Board of Supervisors is required prior to the execution of any commodity contract that includes non-standard terms in the following contract provisions:
 - a) Indemnification
 - b) Limitation of Liability provisions

§3.1-117 Contractor Name Changes

- (1) No Board approval is required for contractor name changes in which control of the entity the County has contracted with remains unchanged.

§3.1-118 Opportunity Buy

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

- (2) Board Approval – Opportunity Buy
 - a) In the event that the “opportunity buy” exceeds \$1,000,000, approval by the Board of Supervisors is required prior to the purchase.

SECTION 3.2

CAPITAL ASSETS

§3.2-101 Definition

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

§3.2-102 Used Equipment

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

§3.2-103 Board Approval

- (1) Unbudgeted Capital Assets:
 - a) Approval of the Board of Supervisors is required prior to the purchase of unbudgeted Capital Assets which cost more than \$25,000 each.
- (2) Budgeted Capital Assets:
 - a) Budgeted Capital Assets within the budgeted amount approved by the Board require no further Board approval prior to purchase.
 - b) Board approval is required for budgeted Capital Assets when the cost exceeds the budgeted amount by more than 10% or \$100,000, whichever is less.
- (3) Sole Source Capital Assets:
 - a) Approval by the Board of Supervisors is required prior to the purchase of a sole source Capital Asset costing more than \$50,000.

§3.2-104 Approval of Non-Standard Contract Terms

- (1) Unless Risk Management agrees in writing that the risk to the County is minimal and County Counsel agrees in writing that the legal risk to the County is minimal, approval by the Board of Supervisors is required prior to the execution of any Capital Asset contract that includes non-standard terms in the following contract provisions:
 - a) Indemnification
 - b) Limitation of Liability provisions

§3.2-105 Contractor Name Changes

- (1) No Board approval is required for contractor name changes in which control of the entity the County had contracted with remains unchanged.

§3.2-106 Solicitation Considerations

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

§3.2-107 Vendor Selection

- (1) With the exception of sole source purchases, selection of vendors for Capital Assets shall be based on the competitive process. Solicitations shall be made as follows:
 - a) Contracts \$5,000 to \$10,000 Minimum of two solicitations, written or oral

- b) Contracts \$10,001 and over Written solicitations to bidders on appropriate bidders' list. Written bids must be received by due date. Facsimiles or other electronically transmitted bids may be acceptable if received by due date.

- (2) Awards will be made to the lowest responsive and responsible bidder or, in the case of negotiated procurement, the vendor with the most responsive proposal as determined by the County. Refer to §4.1-104(g)(h) for definition of "Responsiveness" and "Responsibility" concerning bidders.

§3.2-108 Board Approval – Sole Source Capital Asset Purchases

- (1) Approval by the Board of Supervisors is required prior to the purchase of a sole source Capital Asset which costs more than \$50,000. Purchases may not be intentionally sole sourced to avoid the bidding requirements contained in this manual. For additional rules and guidelines, refer to Section 4.4 of this manual.

§3.2-109 Public Bid Opening

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

§3.2-110 Retroactive Contract Amendments/Changes

- (1) In general, retroactive contracts or contract overruns are not permitted, and if they occur they are invalid unless ratified by the Board of Supervisors, or unless one or more of the following exemptions applies:
 - a) contracts with a total value <\$500
 - b) contracts governed by separate rules and regulations such as Public Works and Human Services Contracts
 - c) telephone Services Requests and Emergency Contracts in any amount
 - d) modifications for computer hardware/software maintenance to add licenses and/or users
- (2) Except with regard to the provisions of this section, County staff may not authorize or implement any contract amendment/changes prior to the finalization and approval of written contract documents by the County Purchasing Agent or appropriate Deputy Purchasing Agent.
- (3) Notwithstanding any other applicable legal governance, this provision shall apply to all County contract amendments/changes exceeding \$10,000 or 10% of the original contract amount, whichever is less.

- (4) Any purported authorization of contract changes by County staff that lacks Board approval may not be relied upon by any contractor, vendor or any other party.

§3.2-111 Emergencies

- (1) Emergencies are defined as those situations where the safety and/or welfare of County residents or employees is at stake and/or immediate purchasing action is required to prevent serious economic or other hardship to the County. When due to the nature of the emergency, it is not possible or it is impractical to follow competitive bidding requirements, these requirements may be waived, by the County Purchasing Agent or appropriate Deputy Purchasing Agent.
 - a) For emergency procurement of Capital Assets costing less than \$50,000 emergency procedures under §3.1-113, Commodities, shall be followed.
 - b) When an emergency requiring the acquisition of a Capital Asset exceeding \$50,000 arises, the agency/department will first call the CEO to receive budget approval for the purchase; and
 - c) The County Purchasing Agent or agency/department Deputy Purchasing Agent will issue a Purchase Order number for an amount sufficient to resolve the immediate emergency.
 - d) If the item cost is over \$50,000, a Purchasing Request with written CEO approval shall be submitted to the County Purchasing Agent or the Deputy Purchasing Agent, as appropriate, within ten (10) working days of the emergency.
 - e) A memorandum from the agency/department head or designee briefly detailing the emergency situation shall accompany the Purchase Request. This justification should become a permanent part of the purchasing file.
 - f) If the requested Capital Asset is unbudgeted, the item will be filed for approval by the Board of Supervisors when the item exceeds \$25,000.

SECTION 3.3

SERVICE CONTRACTS

§3.3-101 Definition

- (1) Service contracts encompass all contracts for services either with or without materials. Included in the definition of service contracts covered in this section are the following:
 - a) Professional Services: Services provided by licensed and/or technical trained professionals, including such services as, data processing, accounting, legal, medical, auditing, information-technology (IT) related services that may or may not include software, and software licenses or other types of end-user agreements.
 - b) Facilities and equipment services: Services which provide maintenance to existing facilities or equipment, including such services as janitorial and grounds maintenance, equipment maintenance and repair, software maintenance, etc.
 - c) Personnel or employee-related services: Services which provide benefit or assistance directly to employees, including such services as vending machines, temporary employment, security, etc.
 - d) Consultant Service Contracts: are for those services which are of an advisory nature, which provide a recommended course of action or personal expertise, and which have an end product which is basically a transmittal of information. Consultant service contracts are issued in order to obtain professional or technical advice or expertise which will supplement departmental expertise or advice or where an independent opinion or audit is required. All consultant service contracts shall contain a provision which prohibits “follow-on” projects that prevent the consultant from performing work related to any recommendations being formulated as a result of the consulting work.
 - e) Revenue Generating Agreements (non-real estate): An agreement for contractor-provided services on County premises in which the County does not pay a fee, but instead receives a portion of the revenues that are generated from the services.
 - f) Capital Leases (non-real estate): a long-term lease that transfers to the lessee most rights and obligations concerning the asset leased, and usually transfers ownership at the end of the lease.
- (2) Not included in the definition of service contracts for County procurement purposes are contracts for public works, architects and engineers, real property contracts, and human services.

§3.3-102 Board Approval

- (1) Approval by the Board of Supervisors is required for all service contracts in accordance with the guidelines listed below.
 - a) Contracts Exceeding \$100,000 – Approval by the Board of Supervisors is required for all service contracts where for any year of the contract, the annual value to any one contractor exceeds \$100,000.

- b) Multi-Year Contracts Exceeding \$500,000 – Approval by the Board of Supervisors is required for all service contracts where the total contract value exceeds or is anticipated to exceed \$500,000 when future contract years are taken into consideration.
- c) Sole Source Service Contracts – Approval by the Board of Supervisors shall be required for all sole source service contracts that exceed a total annual amount of \$50,000 or a two (2) year consecutive term, regardless of dollar amount. Contract may not be intentionally split to avoid this policy.
 - i. Renewal of Sole Source Service Contracts - Sole Source Service Contracts that exceed \$50,000 may not be renewed, without approval by the Board of Supervisors. For additional information and guidelines refer to *Section 4.4 – Sole Source and Proprietary Requests*.

§3.3-103 Approval of Non-Standard Contract Terms

- (1) Unless Risk Management agrees in writing that the risk to the County is minimal and County Counsel agrees in writing that the legal risk to the County is minimal, approval by the Board of Supervisors is required prior to the execution of any contract \$100,000 or less that includes non-standard terms in the following contract provisions:
 - a) Indemnification
 - b) Limitation of Liability provisions

§3.3-104 Contractor Name Changes

- (1) No Board approval is required for contractor name changes in which control of the contractor’s business or entity remains unchanged.

§3.3-105 Term of Contract

- (1) The duration of a service contract will depend upon the County’s need, prevailing market conditions, contract start-up costs, and the County’s best economic interest.
- (2) In no case shall a service contract exceed five (5) years in duration unless specifically approved by the Board of Supervisors.

§3.3-106 Contract Renewals

- (1) Applicable to all contracts with a value that exceeds \$100,000 per year.
 - a) All service contract renewals that exceed \$100,000 per annum must be approved by the Board of Supervisors and be reported by the agency/department within CAMS, either prior to the initial year of the contract or prior to the beginning of the renewal period.
 - b) Renewal periods for service contract renewals shall not exceed two (2) years, unless it is in the best interest of the County.
 - c) When approved by the Board of Supervisors, the Deputy Purchasing Agent or Board authorized designee may execute the first renewal of the service contract without further

action by the Board of Supervisors. Each subsequent renewal thereafter must be approved by the Board of Supervisors, regardless of prior Board action.

- d) All service contract renewals shall be stated in the Recommended Action portion of the Agenda Staff Report (ASR) for consideration by the Board.
- e) In the event the total service contract amount for all contract years exceeds \$750,000, the Agenda Staff Report (ASR) shall be filed on the Board's "Discussion Calendar."

§3.3-107 Contract Pricing

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

§3.3-108 Vendor Selection

- (1) With the exception of sole source service contracts, selection shall be based on the competitive process. Solicitations shall be made as follows:
 - a) Contracts up to \$25,000 Minimum of one solicitation, written or oral
 - b) Contracts \$25,001 and over Written solicitation to bidders on appropriate bidders' list. Written bids must be received by due date. Facsimiles or other electronically transmitted bids may be acceptable if received by due date.
- (2) Awards in all cases will be made to the lowest responsive and responsible bidder as defined in Section 4.1 of this manual. In the case of a negotiated procurement (RFP), award shall be made to the vendor with the most responsive and responsible proposal as detailed in Section 4.2 of this manual.

§3.3-109 Public Bid Opening

- (1) In accordance with Section 4.1, a public bid opening will be held at a time and place announced in the bid solicitation for purchases for services exceeding \$100,000. The amount of each bid, together with the name of each bidder, shall be recorded and made available for public inspection.
 - a) In cases where bids are submitted and tabulated electronically, bid openings will be considered public as long as the individual bids are electronically accessible after the bids close.
 - b) In the case of a negotiated agreement (Request for Proposal (RFP) process), a public bid opening is not held until after the contract award has been made.

§3.3-110 Retroactive Contract Amendments/Changes

- (1) In general, retroactive contracts or contract overruns are not permitted, and if they occur they are invalid unless ratified by the Board of Supervisors, or unless one or more of the following exemptions applies:
 - a) contracts with a total value <\$500
 - b) contracts governed by separate rules and regulations such as Public Works and Human Services Contracts
 - c) telephone Services Requests and Emergency Contracts in any amount
 - d) modifications for computer hardware/software maintenance to add licenses and/or users
- (2) Except with regard to the provisions of this section, County staff may not authorize or implement any contract amendment/changes prior to the finalization and approval of written contract documents by the County Purchasing Agent or appropriate Deputy Purchasing Agent.
- (3) Notwithstanding any other applicable legal governance, this provision shall apply to all County contract amendments/changes exceeding \$10,000 or 10% of the original contract amount, whichever is less.
- (4) Any purported authorization by County staff without Board approval may not be relied upon by any contractor, vendor or any other party.

§3.3-111 Adjustments to Contract Amount

- (1) Decreases: The County Purchasing Agent and/or agency/department Deputy Purchasing Agents may decrease the amount of a contract without obtaining approval by the Board of Supervisors.
- (2) Increases: Service contract increases may not exceed 10% of the original contract amount or \$10,000, whichever is less, unless authorized/approved by the Board of Supervisors. The County Purchasing Agent or appropriate agency/department Deputy Purchasing Agent may increase a service contract under the following circumstances:
 - a) The need for service could not be accurately projected and the percentage of increase does not justify rebidding.
 - b) An emergency exists which does not permit rebidding.
 - c) Special economic factors justify a contract increase.

- d) The increase falls within the contingency amount granted by the Board of Supervisors. Refer to §3.3-113 for guidelines regarding the use of contingency amounts.
- (3) For Board awarded contracts, no increase exceeding the contingency amount will be permitted without approval by the Board of Supervisors.

§3.3-112 Contract Extensions

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

§3.3-113 Contingency Amounts

- (1) When requesting approval for award of a service contract from the Board of Supervisors, a contingency amount may also be requested. Justification for this contingency will be presented to the Board of Supervisors in the Agenda Staff Report (ASR) in accordance with the following:
 - a) The total amount requested shall not exceed a total of 10 percent of the original amount for the first year of the contract.
 - b) This amount, if approved by the Board, may be used over the entire term of the contract.
 - c) Contingencies shall only be used to cover services already provided in the scope of work as set forth in the contract.
 - d) The use of the contingency amount is subject to approval requirements established by the County Purchasing Agent.

§3.3-114 Multiple Awards

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

§3.3-115 Incremental Contracting

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

§3.3-116 Secondary Awards

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

§3.3-117 Indemnification

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

§3.3-118 Insurance

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

§3.3-119 Bid and Performance Bond

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

§3.3-120 Liquidated Damages

- (1) Liquidated damages clauses are enforceable if:
 - a) damages are difficult to ascertain or estimate at the time the contract is formed; and
 - b) the amount is a reasonable forecast of compensatory damages in the case of breach. Specifically, if the liquidated damages amount significantly exceeds the amount of damages prospectively probable, the liquidated damages clause may not be enforceable.
- (2) Liquidated damage clauses may be included in service contracts when the County could suffer financial loss due to delays in performance. Consistent with legal requirements, the amount of damages listed in the contract must be a "reasonable forecast" of the County's actual damages.
- (3) Liquidated Damages Clause
 - a) It is agreed by and between the contractor and the County that if this contract is not fully and completely performed within the terms of the contract, damage will be sustained by the County. Said damage includes any additional costs resulting from a delay in scheduled time frames by the contractor. Since it is and will be impractical and

extremely difficult to determine the actual damage which the County will sustain by reason of such delay, it is therefore agreed that contractor will pay to the County liquidated damages in a set amount for each and every day of delay as set forth in this document.

- b) In the event the liquidated damages as set forth herein are not paid by the contractor, the County will deduct the amount of liquidated damages from any monies due contractor under this contract.
- c) This provision may be invoked at the sole option of the County by notification to the contractor by certified return receipt mail.
- d) If contract is delayed by reason of changes or extra services ordered by the County or as a result of the County's failure to perform or delays cause by the County, the time of performance of this contract will be extended commensurate with the time required for the extra services, and no liquidated damages will accrue during the period of such extension.
- e) If this contract is not fully and completely performed within the time set forth herein, the County shall have the right to increase the time for such performance and to waive the liquidated damages. Nothing herein shall be construed as giving the contractor a right to extra time for performance.

§3.3-121 Contract Administration

- (1) All service contracts will be monitored for efficient performance by the appropriate agency/department employee named in the contract documents. The service(s) to be provided will be clearly stated in the contract and it will be the job of the representative to monitor the contractor's performance to ensure that those services are provided.
 - a) All contract deficiencies will be noted in writing to the contractor and sent to the County Purchasing Agent or Deputy Purchasing Agent, as appropriate.
 - b) No contractor will be paid in full for any service which has not been satisfactorily performed.

§3.3-122 Cancellation

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

§3.3-123 Emergencies

- (1) Emergencies are defined as those situations where the welfare of County residents is at stake and/or immediate purchasing action is required to prevent serious economic or other hardship to the County.
 - a) Process:

- i. In accordance with *Section 4.5 – Small Dollar Purchases*, Emergency service requirements of \$1,000 or less may be handled through Petty Cash or purchasing card, when so authorized.
- ii. For those emergency requirements over \$1,000 the requestor will contact the County Purchasing Agent or appropriate agency/department Deputy Purchasing Agent. The emergency will be described and the County Purchasing Agent or Deputy County Purchasing Agent may use the purchasing card, when so authorized, or may issue a purchase order number for an amount sufficient to resolve the immediate emergency.
- iii. The requestor will ensure and will confirm with the County Purchasing Agent or Deputy Purchasing Agent that the service contractor carries sufficient and appropriate insurance.
- iv. No later than ten (10) working days from the request date, a purchasing request referencing the purchase will be submitted to the County Purchasing Agent or Deputy Purchasing Agent by an agency/department employee authorized to approve purchase requests. This request will be accompanied by a memorandum from the agency/department head or designee briefly detailing the emergency situation. The justification will become a permanent part of the purchasing file.
- v. If the emergency occurs on other than normal working hours, the agency/department is authorized to secure the services required and contact the County Purchasing Agent or Deputy Purchasing Agent on the next regular business day.
- vi. For emergency purchases exceeding \$100,000, an Agenda Staff Report will be filed with the Board of Supervisors by the appropriate agency/department as soon as possible, after the service is performed.

§3.3-124 Multi-Agency and Cooperative Agreements

- (1) Multi-agency contracts are those which are issued for use by multiple County agencies/departments which use like commodities and would benefit from the contract pricing resulting from economies of scale. County agencies/departments listed on the contracts may order directly off multi-agency contracts.
 - a) Contracts for like services for one agency/department will be consolidated whenever possible.
 - b) Contracts for like services for multiple agencies/departments may be consolidated at the discretion of the appropriate agency/department heads.
 - c) Contracts for less than six (6) agencies for like services may be issued by the Deputy Purchasing Agent assigned to one of the agencies/departments.
 - d) Multi-agency contracts for six (6) or more user agencies/departments shall be issued by the Office of the County Purchasing Agent.
- (2) Cooperative Agreements are available for use by agencies/departments throughout the County. Terms and conditions are established under a cooperative contract promulgated by the Office of the County Purchasing Agent. In accordance with Section 4.6 of this manual, other County

agencies/departments or local public entities may then issue individual subordinate contracts against the cooperative contracts, identifying the goods and services they wish to purchase.

§3.3-125 Contracts for Outside Legal Counsel

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

§3.3-126 HIPAA – Business Associate Language

- (1) With the passage of the Health Insurance Portability and Accountability Act (“HIPAA”) Protected Health Information (“PHI”) has become a key legal consideration in the drafting of County contracts for agencies subject to the HIPAA rules. For services to be performed in situations where either the County or a contractor under contract with the County are creating or working with PHI, the County approved business associate sections covering HIPAA activities should be included in the governing contracts. Sections approved for use will be available on the County Procurement Office’s intranet website at <http://intra2k3.ocgov.com/procurement/>.

SECTION 3.4

HUMAN SERVICES CONTRACTS

§3.4-101 Definition

- (1) Human services contracts include all contracts for services that directly maintain or improve the social, economic, physical, or mental well-being of persons for whom the County bears such a responsibility. Included in the definition of Human Services contracts are services provided in response to or in support of federal, state and/or local service mandates to provide health and human services to a target population.

§3.4-102 Responsibility

- (1) The agencies/departments responsible for providing human services will also be directly responsible for human services contracts, including the responsibility for:
 - a) issuing solicitations
 - b) accepting or rejecting proposals
 - c) developing and administering the proposal evaluation process
 - d) selecting proposal evaluation committee members, and
 - e) making the final selection recommendation for contract issuance or forwarding the recommendation to the Board of Supervisors for final selection.
- (2) Those positions in these agencies/departments will not be required to be deputized by the County Purchasing Agent, but may avail themselves of the training opportunities provided by the Office of the County Purchasing Agent.

§3.4-103 Sole Source Requests

- (1) The decision to use a sole source method of procurement will be guided by applicable funding source regulations, as well as, by County guidelines. In the event funding source regulations do not exist, Section 4.4 of this manual shall govern.

§3.4-104 Contract Planning and Coordination

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

§3.4-105 Contracts

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

§3.4-106 Competitive Bidding

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

§3.4-107 Board Approval

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

§3.4-108 Contractor Name Changes

- (1) No Board approval is required for contractor name changes in which control of the entity the County had contracted with remains unchanged.

§3.4-109 Term of Contract

- (1) The initial contract term and provision for allowable extensions must be specified in the Request For Proposal (RFP), if used. Generally, the term of a contract should not exceed three years, unless otherwise approved by the applicable funding source rules and regulations. Exceptions to this general rule may include, but not be limited to:
 - a) Circumstances where substantial start-up costs are necessary for facility, equipment or technological requirements in order to deliver services.
- (2) Prior to recommending renewal or extension of an existing contract, the agency/department should document that performance of the contractor has been satisfactory.

§3.4-110 Vendor Selection

(1) Except where applicable state and/or federal regulations dictate otherwise and with the exception of sole source human services contracts as defined in Section 4.4 of this manual, selection shall be based on the competitive process. Solicitations shall be made as follows:

- | | |
|--------------------------------|---|
| a) Contracts up to \$25,000 | Minimum of one solicitation, written or oral |
| b) Contracts \$25,001 and over | Written solicitations to bidders on appropriate bidders' lists. Written bids must be received by due date. Facsimiles or other electronically transmitted bids may be acceptable if received by due date. |

§3.4-111 HIPAA – Business Associate Language

(1) With the passage of the Health Insurance Portability and Accountability Act (“HIPAA”) Protected Health Information (“PHI”) has become a key legal consideration in the drafting of County contracts for agencies subject to the HIPAA rules. For services to be performed in situations where either the County or a contractor under contract with the County are creating or working with PHI, the County approved business associate sections covering HIPAA activities should be included in the governing contracts. Sections approved for use will be available on the County Procurement Office’s intranet website at <http://intra2k3.ocgov.com/procurement/>.

SECTION 3.5

ARCHITECT-ENGINEER SERVICE CONTRACTS

§3.5-101 Definition

- (1) Architect-Engineer (A-E) service contracts or agreements include, but are not limited to: architectural, engineering, environmental, and land surveying services, as well as incidental services that members of these professions may logically or justifiably perform. Environmental services are further defined to mean those services performed in connection with project development and permit processing that facilitates compliance with state and federal environmental laws.
- (2) Services which are considered A-E services may include but are not limited to: investigations, developing designs, plans and specifications, reports, cost estimates, shop drawings, review, supervision of construction, land surveying, environmental documentation required by the California Environmental Quality Act (CEQA), and other regulatory permits.
- (3) A-E services may also include other related services, where needed, in support of an A-E project including, but not limited to, archeology, geological and soils engineering, agronomy, limnology, biology, paleontology, construction claims consultants, material testing and inspection, real estate appraisal and other property acquisition services.
- (4) If the service provided is a specialized service and performed by private architectural, landscape, engineering, environmental, land surveying or construction project management, the contract or agreement shall meet the requirements set forth in this Section.

§3.5-102 Limits On Architect-Engineer Contracts

- (1) A-E contracts shall not be awarded to the same A-E (or affiliated firms) who provided design services in the situations listed below:
 - a) A-E who prepared plans and specifications may not bid on the project as a construction contractor except as otherwise provided by state law (Design and Build Exceptions);
 - b) any A-E representing a private sector client with an interest in a County project may not also represent the County on the same project. Exceptions to this may be made if the agency/department head discloses the relationship to the Board with a determination that using that particular A-E will provide a substantial benefit to the County;
 - c) it is prohibited to use cooperative contracts, as defined in Section 4.6 of this manual, to procure A-E Services;
 - d) the above list is not exclusive. Other situations where conflicts might exist should also be considered.

§3.5-103 Board Approval

- (1) Pursuant to Government Code §25502.5, approval by the Board of Supervisors is required for all architect-engineer service contracts in excess of the \$100,000 annually.

- (2) Sole Source A-E Service Contracts – Approval by the Board of Supervisors is required for all sole source contracts that exceed a total annual amount of \$50,000 or a two (2) year consecutive term, regardless of dollar amount.
- (3) Renewal of Sole Source A-E Service Contracts - Sole Source A-E Service Contracts that exceed \$50,000 may not be renewed, without approval by the Board of Supervisors. For additional information and guidelines refer to *Section 4.4 – Sole Source and Proprietary Requests*.

§3.5-104 Contractor Name Changes

- (1) No Board approval is required for contractor name changes in which control of the entity the County had contracted with remains unchanged.

§3.5-105 Incremental Contracting

- (1) Projects shall not be intentionally split to avoid approval by the Board of Supervisors or to bypass selection requirements.

§3.5-106 Term of Contract

- (1) If the A-E services to be completed under a given contract are related to a specific project, the contract term shall be based upon a reasonable estimate of time required for the project. This estimate shall be made by County professionals and shall be subject to negotiation with the A-E.
- (2) If the A-E services to be completed are not project-specific, the contract term shall not exceed three years.

§3.5-107 Request For Proposals

- (1) Where the estimated A-E project costs exceed \$200,000 or where the project is of a complex nature, the Request for Proposal (RFP) process, as detailed in Section 4.2 of this manual should be used.
- (2) For A-E projects with estimated cost of \$200,000 or less, Request For Proposals shall be optional and should be considered when the project is complex, not well defined, or where innovative approaches to the project may be of value.
- (3) The proposals will be scored by an evaluation committee in accordance with the RFP policies and procedures contained in this manual, as well as those that may be implemented under the direction of the County Purchasing Agent.
- (4) After scores have been tallied and discussed by the panel of evaluators and a recommended proposal(s) determined, a Memorandum of Recommendation that includes the ranking of all proposals based on the aggregate scores, will be signed by the evaluators and made part of the purchasing file. Within two (2) business days, the DPA shall release the aggregate scores contained in the Memorandum of Recommendation, absent the evaluator names, to all RFP participants.

§3.5-108 Competitive Bidding

- (1) If the services needed are of a technical nature, are well defined, and involve only limited professional judgment, the Invitation For Bid (IFB) process as detailed in Section 4.1 of this manual is allowed. Examples where the IFB process may be appropriate include, but are not limited to:
 - a) Drafting of as-built or record drawings, drafting of standard plans, certain laboratory testing, and certain survey services.
 - b) The IFB process will be done in accordance with the guidelines set forth in this Contract Policy Manual.

§3.5-109 Basis for Selection of Architects and Engineers

- (1) California Government Code §4526 reads in part, “Notwithstanding any other provision of law, selection by a state or local agency head for professional services of private architectural, landscape architectural, engineering, environmental, land surveying or construction project management firms shall be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required.”
- (2) Selection of Architects and Engineers for On-Call A-E Services
 - a) **Definition:** For purposes of this section, “on-call” A-E Services are for projects that are routine in nature, and encompass a predefined category of work as defined by the executing agency/department.
 - b) Each agency/department shall follow the following procedures for selection of A-E firms to perform on-call A-E Services:
 - i. agencies/departments shall establish and define categories of projects, e.g., engineering disciplines;
 - ii. architect-engineer firms shall file applications with individual agencies/departments delineating their qualifications, including experience, expertise for project magnitude which they are capable of handling. A-E firms shall identify the on-call A-E services they are qualified to provide in accordance with the agencies’/departments’ predefined categories;
 - iii. agencies/departments shall maintain a list of qualified architects-engineers from the applications received, in accordance with the process outlined in this section.
 - c) Statements of qualifications will be ranked by County staff using the following evaluation criteria:
 - i. technical expertise;
 - ii. key personnel;
 - iii. availability of adequate staff; and
 - iv. other criteria determined necessary for and appropriate to the project.
 - d) At the discretion of the agency/department oral interviews may or may not be conducted. Such interviews may be with all firms or the firms considered finalists.

- e) After evaluating the qualifications using the established criteria, the agency/department shall submit a ranked slate of the most qualified A-E firms to the Board of Supervisors for selection and approval. Board approved slates for the specific categories of services shall be valid for a period of no more than three (3) years, unless otherwise directed by the Board of Supervisors.
- f) Agencies will then select from the Board approved slates of A-E firms for on-call A-E services and negotiate contracts or agreements as needed.
- g) Once an A-E on-call contract/agreement has been approved and executed, the agencies may utilize the on-call A-E without additional Board approval for as needed tasks, which shall be identified in writing in a subordinate agreement (or “task order”) with the A-E, and in accordance with the pricing set forth in the on-call A-E contract.
- h) While remaining consistent with qualification-based selection, an effort shall be made to produce an equitable distribution of contracts among the best-qualified firms and to provide fair opportunities to small business firms.

(3) **Selection of Architects and Engineers for Project Specific A-E Services**

- a) Each agency/department must issue a Request for Proposals for all architect-engineer projects valued at \$200,000 or more. The process shall consist of evaluation of written proposals and oral presentations. Evaluation criteria shall be as follows:

Written Proposals

- Technical expertise
- Key personnel
- Approach/understanding of project
- Control of cost and schedules
- References
- Adequate staff devoted to project/Availability of firm to commence project
- Other

Oral Presentations

- Presentation
- Technical content
- Project manager
- Key team members
- Communication skills
- Project understanding
- Project schedule
- Other

§3.5-110 Evaluation

- (1) Evaluation shall be based on a scoring system from 0-5, with 0 being unacceptable and 5 being excellent. Weighting of evaluation criteria shall be left to the discretion of the agency/department.
- (2) After evaluating the proposals using the above criteria, the agency/department shall submit a ranked slate of the most qualified A-E firms to the Board of Supervisors for selection and approval. Any member of the Board who recommends the selection of a firm other than the top-ranked firm shall disclose publicly his or her reason.

§3.5-111 Negotiation of Contracts

- (1) After an A-E firm has been selected, the agency/department shall negotiate a contract with the selected firm. The minutes from the contract negotiations shall be documented and made part of

the permanent contract file. If the value of the contract exceeds \$100,000, the contract will be reviewed by County Counsel and submitted to the Board of Supervisors for final approval.

§3.5-112 Contract Changes, Amendments, Extensions

- (1) The contract and its incorporated scope of work define the contract. Within the limited authority granted by the Board of Supervisors in the monetary categories listed in paragraph no. 3 below, the agency/department head may amend the contract allowing additional work within the original scope, as long as, the additional work does not exceed the value of the contract approved by the Board.
- (2) If an increase is warranted, the cost shall be agreed to in writing before beginning the additional work.
- (3) As long as the work performed remains within the existing scope of work, contract increases may be granted by the agency/department head to order changes or additions in the work within the cumulative limits as follows:

Contracts ≤ \$100,000	\$10,000
Contracts > \$100,000; ≤ \$250,000	10 percent of the original contract amount, or 10% of the amended “not to exceed” amount, if applicable, as authorized by the Board of Supervisors;
Contracts > \$250,000	\$25,000 plus 1 percent of the original contract amount in excess of \$250,000, (or the full “not to exceed” amount as authorized by the Board of Supervisors). In no instance shall the extra work cumulatively exceed \$100,000, unless authorized by the Board of Supervisors.

§3.5-113 Amendments Requiring Approval by the Board of Supervisors

- (1) Amendments to the contract or agreement must be used when changes exceed the agency/department head’s authority and must be submitted to the Board of Supervisors for approval.
- (2) Amendments to the contract or agreement which require Board approval are justifiable when:
 - a) there is a major change in the scope of the project;
 - b) the change causes a major delay;
 - c) the change makes the fee structure inappropriate

§3.5-114 Insurance

- (1) All Agenda Staff Report’s recommending a contract for A-E services shall include a statement by the appropriate County agency/department indicating either that:

- a) professional liability insurance is required and the County's professional liability insurance coverage requirements have been met by the A-E firm; or
- b) good cause exists to allow the A-E firm to be exempt from the County's liability insurance requirements, with an explanation justifying the exemption provided in the Agenda Staff Report.

§3.5-115 Federal Grant Projects

- (1) All applicable regulations of the Federal Acquisition Regulations (FAR) will be followed.

SECTION 3.6

PUBLIC WORKS CONTRACTS

§3.6-101 Definition

- (1) The definition of a public project shall be the same definitions that are included in the Public Contract Code, §22002(c), and for payment of prevailing wages, Labor Code §1720:
 - a) “Public project” means any of the following:
 - i. Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility paid for using public funds; and
 - ii. Painting or repainting of any publicly owned, leased, or operated facility.
 - b) “Public project” does not include maintenance work. For purposes of this section, maintenance work includes all of the following:
 - i. Routine, recurring, and usual work for the preservation or protection of any publicly owned or publicly operated facility for its intended purpose;
 - ii. Minor repainting;
 - iii. Resurfacing of streets and highways at less than one inch;
 - iv. Landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems; and
 - v. Work performed to keep, operate, and maintain publicly owned water, power, or waste disposal systems, including, but not limited to, dams, reservoirs, power plants, and electrical transmission lines of 230,000 volts and higher.

§3.6-102 Policy

- (1) Public works contracts shall be issued in accordance with the provisions of the Public Contract Code, Division 2, Part 3, Chapter 2, beginning with Section 22000, otherwise known as the Uniform Public Construction Cost Accounting Act and on forms approved for use by County Counsel.
- (2) The provisions of the act relative to bidding procedures shall supersede the individual procedures contained within the code that may apply to specific projects, special districts or political subdivisions of the state, e.g., county highways; county bridges or subways; flood control district; harbors, beaches, and parks, etc., wherein the County of Orange is contracting for public works projects or on behalf of those entities.
- (3) Amendments or revisions to the code sections affecting this policy and resulting procedures may be directly incorporated into this manual when enacted by the California Legislature without further action of the Board of Supervisors.

§3.6-103 Options for Award of Contract

- (1) On projects of \$45,000 or less, the County may award a contract by bid or negotiation, or it may perform the work with County employees.
- (2) On projects of more than \$45,000, the County shall award a contract to the lowest responsive, responsible bidder, except as follows:
 - a) The County may award the contract to the bidder of its choice if the two lowest bids are equal.
 - b) The County may reject any bids presented and then;
 - i. Abandon the project or readvertise for bids in the manner described in the act; or
 - ii. Declare, with four-fifths approval of the Board of Supervisors, that the work can be performed more economically by employees of the County, and have the project performed by force account.
 - c) If no bids are received by formal or informal bid procedure, the County may have the work performed by employees of the County by force account; or negotiated contract [PCC §22038(c)]

§3.6-104 Contract Methodology

- (1) Public project contracts may be performed by one of four methods, based upon the total value of the project or the emergency nature of the work:
 - a) “Public projects of forty-five thousand dollars (\$45,000) or less may be performed by the employees of a public agency by force account, by negotiated contract, or by Purchase Order.” [PCC §22032(a)]
 - b) Projects of \$15,000 or less – bids shall be solicited from at least one contractor. Initial bids may be taken informally but shall be written and signed by the contractor prior to contract issuance.
 - c) Projects over \$15,000, but \$45,000 or less, bids shall be solicited from at least four contractors, except for those categories of work where there are less than four available sources. All bids shall be written and submitted in a sealed envelope. Bids shall be opened informally, but a summary of the bids and a copy of all bids will be made available for review upon request.
 - d) On projects of \$45,000 or less, contract terms and costs may also be negotiated with a single contractor. The contracting agency/department selects a contractor from a slate of potential contractors who are qualified, capable, interested and available to perform the work within the required time frame, prepares a scope of work, and negotiates the contract.

§3.6-105 Competitive Bidding

- (1) All other factors being equal, competitive bidding (IFB) is preferred over negotiated contracts (RFP), in order to secure the lowest cost. Negotiated contracts should be used only when the contracting agency/department has prepared a written finding demonstrating that it is difficult to completely and accurately define all of the work or material required, or when it is advantageous to utilize the services of a specific contractor and project cost is not the controlling factor.
- (2) Contractors invited to bid or selected to negotiate shall be selected from a listing of available contractors, developed and maintained by the awarding agency/department, or those who have expressed an interest in the project. Contractors shall either be rotated or all qualified contractors on the bid list shall be solicited in order to distribute contract work among all potential sources, providing an opportunity for all contractors to participate in County work.
- (3) Public projects of \$175,000 or less may be let to contract by informal procedures as set forth in the act. [PCC §22032(b)]
- (4) Unless the product or service is proprietary, all contractors for projects over \$45,000 but \$175,000 or less shall be selected, using informal bidding procedures, as follows:
 - a) Written notice is sent by the using agency/department to all qualified contractors on the bidders' list for the category of work being bid; OR
 - b) Written notice is sent by the using agency/department to all of the construction trade journals in accordance with PCC §22036; OR
 - c) Written notice by the using agency/department is sent to all contractors on the bidders' list and all of the construction trade journals in accordance with PCC §22036.
- (5) All mailing of notices to contractors and construction trade journals pursuant to the above paragraph shall be completed not less than ten calendar days before bids are due. The notice inviting informal bids shall describe the project in general terms, including how to obtain more detailed information about the project, and state the time and place for submission of bids.
- (6) If all bids received are in excess of \$175,000, the Board of Supervisors may, by passage of resolution by a four-fifths vote, award the contract, at \$187,500 or less, to the lowest bidder, if it determines the cost estimate was reasonable.
- (7) The agency/department head or designee shall approve plans, specifications, and working details for its public works projects, as appropriate, and the County Purchasing Agent or agency/department Deputy County Purchasing Agent shall issue purchase orders for all public works contracts over \$45,000 but \$175,000 or less.
- (8) Public projects over \$175,000 shall be let to contract using formal (advertised) bidding procedures as defined by the act, i.e., the project, plans, and specifications shall be approved by the Board of Supervisors and the project shall be awarded by the Board of Supervisors. In addition, the project shall be advertised (officially) by the Clerk of the Board and the contract shall be executed by the Chairman of the Board of Supervisors.
- (9) Emergency projects shall be performed in accordance with §22035 of the Public Contract Code. The Board of Supervisors must approve performing the work on an emergency basis.
- (10) Since the requirements for bidding public works projects are more stringent at each successive level, projects below the specified thresholds may be bid using the more stringent requirements at the option of the contracting agency/department.

§3.6-106 Responsibilities

- (1) The Board of Supervisors shall be the awarding authority for all contracts of more than \$175,000. The authorized agency/department head shall be the awarding authority for all contracts of \$175,000 or less.
- (2) The contracting agency/department shall have the primary role in contract preparation, bid solicitation, and contract administration. It shall be responsible for preparation of all necessary contract documents upon County Counsel approved forms, including changes, obtaining required approvals by the Board of Supervisors, distribution of contract documents to prospective bidders, receipt and review of bid documents, inspection, contract compliance, and payments.
- (3) The agency/department personnel trained in the specific statutory requirements applicable to Public Works shall have the primary role in the preparation and processing of the actual contract, subsequent changes to the contract, the development of purchase order contracting procedures, and monitoring of the contracting process for all contracts.
- (4) Each agency/department shall establish and maintain individual bid lists by contractors' category of work. [PCC §22034]

§3.6-107 California Environmental Quality Act (CEQA)

- (1) California Public Resources Code §21000 et seq., codifies a statewide policy of environmental protection. According to CEQA, all state and local agencies must give major consideration to environmental protection in regulating public and private activities, and should not approve projects for which there exist feasible and environmentally superior mitigation measures or alternatives.
- (2) County Agency/Department Responsibilities:
 - a) For projects that do not require approval by the Board of Supervisors;
 - i. the County Purchasing Agent or designee shall ensure that he/she has received a memorandum from the OC Planning Department stating that the project is either categorically exempt or statutorily exempt from CEQA; and
 - ii. if a negative declaration or mitigated negative declaration has been prepared, the declaration must be signed by the Director of OC Public Works or authorized designee.

§3.6-108 Changes

- (1) The contracting agency/department may approve contract cost increases limited to:
 - a) \$5,000 per change for contracts up to \$50,000;
 - b) 10 percent of the original contract amount per change for contracts from \$50,000 to \$250,000; and
 - c) \$25,000 per change for contracts in excess of \$250,000, plus 5 percent of the original contract amount in excess of \$250,000 up to a maximum amount approved by the State Legislature in accordance with PCC §20142.

- d) The Board of Supervisors shall approve all changes over the amounts specified above.
- e) Changes may not be used to add significant work not included in the original scope of work or to deduct work that significantly changes the original scope of work.
- f) The contracting agency/department shall develop internal procedures for:
 - i. reviewing change requests;
 - ii. negotiating change order terms with the contractor;
 - iii. obtaining legal review and approval of change orders, where appropriate; and
 - iv. preparing written documentation on change orders.

§3.6-109 Bonds

- (1) A bid bond in a value not less than 5 percent of the total bid price shall be required on all projects of more than \$25,000.
- (2) A faithful performance bond and a labor and materials bond may be required by the contracting agency/department on any project, as deemed necessary by the contracting agency/department, dependent upon the specific conditions of a project.
 - a) A faithful performance bond and a labor and materials bond in a value no less than 50 percent of the total contract price shall be required on all projects of more than \$25,000.
 - b) Faithful performance bonds and labor and materials bonds shall be submitted on the forms approved by County Counsel and shall be subject to approval by CEO/Risk Management and County Counsel.

§3.6-110 Project Administration

- (1) The contracting agency/department shall:
 - a) Administer the project in accordance with its internal procedures for inspection of work in progress and completion of all work in accordance with specifications;
 - b) Receive and file all documents associated with its inspection process and shall make copies of those records available to the contractor for review upon request; and
 - c) Handle corrective actions in accordance with its internal procedures for voluntary corrective action by the contractor.

§3.6-111 Notices of Completion

- (1) The contracting agency/department shall file a notice of completion for all public works projects of \$5,000 or more; these notices do not need to be approved by the Board of Supervisors. Notices of completion shall be recorded in the Clerk/Recorder's Office within ten days of project completion, in accordance with §3093 of the Civil Code.

§3.6-112 Payments

- (1) The contracting agency/department shall prepare and process all documents necessary for preparation and issuance of payments to the contractor in accordance with the terms established in the contract documents.
 - a) Projects less than \$5,000 will be paid in full upon acceptable completion of the work and receipt of an invoice from the contractor and approved by the contracting agency/department.
 - b) Projects from \$5,000 to \$75,000 may be paid by progress payments or by payment upon completion of the work as established in the contract documents. The contracting agency/department will prepare and process payment(s) up to 95 percent of the actual value of the work completed. Not less than 5 percent shall be withheld until the work is complete. [PCC §9203]
 - c) Projects of \$75,000 or more will be paid by progress payments. The contracting agency/department will prepare and process payments up to 95 percent of the actual value of the work completed. Not less than 5 percent shall be withheld until the work is complete. [PCC §9203]
- (2) If after 50 percent of the project has been completed and the contracting agency/department finds that satisfactory progress is being made, it may make any of the remaining progress payments in full for actual work completed. [PCC §9203]
- (3) Complete shall mean acceptance, as evidenced by a notice of completion, beneficial occupancy accompanied by cessation of labor, a cessation of labor for 100 continuous days or more due to factors beyond the control of the contractor, OR a cessation of labor for 30 continuous days following the filing of a notice of completion or a notice of cessation. [PCC §7107]
- (4) The contracting agency/department may, at its option, withhold amounts greater than those shown above. The contracting agency/department may also, at its option, withhold amounts for up to 30 days in accordance with “Stop Notice Rules” corresponding to work in dispute pending resolution of the dispute. [PCC §7107]
- (5) All funds, including withheld funds, shall be paid in accordance with the time frames specified in the Code. [PCC §7107]
- (6) The contractor may substitute securities for funds withheld in accordance with the Code. [PCC §22300]
- (7) Escrow agreements for security deposit in lieu of retention should be approved by County Counsel.

§3.6-113 General requirements:

- (1) Projects shall not be intentionally split in order to avoid informal or formal advertising or to avoid approval by the Board of Supervisors. [PCC §22033]
- (2) All contractors performing public works projects shall be properly licensed in accordance with the requirements of the State of California Contractor’s License Board.
- (3) All contractors performing public works projects shall pay prevailing wages in accordance with the Labor Code of the State of California.

§3.6-114 Liquidated Damages Clause for use in Public Works Contracts

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

§3.6-115 Contractor Non-Responsibility Policy

- (1) In accordance with the County's *Contractor Non-Responsibility Procedures*, during the bid/solicitation process, a County department can recommend to the Board of Supervisors that a contractor be found "non-responsible" to perform services under the proposed contract.
- (2) For purposes of this section, Non-responsible is means finding a contractor incapable of performing the services based on past performance history or other relevant documentation.
- (3) Prior to making a recommendation to the Board of Supervisors, the department must complete the following:
 - a) notify the contractor of the facts used by the department to determine that the contractor is non-responsible to perform the service; and
 - b) conduct a hearing to provide the contractor with an opportunity to contest the County's findings and present evidence in his or her defense.
- (4) A non-responsibility finding shall become final upon approval of the Board of Supervisors and there shall be no right to further administrative appeals. If non-responsibility is determined, the contractor shall be ineligible for the award of the contract(s) at issue.

SECTION 4 – METHODS OF SOLICITATION

SECTION 4.1

INVITATION FOR BID

§4.1-101 Definition

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

§4.1-102 Prequalification of Bidders

- (1) The County reserves the right to prequalify bidders when deemed to be in its best interest. Prequalification may be done as the first step in a two-step bidding process. Bidders will be prequalified by responding to a Request For Qualifications (RFQ) which will include a request for information related to the bidder's ability to fulfill the contract conditions. Qualification criteria may include financial capacity and stability, company history, capacity to perform, relevant experience, and other criteria relevant to the acquisition being bid.
- (2) Prequalification requirements will be reasonable and will be the minimum requirements necessary to carry out the contract.

§4.1-103 Requests for Information

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

§4.1-104 Invitation for Bid (IFB) Document

- (1) The IFB shall include a purchase description and all contractual terms and conditions applicable to the procurement. All invitations for bid will include the following:
 - a) Adequate Public Notice: Adequate public notice will be given to provide potential bidders sufficient time to prepare and submit bids by the due date specified in the invitation for bid.
 - i. Specifications - General: Clear, concise specifications must be included in all bid documents. The specification is a description of the physical or functional characteristics of the commodity, equipment, or service desired. Specifications shall be written to encourage maximum and fair competition. A Statement of Desired Purpose will be included in all specifications and only those characteristics essential to the final performance of the product or service will be included. Unless only one brand of commodity or equipment is acceptable due to compatibility or other restrictive requirements, any brand name used in the specifications will be used only for the purpose of establishing descriptive information and will not be used to restrict competitive bidding.

- ii. Proprietary Specification (no substitute): Proprietary specifications shall be used only when the end user has presented justification that only the named product will function in the end use required. Proprietary items will be competitively bid whenever there is more than one supplier from whom the product is available.

- b) Terms and Conditions: All IFB's will include terms and conditions which will become part of the contract. The County Purchasing Agent shall maintain, by type of contract, applicable and appropriate terms and conditions to be included in contracts and shall make these available to agencies/departments for inclusion in the contracts they issue.

- c) Bid and Performance Surety: When determined to be in the best interest of the County, the County Purchasing Agent or the Deputy Purchasing Agent may include in the terms and conditions a requirement for bid and/or performance surety. A bid surety will guarantee that a bidder enters into the contract per its bid, and a performance surety will guarantee that the bidder will carry out the contract per the specifications and terms and conditions set down by the County. Such surety, when required, will not be designed to be restrictive, but will only be in an amount necessary to protect the County's interest. Bidders shall be permitted to provide such surety in the form of a bond, certified or cashier's check, letter of credit, or certificate of deposit redeemable by the County. Upon award to the successful bidder, all such sureties will be returned to unsuccessful bidders.

- d) Indemnification: Where the County may experience financial or physical risk in the performance of a contract by a vendor, the contract terms and conditions will require that the vendor hold the County harmless from such risk.

- e) Insurance: The County may also require that the successful bidder submit an insurance certificate prior to contract award. Such certificate will be in an amount adequate to protect the County and will name the County as an additional insured.

- f) Criteria for Award: The IFB will include criteria for award. Award will be based on lowest responsive and responsible bidder.

- g) Responsiveness: A bidder's responsiveness will be judged according to requirements set forth in the invitation to bid. No criteria may be used in the determination of a bidder's responsiveness that is not set forth in the IFB. In order to determine lowest responsive bidder, criteria which affect bid price and may be objectively measured, such as discounts, transportation costs, and life cycle cost, may be considered. Award may not be made to a bidder submitting a higher quality item than the minimum required unless the bidder's price is also determined to be the lowest in accordance with the criteria established in the Invitation For Bid (IFB).

- h) Responsibility: A bidder's responsibility will be judged according to the bidder's ability to successfully carry out the proposed contract. Criteria to be used may include financial capacity, experience, facilities, equipment, and integrity. The County may also consider any of its own past dealings with the bidder. The unreasonable failure of a bidder to promptly supply information or documents required for bid review may be grounds for "determination of non-responsibility"

made by the County Purchasing Agent or appropriate Deputy Purchasing Agent. All findings of non-responsibility shall be documented and made part of the contract award file.

§4.1-105 Vendor Advisory

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

§4.1-106 Pre-Bid Conference

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

§4.1-107 Acceptance of Bids

- (1) Except as noted below, bids must be received no later than the time specified in the IFB. Bids shall be unconditionally accepted without alteration or correction. Late bids shall not be considered and shall be returned to the bidder unopened unless authorized for acceptance and approval by the County Purchasing Agent or Deputy Purchasing Agent with written justification. All bids must be received by someone other than the person who conducted the bid solicitation and must be time and date stamped upon receipt. All bids must be kept in a secure, locked location for access by personnel so authorized by the agency/department head. Bids become public information immediately after the closing date and time. When only one (1) bid is received in response to a solicitation, if that bid is received within 24 hours of the time specified in the IFB and if it is in the County’s best interest, the County Purchasing Agent or Deputy Purchasing Agent may accept that bid.

§4.1-108 Waivable Informalities

- (1) When considered in the best interest of the County, certain bid requirements may be waived by the County Purchasing Agent or Deputy Purchasing Agent. Such waivers will be only for minor requirements which will not provide a material advantage for one bidder over another. Examples of waivable informalities are:
 - a) Failure of a bidder to submit information due to oversight (consistent with paragraph below) descriptive literature;
 - b) Failure of a bidder to sign or date a bid document; or
 - c) Failure of a bidder to submit the requested number of bid copies.

- (2) Waivable informalities will be considered on a case by case basis and will occur only when in the County's best interest.

§4.1-109 Correction, Clarification, or Withdrawal of Bids

- (1) Correction, clarification, or withdrawal of erroneous bids before or after award shall be permitted by the County Purchasing Agent or Deputy Purchasing Agent under the following circumstances:
 - a) Where there is a mistake clearly evident from examining the bid document, such as an extension of unit pricing or errors in addition, the bidder should be permitted to correct the error and the bid remain valid.
 - b) Where a bidder alleges a material mistake of fact and there is reasonable proof a mistake was made and the intended bid cannot be ascertained with reasonable certainty, the bidder shall be permitted to withdraw the submitted bid without penalty.
 - c) Where a bidder fails to supply information requested in the IFB due to oversight, the bidder should be permitted the opportunity to furnish the information. This shall be permitted so long as the information does not affect the bidders' submitted price, specifications or substantive obligations and does not affect the position of his bid relative to others properly submitted.
- (2) Where a bidder committed errors in judgment, the County will not permit withdrawal of the submitted bid without penalty, unless it is determined to be in the best interest of the County.
- (3) Nothing in this section is intended to prohibit the County from accepting a voluntary reduction in price or more favorable terms from a successful bidder after award, provided that such is not conditioned on a modification or deletion of any conditions required in the IFB which would result in a contract less favorable to the County.

§4.1-110 Tied Bids/Local Preference

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

§4.1-111 Cancellation of Invitations for Bid/Reservation to Reject all Bids

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

§4.1-112 Public Bid Openings

- (1) A public bid opening will be held at a time and place announced in the bid solicitation for purchases exceeding \$100,000, subject to the guidelines for each contract type as detailed in Section 3 of this manual.
 - a) The amount of each bid, together with the name of each bidder, shall be recorded and made available for public inspection.
 - b) In cases where bids are submitted and tabulated electronically, bid openings will be considered public as long as the individual bids are electronically accessible after the bids close.

§4.1-113 Protest – Invitation For Bid (IFB):

- (1) **Protest of Bid/Proposal Specifications:** In accordance with Section 1.3 of this manual, all protests related to bid or proposal specifications must be submitted to the Deputy Purchasing Agent no later than five (5) business days prior to the close of the bid or proposal. Protests received after the five (5) business day deadline will not be considered by the County.
 - a) In the event the protest of specifications is denied and the protester wishes to continue in the solicitation process, they must still submit a bid prior to the close of the solicitation in accordance with the bid/proposal submittal procedures provided in the bid/proposal.
- (2) **Protest of Award of Contract:** In accordance with Section 1.3 of this manual, protests related to the award of a contract based on the Invitation For Bid (IFB), the protest must be submitted no later than five (5) business days after the notice of the proposed contract award is provided by the Deputy Purchasing Agent.
 - a) Protests relating to a proposed contract award which are received after the five (5) business day deadline will not be considered by the County.

SECTION 4.2

REQUEST FOR PROPOSAL (RFP)

§4.2-101 Definition

- (1) When it is not in the County's best interest to acquire goods or services through normal competitive bidding, a contract may be solicited using the Request For Proposal (RFP) method. Such a situation may arise for any number of reasons, including, but not limited to:
 - a) The County's requirements are not well-defined.
 - b) The County is interested in evaluating a range of offers so that it may take advantage of technical innovation and developments in the market place.
 - c) Factors such as availability, expertise, and quality override price as a criteria for award.

§4.2-102 Requests for Information

- (1) When required by the County and determined to be in its best interest, a general Request for Information may be sent to vendors preceding the RFP process. The Request for Information will be a way of determining appropriate proposers.

§4.2-103 Request For Proposal (RFP) Process

- (1) Requests for Proposals will be issued with the intent of providing a competitive process from which the County may select a vendor to satisfy its requirements. The RFP will consist of the following:
 - a) Adequate Public Notice: Adequate public notice shall be given to provide potential proposers sufficient time to prepare and submit proposals by the due date specified in the RFP.
 - b) Requirements Statement: This will be a statement of the County's objectives in issuing the request. It shall explain the County's need as clearly as possible. It shall include any special requirements which the County may have in regard to its overall objectives. Included may be requests for special reports, critical timelines, unique items or services to be provided, cost or pricing data required, duration of service, etc.
 - c) Qualification Statement: If necessary, the County may include minimum qualification criteria in the RFP. These criteria shall not be used to limit competition but may be used to assure a certain level of expertise and quality of service.
 - d) Terms and Conditions: The terms and conditions which are intended to become part of the final contract shall be included in the RFP. Included in the terms and conditions are such items as indemnification, contract termination, payment terms, applicable laws, etc. The County Purchasing Agent shall maintain, by type of contract, applicable and appropriate terms and conditions to be included

in contracts and shall make these available to agencies/departments for inclusion in the contracts they issue.

- e) Instructions: These are items which relate directly to the procedures on how the proposal must be submitted. Included in the instructions are items related to number of submittals required, format, procedure for information clarification, etc.
- f) Bid and Performance Surety: When determined to be in the best interest of the County, the County Purchasing Agent or the Deputy County Purchasing Agent may include in the terms and conditions a requirement for bid and/or performance surety. A bid surety will guarantee that proposers enter into the contract as agreed upon, and a performance surety will guarantee that the proposer will carry out the contract requirements according to specifications and terms and conditions set down by the County. Such surety, when required, will not be designed to be restrictive, but will only be in an amount necessary to protect the County's interest. Proposers shall be permitted to provide such surety in the form of a bond, certified or cashier's check, letter of credit, or certificate of deposit redeemable by the County. Upon execution of contract with the successful proposer, all such sureties will be returned to unsuccessful proposers.
- g) Indemnification: Where the County may experience financial or physical risk in the performance of a contract by a vendor, the contract terms and conditions will require that the vendor hold the County harmless from such risk.
- h) Insurance: The County may also require that the successful proposer submit an insurance certificate prior to contract award. Such certificate will be in an amount adequate to protect the County and will name the County as an additional insured.
- i) Liquidated Damages: When determined to be appropriate by the County Purchasing Agent or Deputy County Purchasing Agent, a provision for liquidated damages may be included in the contract terms and conditions. Liquidated damages may not be a penalty, but must be an approximation of the County's actual damages. See Liquidated Damages provision under Section 3.3 for Service Contracts and Section 3.6 for Public Works Contracts.
- j) Evaluation Criteria: The RFP will list the criteria which will be used to evaluate submitted proposals. The factors shall relate to the proposer's ability to satisfy the County's requirements as specified in the proposal. Evaluation criteria may be weighted by having specific values assigned to each criterion. Evaluation criteria may also be listed in order of importance without including values. Only the factors listed as part of the evaluation criteria may be used to determine the successful proposer. Values/weights for evaluation criteria must be established and submitted to the County Purchasing Agent or appropriate Deputy County Purchasing Agent prior to distribution of the proposals to the evaluation committee. Where cost is a factor in the evaluation criteria, cost analysis must be conducted and recorded in the evaluation process.

§4.2-104 Prequalification of Proposers

- (1) The County reserves the right to prequalify proposers when deemed to be in the best interest of the County. Prequalification may be done as the first step in a two-step bidding

process. The process for selection shall be conducted in a competitive manner using the County's standard solicitation methods, to ensure participation by all interested vendors.

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

§4.2-105 Vendor Advisory

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

§4.2-106 Pre-Proposal Conference

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

§4.2-107 Receipt and Acceptance of Proposals

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

however, all proposals received within 24 hours of the specified date and time will be accepted.

§4.2-108 Waivable Informalities

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

§4.2-109 Confidentiality

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

§4.2-110 Protest – RFP

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

§4.2-111 Evaluation Committee

- (1) All proposals shall be evaluated by an evaluation committee comprised of three (3) or more members who have no conflict of interest with the selection process. Members of evaluation committees shall be selected based on their qualifications and expertise related to the subject matter.
 - a) It is County policy that when practical and appropriate, private citizens with appropriate expertise who are free of any potential conflict of interest will be included on the proposal evaluation committee.
 - b) The composition of the selection committee will be determined by using agency/department or by the County Purchasing Agent for those contracts issued by the County Procurement Office.
 - c) All members of the evaluation committee must sign a form certifying, under penalty of perjury, that they have no conflict of interest with the selection process.
 - d) During the proposal evaluation process, evaluators shall not discuss any issues related to the evaluation or selection process with any proposed contractors or their advocates, except in scheduled proposer interviews as discussed below.

§4.2-112 Proposer Interviews

- (1) After reviewing submitted proposals, the evaluation committee may conduct interviews with responsible proposers who have submitted proposals determined to be acceptable and within competitive range. The purpose of these interviews will be for clarification to assure full understanding of and responsiveness to the solicitation requirements.
 - a) Proposers shall be given fair and equal treatment with respect to any opportunity for discussion and revision to proposals.
 - b) Discussions with proposers will be recorded either in writing or on tape, and that record will become part of the contract file.
 - c) In conducting interviews there shall be no disclosure of any information derived from proposals submitted by competing proposers.
 - d) All members of the evaluation committee must sit in on the interviews with all proposers. If in the best interest of the County, an exception may be made with the approval of the County Purchasing Agent or Deputy Purchasing Agent.

§4.2-113 Proposal Revisions

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

§4.2-114 Scope of Work Revisions

- (1) If discussions reveal the need to change the original scope of work, either an addendum detailing the revised scope will be sent to all those submitting proposals, or, if appropriate, the County will issue a revised RFP and begin the solicitation process again.

The County Purchasing Agent or appropriate Deputy Purchasing Agent will be the final authority as to which process will be used.

§4.2-115 Evaluation Scores

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

§4.2-116 One Proposal Received

- (1) If only one (1) proposal is received in response to a RFP, the County Purchasing Agent or appropriate Deputy Purchasing Agent may either recommend award, or, if time permits, resolicit, whichever is in the County's best interest.

§4.2-117 Errors in Proposals

- (1) Prior to the time and date set for the receipt of proposals, any proposer may withdraw the proposal or correct any errors in their previously submitted proposal.
 - a) After the time and date set for the receipt of proposals, proposers may not make any changes to their submitted proposals.
 - b) After the receipt of best and final offers, a proposer may be permitted to withdraw its proposal without penalty if evidence is provided of a material error and the fulfillment of the contract by the proposer would create unconscionable hardship or financial loss.

§4.2-118 Award

- (1) Award of contract will be made to the responsible proposer whose proposal best meets the County's requirements as determined by the evaluation committee using the evaluation criteria, which should include proposed cost.
- (2) Should the County Purchasing Agent or appropriate Deputy Purchasing Agent fail to concur with the recommendation submitted by the evaluation committee, the County Purchasing Agent or appropriate Deputy Purchasing Agent will meet with the evaluation committee members to discuss the reasons for the disagreement.
 - a) No recommendation shall go forward to the Board of Supervisors from the County Purchasing Agent or the Deputy Purchasing Agent, unless there is concurrence among the County Purchasing Agent or Deputy Purchasing Agent, the using agency, and the evaluation committee.

SECTION 4.3

MULTI-STEP SEALED BIDDING

§4.3-101 Definition

- (1) Multi-step sealed bidding is a method of soliciting bids which permits preliminary evaluation based on a proposal's technical merit and the qualifications of the bidder/proposer and a final evaluation based on price.
- (2) Multi-step sealed bidding may be used when it is determined that:
 - a) Available specifications or purchase descriptions are not sufficiently complete to permit full competition without technical evaluations and discussions to ensure mutual understanding between each bidder and the County of Orange;
 - b) Definite criteria exist for evaluation of technical offers;
 - c) More than one technically qualified source is expected to be available; and
 - d) A fixed price contract will be used.

§4.3-102 Multi-Step Bidding Process

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

submission of the technical offers or at any time during the evaluation of unpriced technical offers.

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

(2) Phase Two

- a) Upon completion of Phase One, the County Purchasing Agent or Deputy County Purchasing Agent shall issue an Invitation for Bid (IFB) (See Section 4.1). The invitations for bid shall be issued only to bidders whose technical offers are determined to be acceptable in Phase One.
- b) Award will be made to the lowest responsive and responsible bidder.

§4.3-103 Requests for Information

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

§4.3-104 Vendor Advisory

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

§4.3-105 Protest – Multi-Step Sealed Bidding

- (1) Refer to Section 1.3 – Protest for guidelines concerning vendor protests.

SECTION 4.4

SOLE SOURCE AND PROPRIETARY REQUESTS

§4.4-101 Policy

- (1) It is the policy of the County of Orange to solicit competitive bids and proposals for its procurement requirements. Sole source procurement shall not be used unless there is clear and convincing evidence that only one source exists to fulfill the County's requirements.

§4.4-102 Sole Source Justification

- (1) Formal justification for sole source procurements is required when competitive bid guidelines require pricing from competing firms. A sole source justification will be prepared by the user agency/department and approved by the agency/department head or designee. The County Purchasing Agent or Deputy Purchasing Agent shall retain a copy of this justification as part of the contract file. As part of the sole source justification, the requestor shall clearly explain:
 - a) A detailed description of the type of contract to be established.
 - b) A detailed description of services/commodities to be provided by the vendor.
 - c) Why the recommended vendor is the only one capable of providing the required services/commodities and include back-up information to support the justification.
 - d) Identify other sources that have been contacted and explain in detail why they cannot fulfill the County's requirements.
 - e) How the recommended vendor's prices or fees compare to the general market and attach quotes for comparable services and supplies, if available.
 - f) How the County would accomplish this particular task if the recommended vendor could not provide the product or service.
- (2) Valid sole source justifications require strong technological or strong programmatic justifications. Sole source justifications are not required for purchases where no competitive solicitation is required.
- (3) If a contractor develops a particular expertise through demonstrated past performance which has been investigated and determined to be satisfactory in this area of expertise, then such contractor may be awarded a subsequent contract for related work, provided that the sole source justification requirements outlined in this section are satisfied. Such contractor may be designated as an exclusive contractor if the County would be adversely affected by bringing in another vendor who would be required to meet the expert contractor's level of expertise and existing knowledge and involvement in a specific project.

§4.4-103 Proprietary Source Requests

- (1) Proprietary means confidentially owned and controlled. The term may be used to refer to such items as property, computer software, or intellectual property. The party owning items that are proprietary is known as a sole proprietor and there is no other source available from which to purchase the goods or services.
 - a) Determining if an item is proprietary rests with the Deputy Purchasing Agent and shall be justified in accordance with the policies and procedures outlined in this Section. In the event an item is justified as proprietary, the Deputy Purchasing Agent shall endeavor to negotiate a price that is most advantageous to the County.
- (2) Proprietary Specifications: A proprietary item or service is one that must meet particular restrictive specifications but may be available from a number of sources, e.g., “Brand ‘X’ computers - no substitutions”. A detailed description of the proprietary specification shall be attached to the requisition for approval. The requisition should contain a brief justification for requesting the proprietary specification.
- (3) Board Approval: Board approval is required for proprietary commodities and services in accordance with applicable policy as provided in this Section, as well as those that may apply in Section 3 of this manual.

§4.4-104 Emergency Requests

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

§4.4-105 Commodities – Sole Source Requests

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

§4.4-106 Capital Assets – Sole Source Requests

- (1) In addition to the Board approval requirements stated in Section 3.2 of this manual, approval by the Board of Supervisors is required prior to the purchase of a Sole Source Capital Asset item costing more than \$50,000.

§4.4-107 Service Contracts (includes A-E) – Sole Source Requests

- (1) Approval by the Board of Supervisors is required for the following:
 - a) Sole source service contracts that exceed total annual amount of \$50,000
 - b) Sole Source service contracts that exceed a two (2) year consecutive term, regardless of dollar amount. Contracts may not be intentionally split to avoid this policy.
 - c) Renewal of Sole Source Service Contracts where the annual cost exceeds \$50,000.

§4.4-108 Human Services – Sole Source Requests

- (1) Sole Source requests for human service contracts will be guided by the regulations of the funding source. Sole source requests for any human service contract, as described in 3.4 of this manual that exceeds \$50,000 in value, will require Board Approval.

§4.4-109 Agenda Staff Report

- (1) Prior to the submittal of an Agenda Staff Report, all Sole Source Justifications requiring approval by the Board of Supervisors shall first be reviewed and approved by the Office of the County Purchasing Agent;
- (2) Agenda Staff Reports shall clearly state that the procurement is a sole source procurement and also include the Sole Source Justification text in the “Background Section” of the Agenda Staff Report;
- (3) A signed copy of the Sole Source Justification, as described below, shall also be attached to the Agenda Staff Report.

§4.4-110 Negotiation

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

SECTION 4.5

SMALL DOLLAR PURCHASES

§4.5-101 Definition

- (1) Small dollar purchases are purchases made for items which fall below the dollar limits established for competitive bidding as defined in other sections of this policy manual.

§4.5-102 Types of Small Dollar Purchases

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

SECTION 4.6

COOPERATIVE PURCHASING

§4.6-101 Definition

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

§4.6-102 Policy

- (1) With the exception of Architectural-Engineering projects, Goods and services may be acquired through cooperative contracts that can involve one or more public agencies. Such cooperative purchasing may include public procurement contracts which are made available to other local public entities.

§4.6-103 Responsibility

- (1) The County Purchasing Agent is responsible for identifying and executing all cooperative contracts for use by County agencies and departments. The County Purchasing Agent may authorize and make use of cooperative agreements, including the pricing, and terms and conditions of the contract of another public agency provided that:
 - a) The initial procurement the County is relying upon is consistent with County purchasing rules and requirements; and
 - b) The vendor holding the contract extends the same pricing, terms and conditions to the County.
 - c) Before deciding whether or not to use the contract of another public agency, Deputy Purchasing Agents will conduct an analysis of the contract to determine that the use of the contract serves the best interest of the County of Orange and that minimum County procurement requirements have been followed with respects to competitive bidding.
 - d) The County may also allow local schools, cities, and other public entities to take advantage of contracts the County has competitively bid, although the County shall not be a signator on these contracts and shall have no legal liability to either the contracting entities or to third parties as a result of the contracts, including but not limited to;
 - i. issuing their own contract purchase documents,
 - ii. providing for their own acceptance of the terms & pricing of the contract,
 - iii. obtaining required certificates of insurance and bonds, and
 - iv. making any payments due to the vendor.
- (2) Limitation of Liability – Orange County: The contracting entities shall hold harmless the County of Orange from all claims, demand actions, or causes of actions of every kind resulting directly or indirectly, arising out of, or in any way connected with the use County issued cooperative agreements.

§4.6-104 Contractor Requirements

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

§4.6-105 No Usage Guarantee

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

§4.6-106 Board Approval

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

§4.6-107 Term of Cooperative Contract

- (1) The duration of a County cooperative contract will depend upon the County's need, prevailing market conditions, contract start-up costs, and the County's best economic interest.
- (2) In no case will a County cooperative contract exceed five (5) years in duration, unless specifically approved by the Board of Supervisors.
- (3) County cooperative contracts issued by the County Purchasing Agent that are subordinate to state and/or federal government contracts/programs may be executed in accordance with the term of the overriding contract and where appropriate, may extend beyond five (5) years, without further approval by the Board of Supervisors.

§4.6-108 Collaborative Purchasing

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

SECTION 5 – GLOSSARY

SECTION 5

GLOSSARY

1. Agenda Staff Report: A document by which matters are submitted to the Board of Supervisors for consideration during its regular meetings.
2. Agent: A person authorized by a superior, i.e., principal, to act for him/her. In public purchasing, this designation is usually incorporated into statute/ordinance law.
3. Agreement: See Contract
4. Alternate Bid: A bid submitted in knowing variance from the specifications, terms, conditions or provisions of the solicitation. Such a bid is acceptable only when the variance is deemed to be immaterial.
5. Amendment: See Modification
6. Arbitration: A process by which a dispute between two contending parties is presented to one or more disinterested parties for a decision; a process whereby a disagreement is resolved.
7. Architect or Engineer: Persons or firms providing professional services of an architectural or engineering nature, as well as those providing incidental services that members of these professions and those in their employ may logically or justifiably perform. (See Government Code §4525)
8. Award: The presentation of a purchase agreement or contract to a bidder or proposer.
9. Best Interest: The discretionary rationale used by a purchasing official in taking action most advantageous to the jurisdiction when it is impossible to adequately delineate a specific response by law or regulation.
10. Bid: The offer submitted by a bidder in response to an Invitation for Bid (IFB)s, a request for quotation, or a multi-step bidding procedure. A bid includes a cost for goods or services to be provided per the specifications included in the bid solicitation issued by the County.
11. Bid Bond: An insurance agreement in which a third party agrees to be liable to pay a certain amount of money in the event that a specific bidder, if its bid is accepted, fails to accept the contract as bid.
12. Bid Opening: The formal process through which bids are opened and the contents revealed for the first time to the jurisdiction, other bidders, and, usually, to the public.
13. Bid Surety: A guarantee, in the form of a bond or deposit, that the bidder, if awarded a contract,
14. will accept the contract as bid, otherwise the bidder (in the case of a deposit) or the guarantor (in the case of a bond) will be liable for the amount of the deposit or bond, respectively.
15. Bidders List: A list maintained by the purchasing office setting out the names and addresses of suppliers of various goods and services from whom bids, proposals, and quotations can be solicited.
16. Brand Name: A name which serves to identify a product of a particular manufacturer; a trade name.

17. Calendar Day: Every day shown on the calendar, including Saturdays, Sundays and holidays.
18. Change Order: See Modification
19. Collusion: A secret agreement or cooperation between two or more persons to accomplish a fraudulent, deceitful or unlawful act.
20. Commodities: All supplies and all equipment costing less than \$5,000 per item, including tax and freight, etc., or more than \$5,000 but with a useful life of less than one year.
21. Competitive Process: The process by which two or more vendors vie to secure the business of a purchaser by offering the most favorable terms as to price, quality, delivery, and/or service.
22. Compliance Monitoring: A process whereby the County Purchasing Agent selects and reviews procurement transactions conducted by agencies/departments for the purpose of ensuring that the County purchasing process is fair, equitable, effective and efficient.
23. Confirming Order: A purchase order written and sent to a vendor to verify that an order which was transmitted orally is authorized.
24. Conflict of Interest: A situation where the personal interests of a contractor, public official and/or designated employee are/is, or appear to be, at odds with the interests of the jurisdiction.
25. Consent Agenda Items: Those agenda items, as identified by the CEO and the Board of Supervisors, which are placed in the section of the Board of Supervisors agenda for approval as a group of items. Items on the Consent Calendar may be pulled by the Board, County staff, or a member of the public for discussion and individual Board action.
26. Consultant: A person or firm who provides professional or expert advise and/or recommendations.
27. Consultant Service Request Form: A document submitted by an agency/department wishing to contract with a consultant.
28. Contingency: A Board of Supervisors authorized percentage or specific amount of money which can be added to the base contract amount to provide for small changes to the contract without returning to the Board for approval. The percentage granted will not be based on the total amount of the contract, as it may accumulate in the second and third years, etc., of the contract, but will be based on the initial contract amount.
29. Contract: (1) A deliberate verbal or written agreement between two or more competent persons to perform or not to perform a specific act or acts; also, an agreement. (2) All types of government agreements, regardless of what they may be called, for the procurement or disposal of supplies, services or construction.
30. Contract Administration: The management of various facets of contracts to assure that the contractor's total performance is in accordance with the contractual commitments and that the contractor's obligations to the purchaser are fulfilled.
31. Cooperative Contract: County cooperative contract promulgated by either the Office of the County Purchasing Agent or a contract issued by a separate County agency/department or other public entity approved for use by the County Purchasing Agent. Agencies/departments or other local public entities may issue individual subordinate contracts against the cooperative contracts, identifying the services they wish to purchase.
32. Contractor: Any person or firm having a contract with a governmental body.

33. Debarment: A shutting out or exclusion, through due process, for cause, e.g., a bidder from a list of qualified prospective bidders.
34. Deputy Purchasing Agent: An employee of the County of Orange appointed by an agency/department head who is trained and certified/deputized under the direction of the County Purchasing Agent to act in the capacity of the County Purchasing Agent to procure goods and/or services for the agency/department.
35. Designated Employees: Those employees of the County of Orange who are required to file conflict of interest statements because those employees, in the course of their employment make, or participate in the making of decisions which may potentially have a material effect on the financial interest of the employees.
36. Discount: An allowance or deduction from a normal or list price extended by a seller to a buyer to make the net price more competitive.
37. Discussion Agenda Items: Those agenda items, as identified by the CEO and the Board of Supervisors, which are placed in the section of the Board of Supervisors agenda for discussion and individual Board action. All items requiring the Board to select from a slate or a list of recommendation options, among others, are placed on the Discussion Calendar.
38. Dispute: A difference between a contractor and a jurisdiction over performance or other elements of a contract calling for appropriate administrative action with the intent of achieving a remedial result.
39. Electronic Waste (E-Waste): An electronic device powered by electricity or a battery that has a printed circuit board or video display attached that has reached the end of its useful life and is being discarded by the user. Examples include: televisions, computers, computer peripherals and components, hard drives, CD/DVD drives, printers, facsimile machines, copiers and wireless phones and devices.
40. Emergency: Those situations where the welfare of County residents is at stake and/or immediate purchasing action is required to prevent serious economic or other hardship to the County.
41. Equal or Equivalent: A phrase used to indicate the acceptability of products of similar or superior function.
42. Equipment: Personal property of a durable nature which retains its identity throughout its useful life.
43. Evaluation Committee: A committee which advises and assists in proposal evaluation and award of contract, usually employed for high technology procurements and the purchase of services.
44. Evaluation Criteria: Those criteria set forth in the Request for Proposal (RFP) and used by the evaluation committee to score and rank proposers who respond to the procurement solicitation.
45. Express Warranty: Any affirmation of fact or promise made by a seller to a buyer which relates to the goods and becomes part of the basis of the bargain.
46. Firm Bid: A bid that binds the bidder until a stipulated time of expiration of the bid.
47. Fixed Assets: All tangible property costing \$5,000 or more per item, including tax, delivery and installation, with a useful life expectancy exceeding one year.
48. Fixed Price Contract: A contract which provides for a firm price under which the contractor bears the full responsibility for profit or loss.

49. Force Account: Use of internal (County) labor.
50. Formal Advertising: The placement of a notice in a newspaper or other publication according to legal requirements to inform the public that the government is requesting bids on a specific purchase it intends to make.
51. Formal Bid Process: The competitive bid process requiring a public bid opening with the date, time and location set forth in the bid solicitation.
52. Gratuity: A payment, loan, subscription, advance deposit of monies, services or anything of more than nominal value presented or promised for consideration of a purchasing decision or recommendation.
53. Guarantee: To warrant, stand behind, or ensure performance or quality, e.g., a supplier in relation to his product.
54. Human Services: Services which maintain or improve the social, economic, physical, or mental well-being of persons for whom the County bears such a responsibility.
55. Incremental Contracting: Contracting in small segments to avoid competitive bid requirements or Board of Supervisors approval.
56. Indemnification: Protection against incurred loss, damage, or hurt, usually by monetary compensation.
57. Informal Bid: An unsealed competitive offer conveyed by letter, telephone, telegram, or other means and under conditions different from those required for formal bidding.
58. Insurance: A contract between a certified insurance firm and the County which provides for a monetary payment in the event of loss, accident, or death; also, a contract between a contractor for the County working on County property and an insurance firm, naming the County as an additional insured, for the purpose of reimbursing the County for any loss incurred due to the nature of the work being performed by the contractor.
59. Invitation for Bid (IFB)s: The solicitation document used for competitive sealed bidding for the purchase of equipment, materials, supplies, services, and construction, for which clear specifications can be written.
60. Lead Time: The period of time from date of order to date of delivery during which the buyer must reasonably allow the vendor to prepare goods for shipment; the period of time needed to process purchase requisitions for bid/proposal solicitation and award of contract.
61. Liquidated Damages: Liquidated damages clauses are enforceable if: (1) damages are difficult to ascertain or estimate at the time the contract is formed; and (2) the amount is a reasonable forecast of compensatory damages in the case of breach. Specifically, if the liquidated damages amount significantly exceeds the amount of damages prospectively probable, the liquidated damages clause may not be enforceable. Thus, liquidated damage clauses may be included in service contracts when the County could suffer financial loss due to delays in performance. Consistent with legal requirements, the amount of damages listed in the contract must be a "reasonable forecast" of the County's actual damages.
62. Modification: A written order signed by the County Purchasing Agent or Deputy County Purchasing Agent, directing the contractor to make changes to the original contract.

63. Multi-Agency Contracts: Those contracts issued by the County Purchasing Agent or agency/department Deputy County Purchasing Agents for the purchase of goods and services, which may be used by more than one agency/department of the County under the condition that the agency/department is named on the contract as an authorized user.
64. Negotiation: The discussion or correspondence between the County and the preferred contractor in order to develop a contract with terms and conditions that serve the best interests of the County.
65. One-Time Purchases: Purchases for particular goods or services which cover a particular need. These types of purchases are distinguished from annual or blanket contracts which cover a continuing need of an item or service.
66. Performance Surety: See Bid Surety.
67. Petty Cash: Funds set aside as a cash reserve in a revolving fund for single expenditures under \$1,000 each made within established policies and controls.
68. Pre-Bid/Pre-Proposal Conference: A meeting set up between the County parties issuing a bid/proposal solicitation and the potential bidders/proposers for the purpose of clarifying the bid/proposal solicitation and answering any questions the bidders/proposers may have.
69. Prequalification: A process used prior to solicitation of bids to determine if potential bidders have the ability to fulfill the contract requirements for which the solicitation will be issued and/or to determine if the potential bidders' products will meet the cost and performance criteria required to meet the County's needs.
70. Procurement Appeals Board: A body comprised of County agency/department senior management and a member of the public chaired by the County Purchasing Agent for the purpose of hearing vendor protests to a specific County procurement process.
71. Proposal: The executed document submitted by a proposer in response to a Request for Proposal (RFP). A proposal includes a detailed description of the goods or services to be provided to the County per the scope of work included in the Request for Proposal (RFP), including, but not limited to cost, time frame for completion of work or delivery of goods, and method of accomplishment of services.
72. Proposer Interviews: Sessions conducted by the proposal evaluation committee for the purpose of interviewing proposers who submitted acceptable proposals within competitive range for clarification to assure full understanding of and responsiveness to the solicitation requirements.
73. Proprietary Product: An item or service that must meet particular restrictive specifications, but may be available from multiple sources.
74. Public Works Contracts: An agreement for the erection, construction, alteration, repair, or improvement of any public structure, building or road, or other public improvement of any kind. (See Public Contract Code §1101)
75. Purchasing Council: A committee of County employees appointed by agency/department heads and chaired by the County Purchasing Agent to discuss purchasing issues and make recommendations regarding County-wide purchasing policies.
76. Rejection of Bid(s): The non-acceptance of submitted bid(s).
77. Request for Qualifications (RFQ): The document which describes the project or services required and solicits qualifications from potential vendors or contractors for purposes of evaluating those

- qualifications for screening purposes or for award of contract. (Used predominately for architect-engineer contracts.)
78. Request For Proposal (RFP) (RFP): The solicitation document which includes a scope of work and terms and conditions used to secure proposals for services or goods not clearly defined by the County in terms of exact specifications or manner of delivery of services or where price is not the sole selection criteria.
 79. Responsible Bidder: A bidder who has the capability in all respects to perform in full the contract requirements and who has the integrity and reliability which will assure good faith performance.
 80. Responsive Bidder: A bidder whose bid conforms in all material respects to the terms and conditions, the specifications and other requirements of the solicitation.
 81. Services: The furnishing of labor, time or effort by a contractor involving the delivery of a specific performance.
 82. Sole Source: An award for a commodity or service to the only known capable supplier, occasioned by the unique nature of the requirement, the supplier, or market conditions.
 83. Sole Source Justification: A document submitted by agency/department staff to the agency/department head for approval to contract with a particular party without competitive bidding.
 84. Solicitation: A **good faith** effort to obtain a bid or proposal for the provision of goods or services.
 85. Specifications: A description of what the purchaser seeks to buy, and consequently, what a bidder/proposer must be responsive to in order to be considered for award of a contract.
 86. Standard: A characteristic or set of characteristics for an item that, for reasons of performance level, compatibility or interchangeability with other products, etc., is generally accepted by producers and by users of the item as a required characteristic of all items for the designed purpose.
 87. Steering Committee: A committee which assists in contract administration usually in a management or consulting contract.
 88. Subcontractor: Any person undertaking part of the work under the terms of the contract, by virtue of an agreement with the contractor.
 89. Supplier: An actual or potential contractor; a vendor.
 90. Surplus Property: Inventory not needed by the owning agency/department or by other agencies/ departments at the present time or in the foreseeable future.
 91. Terms and Conditions: A general reference applied to the provisions under which bids/proposals must be submitted and which are applicable to most purchase contracts.
 92. Terms of Payment: Methods and timelines by which the County must render payment under a purchase contract.
 93. Using Agency: Any body of the County which utilizes any supplies, services or construction procured by the County Purchasing Agent or by a Deputy County Purchasing Agent.

94. Value Analysis: An organized effort to analyze the function(s) of products, systems specifications and standards, and practices and procedures, intended to satisfy the required function(s) in the most economical manner.
95. Vendors List: See Bidders List.
96. Waiver of Bid(s): A process authorized by law or rule whereby the County Purchasing Agent or Deputy County Purchasing Agents may procure items without competitive bidding procedures because of unique circumstances related to a particular need or procurement.
97. Waiver of Mistake or Informality: The act of disregarding errors or technical nonconformities in the bid/proposal which do not go to the substance of the bid/proposal and will not adversely affect the competition between bidders/proposers.
98. Warranty: A representation of utility, condition, and durability made by a bidder or proposer for a product offered.
99. Lobbyist: Any person who receives compensation of \$500.00 or more in any calendar month for engaging in lobbying activities or is employed by his or her employer and receives compensation of \$500.00 or more in any calendar month for engaging in lobbying activities, as defined in Article 5 Sec. 1-1-80 of the Orange County Codified Ordinances.