

ORANGE COUNTY BOARD OF SUPERVISORS

A g e n d a R e v i s i o n s a n d S u p p l e m e n t a l s

Note: *This supplemental agenda is updated daily showing items that have been added, continued, deleted or modified. No new supplemental items will be added to the agenda following close of business on Friday immediately prior to a Board meeting.*

November 7, 2023

DISCUSSION

11. **County Executive Office** - Approve grant applications/awards submitted by *Health Care Agency and Social Services Agency* in 11/7/23 grant report and other actions as recommended; *adopt resolution authorizing Health Care Agency Director or designee to submit application to Department of Resources Recycling and Recovery for Waste Tire Enforcement Grant 31st Cycle and execute related documents; and adopt resolution authorizing Social Services Agency Director or designee to apply, accept, execute application, amendments and deliver any related documents for Housing Navigation and Maintenance Program Round 2 (\$601,841), Transitional Housing Program Round 5 (\$1,085,580) and THP - Plus Housing Supplement Program Round 3 (\$199,077) from California Department of Housing and Community Development; and making related findings* - All Districts

THE FOLLOWING AGENDA ITEMS HAVE HAD CHANGES TO THEIR RECOMMENDED ACTIONS SINCE RELEASE OF THE AGENDA TO THE PUBLIC:

Item: 11

S u p p l e m e n t a l I t e m (s)

- S12A. **OC Community Resources** - Approve Memorandum of Understanding (MOU) between County of Orange, CalOptima Health, and Jamboree Housing Corporation for CalOptima Health pilot program for residents of supportive housing developments; and authorize Director or designee to execute MOU - Districts 1 and 4 (Continued from 10/31/23, Item 12)
- S12B. Continued to 12/5/23, 9:30 a.m.
Supervisor Chaffee and Supervisor Sarmiento - Adopt resolution opposing any unilateral action by Kaiser Permanente's attempt to reduce mental health therapists' Patient Management Time (PMT) (Continued from 10/31/23, Item S23A)
- S12C. **County Executive Office** - Approve 2024 Contract Policy Manual, effective 1/1/24; and adopt resolution authorizing OC Public Works Director, Sheriff-Coroner or those qualified County officials or department designees to advertise bids in manner set forth in Public Contract Section 22037 for performance of public projects described in Public Contract Code Section 22032(c) - All Districts (Continued from 10/31/23, Item 23)
- S12D. **County Executive Office** - Approve and adopt 2023-2026 Memorandum of Understanding (MOU) with American Federation of State, County and Municipal Employees Council 36, Local 2076, AFL-CIO, 6/30/23 - 6/25/26; and authorize County Executive Officer or designee to execute MOU - All Districts
- S12E. **Supervisor Chaffee** – Approve addition of Adopt-a-Family Holiday campaign event to County Events Calendar; and make related findings per government Code Section 26227

ORANGE COUNTY BOARD OF SUPERVISORS

A g e n d a R e v i s i o n s a n d S u p p l e m e n t a l s

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- S12F. **Chairman Wagner** – Approve addition of Veteran and Military events to County Events Calendar; and make related findings per government Code Section 26227
- S12G. **County Counsel** – Approve retroactive agreement with Baker & McKenzie LLP for legal services, effective 10/25/23 - All Districts
- S12H. **John Wayne Airport** - Authorize Director to require a mandatory withdrawal of seat capacity during 2023 Plan Year to ensure continued compliance with 11.8 million annual passenger limitation, consistent with requirements set forth in Section 6, Phase 2 Commercial Airline Access Plan and Regulation – District 5
- SCS2. **County Counsel** - CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION Pursuant to Government Code Section 54956.9(d)(1):
Name of Case: Orange County Flood Control District v. JRJ Ranch, L.P., et al., San Bernardino Superior Court Case No. CIVSB2026475
- SCS3. **County Counsel** - CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION Pursuant to Government Code Section 54956.9(d)(1):
Name of Case: County of Orange and Orange County Flood Control District vs. Southern California Edison and T Mobile, Orange County Superior Court Case No. 30-2023-01353934
- SCS4. **County Counsel** - CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION - INITIATION OF LITIGATION pursuant to Government Code Section 54956.9(d)(4):
Number of Cases: One Case
- SCS5. **County Counsel** - CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION Pursuant to Government Code Section 54956.9(d)(1):
Name of Case: In re Bed Bath and Beyond, Inc., U.S. Bankruptcy Court, District of New Jersey Case No. 23-13359 (VFP)
- SCS6. **County Counsel** - CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION - SIGNIFICANT EXPOSURE TO LITIGATION pursuant to Government Code section 54956.9(d)(2):
Number of Cases: One Case
- SCS7. **County Counsel** - CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION - INITIATION OF LITIGATION pursuant to Government Code section 54956.9(d)(4):
Number of Cases: One Case



AGENDA STAFF REPORT

ASR Control 23-000437

MEETING DATE: 11/07/23
LEGAL ENTITY TAKING ACTION: Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S): All Districts
SUBMITTING AGENCY/DEPARTMENT: County Executive Office (Approved)
DEPARTMENT CONTACT PERSON(S): Peter DeMarco (714) 834-5777
 Julie Bechtol (714) 834-2009

SUBJECT: Grant Applications/Awards Report

CEO CONCUR Concur	COUNTY COUNSEL REVIEW Approved Resolution to Form	CLERK OF THE BOARD Discussion 3 Votes Board Majority
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Budgeted: N/A **Current Year Cost:** N/A **Annual Cost:** N/A

Staffing Impact: No **# of Positions:** **Sole Source:** N/A

Current Fiscal Year Revenue: N/A

Funding Source: N/A

County Audit in last 3 years: No

Levine Act Review Completed: N/A

Prior Board Action: N/A

RECOMMENDED ACTION(S):

Approve grant applications/awards as proposed and other actions as recommended.

1.	Approve Grant Application – Health Care Agency – Support and Scale Up of HIV Prevention Services in Sexual Health Clinics – \$5,000,000
2.	Approve Grant Application and Adopt Resolution – Health Care Agency – Waste Tire Enforcement – \$300,000
3.	Approve Grant Award – Health Care Agency – Maternal Child and Adolescent Health/Black Infant Health (BIH) – \$961,605.18
4.	Approve Grant Application and Award and Adopt Resolution – Social Services Agency – Housing Navigation and Maintenance Program, Transitional Housing Program and Transitional Housing Program Plus Housing Supplement Program – \$1,886,498
5.	Receive and File Grants Report.

SUMMARY:

See the attached Grants Report.

BACKGROUND INFORMATION:

See the attached Grants Report.

FINANCIAL IMPACT:

N/A

STAFFING IMPACT:

N/A

ATTACHMENT(S):

Attachment A - Grants Report

Attachment B - Waste Tire Resolution

Attachment B - Housing Programs Resolution



Grants Report

DRAFT

County Executive Office/Legislative Affairs

November 07, 2023
Item No: 11**County of Orange Report on Grant Applications/Awards**

The Grants Report is a condensed list of grant requests by County Agencies/Departments that allows the Board of Supervisors to discuss and approve grant submittals in one motion at a Board meeting. County policy dictates that the Board of Supervisors must approve all grant applications prior to submittal to the grantor. This applies to grants of all amounts, as well as to new grants and those that have been received by the County for many years as part of an ongoing grant. Receipt of grants \$50,000 or less is delegated to the County Executive Officer. Grant awards greater than \$50,000 must be presented to the Board of Supervisors for receipt of funds. This report allows for better tracking of county grant requests, the success rate of our grants, and monitoring of County's grants activities. It also serves to inform Orange County's Sacramento and Washington, D.C. advocates of County grant activities involving the State or Federal Governments.

On November 7, 2023, the Board of Supervisors will consider the following actions:

RECOMMENDED ACTIONS

Approve grant applications/awards as proposed and other actions as recommended.

ACTION ITEMS:

1. Approve Grant Application – Health Care Agency – Support and Scale Up of HIV Prevention Services in Sexual Health Clinics – \$5,000,000
2. Approve Grant Application and Adopt Resolution – Health Care Agency – Waste Tire Enforcement – \$300,000
3. Approve Grant Award – Health Care Agency – Maternal Child and Adolescent Health/Black Infant Health (BIH) – \$961,605.18
4. Approve Grant Application and Award and Adopt Resolution – Social Services Agency – Housing Navigation and Maintenance Program, Transitional Housing Program and Transitional Housing Program Plus Housing Supplement Program – \$1,886,498
5. Receive and File Grants Report.

If you or your staff have any questions or require additional information on any of the items in this report, please contact Julie Bechtol at 714-834-2009.



CEO-Legislative Affairs Office Grant Authorization eForm

Attachment A

☒ GRANT APPLICATION / ☐ GRANT AWARD

Today's Date:	October 30, 2023
Requesting Agency/Department:	Health Care Agency (HCA)
Grant Name and Project Title:	Support and Scale Up of HIV Prevention Services in Sexual Health Clinics Grant Opportunity – Component C
Sponsoring Organization/Grant Source: (If the grant source is not a government entity, please provide a brief description of the organization/foundation)	Department of Health and Human Services Centers for Disease Control
Application Amount Requested:	\$5,000,000 (\$1,000,000 Annually)
Application Due Date:	January 15, 2024
Board Date when Board Approved this Application:	N/A
Awarded Funding Amount:	N/A
Notification Date of Funding Award:	N/A
Is this an Authorized Retroactive Grant Application/Award? No (If yes, attach memo to CEO)	
Recurrence of Grant	New <input type="checkbox"/> Recurrent <input type="checkbox"/> Other <input checked="" type="checkbox"/> Explain: Previously a pass through grant with California Department of Public Health
If this is a recurring grant, please list the funding amount applied for and awarded in the past:	N/A
Does this grant require CEQA findings?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
What Type of Grant is this?	Competitive <input checked="" type="checkbox"/> Other Type <input type="checkbox"/> Explain:
County Match?	Yes <input type="checkbox"/> Amount _____ or _____ % No <input checked="" type="checkbox"/>
How will the County Match be Fulfilled? (Please include the specific budget)	N/A
Will the grant/program create new part or full-time positions?	No
Purpose of Grant Funds:	Provide a summary and brief background of why Board of Supervisors why should accept this grant application/award, and how the grant will be implemented.
The funding will be used to support the Ending the HIV Epidemic in the U.S. (EHE) initiative by scaling up HIV prevention services in sexual health clinics. If awarded, HCA will utilize 17 th Street Testing, Treatment and Care (HIV/STD Clinic) to implement the following three (3) strategies: 1) strengthen clinic infrastructure and improve service delivery to address the syndemic of HIV & STIs, 2) foster strategic partnerships in support of EHE, and 3) conduct specialized evaluation studies on EHE-related clinic activities.	
Board Resolution Required? (Please attach document to eForm)	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Deputy County Counsel Name: (Please list the Deputy County Counsel that approved the Resolution)	
Recommended Action/Special Instructions (Please specify below)	
1. The Health Care Agency requests that the Board of Supervisors authorize HCA to apply for this grant for the term beginning June 1, 2024.	



CEO-Legislative Affairs Office Grant Authorization eForm

Attachment A

2. Authorize the Health Care Agency Director, or designee, to complete any forms needed in the application process. HCA will return to the Board to obtain approval to accept the awarded funds.	
Department Contact:	List the name and contact information (telephone, e-mail) of the staff person to be contacted for further information.
Dr. Regina Chinsio-Kwong rchinsiokwong@ochca.com	
Name of the individual attending the Board Meeting: Debra Baetz Dbaez@ochca.com	List the name of the individual who will be attending the Board Meeting for this Grant Item:



CEO-Legislative Affairs Office Grant Authorization eForm

Attachment A

☒ GRANT APPLICATION / ☐ GRANT AWARD

Today's Date:	October 19, 2023												
Requesting Agency/Department:	Health Care Agency / Environmental Health												
Grant Name and Project Title:	Waste Tire Enforcement – TEA31												
Sponsoring Organization/Grant Source: (If the grant source is not a government entity, please provide a brief description of the organization/foundation)	California Department of Resources Recycling and Recovery (CalRecycle)												
Application Amount Requested:	\$300,000												
Application Due Date:	November 16, 2023												
Board Date when Board Approved this Application:	N/A												
Awarded Funding Amount:	N/A												
Notification Date of Funding Award:	N/A												
Is this an Authorized Retroactive Grant Application/Award? No (If yes, attach memo to CEO)													
Recurrence of Grant	New <input type="checkbox"/> Recurrent <input checked="" type="checkbox"/> Other <input type="checkbox"/> Explain:												
If this is a recurring grant, please list the funding amount applied for and awarded in the past:	<table><tr><td>Applied for annually:</td><td>Awarded:</td></tr><tr><td>TEA26 \$414,428</td><td>\$485,986</td></tr><tr><td>TEA27 \$430,561</td><td>\$430,562</td></tr><tr><td>TEA28 \$430,500</td><td>\$430,500</td></tr><tr><td>TEA29 \$430,500</td><td>\$430,500</td></tr><tr><td>TEA30 \$430,500</td><td>\$409,416</td></tr></table>	Applied for annually:	Awarded:	TEA26 \$414,428	\$485,986	TEA27 \$430,561	\$430,562	TEA28 \$430,500	\$430,500	TEA29 \$430,500	\$430,500	TEA30 \$430,500	\$409,416
Applied for annually:	Awarded:												
TEA26 \$414,428	\$485,986												
TEA27 \$430,561	\$430,562												
TEA28 \$430,500	\$430,500												
TEA29 \$430,500	\$430,500												
TEA30 \$430,500	\$409,416												
Does this grant require CEQA findings?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>												
What Type of Grant is this?	Competitive <input type="checkbox"/> Other Type <input checked="" type="checkbox"/> Explain: Non-competitive State grant to local agencies. Funding from new tire consumer fee.												
County Match?	Yes <input type="checkbox"/> Amount _____ or _____ % No <input checked="" type="checkbox"/>												
How will the County Match be Fulfilled? (Please include the specific budget)	N/A												
Will the grant/program create new part or full-time positions?	No												
Purpose of Grant Funds:	Provide a summary and brief background of why Board of Supervisors why should accept this grant application/award, and how the grant will be implemented.												
CalRecycle offers Tire Enforcement grants to city and county agencies throughout California to investigate illegal tire disposal activities and perform waste tire inspections to ensure compliance with all applicable laws and regulations. By implementing this program at the local level, HCA is providing onsite assistance and guidance to Orange County businesses to comply with State law.													
Board Resolution Required? (Please attach document to eForm)	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>												



CEO-Legislative Affairs Office Grant Authorization eForm

Attachment A

Deputy County Counsel Name: (Please list the Deputy County Counsel that approved the Resolution)	Massoud Shamel
Recommended Action/Special Instructions (Please specify below) CalRecycle recommends that grant applicants consider authorizing resolutions for up to five years. Adopt by resolution: <ol style="list-style-type: none">1. Authorize the Health Care Agency Director or designee, on behalf of the County of Orange, to submit an application to CalRecycle for the Waste Tire Enforcement Grant 31st Cycle2. Authorize the Health Care Agency Director or designee to execute in the name of the County of Orange, all grant documents, including but not limited to, applications, agreements, amendments and requests for payment, necessary to secure grant funds and implement the approved grant project3. Authorize the resolution to be effective for three (3) consecutive cycles from the date of adoption of this resolution	
Department Contact :	List the name and contact information (telephone, e-mail) of the staff person to be contacted for further information.
Regina ChinsioKwong (714) 834-2729 rchinsiokwong@ochca.com	
Name of the individual attending the Board Meeting:	List the name of the individual who will be attending the Board Meeting for this Grant Item:
Debra Baetz (714) 834-5052	

RESOLUTION OF THE BOARD OF SUPERVISORS OF
ORANGE COUNTY, CALIFORNIA
November 7, 2023

WHEREAS, Public Resources Code sections 48000 et seq. authorize the Department of Resources Recycling and Recovery (CalRecycle) to administer various Grant Programs (grants) in furtherance of the State of California's (state) efforts to reduce, recycle and reuse solid waste generated in the state thereby preserving landfill capacity and protecting public health and safety and the environment; and

WHEREAS, in furtherance of this authority CalRecycle is required to establish procedures governing the application, awarding, and management of the grants; and

WHEREAS, CalRecycle grant application procedures require, among other things, an applicant's governing body to declare by resolution certain authorizations related to the administration of CalRecycle grants.

NOW, THEREFORE, BE IT RESOLVED that the Orange County Board of Supervisors authorizes the Health Care Agency Director or designee, on behalf of the County of Orange, to submit an application to CalRecycle for the Waste Tire Enforcement Grant 31st Cycle; and is hereby authorized and empowered to execute in the name of the County of Orange, all grant documents, including but not limited to, applications, agreements, amendments and requests for payment, necessary to secure grant funds and implement the approved grant project; and

BE IT FURTHER RESOLVED that these authorizations are effective for three (3) consecutive annual cycles from the date of adoption of this resolution.



CEO-Legislative Affairs Office Grant Authorization eForm

Attachment A

☐ GRANT APPLICATION / ☒ GRANT AWARD

Today's Date:	10/25/2023
Requesting Agency/Department:	Health Care Agency
Grant Name and Project Title:	Maternal Child and Adolescent Health/ Black Infant Health (BIH)
Sponsoring Organization/Grant Source: (If the grant source is not a government entity, please provide a brief description of the organization/foundation)	California Department of Public Health: Maternal Child and Adolescent Health Division
Application Amount Requested:	N/A
Application Due Date:	N/A
Board Date when Board Approved this Application:	9/12/2023
Awarded Funding Amount:	\$961,605.18
Notification Date of Funding Award:	10/25/23
Is this an Authorized Retroactive Grant Application/Award? No (If yes, attach memo to CEO)	
Recurrence of Grant	New <input checked="" type="checkbox"/> Recurrent <input type="checkbox"/> Other <input type="checkbox"/>
If this is a recurring grant, please list the funding amount applied for and awarded in the past:	This is a new funding amount for Black Infant Health program under Maternal Child and Adolescent Health Program.
Does this grant require CEQA findings?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
What Type of Grant is this?	Competitive <input type="checkbox"/> Other Type <input checked="" type="checkbox"/> Explain: Allocation
County Match?	Yes <input checked="" type="checkbox"/> Amount: \$57,605.16 or _____ % No <input type="checkbox"/>
How will the County Match be Fulfilled? (Please include the specific budget)	The application amount includes the Federal Title XIX dollars. The agency budgeted realignment funds are used for Title XIX match.
Will the grant/program create new part or full-time positions?	No. The Division will re-allocate existing position numbers to place one FTE to serve as a BIH Coordinator (SPHN) and one FTE for a Public Health Nurse.
Purpose of Grant Funds:	Provide a summary and brief background on why the Board of Supervisors should accept this grant application/award, and how the grant will be implemented.
The California Department of Public Health's Maternal, Child and Adolescent Health (MCAH) Division receives funding from the state budget and from the federal government to disburse to local health-related entities and others to promote better health of all mothers and children in California. Orange County is eligible to receive this award to serve Black families based on estimated number of pregnant/birthing mothers who identify as Black. The Black Infant Health Program is a program under the Maternal Child and Adolescent Health Branch. Goals of the program include ensure women are healthy before, during and after pregnancy, ensure all infants are born healthy and thrive in their first year of life, and reduce infant mortality with a focus on reducing disparities.	
Board Resolution Required? (Please attach document to eForm)	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Deputy County Counsel Name: (Please list the Deputy County Counsel that approved the Resolution)	
Recommended Action/Special Instructions (Please specify below)	



CEO-Legislative Affairs Office Grant Authorization eForm

Attachment A

The Health Care Agency requests that the Board of Supervisors:

- 1) Authorize the Health Care Agency Director, or designee, on behalf of the Board of Supervisors to accept the grant funds.
- 2) Authorize the Health Care Agency Director, or designee, to sign related grant documents, and any amendments thereof, that do not change the amount by more than 10% of the original amount and/or make immaterial changes to the scope of work.

Department Contact :

List the name and contact information (telephone, e-mail) of the staff person to be contacted for further information.

Dr. Regina ChinsioKwong rchinsiokwong@ochca.com

Name of the individual attending the Board Meeting:

List the name of the individual who will be attending the Board Meeting for this Grant Item:

Debra Baetz



CEO-Legislative Affairs Office Grant Authorization eForm

Attachment A

☒ GRANT APPLICATION / ☒ GRANT AWARD

Today's Date:	November 7, 2023
Requesting Agency/Department:	Social Services Agency
Grant Name and Project Title:	Housing Navigation and Maintenance Program (HNMP) Round 2, Transitional Housing Program (THP) Round 5, and Transitional Housing Program-Plus Housing Supplement Program (THPSUP) Round 3
Sponsoring Organization/Grant Source: (If the grant source is not a government entity, please provide a brief description of the organization/foundation)	State of California Department of Housing & Community Development (HCD)
Application Amount Requested:	HNMP at \$601,841 THP at \$1,085,580 THPSUP at \$199,077
Application Due Date:	November 17, 2023
Board Date when Board Approved this Application:	N/A
Awarded Funding Amount:	HNMP at \$601,841 THP at \$1,085,580 <u>THPSUP at \$199,077</u> Total \$1,886,498
Notification Date of Funding Award:	October 19, 2023
Is this an Authorized Retroactive Grant Application/Award? No (If yes, attach memo to CEO)	
Recurrence of Grant	New <input type="checkbox"/> Recurrent <input checked="" type="checkbox"/> Other <input type="checkbox"/> Explain:
If this is a recurring grant, please list the funding amount applied for and awarded in the past:	HNMP: \$564,687 (applied for 11-29-2022, award letter issued 02-28-2023) THP: \$1,089,291 (applied for 11-29-2022, award letter issued 02-28-2023) THPSUP: \$199,077 (applied for 11-29-2022, award letter issued 02-28-2023)
Does this grant require CEQA findings?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
What Type of Grant is this?	Competitive <input type="checkbox"/> Other Type <input checked="" type="checkbox"/> Explain: Noncompetitive allocated funds.
County Match?	Yes <input type="checkbox"/> Amount _____ or _____ % No <input checked="" type="checkbox"/>
How will the County Match be Fulfilled? (Please include the specific budget)	N/A
Will the grant/program create new part or full-time positions?	No
Purpose of Grant Funds:	Provide a summary and brief background of why Board of Supervisors why should accept this grant application/award, and how the grant will be implemented.
Pursuant to items 2240-102-0001 and 2240-103-0001 of section 2.00 of the Budget Act of 2023 (Chapter 12 of the Statutes of 2023) and Chapters 11.7, 11.8, and 11.9 (commencing with Section 50811) of Part 2 of Division 31 of the Health and Safety Code (HSC), the Department of Housing and Community Development (HCD) is allocating funding to counties for the HNMP, THP and THPSUP programs.	



HNMP

HNMP will support housing navigators to help young adults 18 years and up to 24 years of age, inclusive, secure and maintain housing, with priority given to young adults currently or formerly in the foster care system. The formula allocation is based on each county's percentage of the total statewide number of young adults 17 through 21 years of age in the foster care and probation system.

Use of the funds may include, but is not limited to:

- 1) Assist eligible young adults secure and maintain housing;
- 2) Provide housing case management which includes essential services in emergency supports to foster youth;
- 3) Prevent young adults from becoming homeless; and
- 4) Improve coordination of services and linkages to key resources across the community including those from within the child welfare system and the local Continuum of Care.

THP

THP will help young adults 18 to 24 years of age, inclusive, secure and maintain housing, with priority given to young adults formerly in the foster care or probation systems. The THP allocation is based on each county's percentage of the total statewide number of young adults 18 through 20 years of age in foster care and homeless unaccompanied young adults (ages 18 through 24).

Use of funds may include, but is not limited to:

- 1) Identify and assist housing services for this population in Orange County;
- 2) Assist this population to secure and maintain housing;
- 3) Improve coordination of services and linkages to community resources within the child welfare system and the local Continuum of Care; and
- 4) Provide engagement in outreach and targeting to serve those with the most severe needs.

THPSUP

THPSUP is designated for use by county child welfare services agencies under the THP-Plus Housing Supplement Program. A county shall be eligible to receive funding if the fair market rent for a two-bedroom apartment in the county is one of the 11 most expensive in the state during the 2022-2023 federal fiscal year.

Use of the funds may include, but is not limited to:

- 1) Payment of a monthly rate to THP-Plus providers, that is no less than \$2,882 per youth per month or the rate paid per youth per month on July 1, 2021, whichever is greater;
- 2) Maintaining the bed capacity for THP-Plus that the county contracted for as of July 1, 2021; and
- 3) Maintaining funding for THP-Plus at the amount listed for the county in County Fiscal Letter No. 11/12-18.

Board Resolution Required?

(Please attach document to eForm)

Yes ☒

No ☐

Deputy County Counsel Name:

(Please list the Deputy County Counsel that approved the Resolution)

Carolyn Frost

Recommended Action/Special Instructions

(Please specify below)

1. Authorize the Social Services Agency Director or designee to apply for and accept the Housing Navigation and Maintenance Program Round 2 allocation in the amount of \$601,841, and to execute any agreement or documents necessary to receive and administer the funds, including augmentations up to an additional \$601,841.
2. Authorize the Social Services Agency Director or designee to apply for and accept the Transitional Housing Program Round 5 allocation in the amount of \$1,085,580, and to execute any agreement or documents necessary to receive and administer the funds, including augmentations up to an additional \$1,085,580.
3. Authorize the Social Services Agency Director or designee to apply for and accept the Transitional Housing Program-Plus Housing Supplement Program Round 3 allocation in the amount of \$199,077, and to execute any agreement or documents necessary to receive and administer the funds, including augmentations up to an additional \$199,077.



CEO-Legislative Affairs Office Grant Authorization eForm

Attachment A

4. Adopt the attached resolution as approved by County Counsel.	
Department Contact :	List the name and contact information (telephone, e-mail) of the staff person to be contacted for further information.
An Tran, (714) 541-7708, An.Tran@ssa.ocgov.com	
Name of the individual attending the Board Meeting:	List the name of the individual who will be attending the Board Meeting for this Grant Item:
An Tran	

RESOLUTION OF THE BOARD OF SUPERVISORS OF
ORANGE COUNTY, CALIFORNIA
November 7, 2023

WHEREAS, the State of California, Department of Housing and Community Development issued an Allocation Acceptance form, dated October 19, 2023 under Round 5 of the Transitional Housing Program (“THP”), authorized by item 2240-102-0001 of section 2.00 of the Budget Act of 2023 (Chapter 12 of the Statutes of 2023) and Chapter 11.7 (commencing with Section 50807) of Part 2 of Division 31 of the Health and Safety Code (the “THP Allocation Acceptance Form”); and

WHEREAS, the State of California, Department of Housing and Community Development issued an Allocation Acceptance form, dated October 19, 2023 under Round 2 of the Housing Navigation and Maintenance Program (“HNMP”) authorized by Item 2240-103-0001 of Section 2.00 of the Budget Act of 2023 (Chapter 12 of the Statutes of 2023) and Chapter 11.8 (commencing with Section 50811) of Part 2 of Division 31 of the Health and Safety Code (the “HNMP Allocation Acceptance Form”); and

WHEREAS, the State of California, Department of Housing and Community Development issued an Allocation Acceptance Form, dated October 19, 2023 under the Transitional Housing Program-Plus Housing Supplement Program (“THPSUP”) authorized by item 2240-102-0001 of Section 2.00 of the Budget Act of 2023 (Chapter 12 of the Statutes of 2023) and Chapter 11.9 (commencing with Section 50820) of Part 2 of Division 31 of the Health and Safety Code (the “THPSUP Allocation Acceptance Form”).

WHEREAS, the THP Allocation Acceptance Form, the HNMP Allocation Acceptance Form, and the THPSUP Allocation Acceptance Form are collectively referred to as the “Allocation Acceptance Forms”; and

WHEREAS, the Allocation Acceptance Forms relate to the availability of the funds under the THP, HNMP and THPSUP Programs; and

WHEREAS, the County of Orange is listed as an eligible applicant in the Allocation Acceptance Forms, dated October 19, 2023.

NOW, THEREFORE, BE IT RESOLVED that that the Board of Supervisors for the County of Orange (“County”) does hereby determine and declare as follows:

1. That the County is hereby authorized and directed to apply for and accept the County’s allocation award in the amount not to exceed \$1,085,580, as detailed and authorized in the THP Allocation Acceptance Form at the time this resolution is executed and authorized.
2. That the County hereby affirms that if THP funds remain available for allocation after the deadline for submitting a signed Allocation Acceptance Form, and if the State of California, Department of Housing and Community Development advises the County that the County is eligible for an additional allocation from the remaining funds for the THP program, the County is hereby authorized and directed to accept this additional allocation of funds (“Additional THP Allocation”) up to the amount authorized by the Department but not to exceed \$2,171,160.
3. That the County is hereby authorized and directed to apply for and accept the County’s allocation award in the amount not to exceed \$601,841, as detailed and authorized in the HNMP Allocation Acceptance Form at the time this resolution is executed and authorized.
4. That the County hereby affirms that if HNMP funds remain available for allocation after the deadline for submitting a signed Allocation Acceptance Form, and if the State of

California, Department of Housing and Community Development advises the County that the County is eligible for an additional allocation from the remaining funds for the HNMP program, the County is hereby authorized and directed to accept this additional allocation of funds (“Additional HNMP Allocation”) up to the amount authorized by the Department but not to exceed \$1,203,682.

5. That the County is hereby authorized and directed to apply for and accept the County’s allocation award in the amount not to exceed \$199,077, as detailed and authorized in the THPSUP Allocation Acceptance Form at the time this resolution is executed and authorized.

6. That the County hereby affirms that if THPSUP funds remain available for allocation after the deadline for submitting a signed Allocation Acceptance Form, and if the State of California, Department of Housing and Community Development advises the County that the County is eligible for an additional allocation from the remaining funds for the THPSUP program, the County is hereby authorized and directed to accept this additional allocation of funds (“Additional THPSUP Allocation”) up to the amount authorized by Department but not to exceed \$398,154.

7. That the Director of the County of Orange Social Services Agency, or designee, is hereby authorized and directed to act on behalf of the County in connection with the THP, HNMP, or THPSUP Allocation Award and any Additional THP, HNMP, or THPSUP Allocation, and to enter into, execute, and deliver any and all documents required or deemed necessary or appropriate to participate in the THP, HNMP, or THPSUP program, including but not limited to a Standard Agreement, be awarded the THP, HNMP, or THPSUP Allocation Award, and any Additional THP, HNMP, or

THPSUP Allocation, and any amendments to such documents (collectively, the “Allocation Award Documents”).

8. That the County shall be subject to the terms and conditions that are specified in the THP, HNMP and THPSUP Allocation Award Documents, and that the County will use the THP, HNMP, and THPSUP Allocation Award funds, and any Additional THP, HNMP, and THPSUP Allocation funds, in accordance with the Allocation Acceptance Forms, the THP, HNMP, and THPSUP Allocation Award Documents, and any subsequent amendments or amendment thereto, as well as any and all other THP, HNMP, and THPSUP requirements, or other applicable laws.

9. That the County has the discretion to accept any or all of the THP, HNMP, and THPSUP program funds it has been awarded.

PASSED AND ADOPTED this _____ [Insert Numerical Day] day of _____ [Insert Month], 20____ [Insert Year, Preceded by 20], by the following vote:

AYES _____ [Insert Number of Ayes]

NOES _____ [Insert Number of Noes]

ABSTENTIONS _____ [Insert Number of Abstentions]

ABSENT _____ [Insert Number Absent]

By: _____

[Below Signature Line Insert Printed Name And Title]

of Chairman of Board of Supervisors or Clerk of Board]

STATE OF CALIFORNIA

County of [_____]

I, [_____], County Clerk of the County of [_____], State of California,

hereby certify the above and foregoing to be a full, true and correct copy of a resolution adopted

by the County Board of Supervisors on this _____ [Insert Numerical Day] day of _____

[Insert Month], 20____ [Insert Year, Preceded by 20]

[Insert Printed name of County Clerk Here]


Clerk of the County of [_____], State of California

By: _____

[Insert Printed Name and Title]



Continuation or Deletion Request

Date: 10/30/23
To: Clerk of the Board of Supervisors
From: Dylan Wright, Director, OC Community Resources 
Re: ASR Control #: 23-000796, Meeting Date 10/31/23 Agenda Item No. # 12
Subject: Approve Memorandum of Understanding for CalOptima Health Pilot Program

☒ Request to continue Agenda Item No. # 12 to the 11/7/23 Board Meeting.

Comments:

☐ Request deletion of Agenda Item No. # _____

Comments:



AGENDA STAFF REPORT

ASR Control 23-000796

MEETING DATE: 10/31/23
LEGAL ENTITY TAKING ACTION: Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S): 1, 4
SUBMITTING AGENCY/DEPARTMENT: OC Community Resources (Approved)
DEPARTMENT CONTACT PERSON(S): Dylan Wright (714) 480-2788
Julia Bidwell (714) 480-2991

SUBJECT: Approve Memorandum of Understanding for CalOptima Health Pilot Program

CEO CONCUR Concur	COUNTY COUNSEL REVIEW Approved Agreement to Form	CLERK OF THE BOARD Discussion 3 Votes Board Majority
-----------------------------	------------------------------------------------------------	-------------------------------------------------------------------

Budgeted: N/A **Current Year Cost:** N/A **Annual Cost:** N/A

Staffing Impact: No **# of Positions:** **Sole Source:** N/A

Current Fiscal Year Revenue: N/A

Funding Source: N/A **County Audit in last 3 years:** No

Levine Act Review Completed: Yes

Prior Board Action: 12/20/2022 #19, 10/18/2022 S42H

RECOMMENDED ACTION(S):

1. Approve Memorandum of Understanding between County of Orange, CalOptima Health and Jamboree Housing Corporation for CalOptima Health pilot program for residents of supportive housing developments in substantially the form attached, with approval as to form by County Counsel.
2. Authorize the OC Community Resources Director or designee to execute the Memorandum of Understanding, in substantially the form attached, with approval as to form by County Counsel.

SUMMARY:

Approval of the Memorandum of Understanding between the County of Orange, CalOptima Health and Jamboree Housing Corporation will allow implementation of a pilot program that will evaluate the feasibility of using California Advancing and Innovating Medi-Cal reimbursement through CalOptima Health to support California Advancing and Innovating Medi-Cal services for residents of supportive housing developments in Orange County.

BACKGROUND INFORMATION:

On December 20, 2022, your honorable Board of Supervisors (Board) received and filed the 2022 Update to the Housing Funding Strategy (2022 HFS) which outlined the resources needed to develop 2,396 supportive housing units in Orange County by 2029 (based on the need shown in the 2022 Point in Time Count). Beyond funding for the development (i.e., capital) and operating subsidies, the 2022 HFS identified the need for \$350 million of additional funding to provide ongoing services for the supportive housing units developed.

Concurrently, since the COVID-19 pandemic, development costs have increased significantly due to the shortage of materials and skilled labor, inflation and rise of interest loan rates. Many affordable and supportive housing developments in the County's pipeline experienced financing gaps which brought developers back to Cities and to the County to request additional funding.

At the October 18, 2022, Board meeting, in reference to the approval of additional loan commitments for the Riviera Motel development, the Board recommended utilizing and leveraging other funding sources such as CalOptima Health (CalOptima) programs to support operating costs and supportive services, thereby possibly offsetting the capital financing needs of the development. In response to this recommendation, OC Community Resources (OCCR) staff explored the possibility of partnering with CalOptima to fund services at supportive housing developments.

As this initiative stemmed from the Riviera Motel, a Jamboree Housing Corporation (Jamboree) proposed development, OCCR staff and CalOptima discussed the feasibility of a pilot program with Jamboree on a Homekey site or other County-assisted supportive housing developments. In an effort to study the pilot program, OCCR, CalOptima and Jamboree selected three properties to evaluate: Ascent Apartment Homes in the City of Buena Park, Huntington Beach Senior Apartment Homes in the City of Huntington Beach and Tahiti Apartment Homes in the City of Stanton. These three properties are good candidates for evaluating successful implementation of the pilot because they are supportive housing (one is a Homekey development), have County funding commitments, have units not funded through Mental Health Services Act or Veterans Affairs services, have financing gaps or a strained cashflow and are in the first year of the lease-up process at the start of the pilot when stabilization is most critical. OCCR also engaged Corporation for Supportive Housing (CSH), an affordable housing and technical assistance consultant experienced in both supportive and affordable housing services and managed care plans, to provide assistance in developing the pilot.

OCCR is recommending approval of the Memorandum of Understanding between the County, CalOptima and Jamboree to implement a pilot program that is intended to demonstrate and evaluate the feasibility of using California Advancing and Innovating Medi-Cal (CalAIM) reimbursement through CalOptima to provide CalAIM services countywide for residents of supportive housing developments referred through the Coordinated Entry System in Orange County. These CalAIM services refer only to the Community Supports "Housing Tenancy Sustaining Services" pursuant to Department of Health Care Services policy. Housing Tenancy and Sustaining Services provide tenancy and sustaining services based on individualized assessment of needs, with a goal of maintaining safe and stable tenancy once housing is secured. These services may include education and training on roles, rights and responsibilities of tenant and landlord; advocacy and linkage with community resources to prevent eviction when housing is or may potentially become jeopardized; and assistance with benefits advocacy, etc. Currently, similar services are being provided to supportive housing developments and are being paid by the property's operating cashflow.

The pilot program, as designed, will explore CalOptima's ability to make the CalAIM services a presumed support service to tenants, allowing for an ongoing funding commitment to a supportive housing development. The pilot will also document how leveraging this funding will reduce operating costs and allow the development to leverage more debt from a financial side. The potential to increase cashflow and/or ability to leverage more debt can help offset cost increases or overruns that are sending developers back to the County for additional funding and can ensure long-term sustainability and affordability of the supportive housing development. This could also assist in aligning funding resources to then free up existing funding to be utilized to develop additional supportive housing.

For the developments that are part of the pilot program, there is an opportunity to test the pilot on real life projects and explore the lender's sensitivities, concerns, underwriting standards and the appropriate solutions to make the mechanics of this structure realistic and feasible. It could also include the following results: assisting in funding any remaining funding gaps being borne by the developer to complete construction by allowing for an increase in a permanent loan and/or potentially expedited repayment of any existing obligations (e.g., County loans, City loans, deferred developer fee, etc.) by increasing the cashflow to these existing projects. This may include additional cashflow to the County and other soft lenders for expedited repayment of their residual receipts' loans.

The County's commitment to the pilot is to assess, in partnership with Jamboree and CalOptima over a two-year period, the effectiveness of Jamboree in successfully and continuously accessing CalAIM Services to serve the residents at the selected developments; cooperate with Jamboree and CalOptima to assess periodically on a timely basis the effectiveness of the pilot at the selected developments and provide formal feedback as to the satisfactory performance of the pilot in meeting the intent of this agreement; and work with Jamboree to review and respond to proposed changes in existing agreements that may be requested by Jamboree or their lenders and investors to implement the pilot program.

As part of the pilot implementation, an evaluation will be conducted; OCCR, Jamboree and CSH are working together to create that evaluation process and plan. To cover costs for the full scope of work associated with the evaluation plan, Jamboree and CSH intend on seeking and utilizing funding that CalOptima is making available to promote innovation in housing and healthcare. At the time of preparing this Agenda Staff Report, this funding opportunity from CalOptima is anticipated to be released in October 2023 and awarded in early 2024. In the event the full funding request is not awarded, any scope of work not covered by the CalOptima funding opportunity can be funded through OCCR's existing technical assistance contract with CSH. If the pilot program is successful, CalOptima intends on making this program available countywide, and this pilot program may become a statewide model for managed health care plans to fund services in supportive housing developments.

Compliance with CEQA: This action is not a project within the meaning of CEQA Guidelines Section 15378 and is therefore not subject to CEQA, since it does not have the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. The approval of this agenda item does not commit the County to a definite course of action in regard to a project since the approval includes implementation of a pilot program for reimbursement of services for residents of supportive housing developments in Orange County. This proposed activity is therefore not subject to CEQA. Any individual, specific work authorized pursuant to this contract will be reviewed for compliance with CEQA.

FINANCIAL IMPACT:

N/A

STAFFING IMPACT:

N/A

REVIEWING AGENCIES:

Office of Care Coordination

ATTACHMENT(S):

Attachment A - Memorandum of Understanding Between County of Orange, CalOptima Health and Jamboree Housing Corporation

**Memorandum of Understanding
Between
County of Orange
OCCR/OCHCD, CalOptima
Health and
Jamboree Housing Corporation**

General Provisions

This Memorandum of Understanding effective as of _____, 2023 expresses the intentions and goals between County of Orange, OC Community Resources/OC Housing & Community Development ("OCCR/OCHCD"), CalOptima Health ("CalOptima") and Jamboree Housing Corporation, a California nonprofit public benefit corporation ("Jamboree"), for the creation of a pilot program to evaluate the delivery of supportive services for persons exiting homelessness through the Coordinated Entry System using CalAIM-funded services in permanent supportive housing developments.

Intent

This pilot program is intended to demonstrate and evaluate the feasibility of using CalAIM reimbursements for CalAIM services to meet the service needs and obligations to the residents of affordable supportive housing developments and more effectively leveraging other existing sources.

The three projects developed and managed by Jamboree (referred to as "the Developments"), proposed to be used as the pilot study for this evaluation of CalAIM funded services are:

1. Ascent Apartment Homes, Buena Park
2. Huntington Beach Senior Apartment Homes, Huntington Beach
3. Clara Vista (formerly Tahiti Apartment Homes), Stanton

The parties agree the goal is to use scarce resources most efficiently to provide capital and operating subsidies for supportive housing developments. CalAIM services refers only to the Community Supports "Housing Tenancy Sustaining Services."

This document is intended to express the interest and commitment of the parties to evaluate a sustainable services model delivered by Jamboree, as a CalOptima Medi-Cal enrolled CalAIM provider, with the support and agreement of CalOptima and OCCR/OCHCD consistent with all housing finance loan documents, regulatory agreements and other applicable requirements with respect to each Development and all applicable federal Medicaid/Medi-Cal guidelines and California Department of Health Care Services regulatory requirements regarding CalAIM services.

The pilot study articulated by this MOU would benefit residents to be housed in the Developments referenced above and funded in part by OCCR/OCHCD, owned by an affiliate of Jamboree for CalOptima Health members eligible for the CalAIM benefits.

The parties to this MOU agree that it is in the best interests of those persons experiencing homelessness, who are mutually served by the parties, to better align funding resources

where feasible to reduce the subsidy required for this housing type that can then be utilized to develop additional supportive housing.

By Signing this MOU

All Parties agree to:

Meet formally once every 90 days during the term of this MOU commencing on 90 days following the execution of this MOU.

Jamboree agrees to:

1. Assess, in partnership with OCCR/OCHCD and CalOptima over a two-year period, the effectiveness of Jamboree in successfully and continuously accessing CalAIM resources to serve the residents at the Developments.
2. Assist qualified households residing in the Developments on a voluntary basis to enroll as CalOptima Health members and for the CalAIM Services.
3. Use commercially reasonable efforts to ensure that qualified households residing in the Developments are enrolled in CalAIM Services. CalOptima Health members referred for residency in the Developments will be evaluated to ensure they are not also receiving duplicative services funded by No Place Like Home, Mental Health Services Act (services provided through OC Health Care Agency) or Veterans Affairs Supportive Housing, (services provided through the Veterans Administration) or in general, units already receiving services from another agency.

OCCR/OCHCD agrees to:

1. Assess, in partnership with Jamboree and CalOptima over a two-year period, the effectiveness of Jamboree in successfully and continuously accessing CalAIM Services to serve the residents at the Developments.
2. Cooperate with Jamboree and CalOptima to assess periodically on a timely basis the effectiveness of the pilot at the Developments and provide formal feedback as to the satisfactory performance of the pilot in meeting the intent of this agreement.
3. Work in good faith with Jamboree to review and respond to proposed changes in existing agreements that may be requested by Jamboree or their Lenders and Investors to implement the pilot program, so long as the proposed changes are in accordance with adopted County policy and/or Board of Supervisors approval.

CalOptima Health agrees to:

1. Assess, in partnership with OCHCD and Jamboree over a two-year period, the effectiveness of Jamboree in successfully and continuously accessing CalAIM Services to serve the residents at the Developments.

2. Jointly commit to continuously reviewing the success at reaching 100% of eligible enrollments in CalAIM Services at the Developments.
3. Demonstrate a flexible and adaptable approach to ensuring, within the limits of federal and state law and Medi-Cal regulatory requirements, to assist in the effective implementation of this pilot.
4. Adopt a presumption of eligibility for CalAIM services, to be articulated in a separate document, for those persons/households referred to these pilot sites for residency. The intent of this pilot is to evaluate the feasibility of the adoption of a lifetime eligibility for the identified CalAIM services as long as the CalOptima Health member remains housed in Permanent Supportive Housing.

TERM and EXPIRATION

This MOU shall be effective as of the date of signature and shall continue thereafter until two years from the date of signature. Prior to the expiration of this agreement two years from date of signature the agreement will continue until, upon notification of any party to this agreement, with 30 days written notice the agreement may be terminated.

AGREED AND ACCEPTED:

COUNTY OF ORANGE

OC Community Resources/OC Housing & Community Development

By: _____ Date: _____, 2023

Name:

Title:

APPROVED AS TO FORM
COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA

Jacqueline
By Guzman

Deputy

Digitally signed by Jacqueline Guzman
DN: cn=Jacqueline Guzman, o=County of
Orange, ou=Office of the County Counsel,
email=Jacqueline.guzman@coco.ocgov.com
, c=US
Date: 2023.09.21 10:41:37 -07'00'

CalOptima Health

DocuSigned by:
Michael Hunn
By: _____ Date: October 10, 2023
Name: Michael Hunn
Title: CEO

**Jamboree Housing Corporation,
a California nonprofit public benefit
corporation**

By: _____ Date: _____, 2023
Name:
Title:


CalOptima Health

By: _____ Date: _____, 2023

Name:

Title:

**Jamboree Housing Corporation,
a California nonprofit public benefit
corporation**

By:  _____ Date: October 10, 2023

Name:

Title: Michael Massie

Chief Development Officer

MOU for OCCR-CalOptima-Jamboree Pilot (FINAL) coco signed

Final Audit Report

2023-10-10

Created:	2023-10-09
By:	Brian Miles Garibay (bgaribay@jamboreehousing.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAXsptJgkH_HEUu2mSSOv0TPZMJiGGZk-y

"MOU for OCCR-CalOptima-Jamboree Pilot (FINAL) coco signed" History

 Document digitally presigned by Jacqueline Guzman (jacqueline.guzman@coco.ocgov.com)


2023-09-21 - 5:41:37 PM GMT

 Document created by Brian Miles Garibay (bgaribay@jamboreehousing.com)


2023-10-09 - 4:32:15 PM GMT

 Document emailed to Michael Massie (mmassie@jamboreehousing.com) for signature

2023-10-09 - 4:33:02 PM GMT

 Email viewed by Michael Massie (mmassie@jamboreehousing.com)

2023-10-10 - 6:56:41 PM GMT

 Document e-signed by Michael Massie (mmassie@jamboreehousing.com)

Signature Date: 2023-10-10 - 6:57:19 PM GMT - Time Source: server

 Agreement completed.

2023-10-10 - 6:57:19 PM GMT



BOARD OF SUPERVISORS

MEMORANDUM

11/2/23

To: Clerk of the Board

From: Supervisor Doug Chaffee, Fourth District
Supervisor Vicente Sarmiento, Second District

Subject: Request to continue Supplemental Agenda Item No. # S12B to the 12/05/23 Board meeting.

Doug Chaffee
Vicente Sarmiento

Supervisor Doug Chaffee and Supervisor Vicente Sarmiento respectfully request the Clerk of the Board to continue Agenda Item No. S12B – the resolution to “Oppose Kaiser Permanente’s attempt to reduce mental health therapists’ Patient Management Time (PMT)” to the 12/05/23 Board meeting.

RECEIVED
2023 NOV -2 AM 11:07
CLERK OF THE BOARD
COUNTY OF ORANGE
BOARD OF SUPERVISORS

From: [Victoria L Scafuto](#)
To: [COB_Response](#)
Cc: ichairez@nuhw.org
Subject: Support Kaiser workers in OC
Date: Wednesday, November 01, 2023 11:55:29 AM
Attachments: [ACTION KIT_Support Kaiser Workers in OC Oct 31.pdf](#)

Correspondence
Bd. 11/7/23, Item S12B

Attention: This email originated from outside the County of Orange. Use caution when opening attachments or links.

Victoria Scafuto, M.A. LCSW

She, Her, Hers
Psychiatric Social Worker

Kaiser Permanente

Behavioral Health – Euclid Medical Office

1188 N. Euclid Street, 5th Floor
Anaheim, CA. 92801

(714) 644-6480 (office)
8-230-1852

Victoria.L.Scafuto@kp.org

kp.org/thrive

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Thank you.



FR: Izeah Chairez, NUHW Organizer, (714) 363-7056
TO: Interested Allies
RE: OC Board of Supervisors Kaiser Permanente Resolution
Date: Thursday, October 26, 2023

Urgent Ask: Join OC Board of Supervisors, Tuesday, Oct 31 at 9:00 AM to support NUHW Kaiser members

NUHW urges community members and allies who support improving Kaiser Permanente's behavioral health care services to **join the Orange County Board of Supervisors Meeting on Tuesday, October 31st at 9:30 AM**. The Board of Supervisors will consider Item S23A. introduced by Supervisor Chaffee and Supervisor Sarmiento: a "resolution opposing any unilateral action by Kaiser Permanente's attempt to reduce mental health therapists' Patient Management Time (PMT)."

Date of Vote:

Tuesday, October 31, 2023

Order of Business:

9:00 A.M. Presentations

9:30 A.M. Regular Business

Address:

Board Hearing Room, First Floor
400 W. Civic Center Drive
Santa Ana, California

You can find additional details on the resolution below.

Kaiser Patient Management Time Sample Letter

If you cannot join in person, consider sending a letter to the board. Please submit **by 5:00 PM Monday, Oct 30**.

[Agenda Link here.](#)

[Resolution linked here.](#)

Email Letter to: response@ocgov.com

CC: ichairez@nuhw.org

Subject: Item 23A SUPPORT for Resolution on Kaiser Permanente PMT

Dear Orange County Board of Supervisors,

I am writing this letter to voice SUPPORT for item 23A in your agenda. Kaiser Permanente mental health clinicians in Southern California deserve to have the same amount of time as their



counterparts in Northern California, to do crucial back end work including calling social services agencies, working with parents of young patients, and general patient care planning.

As a resident of XX, I urge a YES vote on this matter. Thank you,

XX [Victoria Scafuto, LCSW](#)

Additional Background:

When more than 2,000 Kaiser Permanente mental health therapists in Northern California went on strike last year, their top priority was to secure more time to perform critical patient care duties such as responding to patient emails and voicemails, communicating with social service agencies, tailoring treatment plans, preparing for appointments and doing required paperwork.

Burnout from the lack of what Kaiser calls “Patient Management Time” was the biggest reason why therapists were leaving Kaiser in droves and leaving patients waiting months for therapy appointments in violation of state law. It took 10 weeks on the picket line, but Kaiser officials in Northern California finally agreed to significantly increase Patient Management Time to about 6.5 hours per week.

However, in Southern California, Kaiser management is actually threatening to reduce Patient Management Time — to just two hours per week in most areas. This would make it much harder for Kaiser to retain its therapists, forcing patients to wait even longer between therapy appointments.

It would also make it harder for Kaiser to comply with SB 221, the law NUHW sponsored in 2021 requiring all health plans to provide follow-up therapy appointments within 10 business days unless the treating therapist determines that a longer wait would not be detrimental.

Not only is Kaiser in Southern California already failing to comply with the law, it’s pressuring therapists not to advocate for patients who need to be seen within the 10-business day timeline. Currently, Kaiser is requiring Southern California therapists to fill out extensive paperwork for patients who need to be seen frequently, and managers are challenging their clinical judgment and pressuring them to make additional time in their already packed schedules for returning patients.

It’s easy to think of Kaiser as a one-size-fits-all behemoth, but when it comes to mental health care, Kaiser is treating its therapists and patients far worse in Southern California than in Northern California. Our members in Southern California are ready to fight for their patients, and they are seeking your support.

Elected allies who have voiced support for this issue:



Supervisor Doug Chaffee
Supervisor Vince Sarmiento
Supervisor Katrina Foley

Congresswoman Katie Porter
State Senator Josh Newman
State Senator Dave Min
State Senator Scott Wiener
State Senator Richard Roth
State Assemblymember Sharon Quirk Silva
State Assemblymember Avelino Valencia
State Assemblymember Cottie Petrie-Norris
State Assemblymember Sabrina Cervantes
State Assemblymember Corey Jackson
State Assemblymember Juan Carrillo
State Assemblymember James C. Ramos
State Assemblymember Eloise Gomez Reyes
State Assemblymember Freddie Rodriguez

Lopez, Maria [COB]

From: Annette Puga <Annette.X.Puga@kp.org>
Sent: Monday, October 30, 2023 5:22 PM
To: COB_Response
Cc: ichairez@nuhw.org
Subject: Subject: Item 23A SUPPORT for Resolution on Kaiser Permanente PMT Dear Orange County Board of Supervisors,

Attention: This email originated from outside the County of Orange. Use caution when opening attachments or links.

Dear Orange County Board of Supervisors,

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Thank you,

Annette Puga, LCSW

NOTICE TO RECIPIENT: If you are not the intended recipient of this e-mail, you are prohibited from sharing, copying, or otherwise using or disclosing its contents. If you have received this e-mail in error, please notify the sender immediately by reply e-mail and permanently delete this e-mail and any attachments without reading, forwarding or saving them. v.173.295 Thank you.

Ross, Jamie

From: Jean J Lee <Jean.J.Lee@kp.org>
Sent: Monday, October 30, 2023 2:19 PM
To: COB_Response
Cc: ichairez@nuhw.org
Subject: Item 23A SUPPORT for Resolution on Kaiser Permanente PMT
Attachments: ACTION KIT_ Support Kaiser Workers in OC Oct 31.pdf

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As a resident of Orange County, I urge a YES vote on this matter. Thank you,

Bitna Jean Lee

NOTICE TO RECIPIENT: If you are not the intended recipient of this e-mail, you are prohibited from sharing, copying, or otherwise using or disclosing its contents. If you have received this e-mail in error, please notify the sender immediately by reply e-mail and permanently delete this e-mail and any attachments without reading, forwarding or saving them. v.173.295 Thank you.



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Date of Vote:

Tuesday, October 31, 2023

Order of Business:

9:00 A.M. Presentations

9:30 A.M. Regular Business

Address:

Board Hearing Room, First Floor
400 W. Civic Center Drive
Santa Ana, California

You can find additional details on the resolution below.

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[Agenda Link here.](#)

[Resolution linked here.](#)

Email Letter to: response@ocgov.com

CC: ichairez@nuhw.org

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XX

Additional Background:

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However, in Southern California, Kaiser management is actually threatening to reduce Patient Management Time — to just two hours per week in most areas. This would make it much harder for Kaiser to retain its therapists, forcing patients to wait even longer between therapy appointments.

It would also make it harder for Kaiser to comply with SB 221, the law NUHW sponsored in 2021 requiring all health plans to provide follow-up therapy appointments within 10 business days unless the treating therapist determines that a longer wait would not be detrimental.

Not only is Kaiser in Southern California already failing to comply with the law, it’s pressuring therapists not to advocate for patients who need to be seen within the 10-business day timeline. Currently, Kaiser is requiring Southern California therapists to fill out extensive paperwork for patients who need to be seen frequently, and managers are challenging their clinical judgment and pressuring them to make additional time in their already packed schedules for returning patients.

It’s easy to think of Kaiser as a one-size-fits-all behemoth, but when it comes to mental health care, Kaiser is treating its therapists and patients far worse in Southern California than in Northern California. Our members in Southern California are ready to fight for their patients, and they are seeking your support.

Elected allies who have voiced support for this issue:



Supervisor Doug Chaffee
Supervisor Vince Sarmiento
Supervisor Katrina Foley

Congresswoman Katie Porter
State Senator Josh Newman
State Senator Dave Min
State Senator Scott Wiener
State Senator Richard Roth
State Assemblymember Sharon Quirk Silva
State Assemblymember Avelino Valencia
State Assemblymember Cottie Petrie-Norris
State Assemblymember Sabrina Cervantes
State Assemblymember Corey Jackson
State Assemblymember Juan Carrillo
State Assemblymember James C. Ramos
State Assemblymember Eloise Gomez Reyes
State Assemblymember Freddie Rodriguez



BOARD OF SUPERVISORS

MEMORANDUM

2023 OCT 30 PM 2:35

CLERK OF THE BOARD
COUNTY OF ORANGE
BOARD OF SUPERVISORS

10/30/23

To: Clerk of the Board

From: Supervisor Doug Chaffee, Fourth District
Supervisor Vicente Sarmiento, Second District

Doug Chaffee
Vicente Sarmiento

Subject: Request to continue Supplemental Agenda Item No. # S23A to the 11/07/23 Board meeting.

Supervisor Doug Chaffee and Supervisor Vicente Sarmiento respectfully request the Clerk of the Board to continue Agenda Item No. S 23A – the resolution to “Oppose Kaiser Permanente’s attempt to reduce mental health therapists’ Patient Management Time (PMT)” to the 11/07/23 Board meeting.



BOARD OF SUPERVISORS

MEMORANDUM

2023 OCT 24 PM 4: 32

CLERK OF THE BOARD
COUNTY OF ORANGE
BOARD OF SUPERVISORS

10/24/23

To: Clerk of the Board

From: Supervisor Doug Chaffee, Fourth District
Supervisor Vicente Sarmiento, Second District

Subject: Supplemental Agenda Resolution Item for October 31, 2023 Board of Supervisors Meeting – Resolution to Oppose Kaiser Permanente’s Attempt to Reduce Mental Health Therapists’ Patient Management Time (PMT)

[Signature]

Doug Chaffee

S23A

Supervisor Doug Chaffee and Supervisor Vicente Sarmiento respectfully request the Clerk of the Board to add a resolution item to the agenda for the October 31 Board of Supervisors meeting to “Oppose Kaiser Permanente’s attempt to reduce mental health therapists’ Patient Management Time (PMT).”

Resolution to “Oppose Kaiser Permanente’s Attempt to Reduce Mental Health Therapists’ Patient Management Time”

By the authority of the Orange County Board of Supervisors, the following resolution is hereby issued:

WHEREAS, Kaiser Permanente is one of the largest private providers of mental health care for Orange County residents, as well as County employees and their families; and

WHEREAS, the California Health Care Foundation reported that nearly 1 in 7 California adults experiences a mental illness, and the American Academy of Child and American Academy of Pediatrics declared a national emergency over a “shocking” rise in families seeking urgent mental help; and

WHEREAS, quality mental healthcare requires that therapists have sufficient time to chart appointments, communicate with social service agencies, or respond to patient correspondence known as Patient Management Time (PMT); and

WHEREAS, Northern Californian therapists at Kaiser Permanente are given seven hours per week for PMT, and current therapists in Orange County are permitted just three hours to perform the same duties; and

WHEREAS, Kaiser management in Orange County is proposing to raise the permitted PMT to only four hours for therapists who have unrealistically low appointment cancellation rates; and

WHEREAS, outside of Orange County, Kaiser Permanente is seeking to unilaterally cut the amount of permitted PMT for therapists to as few as two hours per week, which will make it increasingly difficult for Kaiser to comply with SB 221, requiring all health plans to provide follow-up therapy appointments within 10 business days unless the treating therapist determines that a longer wait would not be detrimental; and

WHEREAS, a reduction in protected PMT hours will worsen the equity gap in care that Kaiser Permanente mental healthcare patients in Southern California receive compared to Kaiser Permanente patients in Northern California; and

WHEREAS, non-English proficient speakers who require additional follow-up communication and patients who are children will be most impacted by the reduction in PMT, as their therapists need additional time to communicate with parents, teachers, and social workers; and

WHEREAS, Kaiser Permanente is increasing health plan rates by 10 percent or more for patients in Orange County; and

WHEREAS, on October 12, 2023, Kaiser Permanente entered into a \$200-million settlement agreement with the California Department of Managed Health Care (DMHC), that includes paying a \$50-million fine and pledging \$150-million over 5 years to improve its behavioral healthcare services and promises to improve documentation of its patients’ medical record; and

NOW, THEREFORE, BE IT RESOLVED that the Orange County Board of Supervisors opposes any unilateral action by Kaiser Permanente that reduces the amount of PMT time for therapists and calls for Kaiser Permanente to provide therapists in Southern California with the same amount of protected PMT that therapists in Northern California receive.

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ANGELA M. LAI
Assistant Chief Counsel, Bar Number 237616
LICIA M. MARSHALL
Attorney IV, Bar Number 265826
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CALIFORNIA DEPARTMENT OF
MANAGED HEALTH CARE
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Attorneys for the Department of Managed Health Care

BEFORE THE DEPARTMENT OF MANAGED HEALTH CARE
OF THE STATE OF CALIFORNIA

In the Matter of the Investigation of:
Kaiser Foundation Health Plan, Inc.,
Respondent.

Enforcement Matter Number: 22-469;
2022 Non-Routine Survey 933-0055

SETTLEMENT AGREEMENT

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled Enforcement Matters that the following matters are true:

PARTIES

The parties to this Settlement Agreement and Order of the Director of the Department of Managed Health Care (“Settlement Agreement”) are:

1. Sonia R. Fernandes (“Complainant”) is the Deputy Director and Chief Counsel of the DEPARTMENT OF MANAGED HEALTH CARE’s (“Department”) Office of Enforcement. Pursuant to Government Code section 11180 et seq., the Department’s Director has delegated to Complainant the powers and authority to conduct the Department’s investigations and enforcement matters. The enforcement investigations referred to herein were brought solely in Complainant’s official capacity.

2. Kaiser Foundation Health Plan, Inc., (“Plan”) was issued license number 933 0055 to operate a health care service plan on or about November 4, 1977. The Plan is represented in this matter by Sheppard, Mullin, Richter & Hampton, LLP.

3. The Department and the Plan are each referred to herein as a “Party,” and collectively, as the “Parties.”

ACTIONS

4. On May 16, 2022, the Department issued a notice, referenced as “License #933-0055,” to the Plan of the Department’s intent to conduct a non-routine survey of the Plan pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (the “Knox-Keene Act”), and regulations promulgated thereunder¹ (Health & Saf. Code, § 1382; Cal. Code Regs., tit. 28, § 1300.82.1) (the “2022 Non-Routine Survey”).

5. On August 12, 2022, the Department initiated Enforcement Matter 22-469, titled In the Matter of the Investigation and Examination of: Kaiser Foundation Health Plan, Inc. (the “Enforcement Investigation”).

6. The Parties desire to fully and finally resolve the 2022 Non-Routine Survey and the Enforcement Investigation, the terms and conditions of which are fully set forth in detail in this Settlement Agreement. The Department’s investigation in connection with the 2022 Non-Routine Survey is ongoing. Notwithstanding, the Parties agree that this Settlement Agreement will resolve these matters, including penalties and any possible future enforcement referral that may arise related to deficiencies identified by the Department in the 2022 Non-Routine Survey Final Report, where the violation occurred prior to the date this Settlement Agreement is executed by all Parties.

ADVISEMENTS AND WAIVERS

7. The Plan has carefully read, fully discussed with counsel, and understands the

¹ The Knox-Keene Act is codified at Health and Safety Code section 1340 et seq. All references to “Section” are to the Health and Safety Code unless otherwise indicated. The regulations promulgated from the Knox-Keene Act are codified at Title 28 of the California Code of Regulations section 1000 et seq. All references to “Rule” are to Title 28 of the California Code of Regulations unless otherwise indicated.

effects of this Settlement Agreement.

8. The Plan is fully aware of its legal rights in this matter, including the right to a hearing on any potential accusation related to the Enforcement Investigation and 2022 Non-Routine Survey findings; the right to be represented by counsel at its own expense; the right to confront and cross-examine the witnesses against it; the right to present evidence and testimony on its behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; the right to require the Department to meet its burden of proof to establish all elements of any violations charged at an administrative or other hearing; and, all other rights accorded by the California Administrative Procedure Act and other applicable laws.

9. Except as provided herein, by entering into this Settlement Agreement, the Plan voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above with respect to the Enforcement Investigation and 2022 Non-Routine Survey.

10. The Plan acknowledges that this Settlement Agreement will be posted on the Department's public website and will be public record. For work product created under this Settlement Agreement that is submitted to the Department, including portions of the Corrective Action Work Plan, the Plan may request confidential treatment pursuant to California Code of Regulations, title 28, section 1007, subdivision (a).

11. The Plan acknowledges that the Department's investigation in connection with the 2022 Non-Routine Survey is ongoing, and no Preliminary Report has been issued at the time of the Settlement Agreement. The Plan further acknowledges that the Department shall issue a Non-Routine Final Report upon completion of the 2022 Non-Routine Survey.

12. The Plan acknowledges that the Department may, as permitted by law, take into consideration deficiencies found by the 2022 Non-Routine Survey and/or documented in the 2022 Non-Routine Survey Final Report when assessing future administrative or other penalties under Section 1386 and Rule 1300.86.

13. The Parties agree that if the Plan discovers that it is in breach of any of its

obligations under this Settlement Agreement, it will promptly notify the Department in writing of the breach and what actions the Plan has taken or will undertake to cure the breach.

14. The Settlement Agreement may not be altered, amended, or otherwise changed or modified, except as provided herein or in writing signed by both of the Parties.

15. For purposes of construction, the language of the Settlement Agreement is to be construed broadly with respect to the nature and scope of the Department's oversight of the Plan and the Plan's obligations under the Settlement Agreement.

BACKGROUND AND HISTORY

16. The Plan is a full-service health care service plan licensed to operate in the State of California. As of December 31, 2022, the Plan had 9,056,931 enrollees in 32 of the 58 counties in California, making it the largest health care service plan by enrollees in the State. As of December 31, 2022, the Plan reported a total year revenue of \$91,367,748,000, tangible net equity of \$58,380,824,000, and cash equivalents of \$717,781,000.

17. The Plan provides medical and hospital services to its enrollees in California through Kaiser Foundation Hospitals, Inc., ("KFH") and two medical groups, The Permanente Medical Group, Inc. and Southern California Permanente Medical Group (each a "Medical Group" and together the "Medical Groups"), that cover the Northern California market and the Southern California market, respectively. The Plan's long history of coordinated care has, and continues to, provide significant benefits to its enrollees. However, the Department has repeatedly cited the Plan for deficiencies in its oversight of the Medical Groups. While the Plan has not delegated its quality oversight obligations to the Medical Groups, the Plan has failed to clearly define the Medical Groups' roles related to the provision of behavioral health services and there is a lack of role clarity between the Plan and the Medical Groups. In part because of this lack of role clarity, the Plan has exercised inconsistent oversight over the Medical Groups and has not always intervened when necessary to ensure compliance. It is the Department's observation that the close coordination between the Plan and the Medical Groups contributes to the Plan's inconsistent oversight of the Medical Groups. To address these and other issues

1 identified by the Department, the Plan must, among other requirements, have continuous
2 access to data, have full transparency to assess performance, and be fully engaged to take
3 action or intervene where necessary to ensure compliance. However, the Plan is ultimately
4 responsible for ensuring that compliant medical and behavioral health care services are
5 provided to Plan enrollees.

6 18. Since 2006, the Department has brought several enforcement actions against the
7 Plan for failure to consistently oversee the Medical Groups and ensure quality assurance
8 compliance relating to the provision of medical and, most significantly, behavioral health care
9 services. A history of these enforcement actions includes the following:

10 19. In March of 2006, the Department's Non-Routine Survey of the Plan's provision
11 of renal transplant and related services to Plan enrollees at the renal transplant center at KFH
12 – San Francisco (the "Transplant Center") and the Plan's oversight of the Transplant Center
13 and The Permanente Medical Group, identified the Plan's deficiencies in the following areas:
14 1) Failure to provide oversight of the Medical Group in the administration of its kidney
15 transplant program; 2) Failure to ensure that the Medical Group had sufficient administrative
16 capacity to transfer enrollees from externally contracted kidney transplant centers into the
17 medical group's kidney transplant program; 3) Failure to ensure that the Medical Group
18 consistently provided timely accessibility to medically required specialists in its kidney
19 transplant program; 4) Failure to ensure that the Medical Group utilized a formal system for
20 handling and processing member grievances; and 5) Failure to ensure that specialty services
21 related to kidney transplantation were provided in a manner providing continuity of care and
22 ready referral of patients. In response to these findings, the Plan instituted corrective actions to
23 address the issues identified related to the Plan's kidney transplant program.

24 20. On August 9, 2006, the Plan entered into a Consent Agreement where the Plan
25 agreed to pay a penalty of \$2 million and make a charitable donation of \$3 million for the
26 benefit of Donate Life California via the Eastbay Community Foundation. The Plan also agreed
27 to ensure continuity of care for patients and ensure ready access to medical services for
28

1 enrollees.

2 21. In 2007, the Department's 2006 Non-Routine Medical Survey pertaining to the
3 Plan's quality oversight program, identified the Plan's deficiencies in the following areas: 1)
4 Failure to establish a program to monitor and evaluate the care provided by each contracting
5 provider group to ensure the care provided meets professionally recognized standards of
6 practice; 2) Failure to inform each delegate of the scope of that delegate's Quality Assurance
7 ("QA") responsibilities and how it will be monitored by the Plan or have ongoing oversight
8 procedures in place to ensure that delegates are fulfilling all delegated QA responsibilities; 3)
9 Failure to ensure QA reports to the Plan's governing body from quality committees, to which it
10 delegates QA responsibilities, are sufficiently detailed to include findings and actions taken as
11 a result of the QA program and to identify those internal or contracting provider components
12 that the QA program has identified as presenting significant or chronic quality of care issues; 4)
13 Peer Review system is not designed to ensure the level of care meets professional recognized
14 standards of practice and not effective to identify and correct deficiencies in care; and 5) QA
15 system is not designed to ensure a level of care meeting professionally recognized standards
16 of practice is delivered to all enrollees and not effective to identify and correct deficiencies in
17 care.

18 22. On July 30, 2007, the Plan entered into a Consent Agreement where the Plan
19 agreed to pay a penalty of \$2 million and implement a corrective action plan which included
20 changes to the Plan's reporting process to allow the Plan to better monitor the health care
21 delivery system at the medical center level, implementation of a Peer Review Performance
22 Project and regular audits of the Plan's medical centers to ensure a uniform set of peer review
23 standards and consistency throughout the clinical departments, correction of Potential Quality
24 Issues (PQI), and implementation of program changes at the facility level.

25 23. In 2013, the Department's 2012 Routine Survey identified deficiencies related to
26 the ability of the Plan to provide enrollees with timely access to mental health appointments.
27 Specifically, the Plan: (1) failed to accurately measure behavioral health appointments based
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1 in part on some medical centers and facilities ability to customize the Plan's Patient
2 Appointment Registration Reporting System (PARRS) beyond established Plan policies and
3 procedures; (2) failed to monitor appointment wait times, hindering the Plan's ability to detect
4 patterns of non-compliant wait times and leading to inaccurate compliance reports; (3) failed to
5 resolve access deficiencies through its QA Program and instead shifting responsibility onto the
6 medical center and/or the medical group's clinical and administrative management to establish
7 and implement corrective actions; and (4) failed to provide accurate and understandable
8 effective behavioral health education services.

9 24. On June 24, 2013, the Department filed an Accusation and a Cease and Desist
10 Order based on the deficiencies identified in the 2013 Routine Survey Final Report, seeking an
11 administrative penalty of \$4 million. In September of 2014, the Plan agreed to pay an
12 administrative penalty of \$4 million.

13 25. In 2015, the Department's Follow-Up Survey identified two uncorrected
14 deficiencies. Specifically, the Plan's Behavioral Health Quality Assurance Program failed to
15 ensure that effective corrective action was taken when deficiencies were identified, and the
16 Plan failed to provide accurate and understandable behavioral health benefit and coverage
17 education services for its members. In July of 2017, the Plan agreed to implement an
18 extensive corrective action plan to address and correct the identified deficiencies in the Plan's
19 behavioral health program ("2017 Agreement"). The corrective action plan focused on several
20 areas, including, but not limited to, improved documentation of the Plan's quality improvement
21 efforts for access compliance, improved monitoring of follow-up appointment access and
22 adherence to enrollees' treatment plans uniformly applied across both regions, and improved
23 integration of external contracted provider access data and oversight. The Plan represented to
24 the Department that the corrective action plan and associated deliverables under the 2017
25 Agreement were completed as of July 18, 2020.

26 26. The Department's current Enforcement Investigation has confirmed that certain
27 challenges by the Plan related to quality assurance, including monitoring, supervision, and
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oversight of the Medical Groups continue to persist. These challenges have contributed to several of the issues addressed in this Settlement Agreement including maintenance of adequate provider networks and effective and functional quality assurance programs. While the Plan has worked to address these issues, despite multiple enforcement actions, and comprehensive corrective action plans, the Plan's shortfalls have continued and have impacted the Plan's ability to ensure adequate and timely access to behavioral health services to its enrollees.

2022 NON-ROUTINE SURVEY AND ENFORCEMENT INVESTIGATION
OF THE PLAN'S BEHAVIORAL HEALTH SERVICES

27. Acknowledging that the Plan was managing unprecedented statewide need for behavioral health services exacerbated by the impacts of the pandemic, on May 16, 2022, the Department issued notice to the Plan that the Department would commence a non-routine survey ("2022 Non-Routine Survey") in part, based on complaints received from enrollees, providers, and other stakeholders concerning the Plan's behavioral health operations. The 2022 Non-Routine Survey examined the Plan's Northern and Southern California behavioral health operations including, but not limited to, the Plan's internal and external contracted provider networks, timely access to care, processes for intake and follow-up appointments, appointment scheduling processes, levels of care and associated decision-making processes, medical record documentation and retention practices, and monitoring of urgent appointments. The Department conducted the onsite and virtual portions of the 2022 Non-Routine Survey on November 7-9, 2022, and November 14-15, 2022.

28. On August 15, 2022, approximately 2,000 licensed non-physician behavioral health clinician members of the National Union of Health Care Workers ("NUHW") began a labor strike in the Plan's Northern California region (the "NUHW Strike"). The strike which took place at a time of increased statewide need for behavioral health care, exacerbated the Plan's challenges in connection with the provision of behavioral health care services. On August 12, 2022, the Department initiated the Enforcement Investigation in advance of the NUHW Strike.

As part of the Enforcement Investigation, the Department conducted virtual interviews with Plan and Medical Group personnel on September 13-15, 2022. Additionally, the Department's Office of Enforcement engaged in document discovery and review of Plan documents and enrollee medical records. Given the scope of the strike and the heightened demand in the State, the Plan expected certain difficulties in meeting its enrollees' behavioral health care needs during the strike.

29. In summary, while the Plan was managing unprecedented statewide need for behavioral health services exacerbated by the pandemic and the NUHW strike, the Department's investigation identified deficiencies in the Plan's provision of behavioral health care services, many of which have been ongoing. As explained in more detail herein, the Department identified several areas of concern related to the Plan's provision of behavioral health care in Quality Assurance, Delegate and Provider Oversight, Timely Access, Network Adequacy, Grievance and Appeals, Mental Health Parity, and Communications, among others. The Department identified these areas of concern through document and medical records review and a combination of onsite and virtual interviews with Plan and Medical Group staff.

IDENTIFIED AREAS OF CONCERN WITH THE PLAN'S BEHAVIORAL HEALTH CARE SYSTEM

Area No 1: Oversight

(i) Quality Assurance and Delegation Oversight

30. Health care service plans are required to have procedures in place for continuous review of the quality of care, performance of medical personnel, utilization of services and facilities, and costs. (Health & Saf. Code, § 1370.) To meet the Department's requirements for a QA program, the program must, in part, continuously review the quality of care provided to ensure that the level of care meets professionally recognized standards of practice, quality of care problems are identified and corrected, and appropriate care which is consistent with professionally recognized standards of practice is not withheld or delayed for any reason. (Cal. Code Regs., tit. 28, § 1300.70, subd. (b)(1)(A)-(E).) The obligation of the

Plan to comply with the Knox Keene Act, cannot be waived, even if the Plan delegates any services to its Medical Groups. (Health & Saf. Code, § 1367, subd. (j).)

31. Despite several past agreements and corrective actions, including the 2017 Agreement, the Plan has been unable to consistently maintain compliance with Quality Assurance requirements. Specifically, the Plan acknowledges that it is accountable for quality oversight and is required to establish a Quality Assurance Program that continuously reviews and monitors quality of care, performance of medical personnel, utilization of services and facilities, and costs, and that ensures a network that is adequate to timely and appropriately meet enrollees' behavioral health needs. As evidenced in repeated survey findings since 2006 and past enforcement actions, the Plan has not put adequate procedures in place to continuously review and maintain compliance with these requirements.

(ii) **Oversight of Medical Groups and Providers**

32. The Department's investigation, including in connection with the NUHW Strike, confirms that the Plan lacks sufficient access to Medical Group data to ensure transparency and meet its continuous oversight of critical program functions. Specifically, in reference to behavioral health services, the Plan does not have an adequate system for monitoring and evaluating the care provided by the Medical Groups and external contracted providers (in-network providers that are contracted with the Medical Groups and are not directly employed by the Plan or the Medical Groups). Despite requirements that the Plan oversee quality of care, provider performance, and network adequacy, the Plan lacks systems and processes for adequate monitoring of the behavioral health policies and practices implemented by the Medical Groups and external contracted providers. The Plan's responsibility is more than passive monitoring; the Plan has an affirmative, continuous obligation to oversee the quality of its providers and provider network.

33. While the Plan has some processes and procedures in place to review and audit the Medical Groups and external contracted providers, these processes and procedures are not meeting the expected level of continuous oversight (which requires, among

1 other things, sufficient access to performance data as well as procedures to intervene if
2 necessary) to ensure level of care appropriateness, including treatment plan consistency and
3 appropriateness, and if care is being provided in a timely manner consistent with professionally
4 recognized standards. (Cal. Code Regs., tit. 28, § 1300.70, subd. (b)(1)(A)-(E).) In part, the
5 Plan's failure to meet its oversight obligations is exacerbated by limited access to necessary
6 Medical Group data. The Enforcement Investigation's review of enrollee medical records
7 observed a lack of documentation in enrollee charts and treatment plans. The Plan
8 acknowledges its difficulties in implementing effective oversight of the Medical Groups'
9 activities.

10 34. The Plan also lacks sufficient oversight of the external behavioral health
11 contracted providers. As noted above, while the external contracted providers are contracted
12 through the Medical Groups, the Plan has a continuing obligation to oversee these providers.
13 However, the Plan does not have effective processes in place, including for Plan intervention,
14 to ensure that enrollees referred to external contracted providers receive timely access to initial
15 and follow-up care, or that the treatment provided by external contracted providers is
16 compliant. (See Area No. 3(i) (External Contracted Provider Network), pp. 18-20.)

17 (iii) **Oversight of Level of Care Appropriateness**

18 35. All medical necessity determinations by a health care service plan
19 concerning behavioral health services, including service intensity, level of care placement,
20 continued stay, and transfer or discharge of enrollees diagnosed with mental health and
21 substance use disorders shall be conducted in accordance with Health and Safety Code
22 section 1374.721. (Health & Saf. Code, § 1374.72, subd. (a)(7).) Utilization review of all
23 covered behavioral health care services and benefits for the diagnosis, prevention, and
24 treatment of mental health and substance use disorders shall apply the criteria and guidelines
25 set forth in the most recent versions of treatment criteria developed by the nonprofit
26 professional association for the relevant clinical specialty. (Health & Saf. Code, § 1374.721,
27 subd. (b).) When conducting utilization review involving level of care placement decisions or
28

any other patient care decisions that are within the scope of the nonprofit professional association criteria and guidelines, a health care service plan shall not apply different, additional, conflicting, or more restrictive utilization review criteria. (Health & Saf. Code, § 1374.721, subd. (c).) A plan may apply other utilization review criteria or guidelines if the health care service is either outside the scope of the nonprofit professional association criteria and guidelines, or relates to advancements in technology or types of care that are not covered in the most recent versions of the nonprofit professional association criteria and guidelines; however, a plan must still base the criteria on current generally accepted standards of mental health and substance use disorder care. (Health & Saf. Code, §§ 1374.721, subd. (c)(1)-(2); 1374.721, subd. (a).) These requirements apply to health plans and any entity or contracting provider that performs utilization review or utilization management functions on behalf of the health plan. (Health & Saf. Code, § 1374.721, subd. (h).)

36. To ensure proper use of the required criteria by the health plan, and any entity or contracting provider that performs utilization review or utilization management functions on its behalf, a health plan shall, inter alia, track, identify, and analyze how the criteria are used to certify care, deny care, and support the appeals process, conduct interrater reliability (IRR) testing to ensure consistency in utilization review decisions, and run IRR reports about how the clinical guidelines are used in conjunction with the utilization management process and parity compliance activities. (Health & Saf. Code, § 1374.721, subd. (e)(1)-(7).)

37. During the Enforcement Investigation, the Plan represented that it and the Medical Groups, as required by Senate Bill 855, use criteria and guidelines set forth in the most recent versions of treatment criteria developed by the nonprofit professional association for the relevant clinical specialty – specifically, Level of Care Utilization System (LOCUS), Child and Adolescent Level of Care Utilization System/Child and Adolescent Service Intensity Instrument (CALOCUS/CASII), Early Childhood Service Intensity Instrument (ECSII), World Professional Association for Transgender Health (WPATH), National Standards Project-2

(NSP-2), and American Society of Addiction Medicine (ASAM) guidelines – when making clinical determinations in relation to treatment of mental health and substance use disorders, as required by Health and Safety Code section 1374.721. However, the Department's review of 100 behavioral health medical records indicated that none of the medical records documented scores or criteria from the nonprofit professional associations, including LOCUS, CALOCUS, or ASAM. Additionally, the Plan did not provide clinical criteria documentation that would reflect implementation or use of the appropriate clinical criteria. The Department only found the Plan's use of the required clinical criteria in grievance files – analysis which was conducted via email – not copied to or documented in the enrollee's medical record.

38. Instead, the enrollee medical records reviewed by the Department indicate that Medical Group providers are presented with an enrollee's self-assessment BHI score through the Tridium platform. The enrollee medical records also include self-assessment scores from an Adult Outcome Questionnaire (AOQ) and Personal Health Questionnaire (PHQ). Further, the enrollee medical records include scores related to General Anxiety Disorder (GAD) and Alcohol Use Disorder (AUD).

39. While these scores are intended to measure an enrollee's treatment progress and assist in directing care going forward, the application of these scores is inconsistent across the board. Enrollee medical record review indicates that higher acuity scores do not consistently result in higher acuity placement or treatment frequency. Additionally, although the Plan conducts treatment plan audits, the Plan did not provide documentation reflecting that review of the substance of treatment plans was performed to determine the treatment plans' appropriateness for the enrollees' conditions or whether appropriate clinical criteria were utilized in developing the treatment plans. This lack of submitted documentation regarding substantive review of treatment plans further indicates the Plan lacks sufficient oversight of the Medical Groups.

40. Furthermore, the Plan has asserted that it conducts IRR testing to evaluate consistency with providers' application of utilization review criteria. However, the

Plan's IRR policy submitted with the Department in Filing no. 20211027-8 only applies to medical/surgical services. The Plan has not filed an IRR policy that applies to behavioral health services, nor did audit documentation address how IRR review of behavioral health services was to be conducted.

41. Of additional concern, Medical Group clinicians statewide consistently use Microsoft Teams chats and groups to make clinical decisions and determinations on level of care and treatment planning. The Plan's data retention policy for Microsoft Teams chat records states that generally records are deleted after 90 days, though this is subject to exceptions based on various document hold and preservation requirements. These clinical and treatment planning discussions are not consistently copied to the enrollees' medical records. As such, the Plan is not ensuring that the Medical Groups effectively document clinical reviews and determinations, and the Plan is unable to review the decisions for audit purposes necessary to carry out its oversight functions.

Area No. 2: Access

(i) Timely Access and Network Adequacy

42. Health care service plans must ensure that their networks have adequate capacity and availability of licensed providers to offer enrollees appointments for covered services that meet specific timeframes. (Health & Saf. Code, § 1367.03, subd. (a)(5); Cal. Code Regs., tit. 28, § 1300.67.2.2, subd. (c).) The obligation of a health plan to comply with the timely access requirements under Section 1367.03 shall not be waived if the health plan delegates to its provider groups or other contracting entities any services or activities that the health plan is required to perform. (Health & Saf. Code, § 1367.03, subd. (c).)

43. The Plan acknowledges that it lacks sufficient behavioral health providers in its Medical Groups and external contracted provider networks. In an effort to address the deficiencies identified herein, the Plan represented to the Department that it has made significant strides and improvements in expanding its behavioral health network. Nevertheless, this is an area that requires significant review and continued improvement. While the Plan has

1 the ultimate responsibility to ensure network adequacy to provide timely and appropriate
2 behavioral health care services, the Department has observed that the Plan relies in part on
3 the Medical Groups to monitor the Plan's network for sufficient capacity, and has delegated to
4 the Medical Groups the responsibility for contracting with external providers. However, the
5 Plan has not been performing adequate oversight of the process to ensure that the Medical
6 Groups are adequately performing this task. Specifically, the Plan has not continuously
7 reviewed necessary data nor intervened to ensure that the Plan has an adequate network. If
8 the Medical Groups are not performing their obligation to the Plan to ensure that behavioral
9 health care services are reasonably available to Plan enrollees, then the Plan must intervene
10 and take appropriate steps to address this issue. The requirement to maintain adequate
11 networks and ensure timely access is not waivable and rests with the Plan. This lack of clinical
12 staff has resulted in excessive wait times for enrollee individual therapy appointments, and has
13 potentially contributed to a heavy reliance on group therapy, as discussed in paragraph 50
14 below.

15 (ii) **Initiation of Care and Tracking First Appointments**

16 44. When seeking behavioral health care, the Enforcement Investigation
17 documented that the enrollee experience can be unnecessarily complicated and vary
18 significantly based on Plan or Medical Group interaction. Enrollees are provided with several
19 different phone numbers and methods of contact for appointments or to initiate care, and the
20 level of service an enrollee receives is inconsistent depending on which point of contact is
21 used.

22 45. Plan enrollees have complained that they face significant delays and
23 obstacles when seeking behavioral health therapy. These delays and obstacles are due, in
24 part, to the structure of the Plan's behavioral health care intake process, specifically related to
25 its Connect 2 Care program in the Northern California region. For new requests for behavioral
26 health care, enrollees are generally directed through Connect 2 Care after an enrollee has
27 been screened and tracked through the eConsult process that requires a brief clinical review or
28

1 triage of the enrollee's concerns. The Department recognizes that Connect 2 Care program
2 was a well-intentioned and innovative program developed by the Plan's Northern California
3 region in collaboration with NUHW, as well as in consult with the Department in connection
4 with the 2017 Agreement. However, the Plan acknowledges certain challenges with respect to
5 the program require its reevaluation by the Plan.

6 46. Connect 2 Care appointments are generally conducted remotely and the
7 Connect 2 Care clinicians do not become the enrollees' regular treating clinicians, which often
8 results in the enrollees having to explain their behavioral health concerns multiple times to
9 other clinicians. Additionally, the Plan's Northern California region generally performs all intake
10 appointments with only Medical Group providers, prohibiting enrollees from having intake
11 appointments with external contracted providers regardless of excessive appointment wait
12 times.

13 47. Even though the Connect 2 Care clinicians perform an assessment of
14 enrollees and are not the enrollees' treating providers (though in some instances they provide
15 initial care and/or interventions) the Plan has consistently tracked Connect 2 Care intake
16 assessments as appointments for services to satisfy the timely access requirements under
17 Health and Safety Code section 1367.03, subdivision (a)(5)(E) and (F), under the rationale that
18 the Plan believes that the intake process of evaluating a patient and determining the proper
19 treatment plan for the patient is a part of providing appropriate care. However, the Plan cannot
20 confirm that every appointment with a Connect 2 Care clinician results in a treatment plan
21 appropriate for the enrollee's condition, although as mentioned above the Plan conducts
22 treatment plan audits. Further, the Plan does not track the elapsed time between an enrollee's
23 initial request for a behavioral health appointment and the earliest date offered for the
24 appointment for services with a treating provider.

25 (iii) **Follow-up Appointments and Wait Times**

26 48. Beginning July 1, 2022, a health plan must ensure that its contracted
27 provider network has adequate capacity and availability of licensed health care providers to
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1 offer non-urgent appointments with nonphysician behavioral health providers within 10
2 business days of the prior appointment for enrollees in an ongoing course of treatment for an
3 ongoing mental health or substance use disorder condition. (Health & Saf. Code, § 1367.03,
4 subd. (a)(5)(F).) The wait time for an appointment may be extended if the referring or treating
5 licensed health care provider, or the health professional providing triage or screening services,
6 has determined and noted in the medical record that a longer wait time will not have a
7 detrimental impact on the health of the enrollee. (Health & Saf. Code, § 1367.03, subd.
8 (a)(5)(H).)

9 49. At the Department's request, the Plan provided analysis of appointment
10 wait times, which demonstrated that average wait times for non-urgent follow-up behavioral
11 health appointments were longer than prescribed by law. These delays are in part due to the
12 structure of the Plan's behavioral health care processes. The Plan's own analysis determined
13 that in 2021, average non-urgent follow-up appointments for behavioral health therapy were
14 completed within 19 business days of the prior appointment (average across the entire state).
15 In 2022, only 44% of behavioral health therapy non-urgent follow-up individual appointments
16 with internal providers were completed within 10 business days of the prior appointment,
17 whereas 93% of group appointments were completed within 10 business days of a prior
18 appointment. In 2022, average non-urgent follow-up individual appointments for behavioral
19 health therapy were completed within 18.1 business days of the prior appointment. From July
20 1, 2022, when Health and Safety Code section 1367.03, subdivision (a)(5)(F) went into effect,
21 through December 31, 2022, average non-urgent follow-up individual appointments for
22 behavioral health therapy were completed within 21.4 business days of the prior appointment
23 (average across the entire state). During the same time period the average non-urgent follow-
24 up appointment completion time for group therapy was 5 business days from the prior
25 appointment, and from July 1, 2022, through December 31, 2022, the average completion time
26 was 5.9 business days from the prior appointment.

27 50. The Department's review of enrollee medical records indicated a heavy
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1 reliance on outpatient group programs and classes to treat enrollees' behavioral health
2 conditions as opposed to individual therapy or higher levels of care. While outpatient group
3 therapy can be an effective mode of therapy when clinically appropriate, the Department's
4 review of 100 enrollee medical records identified that outpatient group programs and classes
5 were recommended or considered in 70 of the files reviewed. Enrollees have expressed
6 discomfort with receiving treatment primarily in a group setting, and the Enforcement
7 Investigation's review of enrollee medical records indicated that many enrollees chose not to
8 engage in group therapy settings but were not offered alternative treatments or more frequent
9 individual therapy. Further, the majority of the files did not state why an enrollee was referred
10 to a specific group, or whether the recommended group, received in conjunction with any other
11 therapeutic modality, represented a specific level of care consistent with the non-profit criteria
12 guidelines. Moreover, the use of groups and classes potentially obscures the wait times for
13 follow-up appointments if the recommended groups and classes do not actually offer the
14 medically necessary treatment and level of care that are appropriate for each enrollee's mental
15 health or substance use disorder.

16 51. In response to the follow-up appointment standards in Senate Bill 221,
17 effective July 1, 2022, the Plan, through its Medical Groups, implemented policies and
18 procedures, including standardized templates, for providers to use when documenting
19 enrollees' behavioral health appointments to help track follow-up appointments. However,
20 during the period that data was reviewed the Medical Groups had not enforced consistent use
21 of these templates, nor had the Medical Groups required all behavioral health providers to use
22 these templates. In addition, the templates could be altered at the discretion of individual
23 behavioral health providers.

24 **Area No. 3: Network and Referrals**

25 (i) **External Contracted Provider Network**

26 52. As discussed above, the Plan is required to continuously oversee and
27 monitor the external contracted providers to the same extent as the Medical Group providers.
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1 The Plan has not adequately done so and has to a significant extent, instead, relied on the
2 Medical Groups. While the Plan has expanded and improved access to its external contracted
3 network, during the time period covered by the Department's Enforcement Investigation, the
4 Department observed that the Plan's lack of oversight and management of its network has
5 resulted in significant issues relating to initial and follow-up appointments with the Medical
6 Groups' processes of referring enrollees to external contracted providers.

7 53. At the Department's request, the Plan provided data analysis for wait
8 times for follow-up, non-urgent individual behavioral health therapy appointments with external
9 contracted providers. As mentioned above, the Plan's data analysis considered the times
10 between completed appointments, not offered appointments. The Plan's analysis
11 demonstrated that wait times for external contracted providers were better than for
12 appointments with Medical Group providers. According to the Plan, 83% of non-urgent
13 individual behavioral health therapy follow-up appointments with external contracted providers
14 were completed within 10 business days of the prior appointment. The Plan's analysis shows
15 that, in 2022, the average non-urgent individual behavioral health therapy follow-up
16 appointment was completed within 8.2 business days of the prior appointment, and from July
17 1, 2022, through December 31, 2022, was completed within 8.6 business days of the prior
18 appointment (average across the entire state).

19 54. A Clinical Care Pathways document allows Initial Assessment
20 Coordinators (IAC) the option to refer enrollees with moderate (PHQ/GAD scores up to 14) or
21 moderately severe acuity levels (PHQ/GAD scores of 15-19) to external contracted providers
22 through Connect 2 Care. However, the same document does not allow IACs the option to refer
23 enrollees with severe (PHQ/GAD scores above 20) acuity levels to refer directly to external
24 contracted providers through Connect 2 Care. The Plan asserts that PHQ/GAD scores are not
25 dispositive with respect to referrals or treatment.

26 55. The Plan does not directly arrange for enrollee appointments with external
27 contracted providers. Rather, in general, except for external contracted providers who use
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Tridium (below), the external contracted provider contacts the enrollee or, in some cases, the enrollee is required to contact the provider from a list of providers. Further, the Plan, in general, does not have immediate access to data to track whether referrals to all external contracted providers result in appointments and, if so, whether those appointments are timely. While some external contracted providers provide immediate booking data for initial appointments, not all do, and there is currently no Plan requirement that they do.

External Contracted Providers that Use Tridium

56. For some external contracted providers, initial appointments are scheduled through the Tridium system and documented in the KP HealthConnect medical record, which is the centralized medical record system used by the Plan. However, external contracted providers are not required to document clinical or progress notes in the KP HealthConnect medical record. Record of ongoing patient encounters may be documented through Tridium if the external contracted provider performs a progress evaluation through the program. However, if no progress evaluation is performed for an appointment, no documentation of the appointment would immediately appear in the KP HealthConnect medical record.

External Providers referred through Tapestry

57. For enrollees referred to external contracted providers that do not use Tridium, a referral letter is generated through Tapestry. The letter sent to the enrollee includes the name of the external provider network and the contact information for scheduling an appointment. The enrollee, or the external contracted provider, must then schedule an appointment. The Plan does not generally have direct access to the external contracted providers' scheduling systems, although there may be exceptions for specific external contracted providers. As such, a specific provider may show as having appointment availability when the referral is made, but the information the Plan is basing this determination on may be outdated.

1 (ii) **Adequacy of Higher Acuity Treatment Facilities**

2 58. During the Enforcement Investigation, the Department requested data on
3 the contracted Partial Hospitalization Program (PHP) and Residential Treatment Programs
4 (RTC). The Plan provided a list of 78 contracted PHP facilities and 144 contracted RTC
5 facilities. Twelve of the reported PHP facilities were Plan Hospitals. The Plan randomly
6 contacted a sample of the non-Plan contracted facilities to determine the soonest available
7 admission date. Of the 53 RTC facilities sampled, only 29 had availability within a week. Of the
8 37 PHP contracted facilities sampled, 12 responded that they were not a PHP program; 7 of
9 the facilities had a waitlist of longer than two weeks; 3 of the facilities were closed temporarily
10 or permanently; and 1 was no longer contracted. Only 14 of the sampled PHP facilities had
11 immediate availability or an opening within two weeks for PHP services. The Plan's shortage of
12 contracted PHP and RTC facilities with current availability indicates the Plan has an
13 inadequate network of facilities that are able to treat enrollees with higher acuity levels in an
14 appropriate treatment milieu. While the Department is aware of a general shortage of PHP and
15 RTC providers in the state, the Plan can do more to expand its network.

16 (iii) **Referrals to Out of Network Providers**

17 59. A health care service plan shall arrange for the provision of covered
18 services from providers outside the plan's network if not available in network where medically
19 necessary for the enrollee's condition. (Health & Saf. Code, § 1367.03, subd. (a)(7)(C).) For
20 medically necessary behavioral health services not available in network within the geographic
21 region, or within timely access standards, the plan shall arrange for coverage of such services
22 outside the plan's network in accordance with Health and Safety Code section 1374.72,
23 subdivision (d). (*Ibid.*)

24 60. The Plan has not consistently arranged for out-of-network care when the
25 Plan cannot offer a member a timely appointment. The Plan relies on the Medical Groups to
26 make out-of-network referrals, and the Plan has not exercised sufficient performance
27 monitoring or continuous oversight to ensure appropriate access to out-of-network providers.
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1 The Enforcement Investigation included a review of grievance files wherein an enrollee was
2 requesting referral or coverage for out of network care because the Plan could not offer a
3 timely in-network appointment and, the Plan, with few exceptions, would refer the enrollee to
4 its external contracted providers.

5 **Area No. 4: Grievance and Appeals**

6 61. Health care service plans must have a grievance system established in
7 writing and approved by the Department which provides reasonable procedures that shall
8 ensure adequate consideration of enrollee grievances and rectification where appropriate.
9 (Health & Saf. Code, § 1368, subd. (a)(1).) The health plan's grievance process shall provide
10 for written acknowledgement within five calendar days of receipt of a grievance unless an
11 exception applies. (Health & Saf. Code, § 1368, subd. (a)(4)(A).) The grievance system shall
12 require the health plan to resolve standard grievances within 30 days. (Health & Saf Code, §
13 1368.01, subd. (a).) A grievance regarding a delay or difficulty in obtaining an appointment for
14 covered services may constitute an initial request for an appointment. (Cal. Code Regs, tit. 28,
15 § 1300.67.2.2, subd. (b)(2).)

16 62. During the Enforcement Investigation, interviews conducted with Plan and
17 Medical Group staff demonstrated that, in an effort to address the difficulty in locating timely
18 behavioral health appointments, the Plan implemented a practice of routing appointment
19 requests through its grievance and appeals process. This can result in enrollees receiving
20 offered appointments and referrals to external providers outside of the timely access timelines,
21 given that by the time the grievance is resolved, the timeframe to receive a timely appointment
22 may have passed. The Enforcement Investigation's review of grievance files related to
23 behavioral health care appointments noted that in 118 files reviewed, 28 resulted in referrals to
24 external providers. Of the 28 external provider referrals, 22 of the referrals did not provide a
25 specific appointment date, but instead stated that a referral had been initiated and the enrollee
26 would receive the referral in 7-10 days.

27 63. The Plan provided the Department with grievance and appeals data for
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the period of August 8, 2022, through October 21, 2022, relating to behavioral health services in the Plan's Northern California region. The Department noted that during that timeframe, the Plan opened 29,906 grievances and 18,779² of those grievances were subject to the 30-day grievance resolution requirement. However, 5,878³ grievances, or 31.3%, of the 18,779 grievances were not resolved and closed within the required 30 days.

64. The Department noted 27,863⁴ grievances that were subject to the requirement to issue a written acknowledgment of the grievance within 5 calendar days, the Plan failed to acknowledge receipt of 5,052⁵ grievances out of the 27,863 submitted. The Plan's routing of appointment requests through its grievance and appeals process during the NUHW Strike also resulted in delayed grievance acknowledgments and responses through the Plan's already overwhelmed grievance and appeals system. Additionally, the Plan's practice of referring enrollees to external providers, which requires a referral letter to be issued, resulted in multiple grievances that were not adequately resolved in 30 days.

Area No. 5: Cancelled Appointments During the NUHW Strike

65. The law requires that when it is necessary for a provider or enrollee to reschedule an appointment, the appointment shall be promptly rescheduled in a manner that is appropriate for the enrollee's health care needs and ensures continuity of care consistent with good professional practice. (Health & Saf. Code, § 1367.03, subd, (a)(3); Cal. Code Regs., tit. 28. 1300.67.2.2, subd. (c)(3).)

66. As noted above, the NUHW Strike created an unusually difficult

² 18,779 represents the total number of grievances received by the Plan at least 30 days prior to the end of the reporting period on October 21, 2022.

³ 5,878 represents the total number of grievances that were resolved or in "pending" status beyond 30 days of the receipt date, excluding grievances that were resolved on the next business day following a weekend or holiday, and grievances that were withdrawn before the expiration of the 30-day response period.

⁴ 27,863 represents the total number of grievances received by the Plan at least 5 days prior to the end of the reporting period on October 21, 2022.

⁵ 5,052 represents the total number of grievances where an acknowledgement letter was not sent to the enrollee within the required 5 days, excluding grievances that were resolved or withdrawn within the 5-day timeframe.

1 circumstance for the Plan and the Medical Groups to manage. While the Plan faced significant
2 challenges related to the NUHW Strike, the Plan was obligated to comply with timely access
3 requirements during the NUHW Strike period. During the NUHW Strike in Northern California,
4 the Plan reported that 111,803 behavioral health appointments (individual and group) were
5 cancelled, affecting a total of 63,808 enrollees. Of these appointments, 69,080 behavioral
6 health appointments (individual and group) were cancelled by the Medical Group, affecting a
7 total of 46,631 enrollees. Of the Medical Group-initiated cancelled appointments, there were
8 29,645 enrollees for whom the cancelled appointment was not rescheduled internally, or for
9 whom the cancelled appointment was rescheduled internally outside of 10 business days.
10 However, the Enforcement Investigation revealed multiple appointments – either cancelled,
11 rescheduled, or bridge appointments – that were not reflected in the Plan’s appointment
12 documentation, casting doubt on the accuracy of the Plan’s calculations and appointment
13 tracking system.

14 67. During the NUHW Strike, the only means available to the Plan to fully
15 determine whether an offered appointment was medically appropriate was a chart audit of
16 each member’s records conducted by the Plan’s Appointment Audit Team. The Plan provided
17 a Rescheduling Review Job Aid to the Audit Team that instructed the reviewer to notate
18 whether a treatment plan and clinically appropriate appointment wait time was documented in
19 the enrollee’s medical record. The Auditors were then instructed to confirm if the enrollee’s
20 provider had documented that appointments rescheduled outside of the recommended wait
21 time would not be detrimental to the enrollee. However, they were not instructed to review if
22 the appointment cancellation or rescheduling was consistent with good professional practices
23 based on the provider’s most recent assessment of the enrollee or the enrollee’s most recent
24 health care needs. If a cancelled appointment was not rescheduled, was rescheduled outside
25 of 10 business days (but did not reflect non-detriment documentation), or reflected risk criteria,
26 the Plan’s Audit Team would refer the appointment to the Medical Group’s Audit Team for
27 further review and potential rescheduling. In addition to the Medical Group Audit Team’s
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1 review, the Medical Group would also apply its usual workflow to flag and reschedule
2 appointments that needed rescheduling.

3 68. The Department noted in its Enforcement Investigation that the Plan's
4 appointment cancellation audit criteria training was inconsistent. The Plan provided its
5 Behavioral Health Chart Review Teaching Guide, which does not include a publish date, and
6 instructs reviewers that behavioral health groups or classes do not count as an appointment for
7 tracking and audit purposes. However, the Plan's New, Group, Class Appointment Audit guide,
8 dated September 24, 2022, instructs reviewers that groups and classes do count as
9 appointments for audit purposes. Finally, a Plan document, titled IRR Review Chart, dated
10 September 19, 2022, instructs reviewers not to count groups or classes as appointments for
11 tracking and audit purposes. The Plan's inconsistent guidance on the treatment of classes and
12 groups given to the Audit Team further calls into question the accuracy of the Audit Team's
13 results and data concerning the thousands of cancelled appointments during the NUHW Strike.

14 **Area No. 6: Mental Health Parity**

15 69. Health care service plans shall provide coverage for medically necessary
16 treatment of mental health and substance use disorders under the same terms and conditions
17 applied to other medical conditions. (Health & Saf. Code, § 1374.72, subd. (a)(1).)

18 70. Enrollees who seek behavioral health services face greater obstacles and
19 challenges accessing behavioral health care and, even after obtaining it, retaining such care.
20 As discussed above, in order to access a behavioral health provider, Plan enrollees in the
21 Northern California services area often have to explain their behavioral health concerns
22 multiple times to different clinicians. In contrast, an enrollee generally is not required to
23 undergo multiple screenings before accessing certain other routine medical care. The Plan
24 represented that certain medical centers, primarily in the Plan's Southern California service
25 area, have in place limitations on referrals, and enrollees are often unaware of the limitations.
26 In some instances, referrals to external contracted providers were limited to instances where a
27 Medical Group provider was unavailable. Additionally, the Plan represented that in certain
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1 medical centers, enrollees generally could not schedule multiple behavioral health
2 appointments at one time, despite being provided a treatment plan requiring specific
3 appointment frequency. For example, the Plan asserted that in some medical centers,
4 enrollees were generally limited to scheduling one behavioral health appointment at a time
5 while enrollees under other medical treatment plans do not face the same restriction.

6 **Area No. 7: Communications and Advertising**

7 71. Health care service plans may not use or permit the use of any advertising
8 or solicitation that is untrue or misleading. (Health & Saf. Code, § 1360, subd. (a).) A written or
9 printed statement or item of information is misleading whether or not literally true, if in total the
10 statement or item may be understood by a person not possessing special knowledge regarding
11 health care coverage, indicates any benefit or advantage or absence of any exclusion
12 limitation or disadvantage. (Health & Saf. Code, § 1360, subd. (a)(2). Moreover, California's
13 Business and Professions Codes (e.g., Sections 17200, et seq.) prohibit inaccurate advertising
14 and communications.

15 72. The Plan has had a consistent and ongoing issue with communications
16 with enrollees regarding access to behavioral health services. The Plan reported that enrollees
17 have complained that they have difficulty understanding how to access behavioral health care,
18 including how to obtain referrals to external contracted providers. While enrollees do not
19 require a PCP referral to access initial behavioral health services, enrollees cannot typically
20 self-refer to external contracted providers for behavioral health services; however, when
21 enrollees do self-refer to external contracted providers, it is the Plan's policy to reimburse for
22 such treatment. However, certain Plan-issued communications could lead enrollees to believe
23 they can self-refer to external contracted providers.

24 73. By way of example, the Plan's Evidence of Coverage ("EOC") defines a
25 "Plan Provider" as "A Plan Hospital, a Plan Physician, the Medical Group, a Plan Pharmacy, or
26 any other health care provider that Health Plan designates as a Plan Provider." The EOC
27 defines a "Non-Plan Provider" as "A provider other than a Plan Provider." These definitions
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may cause confusion to enrollees when determining if external contracted providers are considered Plan Providers or Non-Plan Providers. Furthermore, the Plan's use of the term "External (Out-of-Plan) Referrals" (which refers to out-of-network providers) in its Utilization Management document may create further confusion to enrollees with no specialized knowledge regarding health care coverage. As each type of provider classification carries different referral or prior-authorization requirements, the unclear use of each term may result in enrollees misunderstanding the benefits under the Plan.

74. The Department identified individual clinical records where requests were submitted by enrollees and Medical Group Providers for referrals to external contracted providers and out-of-network providers. The documents indicated that a referral to external contracted providers required approval by the Medical Group, although the Medical Group does not make coverage decisions for the Plan. This process may be confusing to enrollees with no specialized knowledge regarding health care coverage when compared against the language pertaining to referrals to Non-Medical Group providers contained in the Plan-issued EOC.

ACKNOWLEDGEMENTS

75. Overall, the Department has noted that the Plan's processes, systems, and level of oversight must improve. The Plan has not consistently performed continuous review and appropriate oversight, including intervening where needed, of quality assurance, delegated functions, timely access, network adequacy, and grievance and appeals, among other things, related to behavioral health services.

76. While, as described above, the Department has identified deficiencies, the Plan has represented that, in recent years and since the Department's investigation began, the Plan has invested significant sums in improving its behavioral health programs and access including the following: (i) since 2020, the Plan's annual cost to provide mental health treatment to members has increased by \$1.1 Billion; (ii) since the start of the Non-Routine Survey, KP has increased its spending by \$450 million on outpatient treatment, intensive

1 outpatient treatment (which includes residential treatment for addiction medicine) and autism;
2 and (iii) since 2020 the Plan invested \$195 million in new built clinic facilities for 329 new
3 mental health provider offices.

4 77. After engaging in discussions with the Department, the Plan accepts the
5 above discussed areas of concern and has expressed willingness to undertake a systemic
6 overhaul and transformational change of the Plan's behavioral health delivery system to
7 improve the Plan's enrollees' experiences and treatment outcomes. In addition to the above
8 areas of concern identified by the Department, the Plan further acknowledges areas needing
9 improvement with respect to the Plan's internal and external contracted provider networks,
10 timely access to care, processes for intake and follow-up appointments, appointment
11 scheduling processes, levels of care and associated decision-making processes, medical
12 record documentation and retention practices, monitoring of urgent appointments, and
13 communications with members.

14 78. The Plan agrees that it is in the best interest of the Plan's enrollees for the
15 Plan to enter into this Settlement Agreement and resolve the Enforcement Investigation and
16 2022 Non-Routine Survey. The Department also acknowledges the Plan's and Medical
17 Groups' commitment to care of Plan enrollees and patients.

18 79. The Plan agrees to be bound by all settlement terms and obligations as
19 set forth in this Settlement Agreement, including the imposition of a corrective action plan, and
20 acknowledges that failure to comply with the corrective action plan will subject the Plan to
21 disciplinary action under Health and Safety Code section 1386, subdivision (b)(19). Failure to
22 comply with the terms of the agreed-upon corrective action plan and/or settlement terms and
23 obligations may subject the Plan to additional administrative penalties, and any other remedies
24 available to the Director.

25 80. During the term of this Settlement Agreement, including during the
26 Consultation Period (as set forth in paragraph 107 below), the Department's Office of
27 Enforcement may become aware of new facts arising after the execution of this Settlement
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Agreement which are related to the subject matter of the Corrective Action Areas and which the Department may want the Plan to investigate and/or address. Should that happen, the Office of Enforcement may request to meet and confer with the Plan to determine if the issues can be, or are being, addressed through the Corrective Action Work Plan. Subject to the provisions of this Settlement Agreement and the release of claims herein, the Department may utilize any means necessary to ensure the Plan's compliance with the Knox Keene Act and regulations.

81. At the conclusion of the 2022 Non-Routine Survey, the Department will issue a final report as required by Health and Safety Code section 1380, subdivision (h)(2), that identifies deficiencies that have been corrected by the Plan and describes remedial actions for deficiencies for which correction is or will be in progress. By entering into this Settlement Agreement, the Plan is not waiving any rights it has under the law, including the Knox-Keene Act, with respect to the report.

82. The Plan agrees that any deficiencies identified in the 2022 Non-Routine Survey Final Report that are not addressed in the Corrective Action Work Plan developed under paragraph 105, shall be addressed by the Plan through a modified Corrective Action Work Plan subject to the Department's approval.

83. The Plan agrees that the Department shall conduct a Follow-up Survey to the 2022 Non-Routine Survey Final Report as required by Health and Safety Code section 1380, subdivision (i)(2). Any uncorrected deficiencies identified in the 2022 Non-Routine Survey Follow-up Report that are not encompassed by the terms of this Settlement Agreement, and any penalty amounts paid by the Plan under this Settlement Agreement are exclusive of any future penalties the Department may determine are warranted by the 2022 Non-Routine Survey Follow-up Report.

MONETARY PENALTY

84. The Plan agrees to pay an administrative penalty in the amount of \$50 Million (Fifty Million dollars) ("Penalty Amount") to resolve the issues identified by the

1 Enforcement Investigation and 2022 Non-Routine Survey Final Report. The Plan is hereby
2 ordered to pay to the Department \$40 Million (Forty Million dollars) of the Penalty Amount
3 within 10 business days of the effective date of this Settlement Agreement.

4 85. The Department, through its Director, has determined that the remaining
5 \$10 Million (Ten Million dollars) of the Penalty Amount shall be paid only if, after the conclusion
6 of the Consultation Period, the Department concludes that the Plan unreasonably failed to
7 meet its obligations under this Settlement Agreement. The payment of this amount would be in
8 addition to any penalties the Director may assess pursuant to Health and Safety Code section
9 1380, subdivision (i)(2).

10 **INVESTMENT COMMITMENT**

11 86. In addition to the Penalty Amount, the Plan agrees to invest \$150 Million
12 (One Hundred and Fifty Million dollars) ("Investment Amount") in the next five years to expand
13 and improve behavioral health for Plan enrollees and for community members throughout
14 California, including developing and implementing new models of care, investing in
15 partnerships and training to expand access to care. The Plan shall have the discretion to
16 determine the specific amounts and projects toward which it will invest the Investment Amount.
17 It is the Department's intention and desire that the Plan's investments include projects
18 designed to develop new models of care that set the standards for behavioral health care in
19 California. The Plan's investment shall include the following projects and programs:

- 20 (1) Workforce development programs that transform the landscape for MH
21 service delivery by growing diverse mental health professionals for mental health
22 and substance use disorder care (including Mental Health Scholars Academy
23 and the Behavioral Health Training Institute programs);
- 24 (2) Partnerships with local schools and universities and engagement with local
25 charitable organizations/partners for expansion of community mental health
26 training programs;
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- (3) Programs designed to decrease stigma around seeking mental health/substance use disorder care and reduce youth suicide prevalence;
- (4) Prevention and Early Intervention programs for mental health and wellness programs for school aged children and families;
- (5) Programs designed to support reductions in depression/anxiety for California's youth through cognitive behavioral therapy informed approaches at middle schools across California to equip students with the knowledge and skills to reduce or prevent symptoms;
- (6) Growing community training pathways for peers/para-professionals to provide support for Californians on their mental health and substance use disorder care journey; and
- (7) Supporting/investing in community based organizations providing mental health and substance use disorder care for high risk and high acuity community members.

87. In connection with the Quarterly Meetings required under this Settlement Agreement (Paragraph 110 below), the Plan shall provide information to the Department regarding its anticipated investments of any of the Investment Amounts to enable the Department to provide feedback and ensure that it is within the scope of this Settlement Agreement.

RECITALS

88. The acknowledgments made by the Plan herein are only for the purposes of this Settlement Agreement and shall not be admissible in any other criminal or civil proceeding, but may be used by the Department in future administrative proceedings and/or in considering penalties against the Plan.

89. In the event of any future litigation (administrative or civil) between the Department and the Plan, the Plan agrees it will not object on the basis of California Evidence Code section 1151 to the admissibility of corrective actions taken by the Plan under this

Settlement Agreement.

90. Each signatory below warrants and represents that she or he has authority to sign on behalf of, and to legally bind, her or his respective entity.

91. This Settlement Agreement shall be binding on all Parties, including all principals, executors, administrators, representatives, and successors in interest.

92. This Settlement Agreement is the entire agreement between the Parties and supersedes any prior negotiations, representations, or agreements, whether written or oral.

93. This Settlement Agreement may not be altered, amended, or otherwise changed or modified, except in writing signed by both Parties.

94. This Settlement Agreement shall take effect upon execution by both Parties.

95. The Parties understand and agree that facsimile or PDF copies of the hard copy of the original electronically-signed Settlement Agreement shall have the same force and effect as the original. After the Plan representative has executed the document, the Plan shall forward the hard copy of its original electronically-signed Settlement Agreement to the Department of Managed Health Care's Office of Enforcement, located at 980 9th Street, Suite 500, Sacramento, CA 95814. This Settlement Agreement may be executed in counterparts.

AGREEMENT

WHEREFORE, the parties hereby agree and stipulate as follows:

96. **Comply with all laws.** The Plan shall obey all federal, state, and local laws, rules, and regulations governing health care service plans. Nothing in this Settlement Agreement limits the Plan's obligations to comply with the requirements of all applicable state and federal laws and regulations. In the event that the Plan contends that any provision or portion of this Settlement Agreement is inconsistent with or invalid based on (1) legislation enacted or regulations adopted by the State of California or federal government which have not been superseded, or (2) a final judgment has been entered by a court of competent

jurisdiction that is binding precedent from which no appeal or other judicial review has been taken, or, if appealed, the final judgment has been affirmed by the court of last resort and is no longer subject to further appeal or review, the process described below shall be followed.

97. The Plan will give written notice to the Department of its contention that there has been a change in the law and shall indicate that such notice is being provided pursuant to this Paragraph 97 of the Settlement Agreement. Such notice shall be sent to the attention of the Director. The Parties shall meet and confer in good faith, and if the Parties do not reach agreement within sixty (60) days after the Department's receipt of the Plan's written notice referenced above, the Plan may file a declaratory relief action on the question of whether, and to what extent, the alleged change in the law affects the Plan's responsibility to continue to perform in accordance with this Settlement Agreement. Any legal action taken by the Plan shall be venued in accordance with Paragraph 102, and may not be filed by the Plan any sooner than the sixty-first (61st) day after the Department receives the Plan's written notice. The Plan shall continue to perform in strict compliance with this Settlement Agreement (1) while the Parties are engaging in the meet and confer process, and (2) during the pendency of any such legal action and/or proceeding relating to the change in law that allegedly conflicts with the Plan's obligations under the Settlement Agreement, and (3) until a final and enforceable judgment is entered in favor of the Plan (i.e., a final judgment has been entered from which no appeal or other judicial review has been taken, or if appealed, the final judgment has been affirmed by the court of last resort and is no longer subject to further appeal or review). The Department shall retain its full enforcement authority regarding the terms of this Settlement Agreement during the pendency of litigation regarding the Plan's contention that a change in the law relieves it of its responsibility to continue to perform in accordance with this Settlement Agreement.

98. This Settlement Agreement fully and finally resolves the Enforcement Investigation and the 2022 Non-Routine Survey Final Report, and any other administrative or civil action based on or related to the Enforcement Investigation and the 2022 Non-Routine

1 Survey Final Report, and/or facts and circumstances upon which the Enforcement
2 Investigation and the 2022 Non-Routine Survey Final Report are based on or before the date
3 this Settlement Agreement is executed. The Department agrees to administratively close any
4 open or pending enforcement referrals for which the alleged violations are addressed in the
5 corrective action plan set forth herein. Nothing in this Settlement Agreement shall constitute a
6 disclaimer, accord, relinquishment, estoppel, or a waiver of any form of any right or authority of
7 the Department, including without limitation to continue with its current investigations, surveys,
8 audits, or examinations and/or to exercise its enforcement and disciplinary authority relative to,
9 or independent of, those investigations, audits or examinations, with the exception of those
10 made the subject of the Enforcement Investigation, and the 2022 Non-Routine Survey Final
11 Report. Subject to the foregoing release, nothing in this Settlement Agreement shall limit,
12 affect, or inhibit in any manner the Department's powers to initiate any new or additional
13 investigations, routine or non-routine audits or examinations, or to require and/or order any
14 remediation, penalties, and/or other remedies the Department deems necessary or appropriate
15 to carry out the objectives and purposes of this Settlement Agreement and/or the Knox-Keene
16 Act, including, without limitation, actions necessary to protect and/or effectuate remediation to
17 enrollees and/or providers.

18 99. **Director's Order.** The Parties agree that the terms of this Settlement
19 Agreement are not only a contract but they are additionally an Order of the Director, and the
20 Department may exercise any and all aspects of its enforcement authority to enforce the Plan's
21 compliance with any and/or all of its obligations under this Settlement Agreement, and that any
22 remedy available to the Director is not exclusive, and may be sought and employed in any
23 combination with civil, criminal, and other administrative remedies deemed warranted by the
24 Director to enforce this Settlement Agreement.

25 100. Given its role as the regulator of health care service plans in California
26 and with respect to interpretation of the Knox-Keene Act and regulations promulgated
27 thereunder, the Department will monitor and evaluate the Plan's provision of behavioral health
28

services and the Plan's compliance with its obligations under applicable laws including the Knox-Keene Act, this Settlement Agreement and the Corrective Action Plan required herein. In so doing, the Department will exercise the discretion vested in it by applicable law and rely on its expertise regarding the subject matter of this Settlement Agreement to monitor the Plan and ensure its compliance with all applicable laws and this Settlement Agreement.

101. **Governing Law.** This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to conflicts of law principles.

102. **Venue.** Each Party irrevocably submits to the jurisdiction of the California Office of Administrative Hearings located in Sacramento, California, or the California Superior Court located in Sacramento County, California, over any suit, action, or other proceeding arising out of or relating to this Settlement Agreement, and irrevocably agrees that all claims with respect to any such suit, action, or proceeding may be heard and determined in such venue.

103. **Severability.** In the event any term or portions of any term set forth herein shall be declared invalid or unenforceable for any reason by a court of competent jurisdiction, such term or any portion of any term, to the extent declared invalid or unenforceable, shall not affect the validity or enforceability of any other terms, and such other terms shall remain in full force and effect and shall be enforceable to the maximum extent permitted by applicable law.

CORRECTIVE ACTION PLAN

104. **Retention of Consulting Team.** The Plan shall retain a consulting team (“Consulting Team”) pursuant to the Consultation Agreement discussed in Paragraph 106. The Plan will bear all costs of the Consulting Team’s services throughout the Consultation Period.

105. **Purpose of the Consulting Team.** The Plan will work with the Consulting Team to develop a work plan (the “Corrective Action Work Plan”) to address the Corrective Action Areas. The Corrective Action Work Plan will set forth corrective actions, performance measures, reporting provisions, timelines, deadlines, deliverables, benchmarks, and expected

outcomes. The Consulting Team will also aid the Plan with respect to implementing the Corrective Action Work Plan and with respect to reporting to the Department regarding the Plan's progress.

106. **Consultation Agreement.** Prior to the execution of the Settlement Agreement, the Plan and the Consulting Team will execute an agreement setting forth the scope of the Consulting Team's services ("Consultation Agreement") related to this Settlement Agreement. In the event of conflict between the Settlement Agreement and the Consultation Agreement, the Settlement Agreement controls.

107. **Consultation Period.** Except as modified pursuant to Paragraph 108 below, the Consultation Period shall be two years from the date this Settlement Agreement is finalized (the “Consultation Period”).

108. **Extension of the Consultation Period.** The Consultation Period may be extended at the Plan's discretion; however, the Department shall make the final determination as to whether the Plan's decision complies with the terms of the Corrective Action Plan.

109. **Quarterly Reports.** The Consulting Team shall provide the Department with status updates and progress review reports of the activities performed and outcomes pursuant to the Settlement Agreement on a quarterly basis during the Consultation Period.

110. **Quarterly Meetings.** The Plan, the Department, and the Consulting Team will meet telephonically, virtually, or in-person on a quarterly basis during the Consultation Period. The purpose of these meetings will be to provide a progress review and status update of the activities performed and outcomes pursuant to the Settlement Agreement.

Corrective Action Areas

111. The Plan and Consulting Team will focus on the following **Corrective Action Areas** in order to help ensure enrollees receive timely access to medically necessary behavioral health services and to aid the Plan's Behavioral Health Quality Assurance program in ensuring that effective action is taken to improve care where deficiencies are identified in service areas, including accessibility, availability, and continuity of care. The Corrective Action

Areas are not intended to be an exhaustive list of actions the Plan must take to address each area. Rather, they are intended to provide guidance and set the minimum actions the Plan must undertake. The Correction Action process is intended to be dynamic and subject to continued modification through the Corrective Action Work Plan process as needed to address the issues and deficiencies the Department has identified.

Corrective Action Area No. 1: Oversight

The Plan shall improve its Quality Assurance Program, including continuous performance review and enhanced oversight of the Medical Groups and external contracted providers to ensure timely access, network adequacy, continuity of care, level of care, and quality of care for behavioral health services. The Plan must also implement policies and procedures for intervention whenever necessary, including, for example, if the Medical Groups are unable to ensure that behavioral health care services are reasonably available to Plan enrollees. The corrective actions the Plan shall implement on this topic must include at minimum, the following:

- A. The Plan shall create quality metrics and performance standards that are established and routinely monitored by the Plan and documented to ensure enrollees receive timely behavioral health appointments, as well as medically necessary behavioral health services, that are consistent with the standards under the Knox-Keene Act and regulations promulgated thereunder. Issues that are identified will be escalated appropriately and corrective action will be taken in a timely manner. (See Health & Saf. Code, §§ 1367.03, 1370, 1374.72, 1374.721; Cal. Code Regs., tit. 28, §§ 1300.67.2.2, 1300.70, subd. (a)(3), 1300.70, subds. (b)(2)(G), 1300.70, subd. (b)(2)(H), 1300.74.72.)
- B. The Plan shall ensure that it has full transparency of and access to all necessary policies, practices, standards, and data, including real-time data, from the Medical Groups and from external contracted providers to conduct the Plan's oversight and review of the Medical Groups and external contracted providers,

1 including, but not limited to, encounter data, appointment data, medical records,
2 and claims information. (See Health & Saf. Code, § 1370; Cal. Code Regs., tit.
3 28, §§ 1300.67.2.2, 1300.70, subd. (a)(3), 1300.70, subd. (b)(2)(G), 1300.70,
4 subd. (b)(2)(H).)

5 C. The Plan shall improve its development of internal corrective action plans
6 (“CAP”). The Plan shall develop a process to implement internal CAPs in a way
7 that fully documents and analyzes the root cause of the issue to be corrected and
8 sets forth clear corrective action interventions, including improvement
9 benchmarks. When a CAP does not result in timely improved results, the Plan
10 shall have a process, including associated documentation, that modifies the CAP
11 to demonstrate enhanced analysis and intensified efforts. (See Cal. Code Regs.,
12 tit. 28, § 1300.67.2.2, subd. (d)(3).)

13 D. The Plan shall improve its measurement of behavioral health appointment
14 access compliance. The Plan shall develop a measurement mechanism that
15 identifies appointment requests where the resulting first offered appointment
16 does not meet the timely access standards for behavioral health appointments.
17 The Plan’s measurement mechanism shall differentiate between and document
18 all appointments where (1) an enrollee was offered an appointment within the
19 timely access standards but chose an appointment outside the timely access
20 standards; (2) those instances where an appointment within the timely access
21 standards was not available or not offered to the enrollee, and the provider, or
22 the health professional providing triage or screening services, did not note a non-
23 detriment statement; and (3) those instances where an appointment within the
24 timely access standards was not available or not offered to the enrollee, but the
25 provider, or the health professional providing triage or screening services, did
26 note a non-detriment statement. (See Health & Saf. Code, § 1367.03; Cal. Code
27 Regs., tit. 28, §§ 1300.67.2.2, 1300.67.2.3.)
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1 E. The Plan shall fully implement clinical policies and procedures to ensure
2 consistent treatment, and inter-rater reliability (IRR) across the Plan, Medical
3 Groups, and external contracted providers. The clinical policies and procedures,
4 including criteria and guidelines, shall be consistent with the clinical review
5 standards set forth in the Knox-Keene Act and regulations promulgated
6 thereunder. (See Health & Saf. Code, §§ 1374.72; 1374.721; Cal. Code Regs.,
7 tit. 28, § 1300.74.72.)

8 **Corrective Action Area No. 2: Access**

9 The Plan shall improve its procedures to ensure that its enrollees can access
10 behavioral health appointments consistent with timely access standards. The corrective
11 actions the Plan shall implement on this topic must include at minimum, among other things,
12 the following:

13 A. The Plan shall develop and implement an improved policy and process to
14 effectively monitor each enrollee's appointments, treatment plan, individualized
15 behavioral health care needs, and care consistent with good professional
16 practice, with the Plan intervening as necessary to ensure compliance. The Plan
17 must provide a clearly defined and fully implemented policy and process to be
18 uniformly applied across the Plan, all Medical Groups, Medical Group providers,
19 and external contracted providers, to ensure that initial, follow-up, and
20 rescheduled behavioral health appointment access complies with the timely
21 access requirements, and is consistent with each enrollee's treatment plan,
22 individualized behavioral health care needs, and the clinical criteria stated under
23 the Knox-Keene Act and regulations promulgated thereunder. The policy and
24 process shall ensure that the Plan requires the Medical Groups and external
25 contracted providers to fully document in the enrollees' medical records the date
26 and time the enrollee requested behavioral health appointments, the date and
27 time of the first available appointment that was offered to the enrollee, the date
28

1 and time of the appointment the enrollee accepted, and if a statement of non-
2 detriment or patient preference is documented in the enrollee's medical record.
3 The policy and process shall further ensure that enrollees are provided with
4 timely behavioral health services that are based on individualized determinations
5 of medical necessity. (See Health & Saf. Code, §§ 1367.03, 1374.72; Cal. Code
6 Regs., tit. 28, §§ 1300.70, subds. (a)(3), (b)(1), (b)(2)(G), (b)(2)(H).)

7 B. The Plan shall improve, for both Medical Group providers and external
8 contracted providers, the processes for appointment booking and documentation
9 related to behavioral health services, including, but not limited to, booking of
10 initial and follow-up behavioral appointments within the timely access standards
11 under the Knox-Keene Act and regulations promulgated thereunder. (See Health
12 & Saf. Code, § 1367.03; Cal. Code, Regs., tit. 28, §§ 1300.67.2.2, subd. (b)(2).)

13 C. The Plan shall continuously assess whether the Medical Groups are performing
14 their obligation to the Plan to ensure that behavioral health care services are
15 available consistent with good professional practice and timely access standards
16 to Plan enrollees. If the Plan determines that the Medical Groups are not
17 performing these delegated functions, the Plan must intervene and take whatever
18 steps necessary to ensure compliance. (See Health & Saf. Code, §§ 1367.03,
19 1370; Cal. Code Regs., tit. 28, §§ 1300.67.2.2; 1300.70.)

20 **Corrective Action Area No. 3: Network and Referrals**

21 The Plan shall improve the ability of its enrollees to access the Plan's network,
22 including external contracted providers, for behavioral health services, and improve the ability
23 of its enrollees to access out-of-network providers for behavioral health services in instances
24 where the Plan's network cannot offer enrollees timely care. The corrective actions the Plan
25 shall implement in this area must include at minimum the following:

26 A. The Plan shall review, monitor and participate in the process of issuing referrals
27 to external contracted providers and out-of-network providers for behavioral
28

1 health services. The Plan shall participate and oversee the process of scheduling
2 of behavioral health appointments with external contracted providers and out-of-
3 network providers within the timely access standards required under the Knox-
4 Keene Act and regulations promulgated thereunder. The Plan shall not, and must
5 ensure that the Medical Groups do not, prohibit a referral to an external
6 contracted provider based solely on a determination that the enrollee has a
7 severe or chronic condition that requires care to be performed by Medical Group
8 providers. (See Health & Saf. Code, §§ 1367.03, 1374.72; Cal. Code, Regs., tit.
9 28, § 1300.67.2.2.)

10 B. The Plan shall improve and oversee the collection of external contracted provider
11 access data. The Plan's external contracted provider network shall be fully
12 integrated into the Plan's behavioral health access monitoring plan, processes,
13 systems, and reporting structures. The Plan shall ensure that enrollee
14 appointment access when an enrollee is referred to an external network complies
15 with timely access standards. The Plan shall ensure that the Plan has full
16 transparency of and access to all necessary data from the external contracted
17 providers so that the Plan can conduct its continuous, oversight, review, and
18 intervention as necessary, including, but not limited to, encounter data,
19 appointment data, medical records, and claims information. (See Health & Saf.
20 Code, § 1367.03, subd. (f)(1); Cal. Code, Regs., tit. 28, § 1300.67.1, subd. (c).)

21 C. The Plan shall develop a process for identifying members who attempted, but
22 were unable to, obtain timely and clinically appropriate behavioral health care
23 services in-network and, as a result self-referred to an out-of-network provider.
24 The Plan will develop a process for evaluating enrollee out-of-network claims for
25 reimbursement. The terms of such reimbursement will be subject to agreement
26 between the Plan and the Department. The Plan shall present the process
27
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required by this paragraph to the Department no later than the due date for the first Quarterly Report, as provided in Paragraph 109 above.

Corrective Action Area No. 4: Grievance and Appeals

The Plan shall improve its grievance and appeals policies and procedures. The corrective actions the Plan shall implement on this topic must include at minimum, the following:

- A. The Plan shall improve the Grievance and Appeals process by which enrollee grievances are acknowledged, adequately considered, and responded to within the timeframes required under the Knox-Keene Act and regulations promulgated thereunder. The Plan shall review its practice of referring appointment requests for which a timely appointment cannot be booked through the Grievance and Appeals review process, to ensure that this practice results in enrollees receiving appointments consistent with timely access standards separate from the time that it takes grievances to be resolved. The Plan's review shall develop processes to promptly address any enrollee grievance based, in part, on a complaint that the enrollee cannot schedule a timely behavioral health appointment. The Plan must implement a consistent procedure to ensure that all enrollees who are not offered timely appointments are reviewed for risk and their behavioral health care needs are met. (See Health & Saf. Code, §§ 1367.03, 1368, 1368.01; Cal. Code, Regs., tit. 28, §§ 1300.67.2.2, subd. (b)(2), 1300.68.)
- B. The Plan shall develop a process through which all enrollee grievances regarding a delay or difficulty in obtaining a timely behavioral health appointment are routed to grievance coordinators specially trained in Department-regulated products and Knox-Keene Act and regulations relating to timely access. Although this group of grievance coordinators may primarily focus on Department-regulated products, the group of grievance coordinators may answer calls about health care products

1 licensed in other states, should the Plan choose to have them answer such calls.
2 (See Health & Saf. Code, §§ 1367.03, 1368.)

3 **Corrective Action Area No. 5: Future Strike Contingency Plans**

4 The Plan shall develop a comprehensive contingency plan to be implemented in the
5 event of future labor work stoppages that may result in cancellation of enrollee behavioral
6 health appointments. The contingency plan shall include uniform processes for documentation
7 of enrollee notification of appointment cancellation, and clinical review for prompt rescheduling
8 consistent with enrollees' individual treatment needs. The contingency plan shall also create a
9 uniform reporting structure for Plan oversight of appointment cancellations and/or
10 rescheduling. (Health & Saf. Code, § 1367.03, subd. (a)(3).)

11 **Corrective Action Area No. 6: Mental Health Parity**

12 The Plan shall develop processes to ensure that the Plan is in compliance with all
13 behavioral health parity laws. This shall include, but is not limited to, the Plan ensuring that
14 enrollees receive appropriate treatment based on individualized determinations of clinical
15 appropriateness, and regardless of the type or severity of the enrollees' behavioral health
16 conditions. The Plan shall ensure that enrollees are not directed to behavioral health group
17 therapy, classes, smartphone applications, or "one-size-fits-all" therapy alternatives without an
18 individualized determination that such therapy, classes, applications, or alternatives are
19 clinically appropriate for the enrollee's individual condition. The Plan shall ensure that enrollees
20 do not face barriers to scheduling behavioral health appointments that do not exist for non-
21 behavioral health appointments. (Health & Saf. Code, § 1374.72, subd. (a).)

22 **Corrective Action Area No. 7: Member Communications and Advertising**

23 The Plan shall conduct a comprehensive review of all Plan communications and
24 representations to enrollees, including any related policies, procedures, and training materials,
25 regarding behavioral health services including, but not limited to, advertising to enrollees and
26 the general public, to ensure accuracy and completeness of information provided. This shall
27 include communications and representations regarding the ability of enrollees to obtain
28

individual and group behavioral health therapy, the ability of enrollees to obtain referrals to external contracted providers and out-of-network providers, and regarding alternatives to behavioral health therapy such as classes and smartphone applications. This shall also include information about changes the Plan will implement as the result of this Settlement Agreement and Corrective Action Work Plan, and will also include review of communications to enrollees made by the Medical Groups and external contracted providers. (Health & Saf. Code, § 1360, subds. (a) & (a)(2).)

Corrective Action Area No. 8: Continuous Detailed and Comprehensive Review

The Plan shall engage in a systemic evaluation of all existing programs, processes, mechanisms, and policies and procedures by which enrollees access or receive behavioral health services, including but not limited to Connect 2 Care, eConsult, Tridium, Tapestry, Ableto, and VADAPT. In addition, the Plan shall engage in a systemic evaluation of how enrollees access urgent behavioral health care services, including the availability of the Medical Groups and external contracted providers to offer urgent and emergent behavioral health services. The Plan shall also continuously review whether the Medical Groups are appropriately performing the delegated services, compliant with the Knox Keene Action and regulations promulgated thereunder. (See Health & Saf. Code, §§ 1367, subd. (j), 1367.03, 1374.72; Cal. Code Regs., tit. 28, §§ 1300.70, subd. (a)(3).)

Deliverables/Benchmarks

112. The Plan and the Consulting Team shall complete the draft Corrective Action Work Plan by February 1, 2024. Upon completion of the draft Corrective Action Work Plan, the Plan and the Consulting Team shall submit the Corrective Action Work Plan to the Department for review. The Department shall provide any comment or feedback on the draft Corrective Action Work Plan within 30 days of receipt from the Plan. The Plan and the Consulting Team shall then have an additional 30 days to provide any response to the Department's feedback or comments.

113. Additional benchmarks, deliverables, and deadlines will be established as part of the Corrective Action Work Plan.

114. As acknowledged above, the Department's investigation in connection with the 2022 Non-Routine Survey is ongoing. It is the Parties' intention that this Settlement Agreement incorporates all deficiencies, factual findings, and corrective actions related to the subject matters covered by the 2022 Non-Routine Survey Final Report. The Parties acknowledge that if as the result of the 2022 Non-Routine Survey Final Report, the Department identifies additional deficiencies that are not already addressed as part of the Corrective Action Areas or the Corrective Action Work Plan, the Department has authority to require the Plan and Consulting Team to supplement or amend the Corrective Action Work Plan to address such deficiencies. Any additional corrective actions will be incorporated into and become a part of this Settlement Agreement.

Department Discretion

115. At the Plan's request, the Department has the discretion, with the Consulting Team's recommendation and/or input, to revise or modify benchmarks, deadlines, and Deliverables set forth in the Corrective Action Work Plan. Such discretion may be exercised if the Plan fails to achieve any of the stated benchmarks, deadlines, or Deliverables, despite the Plan's best efforts in working with the Consulting Team, or in the event there is a change to state or federal law impacting the requirements of this Settlement Agreement.

ACCEPTANCE

Dated: October 11, 2023

Kaiser Foundation Health Plan, Inc.

/Original Signed/
Deborah Espinal, PhD
Vice President, Enterprise Regulatory Services
Kaiser Foundation Health Plan, Inc. & Hospitals

I have read and fully discussed with the Plan the terms and conditions and other matters contained in the above Stipulated Settlement and Agreement. I approve its form and content.

Dated: October 11, 2023

Sheppard, Mullin, Richter & Hampton, LLP

/Original Signed/
Moe Keshavarzi
Attorney for Kaiser Foundation Health Plan, Inc.

Dated: October 11, 2023

DEPARTMENT OF MANAGED HEALTH CARE

/Original Signed/
Sonia R. Fernandes, Complainant
Deputy Director | Chief Counsel
Office of Enforcement

Ross, Jamie

From: Saly Nasrat <Saly.X.Nasrat@kp.org>
Sent: Monday, October 30, 2023 9:50 AM
To: COB_Response
Cc: ichairez@nuhw.org
Subject: RE: re OC Board of supervisors

Attention: This email originated from outside the County of Orange. Use caution when opening attachments or links.

Please disregard/delete my last email with the attachment.

Please keep the following statement from me on file instead:

Dear Orange County Board of Supervisors,

I am writing this letter to voice SUPPORT for item 23A in your agenda. Kaiser Permanente mental health clinicians in Southern California deserve to have the same amount of time as their counterparts in Northern California, to do crucial back end work including calling social services agencies, working with parents of young patients, and general patient care planning. As a resident of Orange County, I urge a YES vote on this matter.

Thank you,

Saly Nasrat

Saly Nasrat, LMFT

Psych Social Worker

Kaiser Permanente

Behavioral Health- Euclid Medical Office

1188 N. Euclid St., 5th floor

Anaheim, CA 92801

714.254.6480 (office)

714.254.6805 (fax)

From: Saly Nasrat
Sent: Monday, October 30, 2023 9:34 AM
To: response@ocgov.com
Cc: ichairez@nuhw.org
Subject: re OC Board of supervisors

NOTICE TO RECIPIENT: If you are not the intended recipient of this e-mail, you are prohibited from sharing, copying, or otherwise using or disclosing its contents. If you have received this e-mail in error, please notify the sender immediately by reply e-mail and permanently delete this e-mail and any attachments without reading, forwarding or saving them. v.173.295 Thank you.



Revision to ASR and/or Attachments

Date: November 1, 2023
To: Clerk of the Board of Supervisors
CC: County Executive Office
From: Frank Kim, County Executive Officer
Re: ASR Control #: 23-000787, Meeting Date 11/7/2023, Item No. # S12C
Subject: Approve 2024 Contract Policy Manual

Digitally signed by Frank Kim
DN: cn=Frank Kim, o=County of
Orange, ou=CEO,
email=frank.kim@ocgov.com, c=US
Date: 2023.11.02 13:54:21 -0700

CLERK OF THE BOARD
COUNTY OF ORANGE
BOARD OF SUPERVISORS

2023 NOV - 2 PM 2: 09

RECEIVED

Explanation:

☐ Revised Recommended Action(s)

☐ Make modifications to the:

☐ Subject ☐ Background Information ☐ Summary ☐ Financial Impact

☒ Revised Attachments (attach revised attachment(s) and redlined copy(s))

Attachment A – 2024 Contract Policy Manual
Attachment B – Redline - Contract Policy Manual



2024 CONTRACT POLICY MANUAL



COUNTY OF ORANGE



CONTRACT POLICY MANUAL

**Adopted by the
Orange County Board of Supervisors
November 7, 2023**

Effective: January 1, 2024

**DONALD P. WAGNER
CHAIRMAN
THIRD DISTRICT**

**ANDREW DO
VICE CHAIRMAN
FIRST DISTRICT**

**VICENTE
SARMIENTO
SUPERVISOR
SECOND DISTRICT**

**DOUG CHAFFEE
SUPERVISOR
FOURTH DISTRICT**

**KATRINA
FOLEY
SUPERVISOR
FIFTH DISTRICT**

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SECTION 1 – GENERAL RESPONSIBILITIES

SECTION 1.1

OFFICE OF THE COUNTY PROCUREMENT OFFICER

§1.1-101 Statute

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

§1.1-102 Policy

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

§1.1-103 Ethical Statement

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

§1.1-104 Scope

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

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

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

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

§1.1-106 Delegation of Authority

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

§1.1-107 Authority to Procure

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

§1.1-108 Specific Duties

- (1) Except as otherwise provided herein, or where statutes or ordinances dictate otherwise, the County Procurement Officer and Deputy Purchasing Agents are authorized to carry out the specific duties listed in this manual plus any additional duties as provided by resolution of the Board of Supervisors, Codified Ordinances of the County of Orange, or laws of the State of California. The County Procurement Officer and Deputy Purchasing Agents are authorized to:
 - a) Solicit and purchase all services, commodities, materials, supplies, furnishings, equipment, livestock, food, travel and other personal property of whatever kind and nature required to conduct County business, except in cases of emergency and as otherwise provided through Board of Supervisors action;
 - b) Negotiate and execute all Contracts, as detailed in Section 3 of this manual;
 - c) Execute Memoranda of Understanding (MOUs), as detailed in Section 3 of this manual;
 - d) Approve and confirm emergency purchases;

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

§1.1-109 Responsibilities of the County Procurement Officer:

- (1) The County Procurement Officer or authorized designee is responsible for the following:
 - a) Solicit bids/proposals for cooperative contracts used County-wide by departments;
 - b) Establish Procurement policies and procedures to be followed by departments;
 - c) Establish policies and procedures to be followed by departments for the use of a Purchasing Card Program to promote efficiencies for low dollar purchases;
 - d) Maintain the “bidders list”, as may be required, for use by departments purchasing units for solicitation of bids and proposals;
 - e) Verify, on a periodic basis, that each Deputy Purchasing Agent obtains insurance certificates and endorsements for department purchasing contracts;
 - f) Identify and pursue other governmental department and other organizations cooperative purchasing contracts, that may be executed, that would be beneficial for County use and where appropriate, make these contracts available for use by each department in accordance with Section 4.7 of this manual;
 - g) Manage a centralized program for the reuse of surplus County personal property to foster reuse by other departments in accordance with Section 1.6 of this manual;
 - h) Sell and dispose of personal property, including electronic equipment, no longer required for County use, in accordance with the current County “E-Waste Policy”, as well applicable state, federal and county regulations;
 - i) Assist in identifying new advancements in technology and other innovations in public sector procurement that would be beneficial for County use, and working with the County’s Chief Information Officer (CIO), as appropriate, implement these innovations for County-wide use;
 - j) Develop training materials and conduct training programs for Deputy Purchasing Agents, their supervisors, and others, as designated by department heads that ensures a County-wide procurement process which is fair, effective and efficient, and ensures the integrity of the County’s procurement process;
 - k) Deputize those trained in the procurement process when assured that they are adequately trained to perform with the delegated authority of the County Procurement Officer;
 - l) Provide assistance on a consultative basis, as requested by department heads or their designees, in the development of solicitations and contracts and the handling of vendor protests;
 - m) Review solicitations and contracts when so requested by department personnel;

- n) Develop and implement a compliance monitoring plan with performance measures to review the procurement documents prepared by the Deputy Purchasing Agents, and to report to the appropriate Procurement Council Representative with recommendations for corrective action to ensure the County procurement process is fair, efficient, and compliant with legal requirements and County policies and procedures;
- o) Chair the Procurement Council;
- p) Convene and chair the Procurement Appeals Board;
- q) Encourage County involvement in public procurement organizations in an effort to promote the public procurement profession through education and peer networking;
- r) Amend this manual to include additional Board policy, as directed by the Board of Supervisors or the County Executive Officer;
- s) Carry out the other duties and responsibilities as defined in this manual;
- t) Implement and maintain a Procurement Procedure Manual consistent with this CPM to guide the procurement and management of all contracts in a manner consistent with law, in consultation with County Counsel; and
- u) Amend this CPM to make clerical, ministerial, or other non-material edits, subject to review and approval of such clerical, ministerial, or other non-material edits by County Counsel, including updating provisions based on statutory authority that is cited in the CPM (e.g., statutory dollar triggers and limits, restrictions and authorizations). CPO will communicate to the Board any proposed increases to thresholds as a result of changes in statutory authority. All other changes will be made only as approved by the Board of Supervisors.

§1.1-110 Custodian of Documents

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

SECTION 1.1.1**DEPUTY PURCHASING AGENTS****§1.1.1-101 Policy**

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

§1.1.1-102 Scope

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

§1.1.1-103 Specific Duties

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

SECTION 1.2

PROCUREMENT COUNCIL

§1.2-101 Definition

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

§1.2-102 Specific Duties

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

SECTION 1.3

PROTEST

§1.3-101 **Policy**

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

§1.3-102 **Procedure**

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

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

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

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

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

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

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

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

§1.3-106 Protest Process

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

§1.3-107 Appeal Process

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

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

SECTION 1.4

PROCUREMENT APPEALS BOARD

§1.4-101 Definition

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

§1.4-102 Purpose

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

§1.4-103 Policy

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

§1.4-104 Composition

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

standards, including applicable State and county laws and ordinances, and shall be available on short notice so that protests can be resolved quickly.

§1.4-105 Conflict of Interest – Procurement Appeals Board

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

§1.4-106 Procedures/Support

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

§1.4-107 No Right To Administrative Appeal

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

SECTION 1.5

COMPLIANCE MONITORING

§1.5-101 Policy

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

§1.5-102 Specific Duties

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

§1.5-103 Audit Process

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

SECTION 1.6

SURPLUS COUNTY PROPERTY

§1.6-101 Policy

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

§1.6-102 Definition

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

§1.6-103 Authority

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

§1.6-104 Disposition Methods

- (1) A department must attempt to dispose of Surplus County Department Property through internal transfer to a claiming department, until the County Procurement Officer determines the Surplus County Department Property is not needed by any other County department. At that time, the Surplus County Department Property must be disposed of as Surplus County Property.
 - a) Surplus County Department Property for which disposition is otherwise covered under law, regulation, code, or other Board of Supervisors policy are exempted from Section 1.6; provided that departments notify the County Procurement Officer or designee prior to disposition.
- (2) Surplus County Property shall be disposed of by the following methods, in the order listed below:

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

§1.6-105 Board Approval

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

SECTION 1.6.1

DISPOSITION OF REAL PROPERTY BY SALE

§1.6.1-101 **Definitions**

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

§1.6.1-102 **Policy**

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

§1.6.1-103 **Real Property Need**

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

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

§1.6.1-104 Notice to County Entities

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

§1.6.1-105 Appraisal of Real Property

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

§1.6.1-106 Request for Authorization to Solicit Bidder

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

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

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

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

- (1) The HCD, any local public entity within whose jurisdiction the land is located, as defined in Section 50079 of the Health and Safety Code and, upon written request, “Housing Sponsors” as defined in Section 50074 of the Health and Safety Code, for the purpose of developing low and moderate-income housing and any such sponsors who have notified HCD of their interest in surplus land that is located in Orange County or in all California counties. Priority is to be given to development of the land to provide affordable housing for lower income elderly or disabled persons or households, and other lower income households.
- (2) Any park and recreation department of any city and county within which the land is located. Park, Recreation and Open Space availability notices shall comply with the conditions and follow the requirements as described in Government Code Sections 54221(f)(2), 54222, and 54227(b).
- (3) Any regional park authority having jurisdiction within the area in which the land is located.
- (4) The State Resources Agency or any agency which succeeds its powers.
- (5) The nonprofit neighborhood enterprise association corporation for the area if the land is within an area designated as an enterprise zone, pursuant to Section 7073 of the Government Code. Check with the Planning Department of the city to determine if such a zone and corporation exist.

- (6) The city within which the land is situated. The notice should be addressed to the city manager or city administrator.
- (7) The city managers or city administrator of any other city the boundaries of which are within three miles of the surplus land.

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

§1.6.1-108 County Exempt Surplus Land

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

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

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

§1.6.1-109 Solicitation of Bids

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

§1.6.1-110 Selection of the Successful Bidder

- (1) Sealed Offers and Agreements to Purchase will be received by the CEO Real Estate and opened at a specified time.
- (2) Immediately after the sealed Offers have been opened, a call for verbal bids will be made. At this time, all persons who have not already submitted bids and who wish to bid on the property will have the opportunity to enter the bid process upon presentation of the required bid deposit in the manner prescribed in the bid package.
- (3) Once the verbal bidders have been identified, then the verbal bidding process will begin, with the requirement that the first verbal bid exceed the highest written bid by a predetermined percentage amount as set forth in the proposal package, as reasonably determined by the CREO.
- (4) At the close of verbal bidding, the high bidder shall execute the Offer and Agreement to Purchase Real Property and shall be notified that the total sum to be paid outside of escrow is due and must be delivered to CEO Real Estate on or before the date specified in the purchase agreement.
- (5) If the Board has not previously delegated the CREO to execute the agreement, the CEO Real Estate staff member will prepare an ASR that includes information concerning the number of bids received, the highest bidder, a financial resume, and other pertinent facts. The ASR shall be submitted to the Board at the earliest practicable date for final approval of the sale and permission to execute all applicable documents to close escrow, if any.
- (6) The ASR shall include a recommendation to the Board of Supervisors that “CEO Real Estate be authorized to return the deposits of unsuccessful bidders.”

- (7) All procedures and record-keeping shall be closely adhered to so that all those wishing to purchase County property are given an equal opportunity. Every action the County takes must evidence that these procedures are open and fair to all prospective bidders.

SECTION 1.7

PROCUREMENT CARDS

§1.7-101 Definition

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

§1.7-102 Authorized Use

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

§1.7-103 Responsibilities

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

§1.7-104 Controls

- (1) In addition to other internal controls and procedures as detailed in the Procurement Procedures Manual and Section 3.6 of this manual, use of County issued Procurement Cards are subject to the following controls:

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

§1.7-105 Adherence to Procurement Policy

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

SECTION 1.8

COUNTY OF ORANGE PROCUREMENT PREFERENCE POLICY

§1.8-101 Policy

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

§1.8-102 Business Eligibility Requirements

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

- i. must be certified as a Small Business by the State of California Department of General Services (DGS); and
 - c) Above requirements must be valid at the time of proposal submittal.
- (2) DVBE Eligibility – To qualify as a DVBE, the DVBE must meet the following requirements:
 - a) must be certified as a DVBE by the State of California DGS; and
 - b) DGS DVBE requirements must be valid at the time of bid/proposal submittal.
- (3) Eligibility for Contractors Using OCLSB/DVBE Subcontractors – As applied to procurements with a total estimated contract value in excess of \$200,000, prime contractors that do not otherwise meet the OCLSB/DVBE certification requirements may still qualify for OCLSB/DVBE preferences by virtue of their use of OCLSB/DVBE subcontractors. To qualify for the preferences by using certified OCLSB/DVBE subcontractor(s), twenty percent (20%) of the total proposed contract amount must be allocated to OCLSB and/or DVBE subcontractor(s) meeting the qualifications and certification requirements provided in subsections (1) and (2) above.

§1.8-103 Requests for Proposals

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

§1.8-104 Invitation for Bids / Low Bid Contracts

- (1) For solicitations that are based on the lowest responsive and responsible bid, the preference to be granted to a certified bidder pursuant to Section 1.8-102 above shall be equal to five percent (5%) of the lowest bid. Public Works Procurements shall not include a DVBE preference.
- (2) Except as applied to Public Works Procurements, a bidder deemed qualified for the Preference Policy pursuant to both of the eligibility categories detailed in subsections (1) and (2) of Section

1.8-102 above, or a bidder deemed eligible pursuant to subsection (3) of Section 1.8-102 that includes both certified OCLSB and DVBE subcontractors, the preference to be granted shall be equal to eight percent (8%) of the lowest bid.

- (3) Such preference shall be applied to all certified bidders that requested the preference, even if the certified bidder is the lowest responsible bidder meeting specifications. The contract award shall be the bidder's original bid price, not the price used for bid evaluation purposes.
- (4) In no instance shall any of the preference programs be combined to exceed a total of eight percent (8%), or a maximum of \$150,000, in response to any County solicitation.

§1.8-105 Waivers/Limitations

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

SECTION 2 – GENERAL RULES AND PROCEDURES

SECTION 2.1

ETHICS IN PUBLIC CONTRACTING - COUNTY EMPLOYEES

§2.1-101 Policy

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

§2.1-102 "Arm's Length" Principle

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

§2.1-103 General Standards of Ethical Conduct

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

Purchasing Agent who is overseeing the procurement process. This prohibition extends to the prospective bidder's or respondent's employees, representatives, agents, lobbyists, attorneys, sub-consultants, or anyone else acting on the behalf of the interested party. Contacts that are prohibited include those with members of the evaluation panel, the County Executive Officer, and other County staff; ***provided, however, this prohibition shall not extend to members of the County's Board of Supervisors and Countywide Elected Officials or members of their respective staffs.***

§2.1-104 Conflict of Interest

(1) The State of California Government Code addresses conflicts of interest as follows:

- a) Section 87100: "No public official at any level of state or local government shall make, participate in making, or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest."
- b) Section 87103: "A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of the official's immediate family, or on any of the following:
 - i. Any business entity in which the public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more.
 - ii. Any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.
 - iii. Any source of income, other than gifts or other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars (\$500) or more in value provided to, received by or promised to the public official within twelve months prior to the time when the decision is made.
 - iv. Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.
 - v. Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within twelve months prior to the time when the decision is made. The amount of the value of gifts specified by this subdivision shall be adjusted biennially by the commission to equal the same amount determined by the commission pursuant to subdivision (f) of Section 89503.
 - vi. For purposes of this Section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater."
- c) Section 1090: (a) "Members of the legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity. (b) An individual

shall not aid or abet a Member of the Legislature or a state, county, district, judicial district, or city officer or employee in violating subdivision (a). (c) As used in this Section, 'district' means any agency of the state formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries."

- d) Any employees who, in the course of their employment, make, or participate in the making of, decisions which may potentially have a material effect on a financial interest of the employees are deemed 'designated employees' and are required to complete a Statement of Economic Interests (Form 700) on an annual basis, when they assume employment with the County, and when they terminate employment with the County.
- e) Upon discovery of an actual or potential conflict of interest, an employee shall promptly file a written statement of disqualification with the County Procurement Officer or appropriate Deputy Purchasing Agent and shall withdraw from further participation in the transaction involved. The employee may, at the same time, request through his department head an advisory opinion from County Counsel as to what further participation, if any, the employee may have in the transaction.

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

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

§2.1-106 Use of Confidential Information

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

§2.1-107 Purchase of Surplus Material and Equipment

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

§2.1-108 Auction Techniques

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

§2.1-109 Purchase for Personal Use

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

§2.1-110 Equal Opportunity

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

§2.1-111 Incremental Contracting

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

SECTION 2.2

ETHICS IN PUBLIC CONTRACTING - CONTRACTORS

§2.2-101 Conflict of Interest

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

§2.2-102 Vendor/Contractor Code of Conduct

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

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

§2.2-103 Levine Act

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

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

SECTION 2.3

SURETY AND INDEMNIFICATION

§2.3-101 Definitions

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

§2.3-102 Policy

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

- (4) **Insurance:** Insurance will be required where the County may suffer risk of loss due to the nature of the work being performed. It will be the obligation of each department to research and include in the contracts the appropriate insurance requirements for each applicable circumstance as stated in §2.3-103, below.

- a) No insurance is required for the following purchases:
 - i. emergency purchases (as consistent with Section 3.3-122(1)(a)(iii), when applicable),
 - ii. commodity purchases of \$5,000 or less (regardless of method of delivery),
 - iii. off-the-shelf software products, including off-the-shelf software maintenance, or
 - iv. commodity purchases in excess of \$5,000 that are delivered by third party common couriers to County.
- b) For service purchases, no insurance is required for purchases of \$5,000 or less unless the purchase is for:
 - i. maintenance services related to trades (e.g., plumber, electrician or carpenter) that are performed on County property/premise, or
 - ii. services described in §3.3-101(1) subsections (a), (f), (g) or (i).

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

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

§2.3-103 Standard Insurance Requirements

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

SECTION 2.4**PROCUREMENT REQUISITIONS****§2.4-101 Definition**

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

§2.4-102 Policy

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

§2.4-103 Procedure

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

§2.4-104 Process

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

SECTION 3 - TYPES OF CONTRACTS

SECTION 3.1

COMMODITIES

§3.1-101 Definition

- (1) Commodities include all supplies and equipment, equipment rentals and leases, certain types of software and software licenses costing less than \$5,000 per unit, including tax and freight, and those costing \$5,000 per unit or more with a useful life expectancy of less than one (1) year. Included in the definition of commodity contracts covered in this Section are the following:
- a) Equipment – Operating Rental/Lease: These contracts are in essence an extended rental contract under which the owner of the equipment allows the County to operate or otherwise make use of the equipment in exchange for periodic lease payments. These types of contracts are “Operating leases” and are characterized by short-term, cancelable terms. The lessor bears the risk of obsolescence and depreciation of the equipment. Operating leases are generally preferable when the county needs the equipment for a short period of time such as for minor office equipment, printers, copiers, and light-duty vehicles and related equipment. Not included in the definition are long-term, "capital," non-cancelable leases.
 - b) Software/Licenses (Retail– Perpetual and Subscription): Contracts for proprietary software licenses where the software publisher grants the use of the software under the end-user license contract (EULA), but ownership of the software remains with the software publisher. These types of purchases typically include terms which define the uses of the software and number of users allowed.
 - i. Perpetual License - The right to use a software program indefinitely with payment of a single fee. License may or may not include a limited Software Maintenance period and/or the option to purchase ongoing Software Maintenance at the time of purchase or at a later date.
 - ii. Subscription License - The right to use a software as designed without customization for a determined fee, which includes general technical support, updates and upgrades to new versions or releases of the software (e.g. Software as a Service (SaaS) or Commercial Off the Shelf (COTS) software) irrespective of where the software is hosted. It may also include other no charge support that is included in the purchase price of the product in the commercial marketplace. No charge support includes items such as user blogs, discussion forums, on-line help libraries and FAQs (Frequently Asked Questions), hosted chat rooms, and limited telephone, email and/or web-based general technical support for users’ self-diagnostics.
 - iii. Software Maintenance - Includes person-to-person communications regardless of the medium used to communicate: telephone support, on-line technical support, and/or technical expertise which are changed commercially.
 - c) Subscriptions/Databases/Cloud Computing: Contracts for access to on-line information, databases or remote servers to be used to enhance or support a County program or project. Contracts of this type involve no on-site visits or work by a vendor and are limited to the digital exchange of information for a predetermined fee.

- d) Software Maintenance: Software maintenance as a product includes the publishing of bug/defect fixes via patches and updates/upgrades in function and technology to maintain the operability and usability of the software product. It may also include other no charge support that is included in the purchase price of the product in the commercial marketplace. No charge support includes items such as user blogs, discussion forums, on-line help libraries and FAQs (Frequently Asked Questions), hosted chat rooms, and limited telephone, email and/or web-based general technical support for users' self-diagnostics. Software Maintenance as a product is billed at the time of purchase or on an annual basis.
- e) Telecommunications/Data Communications: Contracts for technologies that enable the transmission, reception, and exchange of information and digital data between individuals, devices, systems, or networks, which may include wired or wireless connections to transmit data, such as the internet, telephone networks, data networks or satellite systems. These types of contracts typically include a monthly recurring charge for a predetermined fee. This definition does not include any contracts that may be procured under sections 3.4 or 3.5.
- f) Cash Alternatives: Cash alternatives, including gift cards and gift certificates, to purchase travel and food for non-employee County department clients receiving services from the County.

§3.1-102 Solicitation Considerations

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

§3.1-103 Term of Contract

- (1) The duration of all contracts for commodities shall be based upon the County's Best Interest. Consideration will be given to product availability, price volatility, and expectation of need. Except for contracts defined under Section 4.8 of this manual, in no case shall a commodity contract exceed five (5) years, except as specified in Section 3.1-104(2) below.

- (2) All contracts will include a provision for cancellation by the County due to lack of funds, termination of requirement, termination for convenience, termination with cause or prices which no longer reflect reasonable market prices.
- (3) Prior to renewal or extension of an existing contract, the department will document that performance of the contractor has been satisfactory.

§3.1-104 Contract Extensions

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

§3.1-105 Contract Pricing

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

§3.1-106 Vendor Selection

- (1) Selection of vendors for commodities will be based on the competitive process except Sole Source purchases as defined in Section 4.5 of this manual. Solicitations shall be made as follows:

a) Contracts \$25,000 or less over the life of the contract	Minimum of one written quote
b) Contracts \$25,001 to \$50,000 over the life of the contract	Minimum of two written quotes
c) Contracts above \$50,000 over the life of the contract	Written solicitation issued on County's bidding system
- (2) Commodity purchases that are below the solicitation threshold are not required to be competitively bid nor require a sole source justification for award, except as may be required for Federal or State funded purchases.
- (3) For commodities obtained through the IFB solicitation method as detailed in Section 4.2, awards in all cases will be made to the lowest responsive and responsible bidder.

- (4) Consecutive contracts going back three (3) years for purchases that contain substantially the same scope shall not be issued to the same vendor using the written quote(s) solicitation method when the consecutive contracts' cumulative dollar amount exceeds the written solicitation threshold.

§3.1-107 Public Bid Opening

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

§3.1-108 Retroactive Contract and Amendments/Changes

- (1) Retroactive contracts or contract overruns are not permitted. If a retroactive contract or contract overrun occurs, it is invalid unless ratified by the Board of Supervisors or unless one of the following exemptions applies:
- a) Retroactive contracts or contract overruns with a total value of \$500 or less that have the approval of the department head.
 - b) Retroactive contracts or contract overruns that exceed \$500 and are \$25,000 or less that have the approval of the County Procurement Officer or designee and Chief Financial Officer on the form(s) approved and provided by the County Procurement Office.
- Retroactive contracts or contract overruns with a total value exceeding \$25,000 shall require approval by the Board of Supervisors.
- (2) Retroactive contracts in the following categories shall also be exempt from Board of Supervisors approval:
- a) Contracts governed by separate rules and regulations that conflict with this policy.
 - b) Telephone services requests and emergency contracts in any amount.
 - c) Modifications for computer hardware/software maintenance to add licenses and/or users.

§3.1-109 Contract Increases

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

§3.1-110 Multiple Awards

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

§3.1-111 Incremental Contracting

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

§3.1-112 Commodity Substitutions

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

§3.1-113 Emergencies

- (1) Emergencies are defined as those situations where the welfare of County residents is at stake and/or immediate procurement action is required to prevent serious economic or other hardship to the County. When, due to the nature of the emergency, it is not possible or it is impractical to follow competitive bidding requirements, these requirements may be waived by the County Procurement Officer or Deputy Purchasing Agent.
 - a) Emergency commodity purchases of \$1,000 or less may be made using petty cash or purchasing card, in accordance with Section 4.6 –Petty Cash Purchases.
 - b) For emergency commodity purchases exceeding \$1,000, the requestor will contact the County Procurement Officer or the department Deputy Purchasing Agent. The emergency will be described and the County Procurement Officer or Deputy Purchasing Agent may, if so authorized, use a purchasing card or may issue a contract number for an amount sufficient to resolve the immediate emergency.
 - c) No later than ten (10) business days from the request date, an approved requisition referencing the purchase will be submitted to the County Procurement Officer or Deputy Purchasing Agent.
 - d) The requisition will be accompanied by a memorandum from the department head or designee briefly detailing the emergency situation. The justification will become a permanent part of the procurement file.
 - e) If the emergency occurs during other than normal business hours, the department is authorized to secure the commodities required and contact the County Procurement Officer or Deputy Purchasing Agent on the next regular working day for issuance of a contract.

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

§3.1-114 Board Approval – Sole Source

- (1) Approval by the Board of Supervisors is required prior to the execution of a Sole Source Commodity Contract which costs more than \$250,000 annually. Commodity contracts may not be

Sole Sourced to avoid the bidding requirements contained in this Section. Refer to Section 4.5 – Sole Source Requests for additional policy concerning Sole Source purchases.

§3.1-115 Approval of Non-Standard Contract Terms

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

§3.1-116 Contractor Name/Ownership Changes

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

§3.1-117 Indemnification

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

§3.1-118 Insurance

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

§3.1-119 Opportunity Buy

- (1) An "Opportunity Buy" is a situation where necessary commodities are for sale at significantly reduced rates from what is normally offered in the general market or where an alternative product to the one being bid represents significant cost savings to the County. In the event this situation arises, the Department Head or designee shall prepare a written justification in support of the prompt action taken that shall become part of the permanent procurement file. The justification shall include:
 - a) A detailed description of the commodity to be provided by the vendor and an explanation of the cost savings achieved;
 - b) Why the recommended vendor is the only one capable of providing the required commodities with back-up information included to support the justification;
 - c) Comparison of the recommended vendor's prices or fees to the general market with price and attach quotes for comparable items provided, if available; and,
 - d) County Procurement Officer or designee approval is required for Opportunity Buys exceeding \$1,000,000, and an Agenda Staff Report will be filed with the Board of Supervisors by the appropriate Department Head. The Agenda Staff Report shall include all documentation and justification in support of the purchase.

§3.1-120 Federal and State Funding

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

§3.1-121 Hybrid Contract Definition

- (1) A hybrid contract is a contract which consists of multiple contract type purchases. For example, a contract for the purchase of a commodity and a service is considered a hybrid contract. The solicitation process will be based on the portion with the greater amount; however, each situation should be carefully considered and documented.
- (2) Purchases that are evenly split between commodity and service should be reviewed on a case-by-case basis by the Deputy Purchasing Agent to determine the appropriate Service or Commodity solicitation process, which shall be documented and made a permanent part of the procurement folder.

- (3) If the service portion of a hybrid contract exceeds an annual aggregate cost of \$200,000, or the service portion of a sole source hybrid contract exceeds an annual aggregate cost of \$100,000 or a five (5) year term, refer to Section 3.3-102 (1) a) and b) of this manual.

§3.1-122 Cash Alternative Purchases

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

SECTION 3.2

CAPITAL ASSETS

§3.2-101 Definition

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

§3.2-102 Used Equipment

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

§3.2-103 Board Approval

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

(3) Sole Source Capital Assets:

- a) Approval by the Board of Supervisors is required prior to the procurement of a Sole Source Capital Asset costing more than \$100,000. Procurements may not be Sole Sourced to avoid the bidding requirements contained in this manual. For additional rules and guidelines, refer to Section 4.5 of this manual.

§3.2-104 Approval of Non-Standard Contract Terms

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

§3.2-105 Solicitation Considerations

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

§3.2-106 Vendor Selection

- (1) With the exception of Sole Source purchases, selection of vendors for Capital Assets shall be based on the competitive process. Solicitations shall be made as follows:
 - a) Contracts \$5,000 to \$50,000 over the life of the contract Minimum of two written quotes
 - b) Contracts above \$50,000 over the life of the contract Written solicitation issued on County's bidding system
- (2) Capital Asset purchases that are below the solicitation threshold are not required to be competitively bid nor require a sole source justification for award, except as may be required for Federal or State funded purchases.
- (3) Awards will be made to the lowest responsive and responsible bidder or, in the case of negotiated procurement, the vendor with the most responsive proposal as determined by the County.

§3.2-107 Public Bid Opening

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

§3.2-108 Retroactive Contract and Amendments/Changes

- (1) Retroactive contracts or contract overruns are not permitted. If a retroactive contract or contract overrun occurs, it is invalid unless ratified by the Board of Supervisors or unless one of the following exemptions applies:
 - a) Retroactive contracts or contract overruns with a total value of \$500 or less that have the approval of the department head.
 - b) Retroactive contracts or contract overruns that exceed \$500 and are \$25,000 or less that have the approval of the County Procurement Officer or designee & Chief Financial Officer on the form(s) approved and provided by the County Procurement Office.

Retroactive contracts or contract overruns with a total value exceeding \$25,000 shall require approval by the Board of Supervisors.
- (2) Retroactive contracts in the following categories shall also be exempt from Board of Supervisors approval:
 - a) Contracts governed by separate rules and regulations that conflict with this policy.
 - b) Telephone services requests and emergency contracts in any amount.
 - c) Modifications for computer hardware/software maintenance to add licenses and/or users.

§3.2-109 Indemnification

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

§3.2-110 Insurance

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

§3.2-111 Emergencies

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

§3.2-112 Federal and State Funding

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

§3.2-113 Opportunity Buy

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

SECTION 3.3

SERVICE CONTRACTS

§3.3-101 Definition

- (1) Service contracts encompass all contracts for services either with or without the furnishing of materials. Included in the definition of service contracts covered in this Section are the following:
- a) Professional Services: Services provided by licensed and/or technically trained professionals, including such services as, data processing, accounting, legal, medical, auditing, information-technology (IT) related services that may or may not include: customized software/application, installation and implementation services, creation/development, design, implementation and/or integration of customized changes to software that are not included with the price of the software or software maintenance.
 - 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, etc. Prevailing wage shall be paid pursuant to Labor Code Section 1720 et seq., when applicable. Registration with the Department of Industrial Relations will be required, when applicable, pursuant to Labor Code Section 1771.1(a) and 1725.5.
 - c) Personnel or employee-related services: Services which provide benefit or assistance directly to employees, including such services as temporary employment, security, etc.
 - d) Consultant Service Contracts: Are for those services which are of an advisory nature, which provide a recommended course of action or personal expertise, and which have an end product which is basically a transmittal of information. Consultant service contracts are issued in order to obtain professional or technical advice or expertise which will supplement departmental expertise or advice or where an independent opinion or audit is required. All consultant service contracts shall contain a provision which prohibits “follow-on” projects that prevent the consultant from performing work related to any recommendations being formulated as a result of the consulting work.
 - e) Revenue Generating Contracts (non-real estate): A contract for contractor-provided services on County premises in which the County does not pay a fee, but instead receives a portion of the revenues that are generated from the services such as vending machines, etc.
 - f) Capital Leases (non-real estate): A long-term lease that transfers to the lessee most rights and obligations concerning the asset leased, and usually transfers ownership at the end of the lease.
 - g) Customized Software Maintenance: Software maintenance creates, designs, implements, and/or integrates customized changes to software that solve one or more problems and is not included with the price of the software.
 - h) Architect-Engineer (“A-E”) Consultant Services: Services may include but are not necessarily limited to: investigations, report preparation, cost estimating, shop drawing review, CEQA documentation preparation, regulatory permit application and acquisition, archeology, geological and soils analysis, agronomy, limnology, biology, paleontology, material testing and inspection, real estate appraisal, and property acquisition services.

Services also may include studies addressing engineering, architecture, facilities management, and environmental issues but **shall not** include design or construction drawings used for public works construction projects.

- i) Human Services: Human Services Contracts include all contracts for services that directly maintain or improve the social, economic, physical, or mental well-being of persons for whom the County bears such a responsibility, including food and travel. Included in the definition of Human Services Contracts are services provided in response to or in support of federal, state and/or local service mandates to provide health and human services to a target population.
- (2) Service contracts as defined in, and applied to, this section do not include Architect-Engineer Service Contracts (related to engineering and design of public projects), Public Works Construction Contracts, and Real Estate Contracts. For policies related to Architect-Engineer Service Contracts, refer to Section 3.4. For policies related to Public Works Construction Contracts, refer to Section 3.5. For policies related to Real Estate Contracts, refer to Sections 3.7 and 4.3.1.

§3.3-102 Board Approval

- (1) Approval by the Board of Supervisors is required for all service contracts in accordance with the guidelines listed below.
 - a) Contracts Exceeding \$200,000 – Approval by the Board of Supervisors is required for all service contracts and/or revenue generating contracts where for any year of the contract, the annual value to any one contractor exceeds \$200,000, in accordance with Government Code Section 25502.5.
 - b) Sole Source Service Contracts – Approval by the Board of Supervisors shall be required for all Sole Source service contracts that exceed a total annual amount of \$100,000 or a five (5) year term. Contracts may not be split to avoid this policy, including proposed successor contracts that contain substantially the same scope of work. Renewal of a Sole Source Service where no changes to the scope or the dollar amount of the contract will not require a new Sole Source approved form. For additional information and guidelines refer to Section 4.5 – Sole Source Requests.

§3.3-103 Approval of Non-Standard Contract Terms

- (1) Unless Risk Management agrees in writing that the risk to the County is minimal and County Counsel agrees in writing that the legal risk to the County is minimal, approval by the Board of Supervisors is required prior to the execution of any contract for \$200,000 or less that includes non-standard terms in the indemnification contract provisions and/or limits the vendor's liability. This shall not apply to service purchases of \$5,000 or less, unless the contract contains an indemnification provision that requires the County to indemnify the vendor.
- (2) Unless County Counsel agrees in writing that the legal risk to the County is minimal, approval by the Board of Supervisors is required prior to the execution of a contract for \$200,000 or less that includes non-standard terms in the governing law or arbitration/dispute resolutions contract provisions. This shall not apply to service purchases of \$5,000 or less.

§3.3-104 Contractor Name/Ownership Changes

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

§3.3-105 Term

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

§3.3-106 Contract Extensions

- (1) Service Contracts may be extended up to a five (5) year term without approval by the Board of Supervisors. The extension may be issued by the Deputy Purchasing Agent, without Board of Supervisors approval provided there are no monetary increases that cumulatively exceed the Board of Supervisors approval threshold, while complying with solicitation thresholds.

- (2) Board and non-Board contract extensions may be issued by the Deputy Purchasing Agent for up to one (1) year, beyond the fifth year, with County Procurement Officer or designee approval, provided there are no monetary increases (i.e., within the contract's existing contract amount).

§3.3-107 Renewals

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

§3.3-108 Pricing

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

§3.3-109 Vendor Selection

- (1) With the exception of Sole Source service contracts, selection shall be based on the competitive process. Solicitations shall be made as follows:
- a) Contracts \$100,000 or less over the life of the contract Minimum of one written quote
 - b) Contracts above \$100,000 over the life of the contract Written solicitation issued on County's bidding system
- (2) Services that are below the solicitation threshold are not required to be competitively bid nor require a sole source justification for award, except as may be required for Federal or State funded procurements.

- (3) Awards in Invitation for Bid solicitations will be made to the lowest responsive and responsible bidder as defined in Section 4.2-102 of this manual. In the case of a negotiated procurement, award shall be made to the vendor with the most responsive and responsible proposal as detailed in Section 4.3-114 of this manual.
- (4) Consecutive contracts going back three (3) years for purchases that contain substantially the same scope shall not be issued to the same vendor using the written quote(s) solicitation method when the consecutive contracts' cumulative dollar amount exceeds the written solicitation threshold.

§3.3-110 Public Bid Opening

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

§3.3-111 Retroactive Contract and Amendments/Changes

- (1) Retroactive contracts or contract overruns are not permitted. If a retroactive contract or contract overrun occurs, it is invalid unless ratified by the Board of Supervisors or unless one of the following exemptions applies:
 - a) Retroactive contracts or contract overruns with a total value of \$500 or less that have the approval of the department head.
 - b) Retroactive contracts or contract overruns that exceed \$500 and are \$25,000 or less that have the approval of the County Procurement Officer or designee and Chief Financial Officer on the form(s) approved and provided by the County Procurement Office.

Retroactive contracts or contract overruns with a total value exceeding \$25,000 shall require approval by the Board of Supervisors.

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

§3.3-112 Adjustments to Contract Amount

- (1) Decreases: The department Deputy Purchasing Agents may decrease the amount of a contract without obtaining approval from the Board of Supervisors.
- (2) Increases: With respect to non-Board awarded service contracts, cumulative contract increases may not exceed 10% of the original annual contract amount, unless authorized/approved by the County Procurement Officer or designee on the form(s) approved and provided by the County Procurement Office. The department Deputy Purchasing Agent shall submit a form, which shall

be made a permanent part of the procurement file, to request an increase of the value of a non-Board awarded service contract under the following circumstances:

- a) The need for service could not be accurately projected and the percentage of increase does not justify rebidding.
 - b) An emergency exists which does not permit rebidding.
 - c) Special economic factors justify a contract increase.
- (3) For Board awarded contracts, no increase exceeding the contingency amount will be permitted without approval by the Board of Supervisors.
- (4) Exemptions: Subordinate contracts issued against RCAs, and subordinate contracts issued against CPO approved cooperative programs with a total aggregate contract amount below the thresholds requiring approval by the Board of Supervisors, and contracts awarded via informal solicitations (one written quote) will not require approval from the County Procurement Officer or designee.

§3.3-113 Contingency Funds

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

§3.3-114 Multiple Awards

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

§3.3-115 Incremental Contracting

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

§3.3-116 Indemnification

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

§3.3-117 Insurance

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

§3.3-118 Bid and Performance Bond

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

§3.3-119 Liquidated Damages

- (1) Liquidated damages clauses are enforceable if:
 - a) damages are difficult to ascertain or estimate at the time the contract is formed; and
 - b) the amount is a reasonable forecast of compensatory damages in the case of breach. Specifically, if the liquidated damages amount significantly exceeds the amount of damages prospectively probable, the liquidated damages clause may not be enforceable.
- (2) Liquidated damage clauses may be included in service contracts when the County could suffer financial loss due to delays in performance. Consistent with legal requirements, the amount of damages listed in the contract must be a "reasonable forecast" of the County's actual damages.
- (3) Liquidated Damages Clause:
 - a) It is agreed by and between the Contractor and the County that if this Contract is not fully and completely performed within the terms of the contract, damage will be sustained by the County. Said damage includes any additional costs resulting from a delay in scheduled time frames by the Contractor. Since it is and will be impractical and extremely difficult to determine the actual damage which the County will sustain by reason of such delay, it is therefore agreed that Contractor will pay to the County liquidated damages in a set amount for each and every day of delay as set forth in this document.
 - b) In the event the liquidated damages as set forth herein are not paid by the Contractor, the County will deduct the amount of liquidated damages from any monies due Contractor under this contract.
 - c) This provision may be invoked at the sole option of the County by notification to the Contractor by certified return receipt mail.
 - d) If Contract is delayed by reason of changes or extra services ordered by the County or as a result of the County's failure to perform or delays cause by the County, the time of performance of this Contract will be extended commensurate with the time required for the extra services, and no liquidated damages will accrue during the period of such extension.
 - e) If this Contract is not fully and completely performed within the time set forth herein, the County shall have the right to increase the time for such performance and to waive the liquidated damages. Nothing herein shall be construed as giving the Contractor a right to extra time for performance.

§3.3-120 Contract Administration

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

§3.3-121 Cancellation

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

§3.3-122 Emergencies

- (1) Emergencies are defined as those situations where the welfare of County residents is at stake and/or immediate purchasing action is required to prevent serious economic or other hardship to the County. When due to the nature of the emergency, it is not possible or it is impractical to follow competitive bidding requirements, these requirements may be waived by the County Procurement Officer or Deputy Purchasing Agent.
 - a) Process:
 - i. Emergency service purchases of \$1,000 or less may be made using petty cash or purchasing card, in accordance with Section 4.6- Petty Cash Purchases.
 - ii. For emergency service purchases over \$1,000 the requestor will contact the County Procurement Officer or appropriate department Deputy Purchasing Agent. The emergency will be described and the County Procurement Officer or Deputy Purchasing Agent may use a purchasing card, when so authorized, or may issue a contract for an amount sufficient to resolve the immediate emergency.
 - iii. The requestor will ensure and will confirm with the County Procurement Officer or Deputy Purchasing Agent that the service contractor carries insurance.
 - iv. No later than ten (10) working days from the request date, an approved requisition referencing the purchase will be submitted to the County Procurement Officer or Deputy Purchasing Agent. This requisition will be accompanied by a memorandum from the department head or designee briefly detailing the emergency situation. The justification will become a permanent part of the procurement file.
 - v. If the emergency occurs on other than normal working hours, the department is authorized to secure the services required and contact the County Procurement Officer or Deputy Purchasing Agent on the next regular business day.

- vi. For emergency purchases exceeding \$200,000, an Agenda Staff Report will be filed with the Board of Supervisors by the department administering the contract as soon as possible, after the service is performed.

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

§3.3-123 Contract Planning and Coordination

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

§3.3-124 Contracts for Outside Legal Counsel

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

§3.3-125 HIPAA – Business Associate Language

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

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

§3.3-126 Federal and State Funding

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

§3.3-127 Hybrid Contract Definition

- (1) A hybrid contract is a contract which consists of multiple contract type procurements. For example, a contract for the purchase of a commodity and a service is considered a hybrid contract. The solicitation process will be based on the portion with the greater amount; however, each situation should be carefully considered and documented.

- (2) Procurements that are evenly split between commodity and service should be reviewed on a case-by-case basis by the Deputy Purchasing Agent to determine the appropriate solicitation process, which shall be documented and made a permanent part of the procurement folder.
- (3) If the service portion of a hybrid contract exceeds an annual aggregate amount in excess of \$200,000, refer to Section 3.3-102 (1) a) and b) of this manual.

§3.3-128 County of Orange Procurement Preference Policy Exemption

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

§3.3-129 Opportunity Buy

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

SECTION 3.4

ARCHITECT-ENGINEER SERVICE CONTRACTS

§3.4-101 General Responsibilities

- (1) State and local law, including [Public Contract Code Section 22034](#), [Government Code Section 25502.5](#), [Orange County Codified Ordinances Section 1-8-11 et seq.](#), and [Orange County Codified Ordinances Section 1-4-12 et seq.](#), provide for delegation of authority by the Board of Supervisors to appropriate officials to engage contractors to provide architectural and engineering services within specified dollar limits. Unless otherwise specified, all references in this section to “Director” shall mean the Director of OC Public Works, Sheriff-Coroner or those qualified County officials or department designees identified by the Director of OC Public Works.
 - a) The employees designated by the Director to procure A-E service contracts and public works construction contracts shall be trained under the direction of the County Procurement Officer, adhere to the methods, policies and procedures established by the County Procurement Officer and deputized as Deputy Purchasing Agents to exercise the authority delegated to the County Procurement Officer by the Board of Supervisors as authorized by law.
 - b) The Deputy Purchasing Agents shall procure A-E contracts and public works construction contracts at the direction of the Director or his or her designee(s), including overseeing the processes for the selection of architects, engineers, and construction contractors, entering into design and construction contracts on behalf of the County, and handling related protests and appeals, as allowed by statute and in accordance with Sections 3.4, 3.5 and 3.6.
- (2) Notwithstanding the Architect-Engineer (A-E) services as defined in Section 3.3 above, all other A-E service contracts, including those not requiring Board of Supervisors approval, shall be solicited and executed by the Director of OC Public Works, Sheriff-Coroner or those qualified County officials or department designees identified by the Director of OC Public Works, or the Sheriff-Coroner to solicit and execute A-E service contracts in accordance with this CPM, Resolutions of the Board of Supervisors and applicable law.
- (3) It shall be the duty of the Director to procure all A-E service contracts and public works construction contracts and handle related protests and appeals, for the County of Orange, its agencies and departments, and the Orange County Flood Control District, and any other public entity that elects to adopt this section of the CPM. All references to the Board of Supervisors shall also apply to the governing body of any public entity that elects to adopt this CPM. If the Sheriff-Coroner determines it is in the best interests of the County for the Director of OC Public Works to procure a particular contract or type of contract, the Director of OC Public Works shall have the authority to procure such contracts.
- (4) Although the Director has the responsibility to prepare and procure design and construction contracts, the contracting department is responsible for: identifying the scope of the project; budgeting and funding of the project, including and ensuring the project meets any applicable requirements relating to the funding source; providing support to the Director throughout design and construction, inspections, contract compliance, and payment processing; and

working with the Director to identify the department's roles and responsibilities for each project.

§3.4 - 102 Definition

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

§3.4-103 Statute

- (1) Government Code Section 4525 *et seq.* (Mini-Brooks Act) governs contracts between public entities and private architectural, landscape architectural, engineering, environmental, land surveying, and construction project management firms. These statutes establish a Qualifications-Based Selection (QBS) method that public agencies in California must use to contract for professional services. This method requires that such services be engaged on the basis of demonstrated competence and qualifications for the types of services to be performed and at a fair and reasonable price. Accordingly, public agencies may not utilize competitive bidding for such services, except in the limited instances where the State or local agency head determines that the services needed are more of a technical nature and involve little professional judgment and that requiring bids would be in the public interest (Government Code §4529). In addition, the procedures adopted to implement the Mini-Brooks Act must assure maximum participation of small business firms as defined in Government Code Section 14837.

§3.4-104 Conflicts of Interest

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

- (1) An A-E entity representing a private sector client with an interest in a County project may not also represent the County on the same project; and
- (2) Notwithstanding Paragraph (1), an A-E entity may serve in both design and construction support

roles on a given project if those roles were contemplated as part of the same contract.

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

§3.4-105 Board of Supervisors Approval

- (1) “In Counties having a population of 200,000 or more, the Board may authorize the purchasing agent to engage independent contractors to perform services for the County or County officers, with or without the furnishing of material, when the annual aggregate cost does not exceed two hundred thousand dollars (\$200,000).” Government Code Section 25502.5. Therefore, Board of Supervisor approval is required when the annual aggregate cost exceeds \$200,000.
- (2) Approval by the Board of Supervisors is required for all sole source A-E Service contracts that exceed a total annual aggregate amount of \$100,000 or a five-year consecutive term, inclusive of any amendments, regardless of dollar amount.

§3.4-106 Contractor or Firm Name/Ownership Changes

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

determined that the proposed assignee is qualified to perform according to the terms of the contract and original solicitation requirements and any key staff identified in the contract remain unchanged.

- (3) Upon approval of County Counsel, Deputy Purchasing Agents are authorized to approve a change in contractor name or ownership for non-Board awarded contracts.

§3.4-107 Term

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

§3.4-108 Firm Selection Methods

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

- (2) Request for Qualifications:

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

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

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

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

b) Additional Use of Qualified Vendor List

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

(3) Request for Proposals

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

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

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

(5) Competitive Bidding

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

(6) Sole Source Contracts:

- a) “Sole source contracts” are contracts that are excused from competitive bidding when (1) the service requested is proprietary, or (2) the County’s business needs require expeditious

award of a contract without competitive bidding. Approval by the Board of Supervisors is required for award of all sole source contracts that exceed an annual amount of \$100,000 or a five (5) year consecutive term (Note: firms that are listed on a current Qualified Vendor List have participated in the competitive bidding process, and do not require sole source justification for contract award. However, contracts awarded from a Qualified Vendor List may still require approval by the Board of Supervisors if they exceed the thresholds in Government Code § 25502.5).

(7) **One-Time Contracts:**

- a) In such cases where firms from an existing Qualified Vendor List cannot be utilized, contracts that do not exceed \$100,000 are considered “one-time” contracts and are not required to be competitively bid nor require a sole source justification for award. Alternate submittals should be obtained to ensure the County has validated firm qualifications and competitive pricing.

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

- (1) For multiple award contracts, the following factors are to be utilized prior to deciding which A-E firm will be requested to perform the necessary services:
 - a) **Expertise:** Applicable expertise of the firm to best perform the specific scope of the services identified.
 - b) **Capacity:** Review of the firm’s necessary staff and equipment availability to perform the specific scope of services identified within the County’s requested time period.
 - c) **Price:** Review of the estimated level of effort and resulting cost to complete the services identified.
 - d) **Utilization:** When the above factors are substantially the same, and in the case of equivalent costs for identified services, the County may consider the amount of work each firm has previously performed under the current contract.
 - e) **Performance:** If poor performance becomes an issue for a specific firm, that firm may receive fewer requests for identified services to protect the County from resulting quality or safety issues.

§3.4-110 Quarterly Usage Report

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

§3.4-111 Amendments

- (1) Within the limited authority granted by the Board of Supervisors, the Director or Director’s designee may amend the contract allowing additional work that is related to, and is of a similar nature to, the original scope, as long as the additional work does not exceed the value of the contract approved by the Board of Supervisors.
- (2) If an increase to an A-E service contract is necessary, the estimated not-to-exceed amount will be agreed upon in writing before beginning the additional work.
- (3) If an A-E service contract has not been approved by the Board of Supervisors, any change to

the Contract that increases the annual aggregate amount beyond \$200,000 must be approved by the Board of Supervisors.

- (4) Subject to restrictions set forth in Paragraph (3) above, increases of the A-E service contract amount for services within a contract's existing scope of work may be granted by the Director or Director's designee without Board of Supervisor's approval where the increased amount does not exceed 25 percent of the existing contract price or \$200,000 annually, whichever is less.
- (5) Amendments to an A-E service contract exceeding the Director's authority as described above must be submitted to the Board of Supervisors for approval.
- (6) Amendments to an A-E service contract require Board of Supervisors approval when there is a major change in the scope of the contract or the change would result in a major delay that significantly differs from the original period of performance as agreed upon in the contract.

§3.4-112 Extensions

- (1) Notwithstanding Section 3.4-112, at the Director's discretion, with the concurrence of County Counsel and for the sole purpose of completing work already commenced, the Director may extend the term of a Board-awarded or non-Board awarded A-E service contract for a period of not more than one (1) year so long as there is no increase in cost to the County or change in the scope of work.

§3.4-113 Insurance

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

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

§3.4-114 State And Federal Grant Projects

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

§3.4-115 Prevailing Wage

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

SECTION 3.5

PUBLIC WORKS CONSTRUCTION CONTRACTS

§3.5-101 General Responsibilities

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

§3.5-102 Definition

- (1) As used in this CPM, “public works,” “public works contract,” “public works construction contract” or “public works project” shall share the same meaning as “public project” as defined in [Public Contract Code Section 22002\(c\)](#):
 - a) Public works contract or public works project means any of the following:

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

(2) Prevailing wage shall be paid pursuant to [Labor Code Sections 1720](#) *et seq.*

§3.5-103 Purpose and Scope

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

§3.5-104 Statute

- (1) Public works contracts shall be issued in accordance with the provisions of the [Public Contract Code Sections 22000](#) *et seq.*, also known as the Uniform Public Construction Cost Accounting Act (the Act), and on forms approved for use by County Counsel.
- (2) The provisions of the Act relative to bidding procedures supersede the procedures contained within the code that would otherwise apply to specific projects or public entities.
- (3) Amendments or revisions to the code sections affecting this policy and resulting procedures may be directly incorporated into this CPM when enacted by the California Legislature without further action of the Board of Supervisors.

§3.5-105 Contract Methodology

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

§3.5-106 Design-Bid-Build

- (1) The Design-Bid-Build method splits construction projects into three (3) distinct phases: (1) design, (2) solicitation and (3) construction. During the design phase, the local agency prepares detailed project plans and specifications using its own employees or by hiring outside architects and engineers, as specified in Section 3. The solicitation and construction phases are specified within this Section.
- (2) [Public Contract Code Sections 20100](#) *et seq.* delineates the requirements and procedures that local officials must follow when awarding public works contracts.
- (3) The County of Orange utilizes the Design-Bid-Build method for construction projects resulting in a Fixed-Price Contract, a Fixed-Price Indefinite Quantity Contract, or a Cost Plus Fixed Fee Contract. When using this method, it is required to utilize the prequalification process per Sections 3.5-114 through 3.5-117.

§3.5-107 Invitation for Bid (IFB) Process

- (1) Public works contracts with a value of \$200,000 or less may be procured by using informal bidding procedures as set forth in [Public Contract Code Section 22032](#) and [Orange County Codified Ordinances 1-8-10 through 1-8-14](#).
- (2) Unless the product or service is proprietary, all contracts with a value of between \$60,000 and \$200,000 or less, or those amounts provided by [Public Contract Code Section 22032](#), shall be selected using the following informal bidding procedures:
 - a) The Director shall maintain a list of qualified contractors, identified according to categories of work. Minimum criteria for development and maintenance of the contractors list shall be determined by the Director.
 - b) All contractors on the list for the category of work being bid or all construction trade journals specified in [Public Contract Code Section 22036](#), or both, shall be mailed or emailed a notice inviting informal bids unless the product or service is proprietary.
 - c) All mailing of notices to contractors and construction trade journals pursuant to this section shall be completed not less than ten (10) calendar days before bids are due.
 - d) The notice inviting informal bids shall describe the project in general terms and how to obtain more detailed information about the project, and state the time and place for the submission of bids.
 - e) As provided by [Public Contract Code Section 22034\(d\)](#), if all bids received are in excess of \$200,000, the Board of Supervisors may, by adoption of a resolution by a four-fifths vote, award the contract, at \$212,500 or less, to the lowest responsible bidder, if it determines the cost estimate of the agency or department was reasonable.
- (3) The Director or designee shall approve plans, specifications, working details for its public works projects, and shall issue contracts for all public works contracts with a value of \$200,000 or less.
- (4) Regarding public works contracts with a value of more than \$60,000, which are not Construction Manager at-Risk or Design-Build contracts, the County must award each contract to the lowest

responsive, responsible bidder, except under one of the following circumstances:

- a) The County may award the contract to the bidder of its choice if the two lowest bids are equal per Public Contract Code 22038(b).
 - b) The County may reject any bids presented, furnish a written notice to the apparent low bidder and then:
 - i. Abandon the advertised public works project or re-advertise for bids in the manner described in the Act per Public Contract Code Section 22038(a)(1); or
 - ii. Declare, by passage of a resolution with four-fifths approval of the Board of Supervisors, that the work can be performed more economically by employees of the County, and have the project performed by force account which is work ordered on a construction project without an existing contract on its cost, and performed with the understanding that the contractor will bill the owner according to the cost of labor, materials, and equipment, plus a certain percentage for overhead and profit.
 - c) If no bids are received by formal or informal bid procedure, the County may have the work performed by employees of the County by force account or negotiated contract in accordance with [Public Contract Code Section 22038\(c\)](#).
- (5) Public works contracts valued at over \$200,000 shall be solicited using formal bid procedures as provided by [Public Contract Code 22037](#). The project, plans, and specifications shall be adopted by the Board of Supervisors, unless delegated. The invitation for bids shall be authorized by the Board of Supervisors, unless delegated, and advertised by the Director or designee. The contract shall be awarded by the Board of Supervisors. The approved contract shall be executed by the Board of Supervisors unless the authority has been clearly delegated and authorized to others by the Board of Supervisors.
- (6) Emergency projects shall be performed in accordance with [Public Contract Code Section 22035 or 22050, as applicable](#).

§3.5-108 Change Orders

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

- (4) The Director or designee shall adhere to County procedures for:
 - a) Reviewing change requests;
 - b) Negotiating change order with the contractor;
 - c) Obtaining legal review and approval of change orders, where appropriate; and
 - d) Preparing written documentation on change orders.

§3.5-109 State And Federal Grant Projects

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

§3.5-110 Alternate Project Delivery Methods

- (1) Alternate Project Delivery Methods shall include Design-Build, Construction Manager at-Risk (CMAR), and Job Order Contract (JOC).
- (2) It is the policy of the County of Orange to solicit in full and open competition and award contracts that are consistent with the nature and requirements of the specifications or services to be procured utilizing the most efficient and effective project delivery method.
- (3) The purpose of this section is to provide an overview of the County's options and alternate project delivery methods of contracting for construction, architectural, engineering, and construction-related services. The scope of this section covers Architect-Engineering (A-E) service contracts and/or public works construction contracts.
- (4) This section establishes the available options and applicable statutory provisions for alternate project delivery methods for utilization by each County department. Alternate project delivery methods involve utilizing qualifications as the primary criteria for selection of construction services as an “alternate” to a price-based selection (or low bid/Design-Bid-Build).

§3.5-111 Design-Build

- (1) Design-Build (DB) is a qualification-based selection (QBS), in which both the design and construction services for a project are procured at the same time following the QBS and pursuant to statute, the contract is awarded either to the lowest responsible bidder or by best value to a single entity known as the DB Entity. In contrast to Design-Bid-Build, DB relies on a single point of responsibility contract and is used to minimize risks for the project owner and to shorten the delivery schedule by overlapping the design phase and construction phase of a project.
- (2) Chapter 4 commencing with Public Contract Code Section [22160](#) provides the general authority for DB procurement by local agencies. With Board of Supervisors approval, the County may use DB contracts for public works projects in excess of \$1,000,000, except for projects on the state highway system, and may award such contracts either to the lowest responsible bidder or by best value. Best value means a value determined by objective criteria related to price, features,

functions, life-cycle costs, experience, and past performance.

- (3) Public Contract Code [Section 22161\(g\)\(1\)](#) defines “project” for the purposes of DB procurement as the construction of a building or buildings and improvements directly related to the construction of a building or buildings, county sanitation wastewater treatment facilities, and park and recreational facilities, but does not include the construction of other infrastructure, including, but not limited to, streets and highways, public rail transit, or water resources facilities and infrastructure. For a county that operates wastewater facilities, solid waste management facilities, or water recycling facilities, “project” also includes those facilities.
- (4) Unless subsequently amended, Public Contract Code [Section 22169](#) provides that the statutes authorizing DB contracting are repealed as of January 1, 2025.
- (5) Pursuant to [Public Contract Code Section 22162.6](#), in addition to those projects permitted to be delivered by DB under [Public Contract Code Section 22161\(g\)\(1\)](#), DB contracts may also be used to deliver the following types of projects in Orange County:
 - a) Flood protection improvements
 - b) Harbor and beach improvements
 - c) Bikeway improvements

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

- (6) Pursuant to [Public Contract Code Section 22162.6](#), in addition to the requirements set forth in Section 22164, for a project authorized under Section (5) above, the County shall be responsible for the performance of, and County employees in Orange County Public Works may perform, project development services, including performance specifications, preliminary engineering, procurement services and the preparation of project reports, and construction inspection services, excluding specialty bridge inspections. The County shall also be the responsible agency for, and County employees in Orange County Public Works may perform, the preparation of documents that may include, but need not be limited to, the size, type, and desired design character of the project, performance specifications covering quality of materials, equipment, and workmanship, preliminary plans, and any other information deemed necessary to describe adequately the needs of the County of Orange.
- (7) Orange County Flood Control District may use the Design-Build project delivery method to design, build and perform projects for flood protection improvements. Public Contract Code [Section 22162.7\(a\)](#). The District may perform no more than twelve (12) such projects with a dollar value greater than \$5 million prior to January 1, 2025. Public Contract Code [Section 22162.7\(c\)](#).
- (8) Pursuant to Public Contract Code Section 22162.7, in addition to the requirements set forth in Section 22164, for a project authorized under Section (7) above, the Orange County Flood Control District shall be responsible for the performance of, and County employees in Orange County Public Works may perform, project development services, including performance specifications, preliminary engineering, procurement services and the preparation of project reports, and construction inspection services, excluding specialty bridge inspections. The County shall also be the responsible agency for, and County employees in Orange County Public Works may

perform, the preparation of documents that may include, but need not be limited to, the size, type, and desired design character of the project, performance specifications covering quality of materials, equipment, and workmanship, preliminary plans, and any other information deemed necessary to describe adequately the needs of the Orange County Flood Control District.

- (9) The DB method of project delivery affords a more collaborative approach, which may provide benefits, such as reducing project cost, expediting project completion, or providing design features, not achievable through the design-bid-build process. In addition, DB may yield cost efficiencies by shifting certain liability and risk for cost containment and project completion with the design-builder.
- (10) DB projects must progress in a four-step process: Scope Development, Request for Qualification of DB Entities, Requests for Proposal, and Evaluation of Proposals and Selection of DB Entities:
 - a) **Scope Development**
The County prepares a set of documents defining the scope of the project, generally called performance specifications and plans. These performance specifications and any plans shall be prepared by a design professional duly licensed and registered in California. If the County retains an architect or engineer to assist in the development of the scope or other project-specific documents for a design-build project, that architect or engineer is not eligible to participate in the preparation of a submittal with any DB Entity for that project.
 - b) **Request for Qualification (RFQ) Process**
When utilizing DB, the County shall initially use the RFQ process to identify the most qualified respondents. Only those entities that are selected through RFQ process will be allowed to submit proposals in response to the County's subsequent DB Request for Proposal. Pursuant to [Public Contract Code Section 22164](#), the RFQ must include:
 - i. Identification of the basic scope and needs of the project or contract;
 - ii. The expected cost range;
 - iii. Methodology that will be used to evaluate the Statement of Qualifications (SOQ) and the procedure for final selection of the DB Entity;
 - iv. Significant factors that the agency expects to consider in evaluating qualifications, including technical design and construction expertise, acceptable safety record, and all other non-price related factors; and
 - v. And any other information deemed necessary by the contracting agency to inform interested parties of the contracting opportunity.
 - c) **Request for Proposal (RFP) Process**
Based on the performance specifications and plans, the County shall prepare an RFP inviting those respondents identified as most qualified through the RFQ process to submit competitive sealed proposals. Pursuant to [Public Contract Code Section 22164\(d\)](#), the RFP must include:
 - i. The basic scope and needs of the project, the estimated cost of the project, and other information deemed necessary by the County to inform interested parties of the opportunity;
 - ii. The methodology that will be used by the County to evaluate proposals, specifically if the contract will be awarded to the lowest responsive, responsible respondent or whether it will be awarded based on best-value and other criteria, and significant

objective factors that the County reasonably expects to consider in evaluating proposals, including cost or price and non-price-related factors; and

- iii. The relative importance of weight assigned to each criteria specifically whether evaluation factors other than cost or price are significantly more than, approximately equal to, or less important than cost or price.

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

d) Evaluation of Proposals and Selection

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

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

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

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

§3.5-112 Construction Manager at-Risk

- (1) Construction Manager at-Risk (CMAR) is an alternate project delivery method which entails a commitment by the Construction Manager at-Risk Entity (CMARE) to deliver the project within a Guaranteed Maximum Price (GMP). The CMARE acts as a consultant to the County in the development and design phases (“preconstruction services”) and as a general contractor during construction.
- (2) [SB328 \(2013\)](#) amended [Public Contract Code Section 20146](#), allowing counties to use CMAR for vertical construction. SB 914 (2018) expanded existing statute to allow counties, as well as other public entities for which the members of a county’s board of supervisors make up the membership of the governing legislative body (e.g., the Orange County Flood Control District), to use CMAR to deliver horizontal projects, in addition to vertical projects, subject to some limitations.
- (3) Pursuant to [Public Contract Code 20146](#), A county with approval of the board of supervisors, or

a public entity, with approval of its governing body, may utilize CMAR construction contracts for the erection, construction, alteration, repair, or improvement of any infrastructure, excluding roads, and including, but not limited to, buildings, utility improvements associated with buildings, flood control and underground utility improvements, and bridges, owned or leased by the county. A CMAR construction contract may be used only for projects in the county in excess of one million dollars (\$1,000,000) and may be awarded using either the lowest responsible bidder or best value method to a CMARE that possesses or that obtains sufficient bonding to cover the contract amount for construction services and risk and liability insurance as may be required by the county or public entity. Any payment or performance bond written for the purposes of this section shall be written using a bond form developed by the county or public entity.

- (4) CMAR may not be used to construct roads. [PCC 20146\(a\)](#).
- (5) The authority to use CMAR terminates by operation of law on January 1, 2029, unless a later enacted statute deletes or extends that date. Public Contract Code [Section 20146\(h\)](#).
- (6) A CMAR contract is procured through a Request for Proposal (RFP) process, which results in a qualification based, competitively procured contract that guarantees the cost of a project and furnishes Construction Management services, including preparation and coordination of bid packages, scheduling, cost control, value engineering, evaluation, preconstruction services, and construction administration. Unlike DB, when utilizing a CMAR contract the County retains control of the entire design process.
- (7) On a CMAR project, the County typically retains the CMARE before or during design. The CMARE provides a contractor's perspective during design, assists in value engineering, and performs quality control to reduce common design problems such as coordination and constructability issues. The construction documents are divided into separate "trade packages" suitable for competitive bidding as separate contracts. The CMARE selects the trade contractors through procedures established by the County, and is responsible for scheduling, coordinating and completing the project for a GMP.
- (8) The CMARE is typically paid a fixed sum for its preconstruction services and receives a fee, calculated as a percentage of hard construction cost (e.g., labor, materials), for services during construction. The CMARE may also provide site services for the project, such as security and sanitation, and may, in some cases, perform portions of the work. If it does so, payment for that work may be in addition to the fees charged for preconstruction services.
- (9) The overall price for construction of the project, either a lump sum or GMP, is usually established late in the design phase or after all trade contracts have been bid. The price should change only if the County modifies the project, regulatory changes increase the cost of the work, or unexpected site conditions appear. As with other contracting methods, the County may prequalify the CMARE and/or subcontractors or set minimum qualifications requirements (which do not score but merely qualify the CMARE and subcontractors). It is important that a CMAR contract clearly identifies the risks the County would shift to the CMARE, and that the County's staff is well trained to use the contract to enforce those responsibilities.
- (10) Selection of the CMARE should be by best value, where "best value" means a value determined by objective criteria related to the experience of the entity and project personnel, project plan, financial strength of the entity, safety record of the entity, and price.

§3.5-113 Job Order Contracts - Annual Contracts for Repair, Remodeling, or other Repetitive Work

- (1) An annual contract for repair, remodeling, or other repetitive work based on unit prices including, but not limited to, a Job Order Contract (JOC) is a firm fixed price, competitively bid through the Invitation for Bid (IFB) process, unit priced, indefinite quantity contract designed to accomplish applicable projects as defined in [Public Contract Code Section 20128.5](#). Per statute, these contracts shall not include the performance of design or contract drawing services.
- (2) Public Contract Code Section 20128.5 provides the statutory authority for these contracts for repair, remodeling, or other repetitive work only, and may not be used for new construction. Unit-price contracts may only be up to one year in duration.
- (3) The Board of Supervisors delegates to the Director the ability to utilize Job Order Contracts awarded by the Board of Supervisors to perform activities described in Public Contract Code Section 20128.5.
- (4) Per [Public Contract Code Section 20128.5](#), these contracts may be awarded up to \$3,000,000 plus an annual Consumer Price Index adjustment based on the annual Consumer Price Index published by the California Department of Industrial Relations.
- (5) Per Public Contract Code Section 20128.5, Job Order Contracts may not be used for new construction. Job Order Contracts may only be used for repair, remodeling, or other repetitive work to be done according to unit prices. Job Order Contracts shall only be awarded to the lowest responsible bidder and shall be based on plans and specifications for typical work provided by the County. “Unit price” as used herein means the amount paid for a single unit of an item of work, and “typical work” means a work description applicable universally or applicable to a large number of individual projects, as distinguished from work specifically described with respect to an individual project.
- (6) No task orders may be issued against a Job Order Contract after expiration of the term of contract; provided, however, that the Director may extend the term of a Job Order Contract for a period of six (6) months for the sole purpose of completing any work or project already ordered prior to the expiration of the original term of the Job Order Contract when work has already commenced on that work or project. No new task orders may be issued against a Job Order Contract after expiration of the original term of the contract, except that work already ordered by task order and commenced prior to expiration of the original term of the JOC contract may be modified by supplemental task order so long as (a) the modification does not substantially alter the character of the work already in progress, (b) the changes ordered in all supplemental task orders do not result in an increase in cost of more than 50% in aggregate above that of the original task order, and (c) the supplemental task order does not extend the time to perform the contemplated work beyond six (6) months past the expiration of the original term of the Job Order Contract.
- (7) The annual unit-price contracts program is carried out by either developing in house, or contracting out for the professional services for, the development and customization of a Unit Price Book (UPB) and technical specifications for typical work. A UPB includes pre-priced construction tasks that are specifically tailored for the type of work that the County intends to accomplish and includes labor, material and equipment costs. All unit prices incorporate federal labor standards including Davis-Bacon requirements and other Federal and State wage rate

requirements, if applicable. A UPB is work-segment based and incorporates local activity, climate, and geographic features. Technical specifications take into account quality of materials and workmanship, performance specifications, and detailed specifications furnished on a project by project basis.

- (8) Contractors bid on adjustment factors for work performed during normal working hours and non-normal working hours. These adjustment factors will be applied against the prices set forth in the unit price book and are used to price out fixed price work orders by multiplying the adjustment factors by the unit prices and quantities. Subcontractor's rates are subject to the prime contractor's bid factors. The contractor with the lowest composite factor will be considered the apparent low bidder.
- (9) Subcontractors proposed to be used to perform work under a prime contractor's contract must be identified in a potential contractor's bid, if known at time of bid, or must be approved in writing by the County if identified at a later date. All subcontractor costs and labor are subject to the prime contractor's bid factor.
- (10) Once a contract is awarded, the County will conduct a meeting with the contractor to determine the actual work to be done for each project or task order to be performed under the contract. The contractor will be issued a request for task proposal and will be required to develop a proposal for the work required. The contractor will submit its proposal to the County and this proposal will be evaluated. If the contractor's proposed units are found reasonable, a work order may be issued at the agreed-upon units, which when multiplied by the unit price and appropriate contract adjustment factor will establish the firm fixed price for the task order.
- (11) California Environmental Quality Act (CEQA): Annual contracts are awarded to the lowest responsive, responsible bidder based on plans and specifications for typical work. Based on the fact that the County may award an annual contract without having identified the specific tasks that are to be performed, or their potential environmental impacts, the contracting department must perform a basic CEQA analysis of tasks subsequently ordered under the contract in case those tasks trigger the need for a new CEQA declaration or finding. Applicable CEQA findings must be included in the file for the project.

§3.5-114 Prequalification Criteria

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

- b) To prevent poor project quality and late delivery (going over budget and/or over schedule) due to the lowest bidder's inexperience or ineptitude.

(5) Use of Prequalification:

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

- a) Single specific projects identified by Department Heads as suitable for prequalification due to uniqueness or complexity of all or a portion of the project.
 - b) All large projects (estimated construction cost over \$5,000,000). If the Director determines that prequalification is not in the best interests of the County for such a project, then the corresponding request for Board of Supervisors action should recommend proceeding without prequalification and provide a justification.
- (6) Formally bid projects under \$5,000,000 will be prequalified by a streamlined prequalification process, unless the Director determines that prequalification is not in the best interest of the County, then the corresponding request for Board action should recommend proceeding without prequalification and provide supporting justification.
- (7) Projects involving the use of the state or Federal Funds may not be able to utilize the prequalification process. A review of specific funding source guidelines is necessary to determine allowance or to establish an alternate process.

§3.5-115 Prequalification of Subcontractors

- (1) Nothing in this section shall preclude the County from prequalifying or disqualifying a subcontractor. The Director may prequalify subcontractors as determined to be in the best interest of the County. However, the disqualification of a subcontractor by the County does not disqualify an otherwise prequalified potential prime contractor. If a subcontractor is not qualified, the potential prime contractor will be given an opportunity to replace that subcontractor with another, which may either be a new subcontractor subject to prequalification, or a subcontractor already prequalified by the County, at the prime contractor's discretion.
- (2) Per [Public Contract Code Section 20101\(a\)](#), prospective bidders seeking prequalification are required to submit to the County completed prequalification documents, which include the Prequalification Questionnaire and all the documents required. This Prequalification Questionnaire and financial statement shall be verified by oath when provided to the County.
- (3) Pursuant to [Public Contract Code Section 20101](#), the submitted Prequalification Questionnaire and financial statement are not public records and are not open to public inspection. They shall be kept confidential to the extent permitted by law. However, the contents may be disclosed to third parties for purpose of verification or investigation of the statements contained therein or in a hearing. Finally, Public Contract Code [Section 20101](#) provides that the names of prospective bidders applying for prequalification status are public records subject to disclosure, and the first page of the Prequalification Questionnaire shall be used for this purpose. Agencies unsure about whether any information is disclosable under the Public Records Act should seek the advice of County Counsel.
 - a) Each prospective bidder will be determined as either qualified to bid as to each bid

package for which it requested prequalification or not qualified based on the County uniform rating system. No rating other than a positive or negative qualification determination shall be established by this process. The contracting department will evaluate the completed Prequalification Questionnaire and supporting documents to determine whether the prospective bidder is qualified or not qualified to bid on the bid packages identified in the Prequalification Questionnaire.

- b) It is mandatory that prospective bidders who intend to submit a bid for any of the identified bid packages provide a Prequalification Questionnaire and any supporting documents requested and are subsequently determined qualified to construct the work required by the bid packages identified on the Prequalification Questionnaire. The County may not accept any bid from a prospective bidder that has not prequalified by this process.
- c) The County's determination that a prospective bidder is qualified shall apply only to the project(s) identified in the prequalification documents. The Prequalification Questionnaire may request information regarding the prospective bidder's specialized expertise or demonstrated experience pertaining to the individual project as long as such information will not unnecessarily restrict the pool of qualified prospective bidders to unfairly exclude any otherwise qualified prospective bidders.
- d) While it is the intent of this prequalification policy to assist the County in determining bidder responsibility prior to bid and to aid the County in selecting the lowest responsible bidder, the prequalification of a prospective bidder will not preclude the County from post-bid consideration of whether a prospective bidder has the quality, fitness, capacity and experience to satisfactorily perform the proposed work and has demonstrated the requisite trustworthiness. The Deputy Purchasing Agent may waive minor irregularities and omissions in the information contained in the Prequalification Questionnaire and supporting documents.
- e) The County may modify the prequalification determination assigned to a prospective bidder based on subsequently learned information. Prospective bidders previously deemed qualified then subsequently disqualified will be given notice and an opportunity to be heard consistent with the procedures set forth herein.

§3.5-116 Prequalification Standards and Notifications Requirements

- (1) The prospective bidder's Prequalification Questionnaire must be completely filled out and verified under penalty of perjury and all the required supporting documents must be submitted as required by the Prequalification Questionnaire. The completed Prequalification Questionnaire and supporting documents must be submitted to the County within the timeline described therein.
- (2) The prospective bidder must successfully meet or exceed the passing threshold established by the awarding department in accordance with recommendations promulgated by the California Department of Industrial Relations.
- (3) The prospective bidder must not provide any false or misleading information in the Prequalification Questionnaire and/or supporting documents.
- (4) The prospective bidder's completed Prequalification Questionnaire and supporting documents must comply with the following submittal requirements:
 - a) All supplemental documents are to be submitted on 8½" by 11" sheets and must be

organized and identified in accordance with the requirements of the Prequalification Questionnaire.

- b) Prequalification Questionnaires must be signed under penalty of perjury in the manner designated at the end of the Prequalification Questionnaire by an individual who has the legal authority to bind the prospective bidder on whose behalf the person is signing. See, e.g., [Corporations Code Section 313](#).
- c) If any information provided by a prospective bidder becomes false or inaccurate subsequent to the submittal of a Prequalification Questionnaire and supporting documentation, the prospective bidder must immediately notify the County and provide updated accurate information in writing under penalty of perjury.
- d) The completed Prequalification Questionnaire and supporting documents must be submitted to the County per the instructions on the solicitation. Late submittals will not be considered by the County. Prospective bidders are encouraged to submit the Prequalification Questionnaire and supporting documents as soon as possible so that they may be notified of omissions of information which can be remedied or of their prequalification determination well in advance of bid advertisement for the project.
- e) The County may accept the Prequalification Questionnaire fully electronically through the County's online bidding system, if the instructions for that specific project state that it is a fully electronic solicitation.
- f) Completed Prequalification Questionnaires and supporting documents must be sealed and marked "Confidential" in a suitable envelope and mailed or delivered to the following:

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

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

§3.5-117 Prequalification Protest Hearing Procedure

- (1) Where the prospective bidder has made a timely and complete submittal of prequalification documents that result in a determination that the contractor is not qualified, the prospective bidder can contest the department's decision via administrative hearing.
- (2) To petition for a hearing, the prospective bidder must deliver written notice of its desire to

contest the department's decision to County of Orange within seven (7) calendar days of the date of County's notice of determination. Failure to file a timely notice shall result in the prospective bidder's waiver of any and all rights to challenge the prequalification determination, whether by administrative process, judicial process, or any other legal process or proceeding.

- (3) The prospective bidder may request the County to advise it in writing of the basis for the prequalification determination and any supporting evidence that was received from others or adduced as a result of an investigation by the County.
- (4) A Hearing Panel shall be established and consist of three panelists from various County of Orange infrastructure departments, with a maximum of one (1) panelist from the procuring department.
- (5) The Hearing Panel shall render its decision based on all potentially relevant evidence submitted by either the County or the prospective bidder, including but not limited to, the administrative record and testimonial evidence. The prospective bidder may submit on the record, or provide other evidence, including testimony given under oath, to rebut the department's determination of non-qualification. Such a hearing is conducted in an informal manner, and all relevant evidence is admissible. The department rendering the initial determination may rebut any evidence proffered by the prospective bidder in writing or through its own testimony. Finally, the Hearing Panel may ask questions of either the prospective bidder or department before making its decision.
- (6) If the prospective bidder requests to provide testimony, the hearing shall be conducted within five (5) business days after the County's receipt on notice of appeal and no later than 20 business days prior to the last date of receipt of bids on the project. Within three (3) business days after the conclusion of the hearing, the Hearing Panel will render its decision in writing.
- (7) The decision of the Hearing Panel shall be the County's final administrative decision and any judicial review thereof shall be instituted no later than the time period specified in [Section 1094.6 of the Code of Civil Procedure](#).

§3.5-118 Determination of Non-Responsibility

- (1) A responsive, responsible bidder is "a bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the public works contract" ([Public Contract Code Section 1103](#)). In other words, the term "responsible" in the context of public works bidding is not employed to denote a bidder who is merely generally trustworthy, but also refers to the bidder's ability to perform in accordance with the requirements of the bid solicitation.
- (2) Prior to a contract being awarded by the County, the County may determine that a party submitting a bid or proposal is non-responsible for purposes of that contract. In the event that the County determines that a bidder is non-responsible for a particular contract, said bidder shall be ineligible for the award of that contract.
- (3) Procedures:
 - a) It is important that County Counsel be consulted when a department considers a non-responsibility determination. Because of the particular nature of a non-responsibility

finding, the bidder found to be non-responsible is entitled to certain due process protections before a determination of non-responsibility is made.

- b) The County may take into account numerous factors in determining responsibility, including the financial capabilities of the bidder, the bidder's experience and familiarity with the type of work of the project, the bidder's work on previous projects (including any prior failure to perform), and the bidder's resources and facilities. Non-responsibility is determined on a case-by-case basis, so these factors are merely examples enumerated by the courts, and are by no means an exhaustive list. Because prequalification is a method of determining responsibility prior to bid, basic considerations may also include those listed in the standard Prequalification Questionnaire, such as whether:
 - i. Bidder possesses a valid and current California contractor's license for the project;
 - ii. Bidder has sufficient liability insurance and bonding capacity;
 - iii. Bidder has current workers' compensation insurance;
 - iv. Bidder can provide a financial statement demonstrating the capacity to perform the project;
 - v. Bidder has had its license revoked in the past, and the reasons for such revocation;
 - vi. A surety has completed a project on behalf of the bidder;
 - vii. Bidder is barred from bidding or being awarded a contract under California law;
 - viii. Bidder has been debarred by another jurisdiction;
 - ix. Bidder or any of its owners, officers, or other principals have been convicted of a crime relevant to the bidder's trustworthiness or ability to perform the contract.
- c) The responsibility of each bidder must be evaluated independently. No consideration can be made of each bidder's relative responsibility among all bidders, so once a finding has been made of the bidders' responsibility all such bidders are deemed equally responsible.

§3.5-119 Notice of Non-responsibility Hearing

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

§3.5-120 Non-Responsibility Hearing Procedure

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

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

§3.5-121 Contract Award and Notice To Proceed

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

§3.5-122 Payments

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

- (6) The contractor may substitute securities for funds withheld in accordance with the Public Contract Code Section 22300.
- (7) Escrow agreements for security deposit in lieu of retention shall be approved by County Counsel.

§3.5-123 Liquidated Damages Clause For Use In Public Works Contracts

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

§3.5-124 Notice of Completion

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

§3.5-125 General Requirements

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

§3.5-126 Bonds

- (1) Public Contract Code Section 20129 requires bidder’s security and performance bonds.
- (2) All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder’s security in an amount not less than 10 percent of the bid:
 - a) cash;
 - b) a cashier’s check made payable to the County;

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

§3.5-127 Regulatory Permit Approvals

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

SECTION 3.6

ADDITIONAL POLICIES RELATED TO DESIGN AND CONSTRUCTION SERVICES

§3.6-101 Protest & Appeal

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

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

§3.6-102 Justification of Variance From Engineer's Estimate

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

figures are not adversely affected by market conditions.

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

§3.6-103 Operations & Maintenance Future Costs

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

of occurrence; and

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

§3.6-104 Sample ASR Language for Ongoing Maintenance Costs

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

§3.6-105 California Environmental Quality Act (CEQA)

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

§3.6-106 Lobbying

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

§3.6-107 County of Orange Procurement Preference Policy

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

SECTION 3.7

REAL ESTATE TRANSACTIONS AND CONTRACTS

§3.7-101 General Responsibilities

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

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

§3.7-102 Delegated Authority

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

Delegated Authority Chart

Revenue Lease/License of County Property	Acquisitions of Real Property Interests for Flood	Acquisition Lease/License for County or Flood Use	Acquisitions of Real Property Interests for County	Collateral Instruments	Donated Space Agreements for County Use	Authorize Full Reconveyance	Grants or Conveyance of County OCFCD OCDA OCHA Property	Revenue Licenses of Orange County Flood Control District Property	Temporary Right of Entry Permits for Flood or County Use
Execute leases/licenses if the monthly rental does not exceed \$15,000 per month and the lease term does not exceed 10 years.	Approve and accept acquisitions of real property interests not exceeding \$250,000 in value and other criteria are met.	Amend and execute leases/licenses if rental over term of lease/license does not exceed \$10,000 per month and a (5) year term and other criteria are met.	Approve and accept acquisitions of real property interests not exceeding \$250,000 in value and other criteria are met.	If instrument is on County's standard form. Instruments are defined as: Attornments Subordination Non-Disturbance.	If agreement is in County's standard form, County's indemnification of donor is limited to \$1,000,000, and agreement is approved by County Counsel and Risk Management.	Execute requests for reconveyance upon approval of County Counsel and receipt of notification from the Auditor- Controller's Office that all sums due and payable under an installment note have been paid in full.	If Easement does not exceed \$25,000 in value and is granted to City, County, State or other public agency with County Counsel approval.	Execute licenses of OCFCD property if the monthly rental does not exceed \$10,000 per month and the license term does not exceed 10 years.	If permit is required by County or Flood Control District from a public or private entity for ingress and egress, construction staging, and other purposes. Permits may include indemnification of others.
per Resolution No. 19-002 and Minute Order dated January 8, 2019. (Gov. Code 25537)	per Resolution No. 20-040 and Minute Order dated May 5, 2020. (Gov. Code 25350.60)	per Resolution No. 20-016 and Minute Order dated March 10, 2020 (Gov. Code 25350.51)	per Ordinance No. 20-004 and Minute Order dated May 19, 2020 (Gov. Code 25350.60)	per Resolution No. 98-75 and Minute Order dated March 10, 1998.	per Resolution No. 21-031 and Minute Order dated April 13, 2021 (Gov. Code 25355)	per Resolution No. 76-1642 dated November 9, 1976.	per Ordinance No. 3898 and Codified Ordinance Section 1-4-225 (Gov. Code 25526.6).	per Minute Order dated February 25, 2014.	per Resolution No. 08-151 and Minute Order dated December 9, 2008.
Delegated Authority expires January 8, 2024	NO EXPIRATION	NO EXPIRATION	Delegated Authority expires May 19, 2025	NO EXPIRATION	NO EXPIRATION	NO EXPIRATION	NO EXPIRATION	NO EXPIRATION	NO EXPIRATION
ANNUAL REPORT	ANNUAL REPORT	ANNUAL REPORT	ANNUAL REPORT		ANNUAL REPORT QUARTERLY REPORT FOR VALUES OVER \$10,000		ANNUAL REPORT	ANNUAL REPORT	
Chief Real Estate Officer, CEO Director, JWA as designee	Chief Real Estate Officer, CEO	Chief Real Estate Officer, CEO Director, JWA as designee	Chief Real Estate Officer, CEO	Chief Real Estate Officer, CEO	Chief Real Estate Officer, CEO	Chief Real Estate Officer, CEO	Director, OCPW	Director, OCPW	Director, OCPW Director, JWA as designee

Revised 4-7-2022

§3.7-103 Specific Duties

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

SECTION 3.8

MEMORANDUM OF UNDERSTANDING (MOU)

3.8-101 Definition

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

3.8-102 Board/CEO Approval

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

§3.8-103 Approval of Non-Standard Contract Terms

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

administrative approval and includes non-standard terms in the governing law or arbitration/dispute resolutions contract provisions.

§3.8-104 Term

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

§3.8-105 Increases

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

SECTION 3.9

UNILATERAL PROCUREMENTS

§3.9-101 Unilateral Procurement Definition

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

SECTION 4 – METHODS OF SOLICITATION

SECTION 4.1
REQUEST FOR INFORMATION (RFI)

§4.1-101 Definition

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

SECTION 4.2

INVITATION FOR BID (IFB)

§4.2-101 **Definition**

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

§4.2-102 **Solicitation Document**

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

or cashier's check, letter of credit, or certificate of deposit redeemable by the County. Upon award to the successful bidder, all such sureties will be returned to unsuccessful bidders.

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

§4.2-103 Lobbying

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

§4.2-104 Pre-Bid Conference

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

§4.2-105 Acceptance of Bids

- (1) Except as noted below, bids must be:
 - a) Received no later than the time specified in the IFB;

- b) Unconditionally accepted without alteration or correction;
- c) All bids must be received by someone other than the person who conducted the bid solicitation and must be time and date stamped upon receipt;
- d) All bids must be kept in a secure, locked location for access by personnel so authorized by the department head; and,
- e) Bids become public information immediately after the closing date and time.

§4.2-106 Waivable Informalities

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

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

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

§4.2-108 Tied Bids

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

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

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

§4.2-110 Award

- (1) Award will be made to the lowest, responsive, responsible bidder.
 - a) References:
 - i. Reference checks must be conducted prior to contract award.
 - ii. References will be obtained from outside the County of Orange whenever possible.
 - iii. References shall not be provided by the same department conducting the solicitation.

SECTION 4.3

REQUEST FOR PROPOSAL (RFP)

§4.3-101 Definition

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

§4.3-102 Solicitation Document

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

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

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

§4.3-103 Lobbying

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

§4.3-104 Pre-Proposal Conference

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

§4.3-105 Receipt and Acceptance of Proposals

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

§4.3-106 Waivable Informalities

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

§4.3-107 Confidentiality

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

§4.3-108 Evaluation Committee

- (1) Proposals shall be evaluated by an evaluation committee. When possible, evaluation committees shall be comprised of an odd number of at least three (3) members. Members shall have no conflict of interest with the selection process. Members of evaluation committees shall be selected based

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

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

§4.3-109 Presentations/Interviews

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

All members of the evaluation committee must sit in on the interviews with all respondents.

§4.3-110 Proposal Revisions

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

§4.3-111 Scope of Work Revisions

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

§4.3-112 Evaluation Scores

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

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

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

§4.3-114 Award

- (1) Award of contract will be made to the responsible respondent who is ranked the highest. This will be determined by the evaluation committee using the evaluation criteria, which may include proposed cost.
 - a) References:
 - i. If a reference check is not part of the RFP evaluation criteria it must be conducted prior to contract award.
 - ii. References will be obtained from outside the County of Orange whenever possible.
 - iii. References shall not be provided by the same department conducting the solicitation.
- (2) Should the County Procurement Officer or appropriate Deputy Purchasing Agent fail to concur with the recommendation submitted by the evaluation committee, the County Procurement Officer

or appropriate Deputy Purchasing Agent will meet with the evaluation committee members to discuss the reasons for the disagreement.

- a) No recommendation shall go forward to the Board of Supervisors from the County Procurement Officer or the Deputy Purchasing Agent, unless there is concurrence among the County Procurement Officer or Deputy Purchasing Agent, the using department, and the evaluation committee.

SECTION 4.3.1

RFP FOR REAL ESTATE INTEREST

§4.3.1-101 **Policy**

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

§4.3.1-102 **Prior to RFP Process**

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

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

§4.3.1-103 Process

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

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

§4.3.1-104 Protest Process

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

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

§4.3.1-105 Evaluation Committee

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

§4.3.1-106 Presentation/Interviews

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

§4.3.1-107 Evaluation Scores

- (1) In addition to the scoring process set out in Section 4.3-112, above, evaluators shall score proposals individually, and scoring will be divided into evaluation of the written proposal and the interview. The initial score sheets containing the evaluators' notes and comments shall remain in the possession of the individual evaluators, and at no time shall this information become part of the permanent procurement file or retained as a County record. Evaluators' individual scores will be discussed with the entire evaluation panel and combined and tallied after the interviews (if conducted). The total number of points earned for the written proposals and interviews will be combined for each respondent resulting in a ranked slate of respondents.

§4.3.1-108 Award

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

SECTION 4.4

TWO-STEP PROCESS

§4.4-101 Definition

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

§4.4-102 Process

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

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

- viii. A statement that only SOQs from respondents who are prequalified during Step One shall be considered for Step Two.
- b) The County Procurement Officer or the department Deputy Purchasing Agent may hold a conference with the potential respondents before submission of the SOQs or at any time during the evaluation of unpriced technical offers.
- c) SOQs shall be due at the time and date specified. The contents of SOQs shall be disclosed only to County personnel having a legitimate interest in them or persons assisting in their evaluation.
- d) SOQs must be received no later than the date and time specified in the RFQ.
- e) At any time during Step One, SOQs may be withdrawn without penalty.

(2) Step Two

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

§4.4-103 Lobbying

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

§4.4-104 Protest Process

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

(3) Protests received after the five (5) business day deadline will not be considered by the County.

SECTION 4.5

SOLE SOURCE REQUESTS

§4.5-101 Policy

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

§4.5-102 Justification

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

§4.5-103 Proprietary Source Requests

- (1) Proprietary means confidentially owned and controlled. The term may be used to refer to such items as property, computer software, or intellectual property. The vendor owning items that are proprietary is known as a sole proprietor and there is no other source available from which to purchase the commodities or services.

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

§4.5-104 Renewals and Amendments

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

§4.5-105 Agenda Staff Report

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

§4.5-106 Solicitation Exemption

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

§4.5-107 County of Orange Procurement Preference Policy Exemption

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

SECTION 4.6**PETTY CASH****§4.6-101 Definition**

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

§4.6-102 Types of Small Dollar Purchases:

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

SECTION 4.7

COOPERATIVE PROCUREMENT

§4.7-101 Definition

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

§4.7-102 Policy

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

§4.7-103 Collaborative Procurement

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

§4.7-104 Responsibility

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

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

§4.7-105 Board Approval

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

§4.7-106 Term

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

§4.7-107 County of Orange Procurement Preference Policy Exemption

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

SECTION 4.8

REGIONAL COOPERATIVE AGREEMENTS (RCAs)

§4.8-101 **Definition**

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

§4.8-102 **Policy**

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

§4.8-103 **Responsibility**

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

§4.8-105 **No Usage Guarantee**

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

§4.8-106 Board Approval

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

§4.8-107 Term

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

SECTION 4.9

REQUEST FOR APPLICATION (RFA)

§4.9-101 Definition

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

§4.9-102 Requirements

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

requirement that vendor indemnify, defend and hold harmless the County against and from such risk.

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

§4.9-103 Lobbying

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

§4.9-104 Pre-Application Conference

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

§4.9-105 Receipt and Acceptance of Applications

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

§4.9-106 Waivable Informalities

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

§4.9-107 Confidentiality

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

§4.9-108 Protest Process

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

§4.9-109 Presentations/Interview

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

§4.9-110 Scope of Work Revisions

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

§4.9-111 Award

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

SECTION 5 – GLOSSARY

SECTION 5

GLOSSARY

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

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

28. **Conflict of Interest:** A situation where the personal interests of a contractor, public official and/or designated employee are/is, or appear to be, at odds with the interests of the jurisdiction.
29. **Consent Agenda Items:** Those agenda items, as identified by the CEO and the Board of Supervisors, which are placed in the section of the Board of Supervisors agenda for approval as a group of items. Items on the Consent Calendar may be pulled by the Board, County staff, or a member of the public for discussion and individual Board action.
30. **Construction:** Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility paid for using public funds; Painting or repainting of any publicly owned, leased, or operated facility.
31. **Construction Manager at Risk (CMAR):** an alternate project delivery method which entails a commitment by the Construction Manager (CM) to deliver the project within a Guaranteed Maximum Price (GMP).
32. **Consultant:** A person or firm who provides professional or expert advice and/or recommendations.
33. **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.
34. **Contract:** A legally enforceable agreement between two or more parties to do or not do a certain thing, which meets the requisite statutory elements of: (a) Parties capable of contracting, (b) Consent, (c) A lawful object and (d) A sufficient cause or consideration. Cal. Civ. Code §§ 1549-1550.
35. **Contract Administration:** The management of various aspects of contracts to assure that the contractor's total performance is in accordance with the contractual commitments and that the contractor's obligations are fulfilled.
36. **Contract Award:** The act of executing a final signed contract between the County and a vendor.
37. **Contract Extension:** An action to extend a contract term upon written mutual agreement by both parties.
38. **Contract Renewal:** A renewal clause allows a contract to continue for a defined term.
39. **Contract Task Order:** A contract for A-E services that includes, price, and scope for the performance of tasks during the period of the A-E On-Call contract.
40. **Cooperative Procurement:** A strategy used by governmental entities to procure services and commodities from contracts awarded by other governmental entities or programs to take advantage of volume purchasing discounts and reduce administrative expenses.
41. **Contractor:** A vendor having a contract with a governmental body.

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

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

70. Guarantee: To warrant, stand behind, or ensure performance or quality of services or commodities.
71. Horizontal: A road maintenance project, such as paving, slurry seal, etc. in reference to construction or maintenance projects.
72. Human Services: Services which maintain or improve the social, economic, physical, or mental well-being of persons for whom the County bears such a responsibility.
73. Hybrid Contract: A contract which consists of multiple procurement types.
74. Incremental Contracting: Contracting in small segments to avoid solicitation requirements or Board of Supervisors approval.
75. Indemnification: Protection against incurred loss, damage, or hurt, usually by monetary compensation.
76. Informal Bidding: A process of procurement that does not exceed of the Board of Supervisors thresholds to require Board approval.
77. Insurance: A contractual relationship where an insurance company agrees, for a premium paid, to reimburse the insured or other party for a loss to a specified subject caused by designated hazards or risks.
78. Interviews: A process facilitated by the Deputy Purchasing Agent during a solicitation, between the evaluation committee and prospective contractor who responded to the solicitation.
79. Invitation for Bid (IFB): The solicitation process used for competitive sealed bidding for the purchase of equipment, materials, supplies, services, and construction, for which clear specifications can be written.
80. Job Order Contract (JOC): An annual contract for repair, remodeling, or other repetitive work based on unit prices, which is a firm fixed price, competitively bid, unit priced, indefinite quantity contract designed to accomplish applicable projects.
81. Liquidated Damages: Liquidated damages clauses are enforceable if: (1) damages are difficult to ascertain or estimate at the time the contract is formed; and (2) the amount is a reasonable forecast of compensatory damages in the case of breach. Specifically, if the liquidated damages amount significantly exceeds the amount of damages prospectively probable, the liquidated damages clause may not be enforceable. Thus, liquidated damage clauses may be included in service contracts when the County could suffer financial loss due to delays in performance. Consistent with legal requirements, the amount of damages listed in the contract must be a “reasonable forecast” of the County’s actual damages.
82. Lobbyist: Any person who receives compensation of \$500.00 or more in any calendar month for engaging in lobbying activities or is employed by his or her employer and receives compensation of \$500.00 or more in any calendar month for engaging in lobbying activities, as defined in Article 5 Sec. 1-1-80 of the Orange County Codified Ordinances.

83. **Maintenance Work:** Routine, recurring, and usual work for the preservation or protection of any publicly owned or publicly operated facility for its intended purpose, including: minor repainting; resurfacing of streets and highways at less than one inch; landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems; work performed to keep, operate, and maintain publicly owned water, power, or waste disposal systems, including, but not limited to, dams, reservoirs, power plants, and electrical transmission lines of 230,000 volts and higher.
84. **Modification:** A non-material change that does not require signatures of contracting parties.
85. **Negotiation:** The discussion or correspondence between the County and a contractor in order to develop a contract with terms and conditions that serve the best interest of the County.
86. **One-Time Contract:** Procurements for particular commodities or services which cover a particular need. These types of procurements are distinguished from annual or blanket contracts which cover a continuing need of an item or service.
87. **Opportunity Buys:** A situation where necessary commodities, capital assets, or services are for sale at significantly reduced rates from what is normally offered in the general market or where an alternative product to the one being bid represents significant savings.

Original Contract Term: The period of time first specified in the contract at the time the contract was initially established.
88. **Payment Bond:** A legal contract, a type of bond, that guarantees certain employees, subcontractors, and vendors are protected against non-payment.
89. **Performance Bond:** A bond issued by a bank or other financial institution, guaranteeing the fulfillment of a particular contract.
90. **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.
91. **Pre-Bid/Pre-Proposal Conference:** A meeting set up between the County parties issuing a solicitation and the potential bidders/respondents for the purpose of clarifying the solicitation and answering any questions.
92. **Prequalification:** A process used prior to solicitation of bids to determine if potential vendors have the ability to fulfill the contract requirements for which the solicitation will be issued and/or to determine if the potential vendors products will meet the cost and performance criteria required to meet the County's needs.
93. **Prevailing Wage:** The California Department of Industrial Relations determines that the general prevailing rate of per diem wages for a particular craft, classification, or type of worker is uniform throughout an area, the director issues a determination enumerated county by county, but covering the entire area.
94. **Procurement Appeals Board:** A body comprised of County department senior management and a member of the public chaired by the County Procurement Officer for the purpose of hearing vendor protests to a specific County procurement process.

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

notices are not offers and cannot be accepted by the County to form a binding contract unless otherwise specified in the solicitation.

108. Request for Proposal (RFP): The solicitation method that includes a scope of work and terms and conditions used to secure proposals for services or commodities not clearly defined by the County in terms of exact specifications or manner of delivery of services or where price is not the sole selection criteria.
109. Request for Qualifications (RFQ): A solicitation method that describes the project or services required and solicits qualifications from potential vendors or contractors for purposes of evaluating those qualifications for screening or for award of contract.
110. 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.
111. Responsive Bidder: A bidder whose bid conforms in all material respects to the terms and conditions, the specifications and other requirements of the solicitation.
112. Retroactive Contract: When goods and services have been ordered, performed or delivered without a requisition and/or contract in place.
113. Requesting Department: A County agency, which requests goods and services procured by the Deputy Purchasing Agent.
114. Services: The furnishing of labor, time or effort by a contractor involving the delivery of a specific performance.
115. Sole Source: A procurement of a commodity or service to the only known capable vendor, occasioned by the unique nature of the requirement, the vendor, or market conditions.
116. Sole Source Justification: A document submitted by department staff for approval to contract with a particular party without competitive bidding.
117. Solicitation: A good faith effort to obtain a bid or proposal for the provision of commodities or services.
118. Specifications: A description of what is requested to be procured.
119. Statement of Qualifications (SOQ): A submitted response to a Request for Qualifications.
120. Subcontractor: A vendor who is performing work on behalf of the contractor.
121. Surplus County Department Property: Tangible supplies, materials or equipment to which the County acquired title by means of purchase, donation, grant, or other lawful means, that a County department has determined is no longer needed by the department.
122. Surplus County Property: Surplus County Department Property that the County Procurement Officer or designee has determined is not needed for public use by any other County department.

123. Task Order: A contract for Job Order Contracts that includes, price, and scope for the performance of tasks during the period of the contract.
124. Terms and Conditions: A general reference applied to the provisions under which bids/proposals must be submitted and which are applicable to most contracts.
125. Terms of Payment: Methods and timelines by which the County must render payment under a contract.
126. Two Step Solicitation: A method of soliciting services and commodities where a preliminary evaluation of the respondent's qualifications is conducted, and a final evaluation for recommendation of award is made based on the RFP process.
127. Unilateral Procurement: A vehicle to pay for critical, ongoing services provided by exclusive entities within a County geographical area that is not subject to County's standard terms and conditions (i.e., utility services). The payment mechanism for unilateral procurements include, but are not limited to: Procurement card(s), County financial system documents, request for checks, etc.
128. 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.
129. Vertical: Construction projects that include constructing a building or performing work to a building or structure.
130. Waiver of Bid(s): A process authorized by law or rule whereby the County Procurement Officer or Deputy Purchasing Agents may procure items without competitive solicitation procedures because of unique circumstances related to a particular need or procurement.
131. Waiver of Mistake or Informality: The act of disregarding errors or technical nonconformities in the bid/proposal which do not go to the substance of the bid/proposal and will not adversely affect the competition between bidders/respondents.
132. Warranty: A representation of utility, condition, and durability made by a bidder or proposer for a product offered.



2024 CONTRACT POLICY MANUAL



COUNTY OF ORANGE



CONTRACT POLICY MANUAL

Adopted by the
Orange County Board of Supervisors
November 7, 2023

Effective: January 1, 2024

~~ANDREW DO~~ DONALD P. WAGNER
CHAIRMAN
~~FIRST-THIRD~~ DISTRICT

~~DOUG CHAFFEE~~ ANDREW DO
VICE CHAIRMAN
~~FOURTH-FIRST~~ DISTRICT

<u>VICENTE</u>	<u>DOUG CHAFFEE</u>	<u>KATRINA</u>
<u>SARMIENTO</u>	<u>DONALD P.</u>	<u>FOLEY</u>
<u>KATRINA</u>	<u>WAGNER</u>	<u>LISA A.</u>
<u>FOLEY</u>	SUPERVISOR	<u>BARTLETT</u>
SUPERVISOR	THIRD	SUPERVISOR
SECOND DISTRICT	<u>FOURTH</u> DISTRICT	FIFTH DISTRICT

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SECTION 1 – GENERAL RESPONSIBILITIES

SECTION 1.1

OFFICE OF THE COUNTY PROCUREMENT OFFICER

§1.1-101 Statute

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

§1.1-102 Policy

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

§1.1-103 Ethical Statement

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

§1.1-104 Scope

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

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

- (1) ~~Except as otherwise provided herein, The authority to execute Public Works Construction Contracts, Public Works Architect Engineer Service Contracts (related to engineering and design of public projects), and Real Property Estate Contracts the contract types listed below has been delegated by the Board of Supervisors to the respective department head or their authorized representatives. Those authorized representatives positions in these departments, with the exception of Real Estate Contracts, are will not be required to be deputized by the County Procurement Officer, but and will may avail themselves of the training opportunities provided by the Office of~~

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

~~a) Real Property Contracts~~

~~b) Public Works Contracts*~~

~~c) Architect Engineering Contracts (related to engineering and design of public projects)*~~

~~d) Human Services Contracts (refer to section 3.4)~~

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

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

§1.1-106 Delegation of Authority

(1) In this capacity, the County Procurement Officer ~~will~~ may delegate their ~~his/her~~ this authority to other employees of the County of Orange, its offices, or any special districts whose affairs and funds are under the supervision and control of the Board of Supervisors.

a) These employees shall be those designated by department heads, and shall be trained under the direction of the County Procurement Officer and deputized as Deputy Purchasing Agents to perform in the County Procurement Officer's capacity, except as otherwise provided herein.

b) The delegation of authority by the County Procurement Officer to Deputy Purchasing Agents in no way grants authority to persons who have not been authorized by department heads.

~~Delegation of purchasing authority to the Deputy Purchasing Agents delineated in this manual is subject to approval of department heads, who may, at their discretion, require approval by higher authority levels within their departments.~~

§1.1-107 Authority to Procure

(1) ~~Except as otherwise provided herein, no purchase contract~~ procurement of personal property, services, ~~or commodities~~ (including cash alternatives and court-ordered commodities and services), food or travel by any person other than the County Procurement Officer or Deputy Purchasing Agents shall be binding upon the County, or constitute a lawful charge against any County funds, except in emergencies and as may be otherwise provided through action by the Board of Supervisors.

- (2) Employees responsible for procuring personal property, services and commodities on behalf of the County cannot also be responsible for approving requisitions for purchases, receiving the commodities purchased, or the approval/processing of invoices for payment for their department.

§1.1-108 Specific Duties

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

§1.1-109 Responsibilities of the County Procurement Officer:

- (1) The County Procurement Officer or authorized designee is responsible for the following:
- a) Solicit bids/proposals for cooperative contracts used for County-wide procurement of services and commodities by for departments;
 - b) Establish Procurement policies and procedures to be followed by departments: in the procurement of services and commodities;
 - c) Establish policies and procedures to be followed by departments for the use of a Purchasing Card Program to promote efficiencies for low dollar purchases;
 - d) Maintain the “vendors bidders list”, as may be required, for use by departments purchasing units for solicitation of bids and proposals;
 - e) Verify, on a periodic basis, that each Deputy Purchasing Agent obtains insurance certificates and endorsements for department purchasing contracts;
 - f) Identify and pursue other governmental department and other organizations cooperative purchasing contracts, that may be executed, that would be beneficial for County use and where appropriate, make these contracts available for use by each department in accordance with Section 4.7 of this manual;

- g) Manage a centralized program for the reuse of surplus County personal property to foster reuse by other departments in accordance with Section 1.6 of this manual;
- h) Sell and dispose of personal property, including electronic equipment, no longer required for County use, in accordance with the current County “E-Waste Policy”, as well applicable state, federal and county regulations;
- i) Assist in identifying new advancements in technology and other innovations in public sector procurement that would be beneficial for County use, and working with the County’s Chief Information Officer (CIO), as appropriate, implement these innovations for County-wide use;
- j) Develop training materials and conduct training programs for Deputy Purchasing Agents, their supervisors, and others, as designated by department heads that ensures a County-wide procurement process which is fair, effective and efficient, and ensures the integrity of the County’s procurement process;
- k) Deputize those trained in the procurement process when assured that they are adequately trained to perform with the delegated authority of the County Procurement Officer;
- l) Provide assistance on a consultative basis, as requested by department heads or their designees, in the development of solicitations and contracts and the handling of vendor protests;
- m) Review solicitations and contracts when so requested by department personnel;
- n) Develop and implement a compliance monitoring plan with performance measures to review the procurement documents prepared by the Deputy Purchasing Agents, and to report to the appropriate ~~Procurement Council Representative department head or designee~~ with recommendations for corrective action to ensure the County procurement process is fair, efficient, and compliant with legal requirements and County policies and procedures; integrity and efficiency of County procurement processes;
- o) Chair the Procurement Council;
- p) Convene and chair the Procurement Appeals Board;
- q) Encourage County involvement in public procurement organizations in an effort to promote the public procurement profession through education and peer networking;
- r) Amend this manual to include additional Board policy, as directed by the Board of Supervisors or the County Executive Officer; ~~and;~~
- s) Carry out the other duties and responsibilities as defined in this manual;:-
- t) Implement and maintain a Procurement Procedure Manual consistent with this CPM to guide the procurement and management of all contracts in a manner consistent with law, in consultation with County Counsel; and
- u) Amend this CPM to make clerical, ministerial, or other non-material edits, subject to review and approval of such clerical, ministerial, or other non-material edits by County Counsel, including updating provisions based on statutory authority that is cited in the CPM (e.g., statutory dollar triggers and limits, restrictions and authorizations).and update specifics of provisions relying on cited State code (for example, dollar triggers and limits, statutory restrictions, and statutory authorizations where a specific code section is identified);- CPO will communicate to the Board any proposed increases to thresholds as a result of changes in statutory authority. All other changes will be made only as

approved by the Board of Supervisors.

§1.1-110 Custodian of Documents

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

SECTION 1.1.1

DEPUTY PURCHASING AGENTS

§1.1.1-101 Policy

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

§1.1.1-102 Scope

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

§1.1.1-103 Specific Duties

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

SECTION 1.2

PROCUREMENT COUNCIL

§1.2-101 Definition

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

§1.2-102 Specific Duties

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

SECTION 1.3

PROTEST

§1.3-101 Policy

- (1) Any actual or prospective bidder, ~~or respondent/proposer or contractor~~ who alleges an error or impropriety in the solicitation or award of a contract may submit a grievance or protest to the appropriate department Deputy Purchasing Agent, as set forth herein.
- (2) ~~For Section 3.5-1203.6-101~~ shall govern procedures for Public Works Architect-Engineer Service Contracts and Public Works Construction Contracts solicitations Bid-Protests and Appeals; ~~see 3.5-121.~~
- (3) ~~Section 4.9~~ shall govern procedures for Real Estate RFPsolicitations. ~~Bid-Protests and Appeals.~~

§1.3-102 Procedure

- (1) All protests shall be typed under the protester's letterhead and submitted in accordance with the provisions stated herein. All protests shall include at a minimum the following information:
 - a) The name, address and telephone number of the protester;
 - b) The signature of the protester or the protester's representative;
 - c) The solicitation ~~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 ~~Solicitation~~Bid/~~Proposal~~ Specifications

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

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

- (1) In accordance with Section 4.2 of this manual, ~~and §3.4-107 where applicable~~, protests related to the award of a contract based on the Invitation for Bid (IFB) process, a protest must be submitted no later than five (5) business days after the Nnotice of ~~the proposed Intent to Award~~contract award is provided by the Deputy Purchasing Agent.

- a) Protests relating to a proposed contract award ~~which are~~ received after the five (5) business day deadline will not be considered by the County.
- b) If the five (5) business day period expires without the receipt~~lodging~~ of a protest, the department may move forward with the contract award or if necessary, file the item for approval by the Board of Supervisors.

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

- (1) ~~In accordance with §4.3-109 of this manual, and §3.4-107 where applicable, immediately upon completion of negotiations with the top ranked vendorrespondent(s), but p~~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 interested Parties~~participating vendors~~ which will initiate the protest period.
 - a) Vendors will have five (5) business days from the date of the notice in which to file a protest concerning the award of the cContract.
 - b) Protests relating to a proposed contract award ~~which are~~ received after the five (5) business day deadline will not be considered by the County.
 - c) During the five (5) business day period, RFP information, including the final evaluator score sheets with the names of individual evaluators redacted, are subject to public disclosure.
 - d) If the five (5) business day period expires without the lodging receipt of a protest, the department may move forward with the contract award or if necessary, filing the item for approval by the Board of Supervisors.

§1.3-106 Protest Process

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

§1.3-107 Appeal Process

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

SECTION 1.4

PROCUREMENT APPEALS BOARD

§1.4-101 Definition

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

§1.4-102 Purpose

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

§1.4-103 Policy

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

(2) For Public Works Construction Contracts and Architect-Engineer Service Contracts and Public Works Construction Contracts-solicitations, see Section 3.6-101 3.5-12101

§1.4-104 Composition

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

ethical standards, including applicable State and county laws and ordinances, and shall be available on short notice so that protests can be resolved quickly.

§1.4-105 — Appointment

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

§1.4-106 Conflict of Interest – Procurement Appeals Board

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

§1.4-107 Procedures/Support

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

§1.4-108 No Right To Administrative Appeal

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

SECTION 1.5

COMPLIANCE MONITORING

§1.5-101 Policy

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

§1.5-102 Specific Duties

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

§1.5-103 Audit Review Process

- (1) The review compliance process is intended to be educational and will be used as a forum to provide guidance and clarification for procurement policies, procedures and Best Practices, policy clarification and to discuss Best Practices. As part of the review process, department being reviewed will be expected to make necessary corrections to bring the file folders into compliance.
- (2) Upon completion of the review audit, the County Procurement Officer or designee will provide the Department Procurement Council Representative a written Final Report that will include, where applicable, a summary of the Findings and R ecommendations for corrective action. As part of the compliance process, departments will be expected to make necessary corrections to bring procurement processes into compliance. shall meet to discuss the discoveries with the appropriate Deputy Purchasing Agent and Purchasing Manager.

- (3) ~~A final written report will be submitted to the appropriate Purchasing Council member that will include, where appropriate, a summary of the discoveries and recommendations for corrective action.~~
- (4)(3) The County Procurement Officer shall, ~~on an annual basis,~~ submit a report to the ~~department -Procurement~~Purchasing Council that contains general Findings and Recommendations ~~discoveries~~ and identifies areas that may require changes to ensure a procurement process that is fair, effective, efficient, and in compliance with legal requirements and Board of Supervisors policy.

SECTION 1.6

SURPLUS COUNTY PROPERTY

§1.6-101 Policy

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

§1.6-102 Definition

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

§1.6-103 Authority

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

§1.6-104 Disposition Methods

- (1) A department must attempt to dispose of Surplus County Department Property through internal transfer to a claiming department, until the County Procurement Officer determines the Surplus County Department Property is not needed by any other County department. At that time, the Surplus County Department Property must be disposed of as Surplus County Property.
 - a) Surplus County Department Property for which disposition is otherwise covered under law, regulation, code, or other Board of Supervisors policy are exempted from Section 1.6; provided that departments notify the County Procurement Officer or designee prior to disposition.
- (2) Surplus County Property shall be disposed of by the following methods, in the order listed below:

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

§1.6-105 Board Approval

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

SECTION 1.6.1

DISPOSITION OF REAL PROPERTY BY SALE

§1.6.1-101 Definitions

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

§1.6.1-102 Policy

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

§1.6.1-103 Real Property Need

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

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

§1.6.1-104 Notice to County Entities

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

§1.6.1-105 Appraisal of Real Property

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

§1.6.1-106 Request for Authorization to Solicit Bidder

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

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

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

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

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

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

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

§1.6.1-108 County Exempt Surplus Land

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

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

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

§1.6.1-109 Solicitation of Bids

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

§1.6.1-110 Selection of the Successful Bidder

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

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

SECTION 1.7

PURCHASING-PROCUREMENT CARDS**§1.7-101 Definition**

- (1) Under the direction of the CEO, the County Procurement Officer shall oversee and administer the County's Purchasing-Procurement Card Program. Purchasing-Procurement cards are County credit cards issued to Deputized Purchasing Agents ~~County of Orange employees authorized by department heads~~ to make purchases on behalf of the department in accordance with ~~established Purchasing Card Program policies and procedures, this CPM, and the Procurement Procedures Manual and Section 3.6 of this manual, as well as, applicable procurement policies and procedures.~~

§1.7-102 Authorized Use

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

§1.7-103 Responsibilities

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

§1.7-104 Controls

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

(2) Department heads may impose additional restrictions on commodities or services that may not be ~~purchased-procured~~ using the ~~Purchasing-Procurement~~ Card.

§1.7-105 Adherence to Procurement Policy

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

SECTION 1.8

COUNTY OF ORANGE PROCUREMENT PREFERENCE POLICY

§1.8-101 Policy

- (1) Purpose: To establish Orange County Board of Supervisors procedures to facilitate Orange County Local Small Business' (OCLSB) and Disabled Veteran Business Enterprises' (DVBE) ability to procure County contracts.
- (2) In alignment of the County of Orange's Procurement Preference Policy (Preference Policy) with applicable law, the County Procurement Officer is hereby authorized to implement the preferences provided herein to increase the participation of certified OCLSB and DVBE businesses.
- (3) The Preference Policy shall be applied to all procurements where competitive bidding (low bid or scored proposals) is required, except as otherwise provided herein or as otherwise required by Federal, State or County laws and regulations.
- (4) The Preference Policy requirement is not applicable to Emergencies.
- (5) To the extent required by federal law, preferences based on minority or gender status may be extended for federally funded procurements consistent with subsection (h) of the California Constitution, Article I, Section 31.
- (6) Further rules and application of the Preference Policy for different types of procurements are referenced in the following sections: 3.1, 3.2, 3.3, 3.4, 3.5, 3.7, 4.5 and 4.7.

§1.8-102 Business Eligibility Requirements

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

- i. must be certified as a Small Business by the State of California Department of General Services (DGS); and;
 - c) Above requirements must be valid at the time of proposal submittal.
- (2) DVBE Eligibility – To qualify as a DVBE, the DVBE must meet the following requirements:
 - a) must be certified as a DVBE by the State of California DGS; and
 - b) DGS DVBE requirements must be valid at the time of bid/proposal submittal.
- (3) Eligibility for Contractors Using OCLSB/DVBE Subcontractors – As applied to procurements with a total estimated contract value in excess of \$200,000, prime contractors that do not otherwise meet the OCLSB/DVBE certification requirements may still qualify for OCLSB/DVBE preferences by virtue of their use of OCLSB/DVBE subcontractors. To qualify for the preferences by using certified OCLSB/DVBE subcontractor(s), twenty percent (20%) of the total proposed contract amount must be allocated to OCLSB and/or DVBE subcontractor(s) meeting the qualifications and certification requirements provided in subsections (1) and (2) above.

§1.8-103 Requests for Proposals

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

§1.8-104 Invitation for Bids / Low Bid Contracts

- (1) For solicitations that are based on the lowest responsive and responsible bid, the preference to be granted to a certified bidder pursuant to Section 1.8-102 above shall be equal to five percent (5%) of the lowest bid. Public Works Procurements shall not include a DVBE preference.
- (2) Except as applied to Public Works Procurements, a bidder deemed qualified for the Preference Policy pursuant to both of the eligibility categories detailed in subsections (1) and (2) of Section

1.8-102 above, or a bidder deemed eligible pursuant to subsection (3) of Section 1.8-102 that includes both certified OCLSB and DVBE subcontractors, the preference to be granted shall be equal to eight percent (8%) of the lowest bid.

(3) Such preference shall be applied to all certified bidders that requested the preference, even if the certified bidder is the lowest responsible bidder meeting specifications. The contract award shall be the bidder's original bid price, not the price used for bid evaluation purposes.

(4) In no instance shall any of the preference programs be combined to exceed a total of eight percent (8%), or a maximum of \$150,000, in response to any County solicitation.

§1.8-105 Waivers/Limitations

(1) The County Procurement Officer or designee may consider a departmental request to waive the County of Orange Procurement Preference Policy requirement under special circumstances and/or if it is determined to be in the best interest of the County. Prior to approving a Preference Policy waiver request, the County Procurement Office will notify the Board of Supervisors of the request.

(2) The Preference Policy waiver request must be approved by the County Procurement Officer or designee and the Chief Financial Officer, on the form(s) approved and provided by the CPO, and shall be made part of the procurement file.

(3) The County of Orange Procurement Preference Policy requirements shall not apply when prohibited by this policy or applicable laws or regulations including, but not limited to, specific state or federal funded projects.

SECTION 2 – GENERAL RULES AND PROCEDURES

SECTION 2.1

ETHICS IN PUBLIC CONTRACTING - COUNTY EMPLOYEES

§2.1-101 Policy

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

§2.1-102 "Arm's Length" Principle

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

§2.1-103 General Standards of Ethical Conduct

- ~~(1) Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the employee's duties is a breach of public trust.~~
- ~~(2) Title 1, Article 2, Division 3 of the Codified Ordinances of the County of Orange prohibits the donation and receipt of gifts to public officials. This article is referred to as the Orange County Gift Ban Ordinance. The Board of Supervisors has found that the receipt of gifts by public officials from persons who do business with the County erodes public confidence in the impartiality of decisions made by those officials.~~
- ~~(3) Violation of the County of Orange Gift Ban Ordinance may constitute a misdemeanor, and any employee found in violation shall be subject to discipline, including, in appropriate cases, termination of employment.~~
- (1) It is the duty of all County and Orange County Flood Control District employees to ensure fairness and transparency in contracting by complying with State and local laws and regulations, including those pertaining to conflicts of interest in threefour areas: (1) contracting (those governed by Government Code Sections 1090 et seq.); (2) incompatible activities (Government Code sections 1126 et seq.); (3) financial interests (those governed by Government Code Sections 87100 et seq. including regulations promulgated by the Fair Political Practices Commission (FPPC)); and (43) the County Git Ban Ordinance (those governed by Sections 1-3-21 et seq. of the Orange County Codified Ordinances.)-(Gift Ban Ordinance). These conflict of interest provisions are only briefly described here; any question arising from a potential conflict of interest or ambiguity under any of these provisions should be addressed to County Counsel.
- ~~(4)(2)~~ (2) 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.
- (3) The Code of Ethics and Commitment to County Public Service adopted by the Board of Supervisors states, "A public official or employee shall not meet or confer with a former County official or

employee who is acting as a lobbyist within one (1) year following termination of the former official or employee from County employment.”

- (4) The Gift Ban Ordinance prohibits County officers and certain designated employees, as defined therein, from soliciting or accepting gifts from persons or entities doing or seeking business with the County. A County officer or someone who does business with the County who violates the Gift Ban Ordinance is subject to criminal liability, and designated employees are subject to discipline, including termination of employment. A more extensive discussion of the Gift Ban Ordinance is contained in a guide, which can be found on the County Counsel intranet site.
- (5) Procurement documents including RFQs, RFPs, RFI's, RFA's, and IFB's will include language that prohibits contacting County staff by non-County interested parties during an active, ongoing procurement process/solicitation. Prospective bidders or respondents are not allowed to receive information concerning any bid/solicitation details of the specific procurement process except with through the designated Procurement staff member Deputy Purchasing Agent who is managing/overseeing the procurement process. This prohibition extends to the firm/vendor's prospective bidder's or respondent's employees, representatives, agents, lobbyists, attorneys, sub-consultants, or anyone else acting on the behalf of the interested party. Contacts that are prohibited include those with members of the evaluation panel, the County Executive Officer, and other County staff; *provided, however, this prohibition shall not extend to members of the County's Board of Supervisors and Countywide Elected Officials or members of their respective staffs.*

§2.1-104 Conflict of Interest

(1) The State of California Government Code addresses conflicts of interest as follows:

- a) Section 87100: -“No public official at any level of state or local government shall make, participate in making, or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.”
- b) Section 87103: -“A ~~public~~ official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of the official's or member of his or her immediate family, or on any of the following:
 - i. Any business entity in which the public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more.
 - ii. Any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.
 - iii. Any source of income, other than gifts or other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars (\$500) or more in value provided to, received by or promised to the public official within twelve months prior to the time when the decision is made.
 - iv. Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

- v. Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within twelve months prior to the time when the decision is made. The amount of the value of gifts specified by this subdivision shall be adjusted biennially by the commission to equal the same amount determined by the commission pursuant to subdivision (f) of Section 89503.
- vi. For purposes of this Section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a ~~ten-10-~~percent interest or greater."

c) Section 1090:- (a) "Members of the legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.

(b) An individual shall not aid or abet a Member of the Legislature or a state, county, district, judicial district, or city officer or employee in violating subdivision (a).

(c) As used in this Section, 'district' means any agency of the state formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries."

~~e)d)~~ Any employees who, in the course of their employment, make, or participate in the making of, decisions which may potentially have a material effect on a financial interest of the employees are deemed 'designated employees' and are required to complete a Statement of Economic Interests (Form 700) on an annual basis, when they assume employment with the County, and when they terminate employment with the County.

~~d)e)~~ Upon discovery of an actual or potential conflict of interest, an employee shall promptly file a written statement of disqualification with the County Procurement Officer or appropriate Deputy Purchasing Agent and shall withdraw from further participation in the transaction involved. The employee may, at the same time, request through his department head an advisory opinion from County Counsel as to what further participation, if any, the employee may have in the transaction.

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

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

§2.1-106 Use of Confidential Information

- (1) Confidential information is defined as that information which is available only because of one's status as a County employee. It shall be a breach of ethical standards for any employee or former

employee to use confidential information for actual or anticipated personal gain or for the actual or anticipated personal gain of another person.

§2.1-107 Purchase of Surplus Material and Equipment

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

§2.1-108 Auction Techniques

- (1) It shall be a breach of ethical standards for any employee to engage in the practice of ~~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, or other classifications protected by law.

§2.1-111 Incremental Contracting

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

SECTION 2.2

ETHICS IN PUBLIC CONTRACTING - CONTRACTORS

§2.2-101 Conflict of Interest

~~(1) Upon County Counsel approval, the County shall 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~~

~~May arise during the performance of the required services and, therefore, would provide reason for termination with cause~~

(1) Upon County Counsel approval, the County shall require that a respondent to a solicitation provide, at the time it submits its response or bid, client lists, disclosure statements, or any other information that the County may require to determine if a respondent has a conflict of interest which:

a) May be detrimental to the County's interests and, therefore, would cause the County not to enter into a contract; or

b) May arise after award and during the performance required under a contract and, therefore, foreseeably could provide reason for termination of that contract ~~with cause~~.

(2) The County may require that a respondent provide the information described in Paragraph (1) above for each subcontractor a respondent has identified as likely to perform work on a given project.

(3) The County may also require that a respondent self-identify any present or potential future relationships or business interests, for both the respondent and any of its officers, which the respondent believes may give rise to a conflict of interest detrimental to the County's interests or which could require the County to terminate any contract after award.

~~(2)(4)~~ The County will be the sole judge in determining if such a conflict would preclude the County from entering into a contract or be reason for termination ~~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.~~

(5) By participating in any solicitation, respondents to a solicitation agree to furnish the required information as requested and accept the County's decision in regard to the existence of an actual or potential conflict of interest that would preclude award of a contract as final.

§2.2-102 Vendor/Contractor Code of Conduct

(1) Vendors shall independently and honestly prepare and submit bids or proposals without collusion or otherwise obtaining information about a competitor's bid or proposal.

(2) Prospective V~~endors and prospective contractors~~ shall truthfully disclose who owns and controls their company or firm, as well as the company or firm's current financial condition during solicitation and contract phases.

- (3) Vendors shall not share price information with competitors for the purpose of manipulating the winning bid of the contract, also known as “price-fixing” or “bid-rigging or collusion”.
- (4) Vendors shall not submit low dollar bids with the expectation of making up the difference after the contract has been won through change orders or amended contracts.
- (5) Strict observance of all local, state, and federal laws is a minimal requirement in all aspects of vendor/contractor conduct.
- (6) Vendors must adhere to the County’s gift ban limits.
- (7) Failure to meet these standards could result in sanctions including, but not limited to, voidance of current or future contracts.

§2.2-103 Levine Act

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

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

SECTION 2.3

SURETY AND INDEMNIFICATION

§2.3-101 Definitions

(1) As used in this Section, the following terms have the meanings set forth:

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

§2.3-102 Policy

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

- (4) **Insurance:** Insurance will be required where the County may suffer risk of loss due to the nature of the work being performed. It will be the obligation of each department to research and include in the contracts the appropriate insurance requirements for each applicable circumstance as stated in §2.3-103, below.

- a) No insurance is required for the following purchases:
 - i. emergency purchases (as consistent with §3.3-123(1)(a)(iii), when applicable),
 - ii. commodity purchases of \$5,000 or less (regardless of method of delivery),
 - iii. off-the-shelf software products, including off-the-shelf software maintenance, or
 - iv. commodity purchases in excess of \$5,000 that are delivered by third party common couriers to County.
- b) For service purchases, no insurance is required for purchases of \$5,000 or less unless the purchase is for:
 - i. maintenance services related to trades (e.g., plumber, electrician or carpenter) that are performed on County property/premise, or
 - ii. services described in §3.3-101(1) subsections (a), (f), ~~and (g)~~, and/or (i).
~~human services as defined in Section 3.4-101~~

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

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

§2.3-103 Standard Insurance Requirements

- (1) For standard insurance requirements, refer to the Insurance Requirements and Reference Manual maintained on the County Risk Management website:

<https://ocgov.sharepoint.com/sites/FIN/risk/programs/Pages/Contract-Insurance-Requirements.aspx>

SECTION 2.4

PURCHASING-PROCUREMENT REQUISITIONS**§2.4-101 Definition**

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

§2.4-102 Policy

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

§2.4-103 Procedure

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

§2.4-104 Process

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

SECTION 3 - TYPES OF CONTRACTS

SECTION 3.1

COMMODITIES

§3.1-101 Definition

(1) Commodities include all supplies and equipment, equipment rentals and leases, certain types of software and software licenses costing less than \$5,000 per unit, including tax and freight, and those costing \$5,000 per unit or more with a useful life expectancy of less than one (1) year. Included in the definition of commodity contracts covered in this Section are the following:

- a) Equipment – Operating Rental/Lease: These contracts are in essence an extended rental contract under which the owner of the equipment allows the County to operate or otherwise make use of the equipment in exchange for periodic lease payments. These types of contracts are “Operating leases” and are characterized by short-term, cancelable terms. The lessor bears the risk of obsolescence and depreciation of the equipment. Operating leases are generally preferable when the county needs the equipment for a short period of time such as for minor office equipment, printers, copiers, and light-duty vehicles and related equipment. Not included in the definition are long-term, "capital," non-cancelable leases.

~~Publications/Newsprint: Contracts to receive periodicals, magazines, trade journals, etc., either in print or electronic/digital subscriptions.~~

- b) Software/Licenses (Retail– Perpetual and Subscription): Contracts for proprietary software licenses where the software publisher grants the use of the software under the end-user license contract (EULA), but ownership of the software remains with the software publisher. These types of purchases typically include terms which define the uses of the software and number of users allowed.

- i. Perpetual License - The right to use a software program indefinitely with payment of a single fee. License may or may not include a limited Software Maintenance period and/or the option to purchase ongoing Software Maintenance at the time of purchase or at a later date.

- ii. Subscription License - The right to use a software as designed without customization for a determined fee, which includes general technical support, updates and upgrades to new versions or releases of the software (e.g. Software as a Service (SaaS) or Commercial Off the Shelf (COTS) software) irrespective of where the software is hosted. It may also include other no charge support that is included in the purchase price of the product in the commercial marketplace. No charge support includes items such as user blogs, discussion forums, on-line help libraries and FAQs (Frequently Asked Questions), hosted chat rooms, and limited telephone, email and/or web-based general technical support for users’ self-diagnostics.

- iii. Software Maintenance - Includes person-to-person communications regardless of the medium used to communicate: telephone support, on-line technical support, and/or technical expertise which are changed commercially.

- c) Subscriptions/Databases/Cloud Computing: Contracts for access to on-line information, databases or remote servers to be used to enhance or support a County program or project.

Contracts of this type involve no on-site visits or work by a vendor and are limited to the digital exchange of information for a predetermined fee.

- d) Software Maintenance: Software maintenance as a product includes the publishing of bug/defect fixes via patches and updates/upgrades in function and technology to maintain the operability and usability of the software product. It may also include other no charge support that is included in the purchase price of the product in the commercial marketplace. No charge support includes items such as user blogs, discussion forums, on-line help libraries and FAQs (Frequently Asked Questions), hosted chat rooms, and limited telephone, email and/or web-based general technical support for users' self-diagnostics. Software Maintenance as a product is billed at the time of purchase or on an annual basis.
- e) Telecommunications/Data Communications: Contracts for technologies, other than those procured under sections 3.4 and 3.5, that enable the transmission, reception, and exchange of information and digital data between individuals, devices, systems, or networks, which may include wired or wireless connections to transmit data, such as the internet, telephone networks, data networks or satellite systems. These types of contracts typically include a monthly recurring charge for a predetermined fee. This definition does not include any contracts that may be procured under sections 3.4 or 3.5.
- f) Cash Alternatives: Cash alternatives, including gift cards and gift certificates, to purchase travel and food for non-employee County department clients receiving services from the County.

§3.1-102 Solicitation Considerations

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

§3.1-103 Term of Contract

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

§3.1-104 Contract Extensions

- (1) ~~Non-Board~~ Contracts ~~of less than five (5) years~~ may be extended ~~for up to one (1) year from the Original Contract Term up to a five (5) year term~~ without approval by the Board of Supervisors. ~~in no event shall the contract term exceed five (5) years.~~ The extension(s) may be issued by the Deputy Purchasing Agent, without Board of Supervisors approval provided there are no monetary increases that cumulatively exceed the average annual value of the prior years of the contract the Board of Supervisors approval threshold, while complying with solicitation thresholds. ~~s and if it is determined to be in the best interest of the County.~~
- (+)(2) Board and non-Board contract extensions may be issued by the Deputy Purchasing Agent for up to one (1) year, beyond the fifth year, with County Procurement Officer or designee approval, provided there are no monetary increases (i.e., within the contract's existing contract amount).

§3.1-105 Contract Pricing

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

§3.1-106 Vendor Selection

- (1) Selection of vendors for commodities will be based on the competitive process except Sole Source purchases as defined in Section 4.5 of this manual. Solicitations shall be made as follows:

a) Contracts \$2540,000 or less over the life of the contract	Minimum of one <u>written</u> quote, written or oral
b) Contracts \$2540,001 to \$5025,000 over the life of the contract	Minimum of two <u>written</u> quotes, written or oral
c) Contracts above \$5025,000 over the life of the contract	Written solicitation issued on County's bidding system

(2) Commodity purchases that are below the solicitation threshold are not required to be competitively bid nor require a sole source justification for award, except as may be required for Federal or State funded purchases.

~~(2)~~(3) For commodities obtained through the IFB solicitation method as detailed in Section 4.2, awards in all cases will be made to the lowest responsive and responsible bidder.

~~(3)~~(4) Consecutive contracts going back three (3) years for purchases that contain substantially the same description-scope shall not be issued to the same vendor using the written/~~oral~~ quote(s) solicitation method when the consecutive contracts' cumulative dollar amount exceeds the written solicitation threshold.

§3.1-107 Public Bid Opening

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

a) The amount of each bid, together with the name of each bidder, shall be recorded and made available for public inspection.

b) In cases where bids are submitted and tabulated electronically, bid openings will be considered public as long as the individual bids are electronically accessible-available immediately after the bids close.

~~b)~~—

§3.1-108 Retroactive Contract and Amendments/Changes

(1) Retroactive contracts or contract overruns are not permitted. If a retroactive contract or contract overrun occurs, it is invalid unless ratified by the Board of Supervisors or unless one of the following exemptions applies:

a) Retroactive contracts or contract overruns with a total value of <\$500 or less that have the approval of the department head.

b) Retroactive contracts or contract overruns ~~with a total value between~~that exceed \$500 and \$9,999 and are \$25,000 or less that have the approval of the County Procurement Officer or designee and Chief Financial Officer on the form(s) approved and provided by the County Procurement Office.

~~Retroactive~~ ~~Contracts~~ or contract overruns with a total value exceeding -of \$10,000-\$25,000 and above shall require approval by the Board of Supervisors.

(2) Retroactive contracts in the following categories shall also be exempt from Board of Supervisors approval:

a) Contracts governed by separate rules and regulations ~~such as Human Services Contracts~~that conflict with this policy.

b) -Telephone services requests and emergency contracts in any amount.

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

§3.1-109 Contract Increases

(1) A contract's total expenditure may not increase by more than 30 percent (30%) of the original contract amount, unless it is demonstrated to be in the best interest of the County and reflective of good ~~procurement~~~~releasing~~ practices and approved by the County Procurement Officer or designee.

- a) Exemptions: Subordinate contracts issued against RCAs, and subordinate contracts issued against CPO approved cooperative programs, that are below the thresholds requiring approval by the Board of Supervisors, and contracts awarded via informal solicitations (one or two ~~oral~~ written quotes) will not require approval from the County Procurement Officer or designee.

§3.1-110 Multiple Awards

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

§3.1-111 Incremental Contracting

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

~~§3.1-112 Secondary Awards~~

~~(1) Awards may be made to secondary, and, in some cases, third and fourth vendors when there is a reasonable possibility of supply disruption and having an alternate source is clearly in the County's best interest.~~

- ~~a) Primary award will go to the lowest responsive and responsible bidder; secondary award will go to the second lowest responsive and responsible bidder, etc.~~
- ~~b) For any commodity requirement, the primary contractor will always be contacted first and, only if that contractor is unable to provide the required commodity within the time required, will the secondary contractor, etc., be contacted.~~

§3.1-11~~23~~³⁴ Commodity Substitutions

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

§3.1-11~~34~~³⁴ Emergencies

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

- a) Emergency commodity purchases of \$1,000 or less may be made using petty cash or purchasing card, in accordance with Section 4.6 —~~Small Dollar Petty Cash~~ Purchases.
- b) For emergency commodity purchases exceeding \$1,000, the requestor will contact the County Procurement Officer or the ~~appropriate~~ department Deputy Purchasing Agent. The emergency will be described and the County Procurement Officer or Deputy Purchasing Agent may, if so authorized, use a purchasing card or may issue a ~~purchase order number~~contract number for an amount sufficient to resolve the immediate emergency.
- c) No later than ten (10) business days from the request date, an approved requisition~~purchase request~~ referencing the purchase will be submitted to the County Procurement Officer or Deputy Purchasing Agent ~~by a department employee authorized to approve purchase requests.~~
- d) The ~~requisition is request~~ will be accompanied by a memorandum from the department head or designee briefly detailing the emergency situation. The justification will become a permanent part of the procurement file.
- e) If the emergency occurs during other than normal business hours, the department is authorized to secure the commodities required and contact the County Procurement Officer or Deputy Purchasing Agent on the next regular working day for issuance of a purchase contract.

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

§3.1-115 — Multi-Department Contracts

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

§3.1-1146 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 Sole Sourced to avoid the bidding requirements contained in this Section. Refer to Section 4.5 – Sole Source Requests for additional policy concerning Sole Source purchases.

§3.1-1157 Approval of Non-Standard Contract Terms

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

§3.1-11~~68~~ Contractor Name/Ownership Changes

- (1) ~~Except as provided herein, Board of Supervisors approval is not required for Board awarded contracts where there is a change in a contractor's ownership or control resulting in the assignment of rights and responsibilities from one entity to another contractor name changes when control of the contracted entity remains unchanged, or when an assignment of the County contract occurs pursuant to a sale, merger, or other change in ownership of the contracted entity, and County Counsel determines that the assignment does not require Board approval.~~
- (2) ~~Deputy Purchasing Agents are authorized to approve the following changes to Board awarded contracts in the absence of a novation or other release from liability, and upon approval of County Counsel: In all cases where the result of the assignment is that the contracted entity has been released from further performance under the County contract, Board approval shall be required.~~
 - a) ~~There is a change in the contractor company name only, but there is no change in the company's:~~
 - i. ~~ownership or control,~~
 - ii. ~~key staff identified in an existing contract, or~~
 - iii. ~~tax identification (e.g., EIN).~~
 - b) ~~There is a proposed assignment of the existing Board awarded contract to a different legal entity based on bankruptcy, merger, sale of the company (as opposed to a mere sale or acquisition of assets), restructuring or dissolution, and the Deputy Purchasing Agent has determined that the proposed assignee is qualified to perform according to the terms of the contract and original solicitation requirements and any key staff identified in the contract remain unchanged.~~
- (3) ~~Upon approval of County Counsel, Deputy Purchasing Agents are authorized to approve a change in contractor name or ownership for non-Board awarded contracts.~~

§3.1-11~~79~~ Indemnification

- (1) Except for contracts in which ~~Section~~ §3.1-11~~65~~⁷ (1) applies, contractors doing business with the County will indemnify the County against losses, liabilities and/or claims that arise from contractor performance including, but not limited to, patent violations, copyright violations, unauthorized use of materials, wrongful acts, and injuries to persons or property, and any other loss, liability or claim unless stated otherwise in this manual.

§3.1-11~~82~~ Insurance

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

§3.1-11~~92~~ Opportunity Buy

- (1) An “Opportunity Buy” is a situation where necessary commodities are for sale at significantly reduced rates from what is normally offered in the general market or where an alternative product to the one being bid represents significant cost savings to the County. In the event this situation arises, the Department Head or ~~duly authorized~~ designee shall prepare a written justification in support of the prompt action taken that shall become part of the permanent procurement file. The justification shall include:
- a) A detailed description of the commodity to be provided by the vendor and an explanation of the cost savings achieved;
 - b) Why the recommended vendor is the only one capable of providing the required commodities with back-up information included to support the justification;
 - c) Comparison of the recommended vendor’s prices or fees to the general market with price and attach quotes for comparable items provided, if available; and,
 - d) County Procurement Officer or designee approval is required for ~~For~~ Opportunity Buys exceeding \$1,000,000, and an Agenda Staff Report will be filed with the Board of Supervisors by the appropriate Department Head. The Agenda Staff Report shall include all documentation and justification in support of the purchase.

§3.1-1202 Federal and State Funding

- (1) Should any portion of the funding for a commodities contract be derived from federal and/or state funding sources, the solicitation process and selection of vendors must be conducted in accordance with the applicable federal and/or state regulations. In the event of a contradiction between County policy and federal and/or state requirements, the more restrictive method must be followed.
- ~~The most recent federal regulations will be available on the County Procurement Office’s intranet website at: CPO website — Federal Uniform Guidance~~
- a) On federally funded projects, DPAs will be required to consult the System for Award Management (SAM) at SAM.gov to comply with funding source requirements.

§3.1-1213 Hybrid Contract Definition

- (1) A hybrid contract is a contract which consists of multiple contract type purchases. For example, a contract for the purchase of a commodity and a service is considered a hybrid contract. The solicitation process will be based on the portion with the greater amount; however, each situation should be carefully considered and documented.
- (2) Purchases that are evenly split between commodity and service should be reviewed on a case-by-case basis by the Deputy Purchasing Agent to determine the appropriate Service or Commodity solicitation process, which shall be documented and made a permanent part of the procurement folder.
- (3) If the service portion of a hybrid contract exceeds an annual aggregate cost of \$200,000, or ~~is at the service portion of a~~ sole source hybrid contract exceeding ~~\$75,000~~ an annual aggregate cost of \$100,000 or a ~~two (2) five (5)~~ year term, refer to Section 3.3-102 (1) a); and b) ~~and e)~~ of this manual.

§3.1-1223 Cash Alternative Purchases

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

SECTION 3.2

CAPITAL ASSETS

§3.2-101 Definition

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

§3.2-102 Used Equipment

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

§3.2-103 Board Approval

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

(3) Sole Source Capital Assets:

- a) Approval by the Board of Supervisors is required prior to the ~~procurement~~~~purchase~~ of a Sole Source Capital Asset costing more than ~~\$75,000~~~~\$100,000~~. ~~Purchases~~~~Procurements~~ may not be Sole Sourced to avoid the bidding requirements contained in this manual. For additional rules and guidelines, refer to Section 4.5 of this manual.

§3.2-104 Approval of Non-Standard Contract Terms

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

§3.2-105 Solicitation Considerations

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

§3.2-106 Vendor Selection

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

- | | |
|---------------------------------------------------------------------------------|------------------------------------------------------------------|
| a) Contracts \$5,000 to \$5025 ,000
over the life of the contract | Minimum of two <u>written</u> quotes, written or oral |
| b) Contracts above \$5025 ,000
over the life of the contract | Written solicitation issued on County's
bidding system |

(2) Capital Asset purchases that are below the solicitation threshold are not required to be competitively bid nor require a sole source justification for award, except as may be required for Federal or State funded purchases.

~~(2)~~(3) Awards will be made to the lowest responsive and responsible bidder or, in the case of negotiated procurement, the vendor with the most responsive proposal as determined by the County.

§3.2-107 Public Bid Opening

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

- a) The amount of each bid, together with the name of each bidder, shall be recorded and made available for public inspection.
- b) In cases where bids are submitted and tabulated electronically, bid openings will be considered public as long as the individual bids are electronically available ~~accessible~~immediately after the bids close.

§3.2-108 Retroactive Contract and Amendments/Changes

(1) Retroactive contracts or contract overruns are not permitted. If a retroactive contract or contract overrun occurs, it is invalid unless ratified by the Board of Supervisors or unless one of the following exemptions applies:

- a) Retroactive contracts or contract overruns with a total value of <\$500 or less that have the approval of the department head.
- b) Retroactive contracts or contract overruns ~~with a total value between that exceed \$500 and \$9,999 and are \$25,000 or less~~ that have the approval of the County Procurement Officer or designee & Chief Financial Officer on the form(s) approved and provided by the County Procurement Office.

Retroactive Contracts or contract overruns with a total ~~cost overrun~~ value exceeding of \$10,000 \$25,000 and above shall require approval by the Board of Supervisors.

(2) Retroactive contracts in the following categories shall also be exempt from Board of Supervisors approval:

- a) Contracts governed by separate rules and regulations ~~such as Human Services contracts that conflict with this policy.~~

- b) Telephone services requests and emergency contracts in any amount.
- c) Modifications for computer hardware/software maintenance to add licenses and/or users.

§3.2-109 Indemnification

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

§3.2-110 Insurance

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

§3.2-111 Emergencies

- (1) Emergencies are defined as those situations where the safety and/or welfare of County residents or employees is at stake and/or immediate purchasing action is required to prevent serious economic or other hardship to the County. When due to the nature of the emergency, it is not possible or it is impractical to follow competitive bidding requirements, these requirements may be waived, by the County Procurement Officer or ~~appropriate~~ Deputy Purchasing Agent.
 - a) For emergency procurement of Capital Assets costing less than \$75,000 emergency procedures under §3.1-114, Commodities, shall be followed.
 - b) When an emergency requiring the acquisition of a Capital Asset exceeding \$75,000 arises, the department will first call the CEO to receive budget approval for the ~~procurement~~~~purchase~~; and
 - c) The County Procurement Officer or department Deputy Purchasing Agent will issue a ~~contract~~ ~~Purchase Order number~~ for an amount sufficient to resolve the immediate emergency.
 - d) If the item cost is over \$75,000, a ~~requisition~~~~Purchasing Request~~ with ~~written~~ CEO approval shall be submitted to the County Procurement Officer or the Deputy Purchasing Agent, as appropriate, within ten (10) working days of the emergency.
 - e) A memorandum from the department head or designee briefly detailing the emergency situation shall accompany the ~~Purchase-Procurement~~ Request. This justification should become a permanent part of the procurement file.
 - ~~f) If the requested Capital Asset is unbudgeted, the item will be filed for approval by the Board of Supervisors when the item exceeds \$50,000.~~
- (2) County of Orange Procurement Preference Policy requirement is not applicable to Emergencies.

§3.2-112 Federal and State Funding

- (1) Should any portion of the funding for a capital asset contract be derived from federal and/or state funding sources, the solicitation process and selection of vendors must be conducted in accordance with the applicable federal and/or state regulations. In the event of a contradiction between County policy and federal and/or state requirements, the more restrictive method must be followed.

~~The most recent federal regulations will be available on the County Procurement Office's intranet website at: CPO website — Federal Uniform Guidance.~~

—On federally funded projects, DPAs will be required to consult the System for Award Management (SAM) at SAM.gov to comply with funding source requirements.

§3.2-113 Opportunity Buy

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

SECTION 3.3

SERVICE CONTRACTS

§3.3-101 Definition

- (1) Service contracts encompass all contracts for services either with or without the furnishing of materials. Included in the definition of service contracts covered in this Section are the following:
- a) Professional Services: Services provided by licensed and/or technically trained professionals, including such services as, data processing, accounting, legal, medical, auditing, information-technology (IT) related services that may or may not include: customized software/application, installation and implementation services, creation/development, design, implementation and/or integration of customized changes to software that are not included with the price of the software or software maintenance.
 - 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, etc. Prevailing wage shall be paid pursuant to Labor Code Section 1720 et seq., when applicable. Registration with the Department of Industrial Relations will be required, when applicable, pursuant to Labor Code Section 1771.1(a) and 1725.5.
 - c) Personnel or employee-related services: Services which provide benefit or assistance directly to employees, including such services as temporary employment, security, etc.
 - d) Consultant Service Contracts: Are for those services which are of an advisory nature, which provide a recommended course of action or personal expertise, and which have an end product which is basically a transmittal of information. Consultant service contracts are issued in order to obtain professional or technical advice or expertise which will supplement departmental expertise or advice or where an independent opinion or audit is required. All consultant service contracts shall contain a provision which prohibits “follow-on” projects that prevent the consultant from performing work related to any recommendations being formulated as a result of the consulting work.
 - e) Revenue Generating Contracts (non-real estate): A contract for contractor-provided services on County premises in which the County does not pay a fee, but instead receives a portion of the revenues that are generated from the services such as vending machines, etc.
 - f) Capital Leases (non-real estate): A long-term lease that transfers to the lessee most rights and obligations concerning the asset leased, and usually transfers ownership at the end of the lease.
 - g) Customized Software Maintenance: Software maintenance ~~as a service~~ creates, designs, implements, and/or integrates customized changes to software that solve one or more problems and is not included with the price of the software. ~~Software maintenance as a service includes person to person communications regardless of the medium used to communicate: telephone support, on-line technical support, customized support, and/or technical expertise which are changed commercially.~~
 - h) Architect-Engineer (“A-E”) Consultant Services: Services may include but are not necessarily limited to: investigations, report preparation, cost estimating, shop drawing

review, CEQA documentation preparation, regulatory permit application and acquisition, archeology, geological and soils analysis, agronomy, limnology, biology, paleontology, material testing and inspection, real estate appraisal, and property acquisition services. Services also may include studies addressing engineering, architecture, facilities management, and environmental issues but **shall not** include design or construction drawings used for public works construction projects.

- i) Human Services: Human Services Contracts include all contracts for services that directly maintain or improve the social, economic, physical, or mental well-being of persons for whom the County bears such a responsibility, including food and travel. Included in the definition of Human Services Contracts are services provided in response to or in support of federal, state and/or local service mandates to provide health and human services to a target population.
- (2) Service contracts ~~for County procurement purposes in this section as defined in, and applied to, this section~~ do not include ~~contracts for~~ Public Works Architects-Engineer Service Contracts (related to engineering and design of public projects), Public Works Construction Contracts, Architects-Engineers (related to engineering and design of public projects), and Real Property Estate Contracts. For policies related to Public Works Architects-Engineer Service Contracts, refer to Section 3.4. For policies related to Public Works Construction Contracts, refer to Section 3.5. For policies related to Real Estate Contracts, refer to Sections 3.7 and 4.94.3.1.

§3.3-102 Board Approval

- (1) Approval by the Board of Supervisors is required for all service contracts in accordance with the guidelines listed below.
 - a) Contracts Exceeding \$200,000 – Approval by the Board of Supervisors is required for all service contracts and/or revenue generating contracts where for any year of the contract, the annual value to any one contractor exceeds \$200,000, in accordance with Government Code Section 25502.5.
 - ~~b) Multi Year Contracts Exceeding \$1,000,000 – Approval by the Board of Supervisors is required for all service contracts where the total contract value exceeds or is anticipated to exceed \$1,000,000 when the total contract term, inclusive of all extensions and renewals, all contract years are taken into consideration.~~
 - e)b) Sole Source Service Contracts – Approval by the Board of Supervisors shall be required for all Sole Source service contracts that exceed a total annual amount of ~~\$75,000~~ \$100,000 or a five (5) year term or a two (2) year consecutive term, regardless of dollar amount. Contracts may not be split to avoid this policy, including proposed successor contracts that contain substantially the same scope of work. Renewal of a Sole Source Service where no changes to the scope or the dollar amount of the contract will not require a new Sole Source approved form. For additional information and guidelines refer to Section 4.5 – Sole Source Requests.

§3.3-103 Approval of Non-Standard Contract Terms

- (1) Unless Risk Management agrees in writing that the risk to the County is minimal and County Counsel agrees in writing that the legal risk to the County is minimal, approval by the Board of Supervisors is required prior to the execution of any contract for \$200,000 or less that includes non-

standard terms in the indemnification contract provisions and/or limits the vendor's liability. This shall not apply to service purchases of \$5,000 or less, unless the contract contains an indemnification provision that requires the County to indemnify the vendor.

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

§3.3-104 Contractor Name/Ownership Changes

- (1) Except as provided herein, Board of Supervisors approval is ~~not~~ required for Board awarded contracts where there is a change in a contractor's ownership or control resulting in the assignment of rights and responsibilities from one entity to another contractor name changes when control of the contracted entity remains unchanged, or when an assignment of the County contract occurs pursuant to a sale, merger, or other change in ownership of the contracted entity, and County Counsel determines that the assignment does not require Board approval.
- (2) Deputy Purchasing Agents are authorized to approve the following changes to Board awarded contracts in the absence of a novation or other release from liability, and upon approval of County Counsel: In all cases where the result of the assignment is that the contracted entity has been released from further performance under the County contract, Board approval shall be required.
- a) There is a change in the contractor company name only, but there is no change in the company's:
- i. ownership or control,
- ii. key staff identified in an existing contract, or
- iii. tax identification (e.g., EIN).
- b) There is a proposed assignment of the existing Board awarded contract to a different legal entity based on bankruptcy, merger, sale of the company (as opposed to a mere sale or acquisition of assets), restructuring or dissolution, and the Deputy Purchasing Agent has determined that the proposed assignee is qualified to perform according to the terms of the contract and original solicitation requirements and any key staff identified in the contract remain unchanged.
- (3) Upon approval of County Counsel, Deputy Purchasing Agents are authorized to approve a change in contractor name or ownership for non-Board awarded contracts.

§3.3-105 Term of Contract

- ~~(3)~~(4) 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.
- ~~(4)~~ With respect to Board awarded contracts, the initial term of a service contract shall not exceed three (3) years, with a two-year renewable term, unless otherwise approved by the Board.

- (5) In no case shall a service contract exceed five (5) years in duration unless the contract is specifically approved by the Board of Supervisors, or is extended from the original contract term by one (1) year in accordance with Section 3.3-106 in this manual.
- (6) Prior to ~~recommending~~ renewal or extension of an existing contract, the department will document that performance of the contractor has been at least satisfactory.

§3.3-106 Contract Extensions

- (1) Service Contracts ~~of less than five (5) years duration~~ may be extended ~~for up to one (1) year from the Original Contract Term up to a five (5) year term~~ without approval by the Board of Supervisors. ~~; in no event shall the contract term exceed five (5) years.~~ The extension may be issued by the Deputy Purchasing Agent, without Board of Supervisors approval provided there are no monetary increases that cumulatively exceed ~~the average annual value of the prior years of the contract or \$200,000 annually, whichever is less~~ the Board of Supervisors approval threshold, while complying with solicitation thresholds. ~~s and if it is determined to be in the best interest of the County.~~
- ~~(1)(2)~~ Board and Non-Board contract extensions may be issued by the Deputy Purchasing Agent for up to one (1) year, beyond the fifth year, with County Procurement Officer or designee approval, provided there are no monetary increases (i.e., within the contract's existing contract amount).

§3.3-107 Contract Renewals

- (1) Applicable to all service contracts with a value that exceeds \$200,000 per year.
 - a) All renewals are subject to Board of Supervisors approval.
 - b) In the event the total service contract amount for all contract years exceeds ~~\$750,000~~ 1,000,000, the Agenda Staff Report (ASR) shall be filed on the Board's "Discussion Calendar".
 - c) All service contract renewals shall be stated in the Recommended Action portion of the Agenda Staff Report (ASR) for consideration by the Board.

§3.3-108 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 ~~R~~Fate/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) Human Services Contracts shall determine cost pricing as deemed to be in the best interest of the County. Generally, Human Services Contracts will utilize the Cost Reimbursement method under which allowable and reasonable costs incurred by the contractor in performance of the contract and reimbursed in accordance of the terms of the contract.~~

~~(4) Human Services Contracts may also be written with one, or a combination, of the following preferred basis for reimbursement:~~

~~a) Fee for Service;~~

~~b) Actual Cost; or,~~

~~c) Negotiated Rates~~

§3.3-109 Vendor Selection

(1) With the exception of Sole Source service contracts, selection shall be based on the competitive process. Solicitations shall be made as follows:

a) Contracts ~~\$50,000-\$100,000~~ or less over the life of the contract

Minimum of one written quote

b) Contracts above ~~\$50,000~~ \$100,000 over the life of the contract

Written solicitation issued on County's bidding system

(2) Services that are below the solicitation threshold are not required to be competitively bid nor require a sole source justification for award, except as may be required for Federal or State funded procurements.

~~(2)~~(3) Awards in Invitation for Bid solicitations will be made to the lowest responsive and responsible bidder as defined in Section 4.2-10~~23~~ of this manual. In the case of a negotiated procurement ~~(RFP)~~, award shall be made to the vendor with the most responsive and responsible proposal as detailed in Section 4.3-11~~56~~ of this manual.

~~(3)~~(4) Consecutive contracts going back three (3) years for purchases that contain substantially the same ~~description-scope~~ shall not be issued to the same vendor using the written quote(s) solicitation method when the consecutive contracts' cumulative dollar amount exceeds the written solicitation threshold.

§3.3-110 Public Bid Opening

(1) ~~In accordance with Section 4.2-111, a~~ A public bid opening will be held at a time and place announced in the ~~bid~~ solicitation for the procurement~~purchases of for~~ services exceeding \$200,000 annually. The amount of each bid, together with the name of each bidder, shall be recorded and made available for public inspection.

- a) In cases where bids are submitted and tabulated electronically, bid openings will be considered public as long as the individual bids are electronically available-aceessible immediately after the bids close.

§3.3-111 Retroactive Contract and Amendments/Changes

- (1) Retroactive contracts or contract overruns are not permitted. If a retroactive contract or contract overrun occurs, it is invalid unless ratified by the Board of Supervisors or unless one of the following exemptions applies:

- a) Retroactive contracts or contract overruns with a total value of <\$500 or less that have the approval of the department head.
- b) Retroactive contracts or contract overruns ~~with a total value between that exceed \$500 and \$9,999 and are \$25,000 or less~~ that have the approval of the County Procurement Officer or designee and Chief Financial Officer on the form(s) approved and provided by the County Procurement Office.

~~Retroactive C~~contracts or contract overruns with a total ~~contract overrun~~ value exceeding of \$10,000-\$25,000 and above shall require approval by the Board of Supervisors.

- (2) Retroactive contracts in the following categories shall also be exempt from Board of Supervisors approval;

- a) Contracts governed by separate rules and regulations ~~such as Human Services Contracts that conflict with this policy.~~
- b) Telephone services requests and emergency contracts in any amount.
- c) Modifications for computer hardware/software maintenance to add licenses and/or users.

§3.3-112 Adjustments to Contract Amount

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

thresholds requiring approval by the Board of Supervisors, and contracts awarded via informal solicitations (one written quote) will not require approval from the County Procurement Officer or designee.

§3.3-113 Contingency Funds Amounts

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

§3.3-114 Multiple Awards

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

§3.3-115 Incremental Contracting

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

§3.3-11~~6~~7 Indemnification

- (1) Except for contracts in which Section 3.3-103 (1) applies, contractors doing business with the County will indemnify the County against losses, liabilities and/or claims that arise from contractor performance including, but not limited to, patent violations, copyright violations, unauthorized use

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

§3.3-11~~78~~ Insurance

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

§3.3-11~~89~~ 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.

§3.3-1~~920~~ 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.

§3.3-1201 Contract Administration

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

§3.3-1212 Cancellation

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

§3.3-1223 Emergencies

- (1) Emergencies are defined as those situations where the welfare of County residents is at stake and/or immediate purchasing action is required to prevent serious economic or other hardship to the County. When due to the nature of the emergency, it is not possible or it is impractical to follow competitive bidding requirements, these requirements may be waived by the County Procurement Officer or Deputy Purchasing Agent.
 - a) Process:
 - i. Emergency service purchases of \$1,000 or less may be made using petty cash or purchasing card, in accordance with Section 4.6-~~Small-Dollar~~ Petty Cash Purchases.
 - ii. For emergency service purchases over \$1,000 the requestor will contact the County Procurement Officer or appropriate department Deputy Purchasing Agent. The emergency will be described and the County Procurement Officer or Deputy Purchasing Agent may use a purchasing card, when so authorized, or may issue a purchase order number contract for an amount sufficient to resolve the immediate emergency.
 - iii. The requestor will ensure and will confirm with the County Procurement Officer or Deputy Purchasing Agent that the service contractor carries insurance.
 - iv. No later than ten (10) working days from the request date, an approved purchasing request requisition referencing the purchase will be submitted to the County Procurement Officer or Deputy Purchasing Agent by a department employee

~~authorized to approve purchase requests.~~ This ~~requisition request~~ will be accompanied by a memorandum from the department head or designee briefly detailing the emergency situation. The justification will become a permanent part of the procurement file.

- v. If the emergency occurs on other than normal working hours, the department is authorized to secure the services required and contact the County Procurement Officer or Deputy Purchasing Agent on the next regular business day.
- vi. For emergency purchases exceeding \$200,000, an Agenda Staff Report will be filed with the Board of Supervisors by the department administering the contract as soon as possible, after the service is performed.

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

§3.3-12~~34~~ Multi-Department Contract Planning and Coordination

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

~~— At the discretion of department heads, every reasonable effort shall be made to ensure, through interdepartmental coordination, that Human Services and funding provided by other County departments are not duplicated.~~

~~(1) County departments responsible for Human Services Contracts and their funding—The County Procurement Office should compare/evaluate Countywide contract inventories to ensure, where possible, departments are not duplicating efforts and to facilitate collaboration across departments to maximize efficiencies and effectiveness. at least once annually and share appropriate information which will assist such coordination efforts.~~

§3.3-12~~45~~ Contracts for Outside Legal Counsel

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

§3.3-12~~56~~ HIPAA – Business Associate Language

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

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

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

§3.3-1267 Federal and State Funding

- (1) Should any portion of the funding for a services contract be derived from federal and/or state funding sources, the solicitation process and selection of vendors must be conducted in accordance with the applicable federal and/or state regulations. In the event of a contradiction between County policy and federal and/or state requirements, the more restrictive method must be followed.

~~The most recent federal regulations will be available on the County Procurement Office's intranet website at: CPO website—Federal Uniform Guidance~~

a) On federally funded projects, DPAs will be required to consult the System for Award Management (SAM) at SAM.gov to comply with funding source requirements.

§3.3-1278 Hybrid Contract Definition

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

§3.3-1289 County of Orange Procurement Preference Policy Exemption

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

§3.3-129 Opportunity Buy

- (2) An "Opportunity Buy" is a situation where necessary services are for sale at significantly reduced rates from what is normally offered in the general market or where an alternative product/service to the one being solicited represents significant cost savings to the County. In the event this situation arises, the Department Head or designee shall prepare a written justification in support of the prompt action taken that shall be approved by the County Procurement Officer or designee and become part of the permanent procurement file. The justification shall include:

i) A detailed description of the services to be provided by the vendor and an explanation of the cost savings achieved;

- j) Why the recommended vendor is the only one capable of providing the required services with back-up information included to support the justification;
- k) Comparison of the recommended vendor's prices or fees to the general market with price and attach quotes for comparable services provided, if available; and,
- l) County Procurement Officer or designee approval is required for Opportunity Buys exceeding Board thresholds as specified in Section 3.3-102 above. An Agenda Staff Report will be filed with the Board of Supervisors by the appropriate Department Head as soon as possible, after the purchase has been made. The Agenda Staff Report shall include all documentation and justification in support of the purchase.

§3.4-101 — Definition

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

§3.4-102 — Responsibility

- ~~(1) Human Services Contracts with federal, state and/or local funding shall be solicited and executed in accordance with the provisions of this manual. In the event of a contradiction between county policy and federal and/or state rules and regulations, the more restrictive rules and regulations shall take precedence.~~
- ~~(2) The departments responsible for providing human services will also be directly responsible for Human Services Contracts, including the responsibility for:~~
- ~~a) issuing solicitations;~~
 - ~~b) accepting or rejecting proposals;~~
 - ~~c) developing and administering the proposal evaluation process;~~
 - ~~d) selecting proposal evaluation committee members;~~
 - ~~e) making the final selection recommendation for contract issuance or forwarding the recommendation to the Board of Supervisors for final selection; and~~
 - ~~f) contract administration and oversight, ensuring services are provided in adherence to all contract requirements and expectations and, where applicable, all funding requirements are satisfied.~~
- ~~(3) The procurement/contract administrator staff in these departments are required to be deputized by the County Procurement Officer, unless justified in writing to and approved by the County Procurement Officer.~~

§3.4-103 — Emergencies

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

§3.4-104 — Contract Planning and Coordination

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

§3.4-105 — Contracts

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

§3.4-106 — Competitive Bidding

- ~~(1) The competitive bid process and selection of vendors for Human Service Contract will be conducted in accordance with applicable federal and/or state regulations/guidelines and Section 4 of this manual. In the event of a contradiction between Section 4 of this manual and federal and/or state regulations/guidelines, the more restrictive regulations/guidelines shall take precedence.~~

§3.4-107 — Protest Process

- ~~(1) Human services solicitations and contract awards shall follow County protest procedure as set out in Section 1.3 of this manual unless alternative procedures are approved in writing by County Procurement Officer.~~
 - ~~a) If it is determined to be in the best interest of the County, Notice of Intent to Award may be sent out prior to negotiations, after the evaluation panel has scored the proposal and a recommendation of award has been made. Procurement folder must be documented with justification when Notice of Intent to Award is sent out prior to negotiations.~~

§3.4-108 — Board Approval

- ~~(1) The Board of Supervisors must approve all Human Services Contracts in excess of \$200,000 per year, regardless of the contract duration.~~

~~(2) Board approval shall be required for the Sole Source Human Services Contracts that exceed an annual amount of \$75,000 or two (2) year consecutive term, regardless of dollar amount. Contract may not be split to avoid this policy.~~

~~a) Renewal of Sole Source Human Service Contracts may not be renewed without approval by the Board of Supervisors. For additional information, refer to Section 4.5—Sole Source Requests.~~

~~§3.4-109~~ Contractor Name/Ownership Changes

~~(1) Board approval is not required for contractor name changes when control of the contracted entity remains unchanged, or when an assignment of the County contract occurs pursuant to a sale, merger, or other change in ownership of the contracted entity, and County Counsel determines that the assignment does not require Board approval.~~

~~(2) In all cases where the result of the assignment is that the contracted entity has been released from further performance under the County contract, Board approval shall be required.~~

~~§3.4-110~~ Term of Contract

~~(1) The duration of a Human Services contract will depend on the County's need, prevailing market conditions, contract start-up costs and the County's best economic interest.~~

~~(2) With respect to Board awarded contracts, the initial term of a Human Service contract shall not exceed three (3) years, with a two year renewable term, unless otherwise approved by the Board and/or determined by the funding source rules and regulations.~~

~~(3) Except when determined otherwise by the funding source, a Human Services Contract shall not exceed five (5) years in duration unless the term beyond five (5) years is specifically approved by the Board of Supervisors.~~

~~(4) Prior to recommending renewal or extension of an existing contract, the department will document that performance of the contractor has been satisfactory.~~

~~§3.4-111~~ Contract Renewals

~~(1) Applicable to all contracts with a value that exceeds \$200,000 per year.~~

~~a) All renewals are subject to Board of Supervisors approval.~~

~~b) In the event the total service contract amount for all contract years exceeds \$750,000, the Agenda Staff Report (ASR) shall be filed on the Board's "Discussion Calendar".~~

~~§3.4-112~~ Contract Pricing

~~(1) Human Services Contracts shall determine cost pricing as it deems to be the best interest of the County. Generally Human Services Contracts will utilize the Cost Reimbursement method under which allowable and reasonable costs incurred by the contractor in performance of the contract and reimbursed in accordance of the terms of the contract.~~

~~(2) Human Services Contracts may also be written with one, or a combination of, the following preferred basis for reimbursement:~~

- ~~a) Fee for Service;~~
- ~~b) Actual Cost; or,~~
- ~~c) Negotiated Rates~~

~~§3.4-113~~ Adjustments to Contract Amount

~~(1) Decreases: The department head or designee may decrease the amount of a contract without obtaining approval from the Board of Supervisors.~~

~~(2) Increases: With respect to non Board awarded service contracts, cumulative contract increases may not exceed 10% of the original annual contract amount unless authorized/approved by the County Procurement Officer on the form(s) approved and provided by the County Procurement Office. The department head or designee shall submit a form, which shall be made a permanent part of the procurement file, to request an increase of the value of a non Board awarded service contract under the following circumstances:~~

- ~~a) The need for service could not be accurately projected and the percentage of increase does not justify rebidding.~~
- ~~b) An emergency exists which does not permit rebidding.~~
- ~~c) Special economic factors justify a contract increase.~~

~~(3) For Board awarded contracts, no increase exceeding the contingency amount will be permitted without approval by the Board of Supervisors.~~

~~(4) Exemptions: Subordinate contracts issued against RCAs, and contracts awarded via informal solicitations (one written quote) will not require approval from the County Procurement Officer or designee.~~

~~§3.4-114~~ Contingency Amounts

~~(1) When requesting approval for award of a Human Service Contract from the Board of Supervisors, a contingency amount may also be requested. Justification for this contingency will be presented to the Board of Supervisors in the Agenda Staff Report (ASR) in accordance with the following:~~

- ~~a) The total amount requested shall not exceed a total of 10 percent (10%) of the original amount for the first year of the contract.~~
- ~~b) This amount, if approved by the Board, may be used over the entire term of the contract.~~
- ~~c) Contingencies shall only be used to cover services already provided in the scope of work, or additional services substantially similar to those already provided in the scope of work, as set forth in the contract.~~
- ~~d) The use of the contingency amount is subject to approval requirements established by the County Procurement Officer.~~

~~§3.4-115~~ **Vendor Selection**

- ~~(1) Except where applicable federal and/or state regulations dictate otherwise and with the exception of Sole Source Human Services Contracts as defined in Section 4.5 of this manual, selection shall be based on the competitive process. Solicitations shall be made as follows:~~
- | | |
|------------------------------------------------------------------------|-------------------------------------------------------------------|
| a) Contracts \$50,000 or less over the life of the contract | Minimum of one written quote |
| b) Contracts above \$50,000 over the life of the contract | Written solicitation issued on County's bidding system |
- ~~(2) Awards in Invitation for Bid solicitations will be made to the lowest responsive and responsible bidder as defined in Section 4.2-103 of this manual. In the case of a negotiated procurement (RFP), award shall be made to the vendor with the most responsive and responsible proposal as detailed in Section 4.3-116 of this manual.~~
- ~~(3) Consecutive contracts for purchases that contain substantially the same description shall not be issued to the same vendor using the written quote(s) solicitation method when the consecutive contracts' cumulative dollar amount exceeds the written solicitation threshold.~~

~~§3.4-116~~ **Retroactive Contract and Amendments/Changes**

- ~~(1) Retroactive contracts or contract overruns are not permitted. If a retroactive contract or contract overrun occurs, it is invalid unless ratified by the Board of Supervisors or unless one of the following exemptions applies:~~
- | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| a) Retroactive contracts or contract overruns with a total value <\$500 that have the approval of the department head. |
| b) Retroactive contracts or contract overruns with a total value between \$500 and \$9,999 that have the approval of the County Procurement Officer and Chief Financial Officer on the form(s) approved and provided by the County Procurement Office. |
- ~~Contracts with a total value of \$10,000 and above shall require approval by the Board of Supervisors.~~
- ~~(2) Retroactive contracts in the following categories shall also be exempt from Board of Supervisors approval;~~
- | |
|------------------------------------------------------------------------------------------------------|
| a) Contracts governed by separate rules and regulations such as Human Services Contracts. |
| b) Telephone services requests and emergency contracts in any amount. |
| c) Modifications for computer hardware/software maintenance to add licenses and/or users. |

~~§3.4-117~~ **HIPAA Business Associate Language**

- ~~(1) With the passage of the Health Insurance Portability and Accountability Act ("HIPAA") Protected Health Information ("PHI") has become a key legal consideration in the drafting of County contracts for departments subject to the HIPAA rules. For services to be performed in situations where either the County or a contractor under contract with the County are creating or working with PHI, the County approved Business Associate Sections covering HIPAA activities should be~~

~~included in the governing contracts. Sections approved for use will be available on the County Procurement Office's intranet website at:~~

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

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

~~§3.4-118~~ **Public Notice**

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

~~§3.4-119~~ **Hybrid Contract Definition**

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

~~§3.4-120~~ **County of Orange Procurement Preference Policy Exemption**

- ~~(1) Solicitations directed at non-profit organizations may be exempt from the County of Orange Procurement Preference Policy.~~

SECTION 3.4

ARCHITECT-ENGINEER SERVICE CONTRACTS§3.4-101 General Responsibilities

(1) State and local law, including Public Contract Code Section 22034, Government Code Section 25502.5, Orange County Codified Ordinances Section 1-8-11 *et seq.*, and Orange County Codified Ordinances Section 1-4-12 *et seq.*, provide for delegation of authority by the Board of Supervisors to appropriate officials to engage contractors to provide architectural and engineering services within specified dollar limits. Unless otherwise specified, all references in this section to “Director” shall mean the Director of OC Public Works, Sheriff-Coroner or those qualified County officials or department designees identified by the Director of OC Public Works.

~~— It is the policy of the Board of Supervisors to delegate authority to the Director to oversee the processes for the selection of architects, engineers, and construction contractors and to enter into design and construction contracts on behalf of the County as allowed by statute and described in Sections 3.4 and 3.5.~~

- a) The employees designated by the Director to procure A-E service contracts and public works construction contracts, ~~such as the Procurement Section,~~ shall be trained under the direction of the County Procurement Officer, adhere to the methods, policies and procedures established by the County Procurement Officer and deputized as Deputy Purchasing Agents to exercise the authority delegated to the County Procurement Officer by the Board of Supervisors as authorized by law.
- b) The Deputy Purchasing Agents shall procure A-E contracts and public works construction contracts at the direction of ~~t~~The Director of OC Public Works or his or her designee(s), including overseeing the processes for the selection of architects, engineers, and construction contractors, entering into design and construction contracts on behalf of the County, and handling related protests and appeals, as allowed by statute and in accordance with ~~shall have discretion to delegate authority to other County officials or department designees to procure design and construction contracts in accordance with Sections 3.4 and 3.5.~~
- (2) Notwithstanding the ~~AH~~ Architect-Engineer (A-E) services as defined in Section 3.3 above, all other A-E service contracts and public works construction contracts, including those not requiring Board of Supervisors approval, shall be solicited and executed by the Director of OC Public Works, Sheriff-Coroner or those qualified County officials or department designees identified by the Director of OC Public Works, or the Sheriff-Coroner to solicit and execute A-E service contracts and public works construction contracts in accordance with this Contract Policy Manual (CPM), Resolutions of the Board of Supervisors and applicable law. Unless otherwise specified, all references hereinafter in this section to “Director” shall mean all such designated officials or departments.

(3) It shall be the duty of the Director to procure all A-E service contracts and public works

construction contracts and handle related protests and appeals, for the County of Orange, its agencies and departments, and the Orange County Flood Control District, and any other public entity that elects to adopt this section of the CPM. All references to the Board of Supervisors shall also apply to the governing body of any public entity that elects to adopt this CPM. If the Sheriff-Coroner determines it is in the best interests of the County for the Director of OC Public Works to procure a particular contract or type of contract, the Director of OC Public Works shall have the authority to procure such contracts.

- (4) Although the Director has the responsibility to prepare and procure design and construction contracts, the contracting department is responsible for: identifying the scope of the project; budgeting and funding of the project, including and ensuring the project meets any applicable requirements relating to the funding source; providing support to the Director throughout design and construction, inspections, contract compliance, and payment processing; and working with the Director to identify the department's roles and responsibilities for each project.

§3.4 - 102 Definition

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

§3.4-103 Statute

- (1) Government Code Section 4525 *et seq.* (Mini-Brooks Act) governs contracts between public entities and private architectural, landscape architectural, engineering, environmental, land surveying, and construction project management firms. These statutes establish a Qualifications-Based Selection (QBS) method that public agencies in California must use to contract for professional services. This method requires that such services be engaged on the basis of demonstrated competence and qualifications for the types of services to be performed and at a fair and reasonable price. Accordingly, public agencies may not utilize competitive bidding for such services, except in the limited instances where the State or local agency head determines that the services needed are more— of a technical nature and involve little

professional judgment and that requiring bids would be in the public interest (Government Code §4529). In addition, the procedures adopted to implement the Mini-Brooks Act must assure maximum participation of small business firms as defined in Government Code Section 14837.

§3.4-104 A-E Conflicts of Interest

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

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

§3.4-105 Board of Supervisors Approval

- (1) “In Counties having a population of 200,000 or more, the Board may authorize the purchasing agent to engage independent contractors to perform services for the County or County officers, with or without the furnishing of material, when the annual aggregate cost does not exceed two hundred thousand dollars (\$200,000).” Government Code Section 25502.5. Therefore, Board of Supervisor approval is required when the annual aggregate cost exceeds \$200,000.
- (2) Approval by the Board of Supervisors is required for all sole source A-E Service contracts that exceed a total annual aggregate amount of \$100,000 or a five-year consecutive term, inclusive of any amendments, regardless of dollar amount.

§3.4-106 Contractor or Firm Name/Ownership Changes

- (1) Except as provided herein, Board of Supervisors approval is required for Board awarded contracts where there is a change in a contractor’s ownership or control resulting in the assignment of rights and responsibilities from one entity to another.

(2) Deputy Purchasing Agents are authorized to approve the following changes to Board awarded contracts in the absence of a novation or other release from liability, and upon approval of County Counsel:

a) There is a change in the contractor company name only, but there is no change in the company's:

- i. ownership or control,
- ii. key staff identified in an existing contract, or
- iii. tax identification (e.g., EIN).

b) There is a proposed assignment of the existing Board awarded contract to a different legal entity based on bankruptcy, merger, sale of the company (as opposed to a mere sale or acquisition of assets), restructuring or dissolution, and the Deputy Purchasing Agent has determined that the proposed assignee is qualified to perform according to the terms of the contract and original solicitation requirements and any key staff identified in the contract remain unchanged.

(3) Upon approval of County Counsel, Deputy Purchasing Agents are authorized to approve a change in contractor name or ownership for non-Board awarded contracts.

§3.4-107 -Term 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 staff and shall be subject to negotiation with the A-E entity.
- (2) If the A-E services to be completed are not project-specific, the initial term of the contract term shall not exceed three years, unless otherwise approved by the Board of Supervisors.
- (3) Notwithstanding the provisions of Paragraph (2) above, contracts for A-E services that are not project-specific and were not required to be awarded by the Board of Supervisors, the term of such contracts shall not exceed five (5) years, unless otherwise extended in accordance with Section 3.4-111(7);

§3.4-108 Firm Selection Methods

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

(2) Request for Qualifications:

The Request for Qualifications (RFQ) method is used primarily for establishing capacity contracts through a qualification-based selection of ~~professional~~ A-E services when future services are necessary from numerous firms for an undefined project scope of services as required by A-Es of the same or similar discipline. An RFQ will be advertised and firms will submit a

Statement of Qualifications (SOQ).

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

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

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

b) Additional Use of Qualified Vendor List

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

(3) Request for Proposals

The Request for Proposals (RFP) method is used for projects with a defined scope, such as a one-time well defined project, or for repetitive services with a defined scope. In this method, firms may be required to submit a technical proposal and may be required to submit a price proposal. Proposals by all firms are evaluated by an evaluation panel based on criteria outlined in the RFP. The evaluation panel scores the proposals at which point final price negotiations may begin with the firm having the highest evaluation ratingscores. The contract may be awarded to one firm for project specific services or for repetitive services that may be required over the term of the contract. The selection and award of these contracts will require approval by the Board of Supervisors when exceeding the thresholds in Section 3.4-105.

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

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

to a RFP issued by the County. Submitted proposals are then evaluated by an evaluation panel based on the criteria outlined in the RFP and the highest ranked firm with the highest rated proposal is recommended for award to the Board of Supervisors.

(5) Competitive Bidding

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

(6) Sole Source Contracts/One-Time Contracts for A-E Services:

- a) ~~Sole Source Contracts:~~ “Sole source contracts” are contracts that are excused from competitive bidding when ~~(a1)~~ the service requested is proprietary, or ~~(b2)~~ the County’s business needs require expeditious award of a contract without competitive bidding. Approval by the Board of Supervisors is required for award of all sole source contracts that exceed an annual amount of \$100,000 or a five (5) year consecutive term, ~~regardless of dollar amount.~~ (Note: ~~vendors~~ firms that are listed on a current Qualified Vendor List have participated in the competitive bidding process, and do not require sole source justification for contract award. However, contracts awarded from a Qualified Vendor List may still require approval by the Board of Supervisors if they exceed the ~~dollar value~~ thresholds in Government Code § 25502.5).

(7) One-Time Contracts:

- a) ~~One-Time Contracts:~~ In such cases where firms from an existing Qualified Vendor List cannot be utilized, contracts that do not exceed \$100,000 are considered a “one-time” contract, and ~~are~~ is not required to be competitively bid nor require a sole source justification for award. Alternate submittals should be obtained to ensure the County has validated firm qualifications and competitive pricing.

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

(1) For multiple award contracts, the following factors are to be utilized prior to deciding which A-E firm will be requested to perform the necessary services:

- a) **Expertise:** Applicable expertise of the firm to best perform the specific scope of the services identified.
- b) **Capacity:** Review of the firm’s necessary staff and equipment availability to perform the specific scope of services identified within the County’s requested time period.
- c) **Price:** Review of the estimated level of effort and resulting cost to complete the services identified.
- d) **Utilization:** When the above factors are substantially the same, and in the case of equivalent costs for identified services, the County may consider the amount of work each firm has previously performed under the current contract.

- e) **Performance:** If poor performance becomes an issue for a specific firm, that firm may receive fewer requests for identified services to protect the County from resulting quality or safety issues.

§3.4-110 Quarterly Usage Report

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

§3.4-111- A-E Service Contract Changes, Amendments, Extensions

- (1) ~~An A-E service contract and its incorporated scope of work define the total contract. Within the limited authority granted by the Board of Supervisors, the Director or Director's designee may amend the contract allowing additional work that is related to, and is of a similar nature to, the original scope, as long as the additional work does not exceed the value of the contract approved by the Board of Supervisors.~~
- (2) ~~If an increase to an A-E service contract aggregate cost is necessary, the estimated not-to-exceed cost amount will be agreed upon to in writing before beginning the additional work.~~
- (3) ~~If an A-E service contract has not been approved by the Board of Supervisors, any change to the amount of that Contract that increases the annual aggregate dollar amount of non-Board awarded contracts with an A-E firm beyond \$200,000 must be approved by the Board of Supervisors.~~
- (4) ~~Subject to restrictions set forth in Paragraph (3) above, increases in of the A-E service contract cost or amount for services within a contract's existing scope of work may be granted by the Director or Director's designee without Board of Supervisor's approval where the increased amount does not exceed 25 percent of the existing contract price or \$200,000 annually, whichever is less.~~
- (5) ~~Amendments to an A-E service contract exceeding the limits placed on Director's authority as described above must be submitted to the Board of Supervisors for approval.~~
- (6) ~~Amendments to an A-E service contract also require Board of Supervisors approval when there is a major change in the scope of the contract or the change would result in a major delay that significantly differs from the original period of performance contemplated as agreed upon in by the contract.~~
- (7) ~~Notwithstanding Section 3.4-111, at the Director's discretion, with the concurrence of County Counsel and for the sole purpose of completing work already commenced, the Director may extend the term of a Board-awarded or non-Board-awarded A-E service contract for a period of not more than one (1) year so long as there is no increase in cost to the County or change in the scope of work.~~

§3.4-112 Extensions

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

§3.4-113 Insurance

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

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

§3.4-114 State And Federal Grant Projects

- (1) All applicable State or Federal Regulations will be followed for projects involving State or Federal grants. Standard County contract language and procurement documents may be modified as necessary to meet the eligibility requirements for State or Federal programs.

- a) On federally funded projects, DPAs will be required to consult the System for Award Management (SAM) at SAM.gov to comply with funding source requirements.

§3.4-115 Prevailing Wage In A-E Contracts

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

SECTION 3.5

PUBLIC WORKS CONSTRUCTION CONTRACTS**§3.5-101 General Responsibilities**

(1) State and local law, including Public Contract Code Section 22034, Government Code Section 25502.5, Orange County Codified Ordinances Section 1-8-11 *et seq.*, and Orange County Codified Ordinances Section 1-4-12 *et seq.*, provide for delegation of authority by the Board of Supervisors to appropriate officials to engage contractors to provide public works construction projects within specified dollar limits. The Director of OC Public Works, Sheriff Coroner or those qualified County officials or department designees identified by the Director of OC Public Works, or the Sheriff Coroner shall have the authority to procure and engage contractors to provide public works construction projects as set forth herein and handle related protests and appeals. Unless otherwise specified, all references in this section to “Director” shall mean all such designated officials or departments. Unless otherwise specified, all references in this section to “Director” shall mean the Director of OC Public Works, Sheriff-Coroner or those qualified County officials or department designees identified by the Director of OC Public Works.

— It is the policy of the Board of Supervisors to delegate authority to the Director to oversee the processes for the selection of architects, engineers, and construction contractors and to enter into design and construction contracts on behalf of the County as allowed by statute and described in Sections 3.4 and 3.5.

a) The employees Those designated by the Director to procure A-E service contracts and public works construction contracts, such as the Procurement Section, shall be trained under the direction of the County Procurement Officer and deputized as Deputy Purchasing Agents to exercise the authority delegated to the County Procurement Officer by the Board of Supervisors as authorized by law. The employees designated by the Director to procure A-E service contracts and public works construction contracts, such as the Procurement Section, shall be trained under the direction of the County Procurement Officer, adhere to the methods, policies and procedures established by the County Procurement Officer and deputized as Deputy Purchasing Agents to exercise the authority delegated to the County Procurement Officer by the Board of Supervisors as authorized by law.

b) The Director of OC Public Works shall have discretion to delegate authority to other County officials or department designees to procure design and construction contracts in accordance with Sections 3.4 and 3.5. The Deputy Purchasing Agents shall procure A-E contracts and public works construction contracts at the direction of the Director or his or her designee(s), including overseeing the processes for the selection of architects, engineers, and construction contractors, entering into design and construction contracts on behalf of the County, and handling related protests and appeals, as allowed by statute and in accordance with Sections 3.4 and 3.5.

(2) Director or designees shall Pursue project delivery methods in accordance with the Public Contract Code and methods available through agreements with other governing entities (for

example, via a Joint Powers Authority) in order to obtain cost savings for or limit liability of the County;

(3) The Director or designees shall have the authority to issue change orders. Changes shall not exceed the limits as stated in Public Contract Code Section 20142. The Board of Supervisors may also delegate additional change order authority to individual officials and their designees when approving specific contracts.

(4) Although the Director has the responsibility to prepare and procure design and construction contracts, the contracting department is responsible for: identifying the scope of the project; budgeting and funding of the project, including and ensuring the project meets any applicable requirements relating to the funding source; providing support to the Director or designee throughout design and construction, inspections, contract compliance, and payment processing; and working with the Director or designee to identify the department's roles and responsibilities for each project.

§3.5-102 Definition

(1) As used in this CPM, "public works," "public works contract", "public works construction contract" or "public works project" shall share the same meaning as "public project" as defined in Public Contract Code Section 22002(c):

a) Public works contract or public works project means any of the following:

i. Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility paid for using public funds;

ii. Painting or repainting of any publicly owned, leased, or operated facility.

b) "Maintenance work" as defined in Public Contract Code Section 22002(d) is not a public works contract for the purposes of this CPM. Maintenance work includes all of the following:

i. Routine, recurring, and usual work for the preservation or protection of any publicly owned or publicly operated facility for its intended purpose;

ii. Minor repainting;

iii. Resurfacing of streets and highways at less than one inch;

iv. Landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems; and

v. Work performed to keep, operate, and maintain publicly owned water, power, or waste disposal systems, including, but not limited to, dams, reservoirs, power plants, and electrical transmission lines of 230,000 volts and higher.

(2) Prevailing wage shall be paid pursuant to Labor Code Sections 1720 *et seq.*

§3.5-103 Purpose and Scope

(1) The purpose of this section is to provide guidelines for the solicitation and procurement of

public works contracts. The scope of this section covers all public works contracts issued by all departments and agencies under the budgetary jurisdiction of the Board of Supervisors.

§3.5-104 Statute

- (1) Public works contracts shall be issued in accordance with the provisions of the Public Contract Code Sections 22000 *et seq.*, also known as the Uniform Public Construction Cost Accounting Act (the Act), and on forms approved for use by County Counsel.
- (2) The provisions of the Act relative to bidding procedures supersede the procedures contained within the code that would otherwise apply to specific projects or public entities.
- ~~(+)(3)~~ Amendments or revisions to the code sections affecting this policy and resulting procedures may be directly incorporated into this CPM when enacted by the California Legislature without further action of the Board of Supervisors.

§3.5-105 Contract Methodology

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

§3.5-106 Design-Bid-Build

- (1) The Design-Bid-Build method splits construction projects into three (3) distinct phases: (1) design, (2) solicitation and (3) construction. During the design phase, the local agency prepares detailed project plans and specifications using its own employees or by hiring outside architects and engineers, as specified in Section 3. The solicitation and construction phases are specified within this Section.
- (2) Public Contract Code Sections 20100 *et seq.* delineates the requirements and procedures that local officials must follow when awarding public works contracts.
- (3) The County of Orange utilizes the Design-Bid-Build method for construction projects resulting in a Fixed-Price Contract, a Fixed-Price Indefinite Quantity Contract, or a Cost Plus Fixed Fee Contract. When using this method, it is required to utilize the prequalification process per Sections 3.5-114~~3~~ through 3.5-117~~6~~.

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

- (1) Public works contracts with a value of \$200,000 or less may be procured by using informal bidding procedures as set forth in Public Contract Code Section 22032 and Orange County Codified Ordinances 1-8-10 through 1-8-14.
- (2) Unless the product or service is proprietary, all contracts with a value of between \$60,000 and \$200,000 or less, or those amounts provided by Public Contract Code Section 22032, shall be selected using the following informal bidding procedures:
 - a) The Director shall maintain a list of qualified contractors, identified according to categories of work. Minimum criteria for development and maintenance of the contractors list shall be determined by the Director.

- b) All contractors on the list for the category of work being bid or all construction trade journals specified in Public Contract Code Section 22036, or both, shall be mailed or emailed a notice inviting informal bids unless the product or service is proprietary.
 - c) All mailing of notices to contractors and construction trade journals pursuant to this section shall be completed not less than ten (10) calendar days before bids are due.
 - d) The notice inviting informal bids shall describe the project in general terms and how to obtain more detailed information about the project, and state the time and place for the submission of bids.
 - a)e) As provided by Public Contract Code Section 22034(d), if all bids received are in excess of \$200,000, the Board of Supervisors may, by adoption of a resolution by a four-fifths vote, award the contract, at \$212,500 or less, to the lowest responsible bidder, if it determines the cost estimate of the agency or department was reasonable.
- (3) The Director or designee shall approve plans, specifications, working details for its public works projects, and shall issue contracts for all public works contracts with a value of \$200,000 or less.
- (4) ~~In regard to~~Regarding public works contracts with a value of more than \$60,000, which are not Construction Manager at-Risk or Design-Build contracts, the County must award each contract to the lowest responsive, responsible bidder, except under one of the following circumstances:
- a) The County may award the contract to the bidder of its choice if the two lowest bids are equal per Public Contract Code 22038(b).
 - b) The County may reject any bids presented, furnish a written notice to the apparent low bidder and then:
 - i. Abandon the advertised contract-public works project or re-advertise for bids in the manner described in the Act per Public Contract Code Section 22038(a)(1); or
 - ii. Declare, by passage of a resolution with four-fifths approval of the Board of Supervisors, that the work can be performed more economically by employees of the County, and have the project performed by force account which is work ordered on a construction project without an existing contract on its cost, and performed with the understanding that the contractor will bill the owner according to the cost of labor, materials, and equipment, plus a certain percentage for overhead and profit.
 - c) If no bids are received by formal or informal bid procedure, the County may have the work performed by employees of the County by force account or negotiated contract in accordance with Public Contract Code Section 22038(c).
- (5) Public works contracts valued at over \$200,000 shall be solicited using formal bid procedures as provided by Public Contract Code 22037. The project, plans, and specifications shall be adopted by the Board of Supervisors, unless delegated. The invitation for bids shall be authorized by the Board of Supervisors, unless delegated, and advertised by the Director or designee. The contract shall be awarded by the Board of Supervisors. The approved contract shall be executed by the Board of Supervisors unless the authority has been clearly delegated and authorized to others by the Board of Supervisors.
- (6) Emergency projects shall be performed in accordance with Public Contract Code Section 22035 or 22050, as applicable.

§3.5-108 Change Orders

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

§3.5-109 State And Federal Grant Projects

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

§3.5-110 Alternate Project Delivery Methods

- ~~—Alternate Project Delivery Methods shall include Design-Build, Construction Manager at-Risk (CMAR, and Job Order Contract (JOC), Construction Manager at Risk (CMAR), and Design-Build. (Refer to Public Contract Code Sections 6950, 6951).~~
- (1) It is the policy of the County of Orange to solicit offers in full and open competition and award contracts that are consistent with the nature and requirements of the specifications or services to be procured utilizing the most efficient and effective project delivery method.
 - (2) The purpose of this section is to provide an overview of the County's options and alternate project

delivery methods of contracting for construction, architectural, engineering, and construction-related services. The scope of this section covers Architect-Engineering (A-E) service contracts and/or public works construction contracts.

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

§3.5-111 Design-Build

- (1) Design-Build (DB) is a qualification-based selection (QBS), in which both the design and construction services for a project are procured at the same time following the QBS- and pursuant to statute, the contract is awarded either to the lowest responsible bidder or by best value to a single entity known as the design-builder or design-build contractor. In contrast to Design-Bid-Build, DB relies on a single point of responsibility contract and is used to minimize risks for the project owner and to shorten the delivery schedule by overlapping the design phase and construction phase of a project.

- (2) Chapter 4 (~~commencing with Public Contract Code Section 22160~~) of the Public Contract Code provides the general authority for DB procurement by local agencies. With Board of Supervisors approval, the County may use DB contracts for public works projects in excess of \$1,000,000, except for projects on the state highway system, and may award such contracts either to the lowest responsible bidder or by best value. Best value means a value determined by objective criteria related to price, features, functions, ~~and~~ life-cycle costs, experience, and past performance.

- ~~(1)(3)~~ Section 22161(g)(1) defines “project” for the purposes of DB procurement as the construction of a building or buildings and improvements directly related to the construction of a building or buildings, county sanitation wastewater treatment facilities, and park and recreational facilities, but does not include the construction of other infrastructure, including, but not limited to, streets and highways, public rail transit, or water resources facilities and infrastructure. For a county that operates wastewater facilities, solid waste management facilities, or water recycling facilities, “project” also includes those facilities.

- ~~(2)(4)~~ Unless subsequently amended, Public Contract Code Section 22169 provides that the statutes authorizing DB contracting are repealed as of January 1, 2025.

- (5) Pursuant to Public Contract Code Section 22162.6, in addition to those projects permitted to be delivered by DB under Public Contract Code Section 22161(g)(1), DB contracts may also be used to deliver the following types of projects in Orange County:

- a) Flood protection improvements
- b) Harbor and beach improvements
- c) Bikeway improvements

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

- (6) Pursuant to Public Contract Code Section 22162.6, in addition to the requirements set forth in Section 22164, for a project authorized under Section (54) above, the ~~e~~County shall be responsible

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

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

a) **Scope Developmenting**

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

—b) **Request for Qualification (RFQ) Process of DB Entities**

When utilizing DB~~-procurement~~, the County shall initially use the RFQ process to identify the most qualified DB entities. Only those entities that are selected through RFQ process will be allowed to submit proposals in response to the County's subsequent DB Request for Proposal. Pursuant to Public Contract Code Section 22164, the RFQ must include:

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

b) Request for Proposal (RFP) Process

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

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

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

c) Evaluation of Proposals and Selection ~~of the DB Entity~~

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

Once the evaluation is complete, the ~~highest scored~~ responsive respondents are scored and the ~~recommendation of award of the highest ranked respondent whose proposal is determined and documented to be most advantageous is made to the Board of Supervisors. to the responsible respondent whose proposal is determined and documented to be most advantageous once award is authorized by the Board of Supervisors. The award and written decision will then be publicly announced.~~

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

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

§3.5-112 Construction Manager at-Risk

- (1) Construction Manager at-Risk (CMAR) is an alternate project delivery method which entails a commitment by the Construction Manager at-Risk ~~Entity~~ (CMAR~~E~~) to deliver the project within a Guaranteed Maximum Price (GMP). The CMAR~~E~~ acts as a consultant to the County in the development and design phases (“preconstruction services”) and as a general contractor during construction.
- (2) SB328 (2013) amended Public Contract Code Section 20146, allowing counties to use CMAR ~~procurement~~ for vertical construction. SB 914 (2018) expanded existing statute to allow counties, as well as other public entities for which the members of a county’s board of supervisors make up the membership of the governing legislative body (e.g., the Orange County Flood Control District), to use CMAR to deliver horizontal projects, in addition to vertical projects, subject to some limitations.
- (3) Pursuant to Public Contract Code 20146, A county with approval of the board of supervisors, or a public entity, with approval of its governing body, may utilize ~~construction manager at-risk~~CMAR construction contracts for the erection, construction, alteration, repair, or improvement of any infrastructure, excluding roads, and including, but not limited to, buildings, utility improvements associated with buildings, flood control and underground utility improvements, and bridges, owned or leased by the county. A CMAR~~construction manager at-risk~~ construction contract may be used only for projects in the county in excess of one million dollars (\$1,000,000) and may be awarded using either the lowest responsible bidder or best value method to a ~~construction manager at-risk entity~~CMAR~~E~~ that possesses or that obtains sufficient bonding to cover the contract amount for construction services and risk and liability insurance as may be required by the county or public entity. Any payment or performance bond written for the purposes of this section shall be written using a bond form developed by the county or public entity.
- (4) CMAR may not be used to construct roads. PCC 20146(a).
- (5) The authority to use CMAR terminates by operation of law on January 1, 2023~~9~~, unless a later enacted statute deletes or extends that date. Public Contract Code Section 20146(h).

- (6) A CMAR contract is procured through a Request for Proposal (RFP) process, which results in a qualification based, competitively procured contract that guarantees the cost of a project and furnishes CM services, including preparation and coordination of bid packages, scheduling, cost control, value engineering, evaluation, preconstruction services, and construction administration. Unlike DB, when utilizing a CMAR contract the County retains control of the entire design process.
- (7) On a CMAR project, the County typically retains the CMARE before or during design. The CMARE provides a contractor's perspective during design, assists in value engineering, and performs quality control to reduce common design problems such as coordination and constructability issues. The construction documents are divided into separate "trade packages" suitable for competitive bidding as separate contracts. The CMARE selects the trade contractors through procedures established by the County, and is responsible for scheduling, coordinating and completing the project for a GMP.
- (8) The CMARE is typically paid a fixed sum for its preconstruction services and receives a fee, calculated as a percentage of hard construction cost (e.g., labor, materials), for services during construction. The CMARE may also provide site services for the project, such as security and sanitation, and may, in some cases, perform portions of the work. If it does so, payment for that work may be in addition to the fees charged for preconstruction services.
- (9) The overall price for construction of the project, either a lump sum or GMP, is usually established late in the design phase or after all trade contracts have been bid. The price should change only if the County modifies the project, regulatory changes increase the cost of the work, or unexpected site conditions appear. As with other contracting methods, the County may prequalify the CMARE and/or subcontractors or set minimum qualifications requirements (which do not score but merely qualify the CMARE and subcontractors). It is important that a CMAR contract clearly identifies the risks the County would shift to the CMARE, and that the County's staff is well trained to use the contract to enforce those responsibilities.
- (10) Selection of the CMARE entity should be by best value, where "best value" means a value determined by objective criteria related to the experience of the entity and project personnel, project plan, financial strength of the entity, safety record of the entity, and price.

§3.5-113 Job Order Contracts - Annual Contracts for Repair, Remodeling, or other Repetitive Work (Job Order Contracts)

- (1) An annual contract for repair, remodeling, or other repetitive work based on unit prices including, but not limited to, a Job Order Contract (JOC) is a firm fixed price, competitively bid through the Invitation for Bid (IFB) process, unit priced, indefinite quantity contract designed to accomplish applicable projects as defined in Public Contract Code Section 20128.5. Per statute, these contracts shall not include the performance of design or contract drawing services.
- (2) Public Contract Code Section 20128.5 provides the statutory authority for these contracts for repair, remodeling, or other repetitive work only, and may not be used for new construction. Unit-price contracts may only be up to one year in duration.
- (3) The Board of Supervisors delegates to the Director the ability to utilize Job Order Contracts awarded by the Board of Supervisors to perform activities described in Public Contract Code Section 20128.5.

- (4) Per Public Contract Code Section 20128.5, these contracts may be awarded up to \$3,000,000 plus an annual Consumer Price Index adjustment based on the annual Consumer Price Index published by the California Department of Industrial Relations.
Public Contract Code Section 20128.5.
- (5) See Per Public Contract Code Section 20128.5, Job Order or Annual Contracts may not be used for new construction. Job Order Contracts may only be used for repair, remodeling, or other repetitive work to be done according to unit prices. Job Order Contracts shall only be awarded to the lowest responsible bidder and shall be based on plans and specifications for typical work provided by the County. "Unit price" as used herein means the amount paid for a single unit of an item of work, and "typical work" means a work description applicable universally or applicable to a large number of individual projects, as distinguished from work specifically described with respect to an individual project. See Public Contract Code Section 20128.5.
- (6) No task orders may be issued against a Job Order Contract after expiration of the term of contract; provided, however, that the Director may extend the term of a Job Order Contract for a period of six (6) months for the sole purpose of completing any work or project already ordered prior to the expiration of the original term of the Job Order Contract when work has already commenced on that work or project. No new task orders may be issued against a Job Order Contract after expiration of the original term of the contract, except that work already ordered by task order and commenced prior to expiration of the original term of the JOC contract may be modified by supplemental task order so long as (a) the modification does not substantially alter the character of the work already in progress, (b) the changes ordered in all supplemental task orders do not result in an increase in cost of more than 50% in aggregate above that of the original task order, and (c) the supplemental task order does not extend the time to perform the contemplated work beyond six (6) months past the expiration of the original term of the Job Order Contract.
- (7) The annual unit-price contracts program is carried out by either developing in house, or contracting out for the professional services for, the development and customization of a Unit Price Book (UPB) and technical specifications for typical work. A UPB includes pre-priced construction tasks that are specifically tailored for the type of work that the County intends to accomplish and includes labor, material and equipment costs. All unit prices incorporate federal labor standards including Davis-Bacon requirements and other Federal and State wage rate requirements, if applicable. A UPB is work-segment based and incorporates local activity, climate, and geographic features. Technical specifications take into account quality of materials and workmanship, performance specifications, and detailed specifications furnished on a project by project basis.
- (8) Contractors bid on adjustment factors for work performed during normal working hours and non-normal working hours. These adjustment factors will be applied against the prices set forth in the unit price book and are used to price out fixed price work orders by multiplying the adjustment factors by the unit prices and quantities. Subcontractors rates are subject to the prime contractor's bid factors. The contractor with the lowest composite factor will be considered the apparent low bidder.
- (9) Subcontractors proposed to be used to perform work under a prime contractor's contract must be identified in a potential contractor's bid, if known at time of bid, or must be approved in writing by the County if identified at a later date. All subcontractor costs and labor are subject to the prime contractor's bid factor.

- (10) Once a contract is awarded, the County will conduct a meeting with the contractor to determine the actual work to be done for each project or task order to be performed under the contract. The contractor will be issued a request for task proposal and will be required to develop a proposal for the work required. The contractor will submit its proposal to the County and this proposal will be evaluated. If the contractor's proposed units are found reasonable, a work order may be issued at the agreed-upon units, which when multiplied by the unit price and appropriate contract adjustment factor will establish the firm fixed price for the task order.

~~§3.5-113~~ (11) California Environmental Quality Act (CEQA):

Annual contracts are awarded to the lowest responsive, responsible bidder based on plans and specifications for typical work. Based on the fact that the County may award an annual contract without having identified the specific tasks that are to be performed, or their potential environmental impacts, the contracting department must perform a basic CEQA analysis of tasks subsequently ordered under the contract in case those tasks trigger the need for a new CEQA declaration or finding. Applicable CEQA findings must be included in the file for the project.

~~§3.5-114~~ Prequalification Criteria

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

~~(4)~~(5) Use of Prequalification:

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

- a) Single specific projects identified by Department Heads as suitable for prequalification due to uniqueness or complexity of all or a portion of the project.
- b) All large projects (estimated construction cost over \$5,000,000). If the Director determines that prequalification is not in the best interests of the County for such a project, then the

corresponding request for Board of Supervisors action should recommend proceeding without prequalification and provide a justification.

- (6) Formally bid projects under \$5,000,000 will be prequalified by a streamlined prequalification process, unless the Director determines that prequalification is not in the best interest of the County, then the corresponding request for Board action should recommend proceeding without prequalification and provide supporting justification.
- ~~(2)~~(7) Projects involving the use of the state or Federal Funds may not be able to utilize the prequalification process. A review of specific funding source guidelines is necessary to determine allowance or to establish an alternate process.

§3.5-115 Prequalification of Subcontractors

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

- c) The County's determination that a prospective bidder is qualified shall apply only to the project(s) identified in the prequalification documents. The Prequalification Questionnaire may request information regarding the prospective bidder's specialized expertise or demonstrated experience pertaining to the individual project as long as such information will not unnecessarily restrict the pool of qualified prospective bidders to unfairly exclude any otherwise qualified prospective bidders.
- d) While it is the intent of this prequalification policy to assist the County in determining bidder responsibility prior to bid and to aid the County in selecting the lowest responsible bidder, the prequalification of a prospective bidder will not preclude the County from post-bid consideration of whether a prospective bidder has the quality, fitness, capacity and experience to satisfactorily perform the proposed work and has demonstrated the requisite trustworthiness. ~~After consulting with County Counsel, the Deputy Purchasing Agent~~County may waive minor irregularities and omissions in the information contained in the Prequalification Questionnaire and supporting documents.
- e) The County may modify the prequalification determination assigned to a prospective bidder based on subsequently learned information. Prospective bidders previously deemed qualified then subsequently disqualified will be given notice and an opportunity to be heard consistent with the procedures set forth herein.

§3.5-116 Prequalification Standards and Notifications Requirements

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

updated accurate information in writing under penalty of perjury.

- d) The completed Prequalification Questionnaire and supporting documents must be submitted to the County per the instructions on the solicitation. Late submittals will not be considered by the County. Prospective bidders are encouraged to submit the Prequalification Questionnaire and supporting documents as soon as possible so that they may be notified of omissions of information which can be remedied or of their prequalification determination well in advance of bid advertisement for the project.
- e) The County may accept the Prequalification Questionnaire fully electronically through the County's online bidding system, if the instructions for that specific project state that it is a fully electronic solicitation.
- a)f) Completed Prequalification Questionnaires and supporting documents must be sealed and marked "Confidential" in a suitable envelope and mailed or delivered to the following:

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

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

§3.5-117 Prequalification Protest Hearing Procedure

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

adduced as a result of an investigation by the County.

- (4) A Hearing Panel shall be established and consist of three panelists from various County of Orange infrastructure departments, with a maximum of one (1) panelist from the procuring department.
- (5) The Hearing Panel shall render its decision based on all potentially relevant evidence submitted by either the County or the prospective bidder, including but not limited to, the administrative record and testimonial evidence. The prospective bidder may submit on the record, or provide other evidence, including testimony given under oath, to rebut the department's determination of non-qualification. Such a hearing is conducted in an informal manner, and all relevant evidence is admissible. The department rendering the initial determination may rebut any evidence proffered by the prospective bidder in writing or through its own testimony. Finally, the Hearing Panel may ask questions of either the prospective bidder or department before making its decision.
- (6) If the prospective bidder requests to provide testimony, the hearing shall be conducted within five (5) business days after the County's receipt on notice of appeal and no later than 20 business days prior to the last date of receipt of bids on the project. Within three (3) business days after the conclusion of the hearing, the Hearing Panel will render its decision in writing.
- ~~(4)~~(7) The decision of the Hearing Panel shall be the County's final administrative decision and any judicial review thereof shall be instituted no later than the time period specified in Section 1094.6 of the Code of Civil Procedure.

§3.5-118 Determination of Non-Responsibility

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

of determining responsibility prior to bid, basic considerations may also include those listed in the standard Prequalification Questionnaire, such as whether:

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

§3.5-119 Notice of Non-responsibility Hearing

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

§3.5-120 Non-Responsibility Hearing Procedure

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

NOTE: On awarding the contract to the lowest responsible bidder, the Board of Supervisors must also

make the finding that any lower bidders were deemed non-responsible and are therefore excluded from consideration.

§3.5-121 Contract Award and Notice To Proceed

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

§3.5-122 Payments

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

- (6) The contractor may substitute securities for funds withheld in accordance with the Public Contract Code Section 22300.
- (7) Escrow agreements for security deposit in lieu of retention shall be approved by County Counsel.

§3.5-123 Liquidated Damages Clause For Use In Public Works Contracts

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

§3.5-124 Notice of Completion

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

§3.5-125 General Requirements

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

§3.5-126 Bonds

- (1) Public Contract Code Section 20129 requires bidder’s security and performance bonds.
- (2) All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder’s security in an amount not less than 10 percent of the bid:
 - a. cash;
 - b. a cashier’s check made payable to the County;
 - c. a certified check made payable to the County;
 - d. a bidder’s bond executed by an admitted surety insurer, made payable to the County.
- (3) Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the county beyond 60 days

from the time the award is made.

- (4) The person to whom the contract is awarded shall execute a bond to be approved by County Counsel and CEO/Risk Management for the faithful performance of the contract.
- (5) Civil Code §9554, the labor and materials payment bond must be for at least 100 percent of the total amount of the public works contract.
- (6) Faithful-performance bonds and labor-and-materials bonds shall be submitted on the forms approved by County Counsel and shall be subject to approval by CEO/Risk Management and County Counsel.

§3.5-127 Regulatory Permit Approvals

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

SECTION 3.6

ADDITIONAL POLICIES RELATED TO DESIGN AND CONSTRUCTION SERVICES

§3.6-101 Protest & Appeal

- (1) Any ~~respondent~~Party who alleges an error or impropriety in the solicitation or award of a contract procured pursuant to Sections 3.4 or 3.5 of this policy manual may submit a grievance or protest to the awarding department and the following procedures will apply.
- (2) Prior to the filing of an Agenda Staff Report (ASR) for award of contract for Board of Supervisor approved contracts, the ~~Director or~~ Deputy Purchasing Agent (DPA) shall ~~transmit~~ issue a Notice of Intent to Award ~~a Contract to all interested Parties-participating vendors and also submit a copy of said Notice to the Clerk of the Board.~~ This Notice shall initiate the protest period as follows:
 - a) ~~Respondents~~Parties will have five (5) business days from the date of the Notice described above in which to file a protest concerning the award of the Contract.
 - b) Protests relating ~~to a 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 protest period subsequent to the release of the County's Notice of Intent to Award, the solicitation information, including bid summaries, proposals, and final evaluator score sheets with the names of individual evaluators redacted, are subject to public disclosure.
 - d) Upon expiration of the five (5) business day period or proper resolution of a protest/appeal, the department may move forward with the contract award or, if necessary, filing the item for approval by the Board of Supervisors.
- (3) In the event of a timely protest, the County shall not proceed with award of the contract until the ~~D~~Deputy Purchasing AgentPA, ~~or the Director,~~ renders a decision on the protest, unless the exception in Section (5) below applies.
- (4) Upon receipt of a timely protest, the Deputy Purchasing AgentDPA will within ten (10) business days of the receipt of the protest, issue a decision in writing which shall state the reasons for the actions taken.
- (5) The County may, after providing written justification to be included in the procurement file, make the determination that an immediate award of the contract is necessary to protect the substantial interests of the County. The award of a contract shall in no way compromise the ~~bidder's~~protestor's right to exercise the protest procedures outlined herein.
- (6) If the protest~~ing bidder~~ disagrees with the decision of the Deputy Purchasing AgentDPA, the protestor may submit a written appeal to the Office of the Director requesting an appeal, in accordance with the process stated below.
- (7) If the protest~~ing respondent~~ wishes to appeal the decision of the Deputy Purchasing AgentDPA, the protest~~ing respondent~~ must submit, within three (3) business days from receipt of the Deputy Purchasing AgentDPA's decision, a written appeal to the Office of the Director.
- (8) Within (15) business days, the Office of the Director will conduct a third-party review of all

materials in connection with the grievance, assess the merits of the protest and provide a written determination that shall contain ~~his or her~~their decision.

- ~~(4)~~(9) The decision of the Director will be final and there shall be no right to any administrative appeals of this decision.

§3.6-102 Justification of Variance From Engineer's Estimate

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

(11) All A-E design contracts should include an engineer's estimate as part of the A-E's Scope of Work as a deliverable.

(12) ~~Submittals~~Bids Above/Below the Engineer's Estimate:

- a) Because it is a point in time estimate, it is common for the engineer's estimate to deviate from the ~~lowest responsible, responsive bid~~.~~submittal~~submittal.
- b) When the ~~bids~~submittal is either above/below the engineer's estimate, the ~~submittal~~bid and the estimate should undergo an additional review. This review shall be performed by a qualified County staff member or by contract with a third party. These reviews and justifications shall depend on the value of the project as follows:
 - i. If a project is above \$200,000, but less than \$1,000,000, the threshold for explaining the difference is 20 percent.
 - ii. If a project is greater than \$1,000,000, the threshold is 10 percent.
 - iii. If a project does not meet one of the above thresholds, no justification is required.

(13) Any review conducted and justification required from the above thresholds shall be discussed in the background of the ASR.

(14) Release of the Engineer's Estimate

- a) The engineer's estimate may be released when the Notice of Intent to Award ~~for the contract~~ is released. It will be included in the body of the ASR in a table which includes all of the ~~submittals~~bids with the engineer's estimate included in the list from lowest to highest. In the ASR, it should be stated, that, "The lowest responsive and responsible bid submitted by XXX for this Project is approximately XX% above/below the Engineer's Estimate of \$XXX." An explanation of any deviation over 20 percent, or 10 percent, as indicated by the preceding subsection must be included (e.g., identifying changed economic conditions such as price of fuel, cost of supplies, rental prices, or the competitive bidding environment).

§3.6-103 Operations & Maintenance Future Costs

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

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

§3.6-104 Sample ASR Language for Ongoing Maintenance Costs

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

§3.6-105 California Environmental Quality Act (CEQA)

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

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

§3.6-106 Lobbying

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

§3.6-107 County of Orange Procurement Preference Policy

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

SECTION 3.7

REAL ESTATE TRANSACTIONS AND CONTRACTS

§3.7-101 General Responsibilities

- (1) The policies of the County of Orange regarding Real Estate are adopted and approved by the Orange County Board of Supervisors and implemented by the Chief Real Estate Officer (CREO) through the CEO Real Estate Department (CEO Real Estate). These policies and procedures shall apply to any Real Estate Contracts involving the County of Orange, and any of its departments (County) or special districts whose affairs and funds are under the supervision and control of the Board of Supervisors, such as the Orange County Flood Control District or Orange County Housing Authority (Special Districts). All references to the Board of Supervisors shall also apply to the governing body of any public entity that elects to adopt this CPM. While other departments may handle certain aspects of real estate transactions (i.e., John Wayne Airport and Orange County Sheriff), this manual is meant to establish clear standards and policies that should be followed in regard to any County Real Estate transactions (i.e., the actual granting or accepting of an interest in real estate on behalf of the County or a Special District), and any deviations shall be specifically approved by the Board of Supervisors unless the Board has delegated authority for such a transaction. As used herein, the term “Real Estate Contracts” shall refer to the legal agreements necessary to effectuate a real estate transactions such as a lease, license, easement, grant deed, or other similar document, but shall not include procurement contracts related to services provided for the transaction nor departmental issued permits, such as County construction permits or encroachment permits. In the event of a question about the applicability of this section to a particular contract, please contact CEO Real Estate.

- (2) All Real Estate Contracts (e.g., leases, licenses, easements, etc., but not departmental issued permits, e.g. County encroachment permits), including those not requiring Board of Supervisors approval, shall be transacted through the CREO or those authorized County officials or department designees identified by the Board of Supervisors, CEO, or the CREO to transact Real Estate Contracts consistent with this CPM, Resolutions of the Board of Supervisors and applicable law. In addition, the CREO is authorized to solicit and procure any and all required real estate services and contractors necessary and intended to supplement or support and carry out real estate transactions and contracts on behalf of the County through compliance with other applicable sections of the CPM. Unless otherwise specified, all references hereinafter to “CREO” shall mean all such designated officials or departments.

- (3) The CREO supervises County real estate staff and contractors in conformance with the real estate policy of the County of Orange found herein, Resolutions of the Board of Supervisors and applicable law. In addition, the CREO and CEO Real Estate department coordinate with other County departments on real estate transactions and this CPM is meant to standardize, to the extent possible, the real estate transaction process carried out on behalf of the County of Orange and its departments and Special Districts.

- (4) The CREO and CEO Real Estate will identify policy elements from time to time that need to be amended, added or deleted in order to meet the real estate needs of the County and to stay in conformance with changes in state law, local ordinances and resolutions.

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

§3.7-102 Delegated Authority

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

Delegated Authority Chart

Revenue Lease/License of County Property	Acquisitions of Real Property Interests for Flood	Acquisition Lease/License for County or Flood Use	Acquisitions of Real Property Interests for County	Collateral Instruments	Donated Space Agreements for County Use	Authorize Full Reconveyance	Grants or Conveyance of Easements of County OCFCD OCDA OCHA Property	Revenue Licenses of Orange County Flood Control District Property	Temporary Right of Entry Permits for Flood or County Use
Execute leases/licenses if the monthly rental does not exceed \$15,000 per month and the lease term does not exceed 10 years.	Approve and accept acquisitions of real property interests not exceeding \$250,000 in value and other criteria are met.	Amend and execute leases/licenses if rental over term of lease/license does not exceed \$10,000 per month and a (5) year term and other criteria are met.	Approve and accept acquisitions of real property interests not exceeding \$250,000 in value and other criteria are met.	If instrument is on County's standard form. Instruments are defined as: Attornments Subordination Non-Disturbance.	If agreement is in County's standard form, County's indemnification of donor is limited to \$1,000,000, and agreement is approved by County Counsel and Risk Management.	Execute requests for reconveyance upon approval of County Counsel and receipt of notification from the Auditor- Controller's Office that all sums due and payable under an installment note have been paid in full.	If Easement does not exceed \$25,000 in value and is granted to City, County, State or other public agency with County Counsel approval.	Execute licenses of OCFCD property if the monthly rental does not exceed \$10,000 per month and the license term does not exceed 10 years.	If permit is required by County or Flood Control District from a public or private entity for ingress and egress, construction staging, and other purposes. Permits may include indemnification of others.
per Resolution No. 19-002 and Minute Order dated January 8, 2019. (Gov. Code 25537)	per Resolution No. 20-040 and Minute Order dated May 5, 2020. (Gov. Code 25350.60)	per Resolution No. 20-016 and Minute Order dated March 10, 2020 (Gov. Code 25350.51)	per Ordinance No. 20-004 and Minute Order dated May 19, 2020 (Gov. Code 25350.60)	per Resolution No. 98-75 and Minute Order dated March 10, 1998.	per Resolution No. 21-031 and Minute Order dated April 13, 2021 (Gov. Code 25355)	per Resolution No. 76-1642 dated November 9, 1976.	per Ordinance No. 3898 and Codified Ordinance Section 1-4-225 (Gov. Code 25526.6).	per Minute Order dated February 25, 2014.	per Resolution No. 08-151 and Minute Order dated December 9, 2008.
Delegated Authority expires January 8, 2024	NO EXPIRATION	NO EXPIRATION	Delegated Authority expires May 19, 2025	NO EXPIRATION	NO EXPIRATION	NO EXPIRATION	NO EXPIRATION	NO EXPIRATION	NO EXPIRATION
ANNUAL REPORT	ANNUAL REPORT	ANNUAL REPORT	ANNUAL REPORT		ANNUAL REPORT QUARTERLY REPORT FOR VALUES OVER \$10,000		ANNUAL REPORT	ANNUAL REPORT	
Chief Real Estate Officer, CEO Director, JWA as designee	Chief Real Estate Officer, CEO	Chief Real Estate Officer, CEO Director, JWA as designee	Chief Real Estate Officer, CEO	Chief Real Estate Officer, CEO	Chief Real Estate Officer, CEO	Chief Real Estate Officer, CEO	Director, OCPW	Director, OCPW	Director, OCPW Director, JWA as designee

Revised 4-7-2022

§3.7-103 Specific Duties

The CREO and CEO Real Estate are authorized to carry out the specific duties listed in the CPM, plus any other ancillary duties consistent with this manual and/or pre-existing delegated authority. In this role, and consistent with applicable law such as Government Code Section 23004, the CREO and CEO Real Estate are authorized to, among other things:

- (1) Solicit and procure any real estate interests necessary for the operation and administration of the County of Orange, and other real property of whatever kind and nature required to conduct County business, except in cases of emergency and as otherwise granted by the Board of Supervisors (see also Government Code Section 25350);
- (2) Advertise and offer for lease or license County or Special District property that has been determined by the County, its departments, and/or its Special Districts to be available for lease or licenses consistent with the CPM and policies and procedures established by the CREO (see also Government Code Section 23004);
- (3) Negotiate and execute all Real Estate Contracts required to conduct County business;
- (4) Sell and dispose of surplus real property no longer required for County and/or Special District use, in accordance with this CPM, Resolutions of the Board of Supervisors and applicable state, federal, and county laws and regulations (see also Government Code Sections [25365](#), [25526](#) and [25363](#));
- (5) Establish policies and procedures to be followed by departments in the solicitation or procurement of real property interests;
- (6) Standardize County real estate forms, including, but not limited to, leases and licenses, for use on behalf of County departments and Special Districts; and
- (7) Review real estate solicitations and contracts being entered into on behalf of the County, its department and Special Districts to ensure consistency.

SECTION 3.8

MEMORANDUM OF UNDERSTANDING (MOU)

3.8-101 Definition

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

3.8-102 Board/CEO Approval

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

§3.8-103 Approval of Non-Standard Contract Terms

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

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

§3.8-104 Term

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

§3.8-105 Increases

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

SECTION 3.9UNILATERAL ~~CONTRACTS~~ PROCUREMENTS§3.9-101 Unilateral Contract Procurement Definition

- (1) A unilateral ~~contract~~ Procurement is a ~~document utilized by the County as a~~ vehicle to pay for critical, ongoing services provided by exclusive entities within a County geographical area that is not subject to County's standard terms and conditions (i.e., utility services). The payment mechanism for unilateral procurements include, but are not limited to: Procurement card(s), County financial system documents, petty cash, and request for checks.
- (2) The following ~~entities~~ unilateral procurements are preapproved ~~for unilateral contract~~:
- a) Utility services: electric, gas, water, telephone
 - b) Cable/Satellite TV companies
 - c) Exclusive franchise trash contracts
 - d) Department of Justice
 - e) US Postal Service
 - f) The Toll Roads/FasTrak
 - g) Publications/Newsprint: Industry related or news periodicals, magazines, trade journals, etc., either in print or electronic/digital subscriptions.
 - ~~g)h)~~ Memberships
 - i. Memberships ~~procured~~ purchased under this Section are limited to wholesale memberships such as Costco, Sam's Club, Smart & Final, Amazon, etc., and memberships in associations formed for a purpose directly related to the primary work of the department and memberships held exclusively for the purpose of obtaining a periodical, journal, or other reference materials that are directly related to the primary work of the department.
 - ~~1. A membership must be held in a manner that allows the membership to remain with the County should the individual leave County employment. To the extent feasible, the membership shall be held in the name of the County, rather than in the name of an individual employee.~~
 - ~~2. A membership may not be purchased procured if the membership would duplicate the services of a current membership.~~
 - ii. Memberships ~~purchased~~ procured under this Section do not include memberships in social, religious and fraternal organizations, professional or occupational organizations (such as accountants in accounting societies, physicians in medical associations, and engineers in engineering associations), or memberships that are included under the County's Personnel and Salary Resolutions.

(3) In accordance with the competitive bidding policies stated in this manual, if a service/commodity can be provided by another vendor, a solicitation should be conducted.

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

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SECTION 4 – METHODS OF SOLICITATION

SECTION 4.1**REQUEST FOR INFORMATION (RFI)****§4.1-101 Definition**

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

SECTION 4.2

INVITATION FOR BID (IFB)

§4.2-101 Definition

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

~~(1)(2)~~ IFB policies and procedures contained in this Section 4.2 shall apply, except as otherwise required for procurements pursuant to Sections 3.4, 3.5, and 3.6[3.7, and 4.3.1].

~~§4.2-102~~ Protest IFB:

~~(1) Protest of Bid Specifications: Except as otherwise set forth herein, in accordance with Section 1.3 of this manual, all protests related to bid specifications must be submitted to the Deputy Purchasing Agent no later than five (5) business days prior to the close of the bid. Protests received after the five (5) business day deadline will not be considered by the County.~~

~~a) In the event the protest of specifications is denied and the protester wishes to continue in the solicitation process, they must still submit a bid prior to the close of the solicitation in accordance with the bid submittal procedures provided in the bid.~~

~~(2) Protest of Award of Contract: In accordance with Section 1.3 of this manual, protests related to the award of a contract based on the IFB, the protest must be submitted no later than five (5) business days after the notice of the proposed contract award is provided by the Deputy Purchasing Agent.~~

~~(3) Protests relating to a proposed contract award which are received after the five (5) business day deadline will not be considered by the County.~~

§4.2-1023 IFB Solicitation Document

(1) The IFB shall include a ~~purchase~~ description and all contractual terms and conditions applicable to the procurement. All invitations for bids will include the following:

a) Adequate Public Notice: Adequate public notice will be given to provide potential bidders sufficient time to prepare and submit bids by the due date specified in the invitation for bid.

b) Specifications - General: Clear, concise specifications must be included in all bid documents. ~~The specification is a description of the physical or functional characteristics of the commodity, equipment, or service desired. Specifications shall be written to encourage maximum and fair competition. A Statement of Desired Purpose will~~ may be included in ~~all~~ specifications and only those characteristics essential to the final performance of the product or service will be included. ~~Unless only one brand of commodity or equipment is acceptable due to compatibility or other restrictive requirements, any brand name used in the specifications will be used only for the purpose of establishing descriptive information and will not be used to restrict competitive bidding.~~

- c) Proprietary Specification (no substitute): -Proprietary specifications shall be used only when the end user has presented justification that only the named product will function in the end use required. -Proprietary items will be competitively bid whenever there is more than one ~~supplier~~-vendor from whom the product is available.
- d) Terms and Conditions: All IFBs will include terms and conditions which will become part of the contract. -The County Procurement Officer shall maintain, by type of contract, applicable and appropriate terms and conditions to be included in contracts and shall make these available to departments for inclusion in the contracts they issue.
- e) Bid and Performance Surety: -When required by law or determined to be in the best interest of the County, the County Procurement Officer or the Deputy Purchasing Agent ~~may~~shall include in the terms and conditions a requirement for bid and/or performance surety. -A Bid Surety will guarantee that a bidder enters into the contract per its bid, and a performance surety will guarantee that the bidder will carry out the contract per the specifications and terms and conditions set down by the County. -Such surety, when required, will not be designed to be restrictive, but will only be in an amount necessary to protect the County's interest. Bidders shall be permitted to provide such surety in the form of a bond, certified or cashier's check, letter of credit, or certificate of deposit redeemable by the County. -Upon award to the successful bidder, all such sureties will be returned to unsuccessful bidders.
- f) Indemnification: -Where the County may experience financial or physical risk in the performance of a contract by a vendor, the contract terms and conditions will require that the vendor hold the County harmless from such risk.
- g) Insurance: -The County may also require that the successful bidder submit an insurance certificate prior to contract award. Such certificate will be in an amount adequate to protect the County and will name the County as an additional insured.
- h) Criteria for Award: -The IFB will include criteria for award. -Award will be based on lowest responsive and responsible bidder.
- i) Responsiveness: -A bidder's responsiveness will be determined in accordance with judged according to the requirements set forth in the invitation to bid. -No criteria may be used in the determination of a bidder's responsiveness that is not set forth in the IFB. -In order to determine lowest responsive bidder, criteria which affect bid price and may be objectively measured, such as discounts, transportation costs, and life cycle cost, may be considered. Award may not be made to a bidder submitting a higher quality item than the minimum required unless the bidder's price is also determined to be the lowest in accordance with the criteria established in the IFB. The unreasonable failure of a bidder to promptly supply information or documents required for bid review may be grounds for "determination of non-responsiveness" made by the appropriate Deputy Purchasing Agent. -All findings of non-responsiveness shall be documented and made part of the contract ~~award~~-file.
- j) Responsibility: -A bidder's responsibility will be ~~judged-determined~~ according to the bidder's ability to successfully carry out the proposed contract. -Criteria to be used may include financial capacity, experience, facilities, equipment, and integrity. -The County may also consider any of its own past dealings with the bidder.

§4.2-10~~34~~34 Vendor Advisory~~Lobbying~~

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

§4.2-10~~45~~55 Pre-Bid Conference

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

§4.2-10~~56~~56 Acceptance of Bids

- (1) Except as noted below, bids must be:

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

§4.2-10~~67~~67 Waivable Informalities

- (1) When considered in the best interest of the County, certain bid requirements may be waived by the County Procurement Officer or Deputy Purchasing Agent. ~~–Such waivers will be only for minor requirements which will not provide a material advantage for one bidder over another. Examples of waivable informalities are:~~
- a) Failure of a bidder to submit information due to oversight (i.e. descriptive literature) consistent with Section 4.2-10~~78~~78;
 - b) Failure of a bidder to sign or date bid documents; or,
 - c) Failure of a bidder to submit the requested number of bid copies.
- (2) Waivable informalities will be considered on a case by case basis and will occur only when in the County’s best interest.

§4.2-1078 Correction, Clarification, or Withdrawal of Bids

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

§4.2-1089 Tied Bids

- (1) When all other factors are determined to be equal, the County Procurement Officer and Deputy Purchasing Agents have the right to ~~award tied bids only by performing a re-solicitation request a best and final offer from~~ of the tied firms vendors and award to the lowest.

§4.2-10910 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 procurement file. Reasons for cancellation or rejection shall be provided upon request to bidders.~~

§4.2-111 Public Bid Openings

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

§4.2-110-12 Award

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

a) References:

- i. Reference checks must be conducted prior to contract award.
- ii. References will be obtained from outside the County of Orange whenever possible.
- iii. References shall not be provided by the same department conducting the solicitation.

~~§4.2-113 County of Orange Procurement Preference Policy~~

~~(1) Orange County Local Small Business (OCLSB) — To qualify as an OCLSB, a business shall meet a), b), and c) requirements below:~~

~~a) Local Business requirements:~~

- ~~i. maintains their principal center of operations (i.e. headquarters) within Orange County, and;~~
- ~~ii. has:~~
 - ~~1) a business address located in the County of Orange that is not a post office box, or~~
 - ~~2) a valid business license or certificate of occupancy issued by the County of Orange or by an Orange County city, or other documentation acceptable to the County of Orange.~~

~~b) Small Business requirements:~~

- ~~i. must be certified as a Small Business by the State of California Department of General Services (DGS); and,~~

~~c) OCLSB requirements must be valid at the time of bid submittal.~~

~~(2) Disabled Veteran Business Enterprise (DVBE) — To qualify as a DVBE, the DVBE must meet the following requirements:~~

- ~~a) must be certified as a DVBE by the State of California Department of General Services (DGS)~~
- ~~b) DGS DVBE requirements must be valid at the time of bid submittal.~~

~~When the lowest responsive and responsible bidder is not an OCLSB/DVBE, the sole lowest certified OCLSB or DVBE within five percent (5%), or the lowest OCLSB and DVBE within 8% of the lowest bid shall be given the opportunity to price match. To participate in the County of Orange Procurement Preference Policy, the sole lowest qualified OCLSB and/or DVBE must accept the County's offer to price match within three (3) business days from the County's offer, unless otherwise specified by the County. If two or more OCLSBs or DVBEs have tied bids within the 5%, or two or more OCLSBs and DVBEs have tied bids within 8%, the County shall request best and final bids from each OCLSB and/or DVBE, which shall price match the lowest bid or~~

~~better. If the best and final bids are tied, the County shall determine the contract award based on the County's best interest.~~

- ~~(5) The County Procurement Officer or designee may consider a departmental request to waive the County of Orange Procurement Preference Policy requirement under special circumstances and/or if it is determined to be in the best interest of the County. Prior to approving a Preference Policy waiver request, the County Procurement Office will notify the Board of Supervisors of the request.~~
- ~~(6) The Preference Policy waiver request must be approved by the County Procurement Officer or designee and Chief Financial Officer, on the form(s) approved and provided by the CPO, and shall be made part of the procurement file.~~
- ~~(7) The County of Orange Procurement Preference Policy requirements shall not apply when prohibited by this policy, law or regulation including, but not limited to specific state or federal funded projects.~~

SECTION 4.3

REQUEST FOR PROPOSAL (RFP)

§4.3-101 Definition

(1) When it is not in the County's best interest to acquire commodities or services through normal competitive bidding, a contract may be solicited using the Request ~~f~~or Proposal (RFP) method. Such a situation may arise for any number of reasons, including, but not limited to:

- a) The County's requirements are not well-defined;
- b) The County is interested in evaluating a range of offers so that it may take advantage of technical innovation and developments in the market place; and,
- c) Factors such as availability, expertise, and quality override price as a criteria for award.

(2) RFP policies and procedures contained in Section 4.3 shall apply, except as otherwise required for procurements pursuant to Sections 3.4, 3.5, and 3.7-and 4.94.3.11.

§4.3-102 RFP Solicitation Document~~Process~~

(1) RFP will be issued with the intent of providing a competitive process from which the County may select a vendor to satisfy its requirements. -The RFP will consist of the following:

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

bid surety will guarantee that ~~respondentproposers~~ enter into the contract as agreed upon, and a performance surety will guarantee that the ~~respondentproposer~~ 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~~Respondents shall be permitted to provide such surety in the form of a bond, certified or cashier's check, letter of credit, or certificate of deposit redeemable by the County. -Upon execution of contract with the successful ~~respondentproposer~~, all such sureties will be returned to unsuccessful ~~respondentproposers~~.

- 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 ~~awardedsuccessful proposer~~respondent submit an insurance certificate prior to contract award. -Such certificate will be in an amount adequate to protect the County and will name the County as an additional insured.
- i) Liquidated Damages: -When determined to be appropriate by the Deputy Purchasing Agent, a provision for liquidated damages may be included in the contract terms and conditions. -Liquidated damages may not be a penalty, but must be an approximation of the County's actual damages. -See Liquidated Damages provision under Section 3.3 for Service Contracts.
- j) Evaluation Criteria: The RFP will list the criteria which will be used to evaluate submitted proposals. -The factors shall relate to the ~~respondentproposer~~'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 ~~resondent~~respondentproposer. Values/weights for evaluation criteria must be ~~included in the RFP, established and submitted to the County Procurement Officer or appropriate Deputy Purchasing Agent prior to distribution of the proposals to the evaluation committee.~~ It is recommended cost be included as ~~part of the~~a criteria. When cost is a factor in the evaluation criteria, cost analysis must be conducted, scored, and recorded by the Deputy Purchasing Agent~~in the evaluation process in accordance with procedures set forth by the County Procurement Officer.~~

§4.3-103 — Prequalification of Proposers

- ~~(1) The County reserves the right to prequalify proposers when deemed to be in the best interest of the County. Prequalification may be done as the first step in a two-step solicitation bidding process or can be conducted as minimum qualifications in the solicitation. 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' demonstrating their ability to fulfill the contract conditions.~~
 - ~~a) Qualification criteria may include:~~
 - ~~i. financial capacity/stability;~~

- ii. ~~company history;~~
- iii. ~~capacity to perform;~~
- iv. ~~relevant experience; and,~~
- v. ~~any other criteria relevant to the services and commodities being sought by the County.~~

(3) ~~Prequalification requirements will be reasonable and will constitute the minimum requirements necessary to fulfill the terms of the contract.~~

§4.3-1034 Vendor Advisory Lobbying

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

§4.3-1045 Pre-Proposal Conference

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

§4.3-1056 Receipt and Acceptance of Proposals

(1) Except as noted below, ~~proposals~~proposals must be:

a) ~~Received no later than the time specified in the RFP. Late proposals may be accepted or rejected depending on the best interest of the County. Rejected proposals shall be returned to the respondent unless authorized for acceptance and approval by the County Procurement Officer or Deputy Purchasing Agent with written justification. If a late proposal is accepted, however, all proposals received within 24 hours of the specified date and time will be accepted.~~

b) Unconditionally accepted without alteration or correction;

c) All proposals must be received by someone other than the person who conducted the solicitation and must be time and date stamped upon receipt;

d) All proposals must be kept in a secure, locked location for access by personnel so authorized by the department head; and,

e) ~~Proposals become public information immediately after the closing date and time. When only one (1) proposal is received in response to a solicitation, if that proposal is received within 24 hours of the time specified in the RFP and if it is in the County’s best interest, the County Procurement Officer or Deputy Purchasing Agent may accept that proposal.~~

f) If conducted as an electronic solicitation, all proposal materials must be kept in a secured electronic location for access only by authorized personnel until provided to the evaluation committee.

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

§4.3-1067 Waivable Informalities

- (1) When considered in the best interest of the County, certain proposal requirements may be waived by the County Procurement Officer or Deputy Purchasing Agent. ~~Such waivers will be only for minor requirements which will not provide a material advantage for one proposer over another. Examples of waivable informalities are:~~
- a) Failure of a proposer to submit information due to oversight, consistent with Section 4.3-1145;
 - b) Failure of a proposer to sign or date a bid document; or,
 - c) Failure of a proposer to submit the requested number of proposal copies.
- (2) Waivable informalities will be considered on a case by case basis and will occur only when in the County's best interest.

§4.3-1078 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-required by the California Public Records Act. Additionally, all proposals shall become the property of the County. The County reserves the right to make use of any information or ideas in the proposals submitted.~~
- (2) Regardless of any identification otherwise, including marking some or all pages as "confidential" or "proprietary", information in proposals shall become a part of the public record and subject to disclosure without further notice to the proposer.
- (3) The County shall not in any way be liable or responsible for the disclosure of any such records.

§4.3-109 Protest RFP

- (1) ~~In accordance with Section 1.3 of this manual, any actual or prospective proposer or contractor who alleges a grievance by an error or impropriety in the solicitation or award of a contract may submit a grievance or protest to the appropriate department Deputy Purchasing Agent administering the RFP.~~
- (2) Release of Proposal Information: ~~In accordance with §1.3-105, immediately upon completion of negotiations with the top ranked vendor(s), but prior to the filing of an ASR for award of contract, the Deputy Purchasing Agent shall send a “notice of intent to award” to all participating vendors. For Human Services solicitations, and when it is determined to be in the best interest of the County, Notice of Intent to Award may be sent out prior to negotiations, after the evaluation panel has scored the proposal and a recommendation of award has been made. Procurement folder must be documented with justification when Notice of Intent to Award is sent out prior to negotiations.~~
 - a) ~~Vendors will then have five (5) business days from the date of the notice in which to request and obtain proposal documents that are available for disclosure, including final score sheets with the names and notes of individual evaluators redacted.~~
 - i. ~~Proposal documents should be released as early as possible after a vendor’s request to allow all participating vendors a fair protest.~~
 - b) ~~Upon expiration of the five (5) day period, the department may move forward with the contract award or as necessary, filing the item for approval by the Board of Supervisors.~~

§4.3-1080910 Evaluation Committee

- (1) Proposals shall be evaluated by an evaluation committee. When possible, evaluation committees shall be comprised of an odd number of at least ~~a minimum of~~ three (3) ~~or more~~ members. Members shall 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. If only one (1) proposal is received in response to an RFP, the ~~DPA~~Deputy Purchasing Agent, after verifying that the minimum qualifications have been met, may waive the standard evaluation process and allow project manager/department designee(s) to review the proposal to determine whether to proceed with negotiations and/or contract award.
 - a) It is County policy that when practical and appropriate, private citizens with appropriate expertise who are free of any potential conflict of interest will be included on the proposal evaluation committee.
 - b) The composition of the selection committee will be determined by ~~using the contracting~~ department or by the County Procurement Officer or designee for those contracts issued by the County Procurement Office.
 - c) All members of the evaluation committee must ~~sign a form~~ certifying, under penalty of perjury, that they have no conflict of interest with the selection.
 - d) During the ~~proposal~~ evaluation process, evaluators shall not discuss any issues related to the evaluation or selection process with any ~~proposed contractors~~respondents or their advocates, except in scheduled ~~proposer~~ interviews as discussed below.
 - e) A member that serves on the evaluation committee shall not ~~also~~ be listed as a reference for the same RFP. ~~If the evaluation committee member is listed as a reference, that member shall be excused from that particular RFP.~~

§4.3-10911 Proposer Oral Presentations/Interviews

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

§4.3-1102 Proposal Revisions

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

§4.3-1123 Scope of Work Revisions

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

§4.3-1134 Evaluation Scores

- (1) Evaluators shall initially score proposals individually. The initial score sheets containing the evaluators notes and comments shall remain in the possession of the individual evaluators, and at no time shall this information become part of the permanent procurement file or retained as County record.

- (2) Evaluators' individual scores will be discussed with the entire evaluation panel and combined and tallied.
- (3) After scores have been tallied and discussed by the panel of evaluators and a recommended proposal(s) determined, a Memorandum of Recommendation that includes the ranking of all proposals based on the aggregate scores, will be signed by the evaluators and made part of the procurement file. The final scores will be recorded on a single consolidated score sheet.
- (4) The aggregate scores will be documented and be part of the procurement file. Furthermore, the finalized individual scoring sheet(s), with evaluators names redacted, will be provided to the Board of Supervisors as an attachment to the Agenda Staff Report (ASR).

§4.3-11~~45~~⁵⁶ Correction, Clarification, or Withdrawal of Proposals~~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.
- ~~(1)~~(2) After the time and date set for the receipt of proposals, proposers may not make any changes to their submitted proposals.
- ~~(3) After the receipt of best and final offers, a proposer may be permitted to withdraw its proposal without penalty if evidence is provided of a material error and the fulfillment of the contract by the proposer would create unconscionable hardship or financial loss.~~

§4.3-11~~56~~⁵⁶ Award

- (1) Award of contract will be made to the responsible ~~proposer~~ respondent who is ranked the highest whose proposal best meets the County's requirements. This will be determined by the evaluation committee using the evaluation criteria, which ~~may~~ should include proposed cost.
 - a) References:
 - i. If a reference check is not part of the RFP evaluation criteria it must be conducted prior to contract award.
 - ii. References will be obtained from outside the County of Orange whenever possible.
 - iii. References shall not be provided by the same department conducting the solicitation.
- (2) Should the County Procurement Officer or appropriate Deputy Purchasing Agent fail to concur with the recommendation submitted by the evaluation committee, the County Procurement Officer or appropriate Deputy Purchasing Agent will meet with the evaluation committee members to discuss the reasons for the disagreement.
 - a) No recommendation shall go forward to the Board of Supervisors from the County Procurement Officer or the Deputy Purchasing Agent, unless there is concurrence among the County Procurement Officer or Deputy Purchasing Agent, the using department, and the evaluation committee.

~~§4.3-117~~ County of Orange Procurement Preference Policy

- ~~(1) Orange County Local Small Business (OCLSB) — To qualify as an OCLSB, a business shall meet a), b), and c) requirements below:~~
- ~~a) Local Business requirements:~~
 - ~~i. maintains their principal center of operations (i.e. headquarters) within Orange County, and;~~
 - ~~ii. has:~~
 - ~~1) a business address located in the County of Orange that is not a post office box, or~~
 - ~~2) a valid business license or certificate of occupancy issued by the County of Orange or by an Orange County city, or other documentation acceptable to the County of Orange.~~
 - ~~b) Small Business requirements:~~
 - ~~i. must be certified as a Small Business by the State of California DGS; and,~~
 - ~~c) OCLSB requirements must be valid at the time of proposal submittal.~~
- ~~(2) Disabled Veteran Business Enterprise (DVBE) — To qualify as a DVBE, the DVBE must meet the following requirements:~~
- ~~a) must be certified as a DVBE by the State of California DGS~~
 - ~~b) DGS DVBE requirements must be valid at the time of proposal submittal.~~
- ~~(3) An extra five percent (5%) shall be applied to the tallied score of each certified OCLSB or DVBE, or eight percent (8%) for each certified OCLSB and DVBE, to obtain the final score. If the final score of any OCLSB or DVBE matches the final score of a proposer who is not an OCLSB or DVBE, preference shall be given to the certified OCLSB or DVBE. If two or more OCLSBs and/or DVBEs have the same final score, the County shall determine the contract award based on the County's best interest.~~
- ~~(4) The County Procurement Officer may consider a departmental request to waive the County of Orange Procurement Preference Policy requirement under special circumstances and/or if it is determined to be in the best interest of the County. Prior to approving a Preference Policy waiver request, the County Procurement Office will notify the Board of Supervisors of the request.~~
- ~~(5) The Preference Policy waiver request must be approved by the County Procurement Officer and Chief Financial Officer, on the form(s) approved and provided by the CPO, and shall be made part of the procurement file.~~
- ~~(6) The County of Orange Procurement Preference Policy requirements shall not apply when prohibited by this policy, law or regulation including, but not limited to specific state or federal funded projects.~~

SECTION 4.3.1

RFP FOR REAL ESTATE INTEREST

§4.3.1-101 Policy

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

§4.3.1-102 Prior to RFP Process

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

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

§4.3.1-103 **RFP Process**

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

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

§4.3.1-104 Protest Process—~~Real Estate RFP~~

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

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

§4.3.1-105 Evaluation Committee

- (1) The evaluation committee for real estate RFPs under this section shall be comprised of no less than five (5) members who have no conflict or apparent conflict of interest with the selection process or any potential ~~respondents~~proposers. In addition to the requirements set out in §4.3-108, above, members of evaluation committees shall be selected based on their qualifications and expertise related to the subject matter, and should generally be experienced in real estate, construction (if

applicable), finance, development or another area relevant to the RFP as reasonably determined by the CREO and CEO Real Estate.

- (2) The evaluation committee will conduct evaluations of the proposals. The committee will consider the information supplied or not supplied by ~~respondents~~proposers. If it finds a failure or deficiency in the proposals or any information provided in connection thereto, the evaluation committee may reject said proposal or information or reflect the failure or deficiency in the evaluation.
- (3) CEO Real Estate may request clarifications, or otherwise verify the contents of the proposal, including information about the ~~respondent~~proposer, development team members (if any), consultants, and sub-consultants. If CEO Real Estate considers clarification or interpretation of the RFP is necessary, a written addendum shall be issued. Any addenda issued will become part of the RFP. ~~Each respondent~~proposer must follow the directions in the addenda. CEO Real Estate reserves the right to seek publicly available information about the ~~respondents~~proposers and their development teams, if any.
- (4) Proposals will be evaluated on the basis of the responsiveness ~~to the questions of the and~~ requirements in this RFP. Proposals will be ~~competitively~~ evaluated on the basis of the following criteria ~~listed in a random sequence to their order of importance~~ (all or some of the following may be included by CEO Real Estate depending on the subject of the RFP):
 - a. Demonstrated understanding of RFP objectives;
 - b. Quality of the proposed plan, if any;
 - c. Feasibility of proposed plan, if any;
 - d. Composition of the proposed team, if any;
 - e. Relevant experience of team, if any;
 - f. Project schedule and phasing
 - g. Quality of the ~~respondents~~proposer's proposed financing capability and structure;
 - h. Financial offer;
 - i. Proposed option and/or ground lease amendments and exceptions;
 - j. Public benefit (if required);
 - k. Completeness of submittal; and
 - l. Interview, as needed
 - m. Other criteria as needed

§4.3.1-106 ~~Proposer~~ -Presentation/-Interviews

- (1) When a real estate RFP is issued, CEO Real Estate will conduct interviews with ~~respondents~~proposers, as needed. ~~Respondents~~Proposers shall be ready to attend the ~~oral~~ interview within ten (10) business days of notification. CEO Real Estate may also send written questions and ask for written responses within five (5) business days. The interviews will be evaluated based on the following criteria ~~listed in a random sequence to their order of importance~~ (all or some of the following may be included by CEO Real Estate depending on the subject of the RFP):

- a. Presentation / communication skills;
 - b. Project lead / key team members;
 - c. Respondent~~Proposer~~'s response to questions; and
 - d. Overall understanding of the project and articulation of project vision.
 - e. Other criteria as needed
- (2) Proposals will be scored based on established criteria, which have been weighted and will be assigned points that measure the responsiveness to each identified criterion.

§4.3.1-107 Evaluation Scores

- (1) In addition to the scoring process set out in §4.3-113, above, evaluators shall score proposals individually, and scoring will be divided into evaluation of the written proposal and the interview. The initial score sheets containing the evaluators' notes and comments shall remain in the possession of the individual evaluators, and at no time shall this information become part of the permanent procurement file or retained as a County record. Evaluators' individual scores will be discussed with the entire evaluation panel and combined and tallied after the interviews (if conducted). The total number of points earned for the written proposals and ~~oral~~ interviews will be combined for each ~~respondentproposer~~ resulting in a ranked slate of ~~respondentsproposers~~.

§4.3.1-108 Award

- (1) In addition to the procedure outlined in §4.3-115, above, after the RFP evaluation process has produced a ranked slate of ~~respondentsproposers~~, a primary ~~respondentproposer~~ and alternate (if the RFP results in multiple ~~respondentsproposers~~) shall be identified and, in the reasonable discretion of the CREO may be presented to the Board of Supervisors, either in open or closed session, to ~~select~~identify the ~~respondentproposer~~ with ~~who~~ to negotiate the applicable Real Estate Contract~~real estate contract~~ for Board approval. ~~The CREO shall also be given authority to negotiate with the alternate respondentproposer if negotiations with the primary respondentproposer do not result in a final contractagreement between the parties.~~
- (2) After negotiations have been completed with the ~~selected respondent proposer~~respondent, the Board of Supervisors at a public meeting shall approve the final Real Estate Contract~~real estate contract~~(s).
- (3) In no event shall the County be bound by, or liable for, any obligation with respect to a proposed project by a potential ~~respondentproposer~~ until such time (if at all) a Real Estate Contract ~~real estate contract~~ between the County and the ~~respondentproposer~~, in form and substance acceptable and satisfactory to the sole discretion of County, has been approved by the Board of Supervisors.

SECTION 4.4

TWO-STEP ~~SEALED-BIDDING-PROCESS~~**§4.4-101 Definition**

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

§4.4-102 Two-Step Solicitation Bidding Process

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

- (1) ~~Phase-Step One –Statement of Qualification (SOQ) Request for Qualification (RFQ)~~
- a) ~~Two-step sealed bidding Step One~~ shall be initiated by an RFQ for respondents to submit Statement of Qualifications (SOQ) 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. This step could also be included as part of a standard IFB/RFP in the form of minimum qualifications. Qualification criteria may include, but is not limited to: financial capacity/stability, company history, capacity to perform, relevant experience, professional licenses/certifications, and any other criteria relevant to services or items being sought. Prequalification requirements will constitute the minimum requirements necessary to fulfill the contract. The invitation-RFQ to submit offers shall be issued in a manner which provides adequate public notice allowing bidders-potential respondents sufficient time to prepare and submit responses. The invitation to submit technical offersRFQ shall may contain, but is not be limited to, the following information:
 - i. Notice that the procurement process shall be conducted in two-phases steps;
 - ii. A description of the material or service desired using the best information available to the County;
 - iii. A statement that cost will not unprieced technical offers only shall be considered

- included in Phase Step One;
- iv. The qualification requirements ~~for the technical offers~~, such as drawings, ~~and descriptive literature, proof of licenses/certification, etc.;~~
 - v. The criteria for evaluating ~~technical offers~~ the SOQs;
 - vi. The closing date and time for receipt of ~~technical offers~~ SOQs and the location where ~~offers they~~ should be delivered or mailed;
 - vii. A statement that discussions may be held; and,
 - viii. A statement that only bids SOQs from respondents who are prequalified during ~~based on technical offers determined to be acceptable in Phase Step One~~ shall be considered for award Step Two.
- b) The County Procurement Officer or the department Deputy Purchasing Agent may hold a conference with the potential ~~bidders respondents~~ before submission of the ~~technical offers~~ SOQs or at any time during the evaluation of unpriced technical offers.
- ~~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 respondents 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.~~
- c) ~~Unpriced technical offers~~ SOQs shall be due at the time and date specified. The contents of ~~unpriced technical offers~~ SOQs shall be disclosed only to County personnel having a legitimate interest in them or persons assisting in their evaluation.
- d) Except as prohibited for procurements conducted pursuant to Sections 3.4 and 3.5 herein, ~~late technical offers~~ SOQs may be accepted or rejected depending upon the best interest of the County. No ~~technical offer~~ SOQ will be accepted which is received later than 24 hours from the original due date. The County Procurement Officer or appropriate Deputy Purchasing Agent will have sole discretion in deciding which late ~~technical offers~~ SOQs will be accepted or rejected.
- ~~e) Unpriced technical offers SOQs shall be evaluated solely in accordance with the criteria set forth in the invitation to submit technical offers RFQ. Offers shall be determined to be either acceptable for further consideration or unacceptable. A determination that an unpriced technical proposal SOQ is unacceptable shall be stated in writing explaining the basis for the determination. A record of the rejection will be retained in the procurement file. Unsuccessful bidders shall be notified in writing by the County Procurement Officer or Deputy Purchasing Agent, and the bidder shall not be afforded the opportunity to amend its technical offer.~~
- ~~f) Discussions may be held with any bidder who submits an acceptable or potentially acceptable technical offer SOQ. During discussions, there shall be no disclosure of any information derived from one un-priced technical offer SOQ to another bidder. After discussions the County Procurement Officer or Deputy Purchasing Agent shall establish a closing date for receipt of final technical offers SOQs and shall notify in writing bidders submitting acceptable or potentially acceptable offers SOQs of the closing date. A record will be kept of discussions and made part of the procurement file.~~

~~g)e)~~ At any time during Phase-Step One, ~~offers-SOQs~~ may be withdrawn without penalty.

(2) Phase-Step Two

- a) ~~Except as otherwise required for procurements conducted pursuant to Sections 3.4 and 3.5 herein, u~~ Upon completion of Phase-Step One, the County Procurement Officer or Deputy Purchasing Agent shall ~~issue-conduct~~ an Request for Proposal Invitation for Bid (IFBRFP); ~~in accordance with Section 4.2 on Request for Proposal (RFP)-in accordance with Section 4.3 solicitations. These solicitations documents shall be issued o~~ Only to those determined to be most qualified bidders whose technical offers are determined to be acceptable in Phase-Step One will be invited to participate in Step Two.

~~Award will be made to the lowest responsive and responsible bidder for IFBs, and in the case of an RFP, award will be made to the responsible proposer who best meets the County's requirements.~~

- b) References:

~~Reference checks must be conducted prior to contract award.~~

- i. References will be obtained from outside the County of Orange whenever possible.
- ii. If a reference check is not part of the RFP evaluation criteria it must be conducted prior to contract award.
- iii. References shall not be provided or accepted by the same department conducting the solicitation.

~~§4.4-103~~ Requests for Information

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

~~§4.4-104~~ 103 Vendor Advisory Lobbying

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

~~§4.4-105~~ 104 Protest Process Two-Step Sealed Bidding

- (1) ~~Protest of two step sealed bidding:~~ Protests will only be accepted in Step Two and in accordance with Section 1.3 of this manual, except as otherwise provided in Sections 3.4, and 3.5 and 3.6 herein, a 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/solicitation. Protests received after the five (5) business day deadline will not be considered by the County.
- a) In the event the protest of specifications is denied and the ~~protestor~~ protestor wishes to continue in the solicitation process, they must ~~still~~ submit a bid/proposal prior to the close

of the solicitation in accordance with the ~~bid submittal procedures provided in the~~ bidsolicitation instructions.

- (2) Protest of Award of Contract: Except as otherwise required in Sections 3.4, and 3.5, and 3.6, herein, in accordance with Section 1.3 of this manual, protests related to the award of a contract ~~based on the two step sealed bidding process, the protest~~ must be submitted no later than five (5) business days after the notice of ~~the proposed contract~~ intent to award is provided by the Deputy Purchasing Agent.
- (3) Protests ~~relating to a proposed contract award which are~~ received after the five (5) business day deadline will not be considered by the County.

~~§4.4-106~~ County of Orange Procurement Preference Policy

- ~~(1) Orange County Local Small Business (OCLSB) To qualify as an OCLSB, a business shall meet a), b), and c) requirements below:~~
 - ~~a) Local Business requirements:~~
 - ~~i. maintains their principal center of operations (i.e. headquarters) within Orange County, and;~~
 - ~~ii. has:~~
 - ~~1) a business address located in the County of Orange that is not a post office box, or~~
 - ~~2) a valid business license or certificate of occupancy issued by the County of Orange or by an Orange County city, or other documentation acceptable to the County of Orange.~~
 - ~~b) Small Business requirements:~~
 - ~~i. must be certified as a Small Business by the State of California DGS; and,~~
 - ~~c) OCLSB requirements must be valid at the time of bid/proposal submittal.~~
- ~~(2) Disabled Veteran Business Enterprise (DVBE) To qualify as a DVBE, the DVBE must meet the following requirements:~~
 - ~~a) must be certified as a DVBE by the State of California DGS~~
 - ~~b) DGS DVBE requirements must be valid at the time of bid/proposal submittal.~~
- ~~(3) When an Invitation for Bid (IFB) is the method of solicitation, refer to Section 4.2-113 of this manual.~~
- ~~(4) When a Request for Proposal (RFP) is the method of solicitation, refer to Section 4.3-117 of this manual.~~
- ~~(5) The County Procurement Officer may consider a departmental request to waive the County of Orange Procurement Preference Policy requirement under special circumstances and/or if it is determined to be in the best interest of the County. Prior to approving a Preference Policy waiver request, the County Procurement Office will notify the Board of Supervisors of the request.~~

- ~~(6) The Preference Policy waiver request must be approved by the County Procurement Officer and Chief Financial Officer, on the form(s) approved and provided by the CPO, and shall be made part of the procurement file.~~
- ~~(7) The County of Orange Procurement Preference Policy requirements shall not apply when prohibited by this policy, law or regulation including, but not limited to specific state or federal funded projects.~~

SECTION 4.5

SOLE SOURCE REQUESTS

§4.5-101 Policy

- (1) It is the policy of the County of Orange to solicit competitive bids and proposals for its procurement requirements. ~~-A Sole Source procurement may only be used when there is clear and convincing evidence that only one source exists to fulfill the County's requirements, subject to further limitations for procurements pursuant to Sections 3.4, 3.5 and 3.7 and 4.94.3.1 that are inconsistent/conflicting with the Sole Source requirements in this section.~~

§4.5-102 Sole Source Justification

- (1) Formal justification for Sole Source procurements is required when competitive ~~bid guidelines require pricing from competing firms~~solicitation is required. ~~-A Sole Source justification will be prepared and signed by the requesting user department, and approved by the department head or designee, and the Deputy Purchasing Agent.~~ -The County Procurement Officer or Deputy Purchasing Agent shall retain a copy of this justification as part of the procurement file. ~~-As part of the Sole Source justification, the requestor shall clearly explain:~~
- a) A detailed description of the type of contract to be established;
 - b) A detailed description of services/commodities to be provided by the vendor;
 - c) Why the recommended vendor is the only one capable of providing the required services/commodities and includes back-up information to support the justification;
 - d) Identify other sources that have been contacted and explain in detail why they cannot fulfill the County's requirements;
 - e) How the recommended vendor's prices or fees compare to the general market and attach quotes for comparable services and supplies, if available; and,
 - f) How the County would ~~accomplish~~achieve the desired requestthis 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 ~~issued awarded a subsequent a~~ contract for related work, provided that the Sole Source justification requirements outlined in this Section are satisfied. ~~-Such contractor may be designated as an exclusive contractor if the County would be adversely affected by bringing in another vendor who would be required to meet the expert contractor's level of expertise and existing knowledge and involvement in a specific project.~~

§4.5-103 Proprietary Source Requests

- (1) Proprietary means confidentially owned and controlled. The term may be used to refer to such items as property, computer software, or intellectual property. The ~~party-vendor~~ owning items that are proprietary is known as a sole proprietor and there is no other source available from which to purchase the commodities or services.
- (2) Determining if an item is proprietary rests with the Deputy Purchasing Agent and shall be justified in accordance with the policies and procedures outlined in this Section. In the event an item is justified as proprietary, the Deputy Purchasing Agent shall endeavor to negotiate a price that is most advantageous to the County.
- ~~(3) Proprietary Specifications:~~ A proprietary item or service is one that must meet particular restrictive specifications but may be available from a number of sources, e.g., “Brand ‘X’ computers - no substitutions”. ~~–A detailed description of the proprietary specification shall be attached to the requisition for approval. The requisition should contain a brief justification for requesting the proprietary specification.~~
- (3) A detailed description of the proprietary specification shall be attached to the requisition for approval. The requisition should contain a brief justification for requesting the proprietary specification.
- (4) Board Approval: Board approval is required for proprietary commodities and services in accordance with applicable policy as provided in this Section, as well as those that may apply in Sections 3.1, 3.2, and 3.3 of this manual.

~~§4.5-104~~ Commodities Sole Source Requests

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

~~§4.5-105~~ Capital Assets Sole Source Requests

- ~~(1) In addition to the Board approval requirements stated in Section 3.2 of this manual, approval by the Board of Supervisors is required prior to the purchase of a Sole Source Capital Asset item costing more than \$75,000\$100,000.~~

~~§4.5-106~~ Service Contracts Sole Source Requests

- ~~(1) Approval by the Board of Supervisors is required for the following:~~
 - ~~a) Sole Source service contracts that exceed total annual amount of \$75,000 \$100,000;~~
 - ~~b) Sole Source service contracts that exceed a two (2) five (5) year consecutive term, regardless of dollar amount. Contracts may not be split to avoid this policy; including proposed successor contracts that contain substantially the same scope of work; and,~~
 - ~~c) Renewal of Sole Source Service Contracts where the annual cost exceeds \$75,000\$100,000.~~

~~§4.5-107~~ 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 Section 3.4 of this manual that exceeds \$75,000 annually will require Board Approval.~~

§4.5-1048 Contract Renewals and Amendments

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

§4.5-1059 Agenda Staff Report

- (1) Prior to the submittal of an Agenda Staff Report, all Sole Source Justifications requiring approval by the Board of Supervisors shall first be reviewed and approved by the Office of the County Procurement Officer.
- (2) Agenda Staff Reports shall clearly state that the procurement is a Sole Source procurement and also include the Sole Source Justification text in the “Background Section” of the Agenda Staff Report.
- ~~(3) A signed copy of the Sole Source Justification, as described in Section 4.5-102, shall also be attached to the Agenda Staff Report.~~

~~§4.5-109~~§4.5-110 Negotiation

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

§4.5-110§4.5-111 Solicitation Exemption

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

§4.5-111§4.5-112 County of Orange Procurement Preference Policy Exemption

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

SECTION 4.6

~~SMALL DOLLAR~~PETTY CASH PURCHASES**§4.6-101 Definition**

- (1) Petty Cash: ~~Small dollar purchases procurements are purchases made for items which fall below the dollar limits established for competitive solicitations bidding Funds set aside as a cash reserve in a revolving fund for single expenditures under \$1,000 each made within established policies and controls in accordance with Sections 3.1, 3.2, and 3.3 of this manual.~~

§4.6-102 Types of Small Dollar Purchases~~4.6-101 Petty Cash:~~

- (1) ~~Petty Cash:~~ Petty cash purchases are ~~purchases~~ made directly by ~~using~~ County departments using cash established within their revolving petty cash funds. Petty cash funds are to be used in the following manner and in accordance with Auditor-Controller's Accounting Manual:
- a) The limit on any individual petty cash transaction is \$1,000, including tax, handling charges, etc. Splitting ~~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) Purchases are to be paid for when received. ~~Purchases~~ where the invoice follows the commodities should be handled by ~~contract~~purchase order; and,
 - d) Petty Cash shall not be used to ~~procure~~purchase services or commodities that are available on a County contract.
- ~~(2) Purchasing Card: Purchasing card purchases are made only by those employees authorized by their department head to make purchasing card purchases in accordance with established program policies as provided for in Section 1.7, as well as, those procedures established by the County Procurement Officer.~~
- ~~(3) Small Dollar Purchases: When using the small dollar purchase system, the insurance and indemnification requirements set forth in Section 2.3, 3.1, 3.2 and 3.3 must be followed.~~

SECTION 4.7

COOPERATIVE ~~PURCHASING~~ PROCUREMENT§4.7-101 Definition

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

§4.7-102 Policy

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

§4.7-103 Collaborative Purchasing Procurement

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

§4.7-104 Responsibility

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

- a) ~~The initial procurement the County is relying upon is consistent with County purchasing rules and requirements, which shall include specific descriptions of the commodities and services available under the cooperative contract; and,~~
 - b) The vendor holding the contract extends the same pricing, terms and conditions to the County.
- (2) Before deciding whether or not to use the contract of another public entity or program, Deputy Purchasing Agents will ~~conduct an analysis~~review 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. Deputy Purchasing Agents shall ensure that all terms and conditions associated with the cooperative agreement to which the subordinate contract will be subject, are reviewed and incorporated as appropriate as part of this review~~analysis and approval process.~~ Should multiple vendors possess a cooperative contract for the same services/products, a pricing analysis will be conducted to ensure the most advantageous contract is utilized.
- (3) For ~~software commodity and capital asset purchases, as defined in Sections 3.1--101 and Section 3.2-101 respectively~~respectively, subordinate to cooperative contracts with a contract value of \$250,000 annually or less, the requirement for a “specific description” as stated in Section 4.7-104 (1) a) shall not apply as long as the ~~specific~~ item and name of the ~~software company commodity and/or capital asset is~~are listed within the cooperative contract. Such contracts shall be considered to have satisfied the written solicitation requirement in this manual.

~~(3)~~

§4.7-105 Board Approval

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

§4.7-106 Term

- (1) The duration of a contract executed as a subordinate to a cooperative contract will depend upon the County’s need, prevailing market conditions, contract start-up costs, and the County’s best economic interest.
- (2) ~~Term:~~ With respect to non-Board of Supervisors awarded contracts, in no case will a contract executed as a subordinate to a cooperative contract exceed five (5) years in duration, unless specifically approved by the Board of Supervisors.
- ~~(3) Board and Non-Board subordinate contract extensions may be issued by the Deputy Purchasing Agent for up to one (1) year, beyond the fifth year, with County Procurement Officer or designee approval, provided there are no monetary increases (i.e., within the contract’s existing contract amount). County cooperative contracts issued by department Deputy Purchasing Agents that are subordinate to non-County cooperative programs may not extend beyond five (5) years in duration, without approval by the Board of Supervisors.~~

§4.7-107 County of Orange Procurement Preference Policy Exemption

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

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SECTION 4.8

REGIONAL COOPERATIVE AGREEMENTS (RCAs)

§4.8-101 Definition

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

§4.8-102 Policy

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

§4.8-103 Responsibility

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

§4.8-104 Contractor Requirements

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

§4.8-105 No Usage Guarantee

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

§4.8-106 Board Approval

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

§4.8-107 Term

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

SECTION 4.9

REQUEST FOR APPLICATION (RFA) ~~—HUMAN SERVICES~~§4.9-101 Definition

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

§4.9-102 RFA Requirements

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

- f) Indemnification: Where the County may have exposure to an appreciable risk of financial or property loss as the result of the performance ~~of the Human Services Contract~~ by vendor, the RFA must specify that the terms and conditions which are intended to become part of the final contract include a requirement that vendor indemnify, defend and hold harmless the County against and from such risk.
- g) Insurance: The RFA must specify that the County may require that prior to the award of a final contract, the selected applicant submit an insurance certificate that will be in an amount adequate to protect the County and will name the County as an additional insured. The RFA must clearly specify the County's insurance requirements as recommended by CEO/Risk Management.
- h) Application Review and Award Criteria: An administrative review of the applications submitted by interested vendors must be performed to ensure they meet the instructions and minimum requirements specified in the RFA. Those applications that meet the instructions and minimum requirements will be considered for contract award. The County department and/or agency issuing the RFA may make contract awards on a continuous basis and up until it has been determined that the needs of the department or agency have been met.

§4.9-103 Vendor Advisory Lobbying

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

§4.9-104 Pre-Application Conference

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

§4.9-105 Receipt and Acceptance of Applications

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

a late application, he or she must also accept all applications that are received within 24 hours of the specified date and time.

§4.9-106 Waivable Informalities

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

§4.9-107 Confidentiality

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

§4.9-108 Protest Process—RFA

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

§4.9-109 Presentations/Interviews

- (1) Interviews may be conducted when deemed necessary to verify an applicant's qualifications/certifications and to verify requirements, as set forth in the RFA, have been met. Such interviews will be conducted by the appropriate County department staff for applicant(s) who have submitted a responsive application.
 - a) Applicants shall be given fair and equal treatment with respect to any opportunity for discussion and revision to their applications;

- b) Discussions with applicants will be recorded either in writing or digital media, and that record will become part of the procurement file; and
- c) In conducting interviews, there shall be no disclosure of any information derived from applications submitted by other applicants.

§4.9-110 Scope of Work Revisions

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

§4.9-111 Award

- (1) Award of contract(s) will be made by the Board of Supervisors to applicants whose applications meet the County's requirements. Awards may be made on a continuous basis until the needs of the County have been met. ~~Contract~~ awards shall be submitted for Board of Supervisors (Board) approval in accordance with Section ~~3.4-1083.3-102~~ of this manual.
- (2) All ~~Master Agreements~~ Contracts will be submitted to the Board in accordance with Section ~~3.4-1083.3-102~~ of this manual. When requesting Board of Supervisors' approval of a ~~Master Agreement~~ Contracts, the initial applicant(s) will also be brought to the Board for approval. The County department or agency may request, in the Agenda Staff Report (ASR), the delegated authority to add future applicant(s) to the ~~Master Agreement~~ Contract, without further Board approval, provided the original, Board approved, dollar amount on ~~Master Agreement~~ the Contract is not exceeded.

SECTION 5 – GLOSSARY

SECTION 5

GLOSSARY

1. Addendum: A written change, addition, alteration, correction or revision to a bid, proposal or contract document.
2. Agenda Staff Report (ASR): A document by which matters are submitted to the Board of Supervisors for consideration during its regular meetings.
- ~~Aggregate Amount: Total amount of contract between multiple contractors.~~
- ~~Aggregate Contract: Multiple contracts between more than one contractor and the County, for the same service or commodity.~~
- ~~Alternative Delivery Method: Procurement Method selecting a contracting team for design and construction using the design build, construction manager at risk, and job order contracting for the construction of a public works project pursuant to a competitive negotiation process to establish the best value.~~
3. Amendment: An agreed addition to, deletion from, correction or modification of a document or contract.
4. Appeal: A written notice of disagreement, signed by a person of authority, from a protestor to the County Procurement Officer in appealing a decision of department Deputy Purchasing Agent.
5. Arbitration: A process by which a dispute between two contending parties is presented to one or more disinterested parties for a decision; a process whereby a disagreement is resolved.
6. Architect-Engineer: ~~s~~Services include but are not limited to: architectural, landscape architectural, engineering, environmental, land surveying services, and construction project management as well as incidental services that members of these professions may logically or justifiably perform.
- ~~6.7.~~ Award: The ~~execution presentation~~ of a ~~purchase~~ contract ~~or contract~~ to a ~~vendor~~ bidder or proposer.
- ~~7.8.~~ Best Interest: The discretionary rationale used by a ~~purchasing~~ procurement official in taking action most advantageous to the jurisdiction when it is impossible to adequately delineate a specific response by law or regulation.
- ~~8.9.~~ Best Practice: A business process, activity or operation that is authorized by the County Procurement Officer.
- ~~9.10.~~ Bid: The offer submitted by a bidder in response to an Invitation for Bid (IFB), a request for quotation, or a two-step ~~bidding-solicitation process~~ procedure. A bid includes a cost for commodities or services to be provided per the specifications included in the bid solicitation issued by the County.
- ~~10.11.~~ Bid Bond: An insurance instrument in which a third party agrees to be liable to pay a certain amount of money in the event that a specific bidder, if its bid is accepted, fails to accept the contract as bid.

- ~~11.~~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.
- ~~12.~~13. Bid Surety: A guarantee, in the form of a bond or deposit, that the bidder, if awarded a contract will accept the contract as bid, otherwise the bidder (in the case of a deposit) or the guarantor (in the case of a bond) will be liable for the amount of the deposit or bond, respectively.
- ~~13.~~14. Bidders List: A list maintained by the county's bidding system setting out the names and addresses of suppliers-vendors of various services and commodities from whom bids, proposals, and quotations can be solicited.
- ~~— Bonds: **Payment Bond**— a legal contract, a type of bond, that guarantees certain employees, subcontractors, and vendors are protected against non-payment; **Performance Bond**— a bond issued by a bank or other financial institution, guaranteeing the fulfillment of a particular contract.~~
- ~~14.~~15. Brand Name: A name which serves to identify a product of a particular manufacturer; a trade name.
- ~~16.~~ Business Day: ~~aAny day induring which normal business operations are conducted.~~
- ~~15.~~17. Calendar Day: Every day shown on the calendar, including Saturdays, Sundays and holidays.
- ~~16.~~18. Capital Asset: A tangible property costing \$5,000 or more per unit, including tax, delivery and installation, with a useful life expectancy exceeding one (1) year.
- ~~19.~~ California Environmental Quality Act (CEQA): A 1970 California state law which requires state and local government agencies to inform decision makers and the public about the potential environmental impacts of proposed projects or actions that are subject to a discretionary approval before they are approved, and to reduce the environmental impacts of proposed projects or actions to the extent feasible.~~A California statute passed in 1970 and signed in to law by then Governor Ronald Reagan, shortly after the United States federal government passed the National Environmental Policy Act, to institute a statewide policy of environmental protection.~~
- ~~20.~~ Cash Alternatives: Gift cards, gift certificates, gift vouchers, etc. to purchase travel and food for non-employee County department clients receiving services from the County.
- ~~17.~~21. Change Order: See Modification.
- ~~18.~~22. Closing Date/Time: Refers to the date and time for a bid or proposal closing.
- ~~19.~~23. Cloud Computing: The delivery of software/applications/infrastructure and other resources providing remote or on-demand network access to remote servers, or applications hosted on the Internet to conduct business operations. This may include the storage, management, and processing of data (e.g., Platform as a Service (PaaS), allows for the development, management, and delivery of applications without infrastructure, Infrastructure as a Service (IaaS) provides virtualized computing resources over the Internet or Software as a Service (SaaS) functionally delivers software applications over the Internet).

- ~~20-24.~~ Collusion: A secret contract or cooperation between two or more persons to accomplish a fraudulent, deceitful or unlawful act.
- ~~21-25.~~ Commodities: All supplies and all equipment costing less than \$5,000 per item, including tax and freight, etc., or more than \$5,000 but with a useful life of less than one (1) year.
- ~~22-26.~~ Competitive Process: The process by which two or more vendors vie to secure the business of a purchaser by offering the most favorable terms as to price, quality, delivery, and/or service.
- ~~23-27.~~ Compliance Monitoring: A process whereby the County Procurement Officer, or designee, selects and ~~reviews audits~~ procurement transactions conducted by departments for the purpose of ensuring that the County purchasing-procurement process is fair, ~~and~~ efficient, and compliant with legal requirements and County policies and procedures.
- ~~24.~~ Confirming Order: A purchase order written and sent to a vendor to verify that an order which was transmitted orally is authorized.
- ~~25-28.~~ Conflict of Interest: A situation where the personal interests of a contractor, public official and/or designated employee are/is, or appear to be, at odds with the interests of the jurisdiction.
- ~~26-29.~~ Consent Agenda Items: Those agenda items, as identified by the CEO and the Board of Supervisors, which are placed in the section of the Board of Supervisors agenda for approval as a group of items. Items on the Consent Calendar may be pulled by the Board, County staff, or a member of the public for discussion and individual Board action.
- ~~30.~~ Construction: Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility paid for using public funds; Painting or repainting of any publicly owned, leased, or operated facility.
- ~~31.~~ Construction Manager at Risk (CMAR): an alternate project delivery method which entails a commitment by the Construction Manager (CM) to deliver the project within a Guaranteed Maximum Price (GMP).
- ~~27-32.~~ Consultant: A person or firm who provides professional or expert advice and/or recommendations.
- ~~28-33.~~ 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.
- ~~29-34.~~ Contract: (1) A deliberate verbal or written legally enforceable agreement between two or more Parties or more competent persons to perform-do or not to perform a specific act or acts do a certain thing, which meets the requisite statutory elements of: (a) Parties capable of contracting, (b) Consent, (c) A lawful object and (d) A sufficient cause or consideration. Cal. Civ. Code §§ 1549-1550; 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.

- 30.35. Contract Administration: The management of various ~~facets-aspects~~ 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.
- 31.36. Contract Award: The ~~act of executing a final signed agreement contract on the terms and conditions of a contract~~ between ~~the County and a vendor, a buyer and seller.~~
- 32.37. Contract Extension: An action to extend a contract ~~termination date~~ upon written mutual agreement by both parties.
- 33.38. Contract Renewal: A renewal clause allows ~~an agreement contract~~ to continue for a defined ~~term~~period.
39. Contract Task Order: ~~a~~A contract for A-E services that includes, price, and scope for the performance of tasks during the period of the A-E On-Call contract.
- 34.40. Cooperative Procurement~~urchasing~~: ~~Cooperative Purchasing is A~~a strategy used by ~~local~~ governmental entities to ~~procure~~purchase services and commodities from contracts awarded by other governmental entities or programs to take advantage of volume purchasing discounts and reduce administrative expenses.
- 35.41. Contractor: A ~~vendor~~any person or firm having a contract with a governmental body.
- 36.42. County of Orange Procurement Preference Policy: An initiative approved by the Orange County Board of Supervisors to encourage local small businesses and disabled veteran businesses to compete in new solicitations released by the County of Orange.
43. Consumer Price Index (CPI): The Consumer Price Index measures the overall change in consumer prices based on a representative basket of goods and services over time.
- 37.44. Debarment: A shutting out or exclusion, through due process, for cause, e.g., a bidder from a list of qualified prospective bidders.
45. Department of Industrial Relations (DIR): A California state agency that monitors ~~the~~ state labor laws.
- 38.46. Deputy Purchasing Agent: An employee of the County of Orange appointed by a department head who is trained and certified/deputized under the direction of the County Procurement Officer to act in the capacity of the County Procurement Officer to procure commodities and/or services for the department.
47. Design--Bid--Build: ~~a~~A procurement method for construction projects resulting in a Fixed-Price Contract, a Fixed-Price Indefinite Quantity Contract, or a Cost Plus Fixed Fee Contract, and is required to utilize the prequalification process
48. Design Build: ~~a~~A qualification-based selection (QBS), in which both the design and construction services for a project are procured at the same time following the QBS.

~~39.~~49. Designated Employees: Those employees of the County of Orange who are required to file conflict of interest statements because those employees, in the course of their employment make or participate in the making of decisions which may potentially have a material effect on the financial interest of the employees.

50. Director: s~~Shall mean all such designated officials or departments.~~

~~40. Disabled Veteran Business Enterprise (DVBE)~~

~~1. To qualify as a DVBE, the DVBE must meet the following requirements:~~

~~a) Must be certified as a DVBE by the State of California Department of General Services (DGS)~~

~~b) DGS DVBE requirements must be valid at the time of bid/proposal submittal~~

~~41.~~51. Discount: An allowance or deduction from a normal or list price extended by a seller to a buyer to make the net price more competitive.

~~42. Discoveries: The identification of facts or documentations which are not in compliance with procurement policy or Best Practice~~

~~43.~~52. Discussion Agenda Items: Those agenda items, as identified by the CEO and the Board of Supervisors, which are placed in the section of the Board of Supervisors agenda for discussion and individual Board action. All items requiring the Board to select from a slate or a list of recommendation options, among others, are placed on the Discussion Calendar.

~~44.~~53. Dispute: A difference between a contractor and a jurisdiction over performance or other elements of a contract calling for appropriate administrative action with the intent of achieving a remedial result.

~~45.~~54. Electronic Waste (E-Waste): An electronic device powered by electricity or a battery that has a printed circuit board or video display attached that has reached the end of its useful life and is being discarded by the user. Examples include: televisions, computers, computer peripherals and components, hard drives, CD/DVD drives, printers, facsimile machines, copiers and wireless phones and devices.

~~46.~~55. Emergency: Those situations where the welfare of County residents is at stake and/or immediate purchasing-procurement action is required to prevent serious economic or other hardship to the County.

~~47.~~56. Equal or Equivalent: A phrase used to indicate the acceptability of products of similar or superior function.

~~48.~~57. Equipment: Personal property of a durable nature which retains its identity throughout its useful life.

~~49.~~58. 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.

- 50.59. Evaluation Criteria: Those criteria set forth in the ~~Request for Proposal (RFP)~~Solicitation and used by the evaluation committee to score and rank ~~proposers-respondents who respond to the procurement solicitation.~~
- 51.60. Express Warranty: Any affirmation of fact or promise made by a seller to a buyer which relates to the commodities and becomes part of the basis of the bargain.
61. Findings: The identification of facts or documentations which are not in compliance with procurement policy, procedures, or Best Practices.
62. Firms: ~~a~~A business ~~whothat~~ provides professional or technical advice or expertise which will supplement departmental expertise or advice or where an independent opinion or audit is required.
- 52.63. Firm Bid: A bid that binds the ~~vendor~~bidder until a ~~specified~~stipulated time of expiration of the bid.
- 53.64. Fixed Price Contract: A contract which provides for a firm price under which the contractor bears the full responsibility for profit or loss.
- 54.65. Force Account: Use of internal (County) labor.
- 55.66. Formal Advertising: The placement of a notice in a newspaper or other publication according to legal requirements to inform the public that the government is requesting ~~solicitation~~purchase it intends to make.
- 56.67. Formal Bidding-Process: ~~As to formal bids referenced in Sections 3.5, formal bids are those in excess of \$~~Bids in excess of the Board of Supervisors threshold, requiring a four-fifths (4/5) vote for the award the contract. The project plans and specifications shall be adopted by the Board of Supervisors, unless delegated. For all other procurements, formal bids are those that ~~The~~require a competitive bid solicitation process ~~required~~for contracts/purchases exceeding the oral/written quote dollar thresholds. All formal solicitations will be advertised via the County's bidding system. This process may or may not requiring require a Public Bid Opening with the date, time and location set forth in the bid solicitation.
68. Government Code: The general ~~and permanent~~ laws of the State of ~~United States~~California as applied to the County of Orange and other governmental entities.
- 57.69. Gratuity: A payment, loan, subscription, advance deposit of monies, services or anything of more than nominal value presented or promised for consideration of a ~~purchasing~~procurement decision or recommendation.
- 58.70. Guarantee: To warrant, stand behind, or ensure performance or quality ~~of services or commodities; e.g., a supplier in relation to his product.~~
71. Horizontal: ~~is~~A road ~~mainenaneet~~maintenance project, such as paving, slurry seal, etc. in reference to construction or maintenance projects.
- 59.72. Human Services: Services which maintain or improve the social, economic, physical, or mental well-being of persons for whom the County bears such a responsibility.

~~60.~~73. Hybrid Contract: ~~Is a~~A contract which consists of multiple procurement typess-purchases.

~~61.~~74. Incremental Contracting: Contracting in small segments to avoid ~~competitive bids~~solicitation requirements or Board of Supervisors approval.

~~62.~~75. Indemnification: Protection against incurred loss, damage, or hurt, usually by monetary compensation.

~~63.~~76. Informal Bidding: ~~bids~~A process of procurement that does not exceed of the Board of Supervisors thresholds and do not require their approval to require Board approval. An unsealed competitive offer for contracts/purchases within the oral/written quoted dollar thresholds. May be conveyed by email, letter, telephone, telegram, or other means and under conditions different from those required for formal bidding solicitations.

~~64.~~77. Insurance: A contractual relationship where an insurance company agrees, for a premium paid, to reimburse the insured or other party for a loss to a specified subject caused by designated hazards or risks.

78. Interviews: FA process facilitated by the Deputy ~~Purchasing~~Purchasing Agent during a solicitation, between the evaluation committee and prospective contractor who responded to the solicitation.

~~65.~~79. Invitation for Bid (IFB): The solicitation ~~document~~process used for competitive sealed bidding for the purchase of equipment, materials, supplies, services, and construction, for which clear specifications can be written.

80. Job Order Contract (JOC): An annual contract for repair, remodeling, or other repetitive work based on unit prices, which is a firm fixed price, competitively bid, unit priced, indefinite quantity contract designed to accomplish applicable projects.

~~66. 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 commodities for shipment; the period of time needed to process purchase requisitions for bid/proposal solicitation and award of contract.~~

~~67.~~81. Liquidated Damages: Liquidated damages clauses are enforceable if: (1) damages are difficult to ascertain or estimate at the time the contract is formed; and (2) the amount is a reasonable forecast of compensatory damages in the case of breach. Specifically, if the liquidated damages amount significantly exceeds the amount of damages prospectively probable, the liquidated damages clause may not be enforceable. Thus, liquidated damage clauses may be included in service contracts when the County could suffer financial loss due to delays in performance.—Consistent with legal requirements, the amount of damages listed in the contract must be a “reasonable forecast” of the County’s actual damages.

~~68.~~82. Lobbyist: Any person who receives compensation of \$500.00 or more in any calendar month for engaging in lobbying activities or is employed by his or her employer and receives compensation of \$500.00 or more in any calendar month for engaging in lobbying activities, as defined in Article 5 Sec. 1-1-80 of the Orange County Codified Ordinances.

83. Maintenance Work: Routine, recurring, and usual work for the preservation or protection of any publicly owned or publicly operated facility for its intended purpose, including: minor repainting; resurfacing of streets and highways at less than one inch; landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems; work performed to keep, operate, and maintain publicly owned water, power, or waste disposal systems, including, but not limited to, dams, reservoirs, power plants, and electrical transmission lines of 230,000 volts and higher.
69. ~~Milestones: Designated steps of the planned acquisition which usually signify a completion of a requirement or delivery of materials.~~
- 70.84. Modification: A ~~written non-material~~non-material change that does not require order signed by the County Procurement Officer or Deputy Purchasing Agent, and by the Director of OC Public Works and OC Sheriff's Department for change orders to Public Works contracts, directing the contractor to make changes to the original contract. A change made to a document in the County System of Records. This type of change is distinguished from an amendment which requires signatures of contracting both parties.
71. ~~Multi-Department Contracts: Those contracts issued by the County Procurement Officer or department Deputy Purchasing Agents for the purchase of services and commodities, which may be used by more than one department of the County under the condition that the department is named on the contract as an authorized user.~~
- 72.85. Negotiation: The discussion or correspondence between the County and ~~the preferred a~~ contractor in order to develop a contract with terms and conditions that serve the best interest of the County.
73. ~~OC Local Small Business (OCLSB) shall meet (1) and (2) below:~~
- ~~(1) Local Business requirements:~~
- ~~a) maintains their principal center of operations (i.e. headquarters) within Orange County, and;~~
- ~~b) has:~~
- ~~i. a business address located in the County of Orange that is not a post office box, or~~
- ~~ii. a valid business license or certificate of occupancy issued by the County of Orange or by an Orange County city, or other documentation acceptable to the County of Orange.~~
- ~~(2) Small Business requirements:~~
- ~~a) must be certified as a Small Business by the State of California Department of General Services (DGS); and,~~
- ~~(3) OCLSB requirements must be valid at the time of bid/proposal submittal.~~
- 74.86. One-Time ~~PurchasesContract~~: ~~Procurementsurchases~~ for particular commodities or services which cover a particular need. These types of procurements-purchases are distinguished from annual or blanket contracts which cover a continuing need of an item or service.

- 75.87. Opportunity Buys: A situation where necessary commodities, capital assets, or services are for sale at significantly reduced rates from what is normally offered in the general market or where an alternative product to the one being bid represents significant savings.
76. Original Contract Term: The period of time first specified in the contract at the time the contract was first completed initially established, ~~which includes any renewals. (e.g., The initial term of this Contract shall become effective upon execution of all signatures, and shall continue for one (1) year that date, unless otherwise terminated as provided herein. Contract may be renewed upon expiration for four (4) additional years, upon mutual agreement of both parties.)~~
88. Payment Bond: A legal contract, a type of bond, that guarantees certain employees, subcontractors, and vendors are protected against non-payment.
- 77.89. ~~Performance Surety Bond: See Bond~~ Performance Bond: A bond issued by a bank or other financial institution, guaranteeing the fulfillment of a particular contract.
- 78.90. 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.
79. Pre-Bid/Pre-Proposal Conference: A meeting set up between the County parties issuing a ~~bid/proposal~~ solicitation and the potential bidders/~~respondents~~respondents~~proposers~~ for the purpose of clarifying the ~~bid/proposal~~ solicitation and answering any questions. ~~the bidders/proposers may have.~~
- 80.91. Prequalification: A process used prior to solicitation of bids to determine if potential ~~vendors~~bidders have the ability to fulfill the contract requirements for which the solicitation will be issued and/or to determine if the potential ~~vendors~~bidders' products will meet the cost and performance criteria required to meet the County's needs.
92. Prevailing Wage: The California Department of Industrial Relations determines that the general prevailing rate of per diem wages for a particular craft, classification, or type of worker is uniform throughout an area, the director issues a determination enumerated county by county, but covering the entire area.
- 81.93. Procurement Appeals Board: A body comprised of County department senior management and a member of the public chaired by the County Procurement Officer for the purpose of hearing vendor protests to a specific County procurement process.
- 82.94. Procurement Council: A committee of County employees appointed by department heads and chaired by the County Procurement Officer to discuss ~~purchasing~~procurement issues and make recommendations regarding County-wide ~~purchasing~~procurement policies and procedures.
- 83.95. Proposal: The ~~executed~~ document submitted by a ~~respondent~~proposer in response to a Request for Proposal (RFP). A proposal includes a detailed description of the commodities or services to be provided to the County per the scope of work included in the Request for Proposal (RFP), including, but not limited to cost, time frame for completion of work or delivery of commodities, and method of accomplishment of services.

84. ~~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.~~
- 85.96. Proprietary Product: An item or service that must meet particular restrictive specifications, but may be available from multiple sources. 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”.
- 86.97. Protest: A written objection of grievance from an actual or prospective bidder who alleges an error or impropriety in the solicitation or award of a contract.
- 87.98. Public Bid Opening: The process of opening and reading bids at the time and place specified in the solicitation and in presence of anyone who wishes to attend.
99. Public Contract Code: ~~applies~~ Statutory authority applicable in one respect or another to virtually all public entities in California in relation to certain procurements. Pursuant principally to the California Public Contract Code, with limited exceptions, public agencies have a duty to publicly bid certain contracts, particularly construction contracts.
100. Public Works Procurements: Contracts procured via Sections 3.4 or 3.5 of this CPM.
101. Public Works Project: Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility paid for using public funds; painting or repainting of any publicly owned, leased, or operated facility.
102. Qualified Vendor List (QVL): ~~a~~ A list of qualified A-E firms that have been deemed responsive through the Request for Qualification (RFQ) process.
- 88.103. Real ~~Property-Estate~~ Contracts: ~~Legal agreements~~ instruments necessary to effectuate a real estate transaction such as a lease, license, easement, grant deed, or other similar document, but shall not include procurement contracts related to services provided for the transaction nor departmental issued permits, such as County construction permits or encroachment permits. This ~~includes~~ acquiring, leasing, licensing constructing, operation, and maintaining County-owned or County-occupied facilities and assets. ~~Agreements-Contracts~~ concerning the purchase or use of County owned or private sector parking spaces are considered real ~~property-estate~~ contracts.
- 89.104. Regional Cooperative Agreement (RCA): ~~An RCA is a~~ cooperative contract for commonly used services and commodities executed by the Office of the County Procurement Officer ~~or designee~~ to take advantage of the County’s economies of scale and reduce the duplication of efforts across the County.
105. Rejection of Bid(s): The non-acceptance of submitted bid(s).
- 90.106. Request for Information (RFI): A request for information is used to obtain price, delivery, other market information, or capabilities for planning purposes. Responses to request for information notices are not offers and cannot be accepted by the County to form a binding contract unless otherwise specified in the solicitation.

91,107. Request for Proposal (RFP): The solicitation ~~method document which that~~ includes a scope of work and terms and conditions used to secure proposals for services or commodities not clearly defined by the County in terms of exact specifications or manner of delivery of services or where price is not the sole selection criteria.

92,108. Request for Qualifications (RFQ): A solicitation ~~method, which that~~ describes the project or services required and solicits qualifications from potential vendors or contractors for purposes of evaluating those qualifications for screening or for award of contract.

93,109. 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.

94,110. Responsive Bidder: A bidder whose bid conforms in all material respects to the terms and conditions, the specifications and other requirements of the solicitation.

95,111. Retroactive Contract: ~~When goods and services have been ordered, performed or delivered without a requisition and/or contract in place. An unauthorized purchase or commitment made to a supplier/vendor without an approved written contract in place prior to delivery of any commodities and/or services.~~

112. Requesting Department: A County agency, which requests goods and services procured by the Deputy Purchasing Agent.

96,113. Services: The furnishing of labor, time or effort by a contractor involving the delivery of a specific performance.

97,114. Sole Source: A ~~procurement of an award for~~ a commodity or service to the only known capable ~~supplier/vendor~~, occasioned by the unique nature of the requirement, the ~~supplier/vendor~~, or market conditions.

98,115. Sole Source Justification: A document submitted by department staff for approval to contract with a particular party without competitive bidding.

99,116. Solicitation: A good faith effort to obtain a bid or proposal for the provision of commodities or services.

100,117. ~~Specifications: A description of what is requested to be procured 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.~~

~~101. 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.~~

118. Statement of Qualifications (SOQ): a submitted response to a Request for Qualifications.

~~102. Steering Committee: A committee which assists in contract administration usually in a management or consulting contract.~~

~~103. Subcontractor: A vendor who is performing work on behalf of the contractor. Any person undertaking part of the work under the terms of the contract, by virtue of a separate contract between the contractor and subcontractor.~~

~~104. Supplier: An actual or potential contractor; a vendor.~~

~~105.~~119. Surplus County Department Property: Tangible supplies, materials or equipment to which the County acquired title by means of purchase, donation, grant, or other lawful means, that a County department has determined is no longer needed by the department.

~~106.~~120. Surplus County Property: Surplus County Department Property that the County Procurement Officer or designee has determined is not needed for public use by any other County department.

121. Task Order: a contract for Job Order Contracts that includes, price, and scope for the performance of tasks during the period of the contract.

~~107.~~122. 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.

~~108.~~123. Terms of Payment: Methods and timelines by which the County must render payment under a-purchase contract.

124. Two Step Solicitation: A method of soliciting services and commodities where a preliminary evaluation of the respondent's qualifications is conducted, and a final evaluation for recommendation of award is made based on the RFP process.

125. Unilateral Procurement-Contract: A vehicle to pay for critical, ongoing services provided by exclusive entities within a County geographical area that is not subject to County's standard terms and conditions (i.e., utility services). The payment mechanism for unilateral procurements include, but are not limited to: Procurement card(s), County financial system documents, request for checks, etc.

~~A document utilized by the County as a vehicle to pay for critical, ongoing services provided by exclusive entities within a County geographical area that is not subject to County's standard terms and conditions (i.e. utility services).~~

~~109. Using Department: A unit of the County which utilizes good and services procured by the Deputy Purchasing Agent.~~

~~110.~~126. 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.

~~111. Vendors List: See Bidders List.~~

127. Vertical: eConstruction projects that include constructing a building or performing work to a building or structure.

~~112.~~128. _____ Waiver of Bid(s): A process authorized by law or rule whereby the County Procurement Officer or Deputy Purchasing Agents may procure items without competitive ~~bidding~~ solicitation procedures because of unique circumstances related to a particular need or procurement.

~~113.~~129. _____ 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~~ respondents.

~~114.~~130. _____ Warranty: A representation of utility, condition, and durability made by a bidder or proposer for a product offered.



Continuation or Deletion Request

Date: October 30, 2023
To: Clerk of the Board of Supervisors
From: Frank Kim, County Executive Officer *for Maguire*
Re: ASR Control #: 23-000787, Meeting Date 10/31/23 Agenda Item No. # 23
Subject: Approve 2024 Contract Policy Manual

☒ Request to continue Agenda Item No. # 23 to the 11/7/2023 Board Meeting.

Comments:

☐ Request deletion of Agenda Item No. # _____

Comments:

RECEIVED
2023 OCT 31 AM 7:47
CLERK OF THE BOARD
COUNTY OF ORANGE
BOARD OF SUPERVISORS



AGENDA STAFF REPORT

ASR Control 23-000787

MEETING DATE: 10/31/23
LEGAL ENTITY TAKING ACTION: Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S): All Districts
SUBMITTING AGENCY/DEPARTMENT: County Executive Office (Approved)
DEPARTMENT CONTACT PERSON(S): Michelle Aguirre (714) 834-4304
Maria Agrusa (714) 834-6889

SUBJECT: Approve 2024 Contract Policy Manual

CEO CONCUR
Concur

COUNTY COUNSEL REVIEW
Approved Resolution to Form

CLERK OF THE BOARD
Discussion
3 Votes Board Majority

Budgeted: N/A

Current Year Cost: N/A

Annual Cost: N/A

Staffing Impact: No

of Positions:

Sole Source: N/A

Current Fiscal Year Revenue: N/A

Funding Source: N/A

County Audit in last 3 years: N/A

Levine Act Review Completed: N/A

Prior Board Action: 5/11/2021 #41, 4/27/2021 #53, 10/6/2020 #S16B, 8/13/2019 #19

RECOMMENDED ACTION(S):

1. Approve 2024 Contract Policy Manual, effective January 1, 2024.
2. Adopt amended Resolution authorizing the Director of OC Public Works, Sheriff-Coroner or those qualified County officials or department designees identified by the Director of OC Public Works or Sheriff-Coroner to advertise bids in the manner set forth in Public Contract Code Section 22037 for the performance of public projects described in Public Contract Code Section 22032(c) on behalf of the County of Orange.

SUMMARY:

Approval of the 2024 Contract Policy Manual and Resolution will update procurement policies, enhance the County of Orange Procurement Preference Policy and consolidate procurement-related policies into one comprehensive manual for consistency and efficiency.

BACKGROUND INFORMATION:

The County's Contract Policy Manual (CPM) was previously updated and approved by the Board of Supervisors (Board) on June 26, 2018, August 13, 2019, and May 11, 2021. On October 6, 2020, the Board approved the Disabled Veteran Business Enterprise (DVBE) Preference Policy and directed CPO to implement the DVBE Preference Policy, effective January 1, 2021, and to update the CPM to reflect implementation of the Policy. On April 27, 2021, the Board approved the adoption of an ordinance to update procurement policies related to competitive bidding and disposition of County surplus property.

On November 2, 2021, then Chairman Do, established the Procurement Ad Hoc Committee to review and discuss updates to the CPM. The Board designated then Vice Chairman Chaffee and Chairman Do to the Ad Hoc Committee. Following a series of meetings and input from key County stakeholders, including the County Executive Office (CEO), County Counsel, OC Public Works, CEO Real Estate Services and the Procurement Council, the 2024 revision of the CPM is presented for Board consideration and approval. The CPM updates consisted of substantive changes, including various enhancements to the Preference Policy, review and consolidation of the County's Design and Construction Procurement Policy Manual and incorporation of various Real Estate procurement-related policies; thus, additional time was necessary to conduct research associated with the revisions and to ensure appropriate review and input was obtained from key stakeholders.

Key elements of the revisions recommended by the Procurement Ad Hoc Committee are identified below. All revisions are shown in the redlined 2024 CPM (Attachment B).

- Incorporate into the CPM and consolidate the policies of the Design and Construction Procurement Policy Manual and Real Estate Procurement related policies to ensure one comprehensive procurement manual and further enhance standardization of procurement contracts. [Section 1.6.1, Sections 3.4–3.7]
- Consolidate Human Services Contracts and Service Contracts sections to properly align policies and ensure consistency. [Section 3.3-101(1)(i)]
- Reorganize as its own section and enhance the County of Orange Procurement Preference Policy to incorporate [Section 1.8]:
 - Eligibility for contractors to qualify for the preference using Orange County Local Small Business (OCLSB) and Disabled Veteran Business Enterprise (DVBE) subcontractors [Section 1.8-102(3)]
 - A (3) three percent award requirement to OCLSB/DVBE subcontractors for public works projects over \$5,000,000, except as otherwise required or prohibited by Federal or State funding requirements [Section 3.6-107]
- Increase the solicitation thresholds for Commodity, Capital Asset and Service Contracts. [Sections 3.1-106(1), 3.2-106(1), 3.3-109(1)]

Contract Type	Solicitation Method	Previous Threshold	Revised Threshold
Commodity	Minimum of one written quote	\$10,000 or less over the life of the contract	\$25,000 or less over the life of the contract

	Minimum of two written quotes Written solicitation issued on County's bidding system	\$10,001 to \$25,000 over the life of the contract Above \$25,000 over the life of the contract	\$25,001 to \$50,000 over the life of the contract Above \$50,000 over the life of the contract
Capital Asset	Minimum of two written quotes Written solicitation issued on County's bidding system	\$5,000 to \$25,000 over the life of the contract Above \$25,000 over the life of the contract	\$5,000 to \$50,000 over the life of the contract Above \$50,000 over the life of the contract
Service	Minimum of one written quote Written solicitation issued on County's bidding system	\$50,000 or less over the life of the contract Above \$50,000 over the life of the contract	\$100,000 or less over the life of the contract Above \$100,000 over the life of the contract

- Revise the Sole Source monetary and term thresholds for Board approval for Service Contracts, including Architect-Engineering Services. [Section 3.3-102(b), Section 3.4-105(2)]

Service Contract and Architect-Engineering Services	Previous Thresholds	Revised Thresholds
Monetary	\$75,000	\$100,000
Term	Two (2) year consecutive term	Five (5) year term

- Allow extensions of Commodities and Services contracts up to one year beyond the fifth year provided there are no monetary increases. For example, additional time may be needed to conduct a solicitation. [Section 3.1-104; Section 3.3-106]
- Update retroactive contract approval thresholds. [Section 3.1-108(1)(b), Section 3.2-108(1)(b), Section 3.3-111(1)(b)]

Approval Level	Previous Thresholds	Revised Thresholds
Department Head	\$500 or less	No Change
Chief Financial Officer and County Procurement Officer	Between \$500 and \$9,999	Exceeds \$500 but \$25,000 or less
Board of Supervisors	\$10,000 and above	Exceeds \$25,000

- Incorporate Memorandum of Understanding (MOU) section, which establishes definitions and policies for the use of MOUs. [Section 3.8]
- Update the Discussion Calendar contract threshold for ASRs to align with the recently updated and Board approved Board Rules as shown below. [Section 3.3-107(1)(b)]

Calendar	Previous	Revised
Consent	Contracts \$750,000 or less	Contracts \$1,000,000 or less Straight contract renewals (no monetary or scope of work revisions)
Discussion	Contracts exceeding \$750,000	Contracts exceeding \$1,000,000

- To align with current industry standards, update the Two-Step Solicitation Process to require an evaluation-based solicitation for both steps (Step 1 – Request for Qualifications, Step 2 – Request for Proposals). [Section 4.4]
- Incorporate authority for the procurement of cash alternatives (e.g., gift cards), food, travel and court-ordered commodities/services. [Section 1.1-107(1), 3.1-101(1)(f), 3.1-122]

The recommended implementation date following Board approval of the 2024 CPM is January 1, 2024, to allow time for development and revision of documentation and procedures, and to educate department Deputy Purchasing Agents on the revisions.

Resolution of Delegation

As the Design and Construction Procurement Policy Manual will be consolidated into the 2024 CPM, approval of the amended Resolution will continue to authorize the Director of OC Public Works, Sheriff-Coroner or those qualified County officials or department designees identified by the Director of OC Public Works or Sheriff-Coroner to advertise for bids, which includes the adoption of plans, specifications, and working details, in accordance with the Public Contract Code for public works projects on behalf of the County and the Orange County Flood Control District.

FINANCIAL IMPACT:

N/A

STAFFING IMPACT:

N/A

ATTACHMENT(S):

Attachment A – 2024 Contract Policy Manual

Attachment B – Redline - Contract Policy Manual

Attachment C – Resolution



2024 CONTRACT POLICY MANUAL



COUNTY OF ORANGE



CONTRACT POLICY MANUAL

**Adopted by the
Orange County Board of Supervisors
October 31, 2023**

Effective: January 1, 2024

**DONALD P. WAGNER
CHAIRMAN
THIRD DISTRICT**

**ANDREW DO
VICE CHAIRMAN
FIRST DISTRICT**

**VICENTE
SARMIENTO
SUPERVISOR
SECOND DISTRICT**

**DOUG CHAFFEE
SUPERVISOR
FOURTH DISTRICT**

**KATRINA
FOLEY
SUPERVISOR
FIFTH DISTRICT**

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SECTION 1 – GENERAL RESPONSIBILITIES

SECTION 1.1

OFFICE OF THE COUNTY PROCUREMENT OFFICER

§1.1-101 Statute

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

§1.1-102 Policy

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

§1.1-103 Ethical Statement

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

§1.1-104 Scope

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

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

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

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

§1.1-106 Delegation of Authority

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

§1.1-107 Authority to Procure

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

§1.1-108 Specific Duties

- (1) Except as otherwise provided herein, or where statutes or ordinances dictate otherwise, the County Procurement Officer and Deputy Purchasing Agents are authorized to carry out the specific duties listed in this manual plus any additional duties as provided by resolution of the Board of Supervisors, Codified Ordinances of the County of Orange, or laws of the State of California. The County Procurement Officer and Deputy Purchasing Agents are authorized to:
 - a) Solicit and purchase all services, commodities, materials, supplies, furnishings, equipment, livestock, food, travel and other personal property of whatever kind and nature required to conduct County business, except in cases of emergency and as otherwise provided through Board of Supervisors action;
 - b) Negotiate and execute all Contracts, as detailed in Section 3 of this manual;
 - c) Execute Memoranda of Understanding (MOUs), as detailed in Section 3 of this manual;
 - d) Approve and confirm emergency purchases;

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

§1.1-109 Responsibilities of the County Procurement Officer:

- (1) The County Procurement Officer or authorized designee is responsible for the following:
 - a) Solicit bids/proposals for cooperative contracts used County-wide by departments;
 - b) Establish Procurement policies and procedures to be followed by departments;
 - c) Establish policies and procedures to be followed by departments for the use of a Purchasing Card Program to promote efficiencies for low dollar purchases;
 - d) Maintain the “bidders list”, as may be required, for use by departments purchasing units for solicitation of bids and proposals;
 - e) Verify, on a periodic basis, that each Deputy Purchasing Agent obtains insurance certificates and endorsements for department purchasing contracts;
 - f) Identify and pursue other governmental department and other organizations cooperative purchasing contracts, that may be executed, that would be beneficial for County use and where appropriate, make these contracts available for use by each department in accordance with Section 4.7 of this manual;
 - g) Manage a centralized program for the reuse of surplus County personal property to foster reuse by other departments in accordance with Section 1.6 of this manual;
 - h) Sell and dispose of personal property, including electronic equipment, no longer required for County use, in accordance with the current County “E-Waste Policy”, as well applicable state, federal and county regulations;
 - i) Assist in identifying new advancements in technology and other innovations in public sector procurement that would be beneficial for County use, and working with the County’s Chief Information Officer (CIO), as appropriate, implement these innovations for County-wide use;
 - j) Develop training materials and conduct training programs for Deputy Purchasing Agents, their supervisors, and others, as designated by department heads that ensures a County-wide procurement process which is fair, effective and efficient, and ensures the integrity of the County’s procurement process;
 - k) Deputize those trained in the procurement process when assured that they are adequately trained to perform with the delegated authority of the County Procurement Officer;
 - l) Provide assistance on a consultative basis, as requested by department heads or their designees, in the development of solicitations and contracts and the handling of vendor protests;
 - m) Review solicitations and contracts when so requested by department personnel;

- n) Develop and implement a compliance monitoring plan with performance measures to review the procurement documents prepared by the Deputy Purchasing Agents, and to report to the appropriate Procurement Council Representative with recommendations for corrective action to ensure the County procurement process is fair, efficient, and compliant with legal requirements and County policies and procedures;
- o) Chair the Procurement Council;
- p) Convene and chair the Procurement Appeals Board;
- q) Encourage County involvement in public procurement organizations in an effort to promote the public procurement profession through education and peer networking;
- r) Amend this manual to include additional Board policy, as directed by the Board of Supervisors or the County Executive Officer;
- s) Carry out the other duties and responsibilities as defined in this manual;
- t) Implement and maintain a Procurement Procedure Manual consistent with this CPM to guide the procurement and management of all contracts in a manner consistent with law, in consultation with County Counsel; and
- u) Amend this CPM to make clerical, ministerial, or other non-material edits, subject to review and approval of such clerical, ministerial, or other non-material edits by County Counsel, including updating provisions based on statutory authority that is cited in the CPM (e.g., statutory dollar triggers and limits, restrictions and authorizations). CPO will communicate to the Board any proposed increases to thresholds as a result of changes in statutory authority. All other changes will be made only as approved by the Board of Supervisors.

§1.1-110 Custodian of Documents

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

SECTION 1.1.1

DEPUTY PURCHASING AGENTS

§1.1.1-101 Policy

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

§1.1.1-102 Scope

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

§1.1.1-103 Specific Duties

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

SECTION 1.2

PROCUREMENT COUNCIL

§1.2-101 Definition

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

§1.2-102 Specific Duties

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

SECTION 1.3

PROTEST

§1.3-101 Policy

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

§1.3-102 Procedure

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

§1.3-103 Protest of Solicitation/Specifications

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

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

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

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

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

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

§1.3-106 Protest Process

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

§1.3-107 Appeal Process

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

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

SECTION 1.4

PROCUREMENT APPEALS BOARD

§1.4-101 Definition

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

§1.4-102 Purpose

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

§1.4-103 Policy

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

§1.4-104 Composition

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

standards, including applicable State and county laws and ordinances, and shall be available on short notice so that protests can be resolved quickly.

§1.4-105 Conflict of Interest – Procurement Appeals Board

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

§1.4-106 Procedures/Support

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

§1.4-107 No Right To Administrative Appeal

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

SECTION 1.5

COMPLIANCE MONITORING

§1.5-101 Policy

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

§1.5-102 Specific Duties

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

§1.5-103 Audit Process

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

SECTION 1.6

SURPLUS COUNTY PROPERTY

§1.6-101 Policy

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

§1.6-102 Definition

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

§1.6-103 Authority

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

§1.6-104 Disposition Methods

- (1) A department must attempt to dispose of Surplus County Department Property through internal transfer to a claiming department, until the County Procurement Officer determines the Surplus County Department Property is not needed by any other County department. At that time, the Surplus County Department Property must be disposed of as Surplus County Property.
 - a) Surplus County Department Property for which disposition is otherwise covered under law, regulation, code, or other Board of Supervisors policy are exempted from Section 1.6; provided that departments notify the County Procurement Officer or designee prior to disposition.
- (2) Surplus County Property shall be disposed of by the following methods, in the order listed below:

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

§1.6-105 Board Approval

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

SECTION 1.6.1

DISPOSITION OF REAL PROPERTY BY SALE

§1.6.1-101 Definitions

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

§1.6.1-102 Policy

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

§1.6.1-103 Real Property Need

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

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

§1.6.1-104 Notice to County Entities

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

§1.6.1-105 Appraisal of Real Property

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

§1.6.1-106 Request for Authorization to Solicit Bidder

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

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

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

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

- (1) The HCD, any local public entity within whose jurisdiction the land is located, as defined in Section 50079 of the Health and Safety Code and, upon written request, “Housing Sponsors” as defined in Section 50074 of the Health and Safety Code, for the purpose of developing low and moderate-income housing and any such sponsors who have notified HCD of their interest in surplus land that is located in Orange County or in all California counties. Priority is to be given to development of the land to provide affordable housing for lower income elderly or disabled persons or households, and other lower income households.
- (2) Any park and recreation department of any city and county within which the land is located. Park, Recreation and Open Space availability notices shall comply with the conditions and follow the requirements as described in Government Code Sections 54221(f)(2), 54222, and 54227(b).
- (3) Any regional park authority having jurisdiction within the area in which the land is located.
- (4) The State Resources Agency or any agency which succeeds its powers.
- (5) The nonprofit neighborhood enterprise association corporation for the area if the land is within an area designated as an enterprise zone, pursuant to Section 7073 of the Government Code. Check with the Planning Department of the city to determine if such a zone and corporation exist.

- (6) The city within which the land is situated. The notice should be addressed to the city manager or city administrator.
- (7) The city managers or city administrator of any other city the boundaries of which are within three miles of the surplus land.

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

§1.6.1-108 County Exempt Surplus Land

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

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

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

§1.6.1-109 Solicitation of Bids

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

§1.6.1-110 Selection of the Successful Bidder

- (1) Sealed Offers and Agreements to Purchase will be received by the CEO Real Estate and opened at a specified time.
- (2) Immediately after the sealed Offers have been opened, a call for verbal bids will be made. At this time, all persons who have not already submitted bids and who wish to bid on the property will have the opportunity to enter the bid process upon presentation of the required bid deposit in the manner prescribed in the bid package.
- (3) Once the verbal bidders have been identified, then the verbal bidding process will begin, with the requirement that the first verbal bid exceed the highest written bid by a predetermined percentage amount as set forth in the proposal package, as reasonably determined by the CREO.
- (4) At the close of verbal bidding, the high bidder shall execute the Offer and Agreement to Purchase Real Property and shall be notified that the total sum to be paid outside of escrow is due and must be delivered to CEO Real Estate on or before the date specified in the purchase agreement.
- (5) If the Board has not previously delegated the CREO to execute the agreement, the CEO Real Estate staff member will prepare an ASR that includes information concerning the number of bids received, the highest bidder, a financial resume, and other pertinent facts. The ASR shall be submitted to the Board at the earliest practicable date for final approval of the sale and permission to execute all applicable documents to close escrow, if any.
- (6) The ASR shall include a recommendation to the Board of Supervisors that “CEO Real Estate be authorized to return the deposits of unsuccessful bidders.”

- (7) All procedures and record-keeping shall be closely adhered to so that all those wishing to purchase County property are given an equal opportunity. Every action the County takes must evidence that these procedures are open and fair to all prospective bidders.

SECTION 1.7

PROCUREMENT CARDS

§1.7-101 Definition

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

§1.7-102 Authorized Use

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

§1.7-103 Responsibilities

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

§1.7-104 Controls

- (1) In addition to other internal controls and procedures as detailed in the Procurement Procedures Manual and Section 3.6 of this manual, use of County issued Procurement Cards are subject to the following controls:

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

§1.7-105 Adherence to Procurement Policy

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

SECTION 1.8

COUNTY OF ORANGE PROCUREMENT PREFERENCE POLICY

§1.8-101 Policy

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

§1.8-102 Business Eligibility Requirements

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

(2) DVBE Eligibility – To qualify as a DVBE, the DVBE must meet the following requirements:

- a) must be certified as a DVBE by the State of California DGS; and
- b) DGS DVBE requirements must be valid at the time of bid/proposal submittal.

(3) Eligibility for Contractors Using OCLSB/DVBE Subcontractors – As applied to procurements with a total estimated contract value in excess of \$200,000, prime contractors that do not otherwise meet the OCLSB/DVBE certification requirements may still qualify for OCLSB/DVBE preferences by virtue of their use of OCLSB/DVBE subcontractors. To qualify for the preferences by using certified OCLSB/DVBE subcontractor(s), twenty percent (20%) of the total proposed contract amount must be allocated to OCLSB and/or DVBE subcontractor(s) meeting the qualifications and certification requirements provided in subsections (1) and (2) above.

§1.8-103 Requests for Proposals

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

§1.8-104 Invitation for Bids / Low Bid Contracts

- (1) For solicitations that are based on the lowest responsive and responsible bid, the preference to be granted to a certified bidder pursuant to Section 1.8-102 above shall be equal to five percent (5%) of the lowest bid. Public Works Procurements shall not include a DVBE preference.
- (2) Except as applied to Public Works Procurements, a bidder deemed qualified for the Preference Policy pursuant to both of the eligibility categories detailed in subsections (1) and (2) of Section 1.8-102 above, or a bidder deemed eligible pursuant to subsection (3) of Section 1.8-102 that includes both certified OCLSB and DVBE subcontractors, the preference to be granted shall be equal to eight percent (8%) of the lowest bid.

- (3) Such preference shall be applied to all certified bidders that requested the preference, even if the certified bidder is the lowest responsible bidder meeting specifications. The contract award shall be the bidder's original bid price, not the price used for bid evaluation purposes.
- (4) In no instance shall any of the preference programs be combined to exceed a total of eight percent (8%), or a maximum of \$150,000, in response to any County solicitation.

§1.8-105 Waivers/Limitations

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

SECTION 2 – GENERAL RULES AND PROCEDURES

SECTION 2.1

ETHICS IN PUBLIC CONTRACTING - COUNTY EMPLOYEES

§2.1-101 Policy

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

§2.1-102 "Arm's Length" Principle

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

§2.1-103 General Standards of Ethical Conduct

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

Purchasing Agent who is overseeing the procurement process. This prohibition extends to the prospective bidder's or respondent's employees, representatives, agents, lobbyists, attorneys, sub-consultants, or anyone else acting on the behalf of the interested party. Contacts that are prohibited include those with members of the evaluation panel, the County Executive Officer, and other County staff; *provided, however, this prohibition shall not extend to members of the County's Board of Supervisors and Countywide Elected Officials or members of their respective staffs.*

§2.1-104 Conflict of Interest

(1) The State of California Government Code addresses conflicts of interest as follows:

- a) Section 87100: "No public official at any level of state or local government shall make, participate in making, or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest."
- b) Section 87103: "A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of the official's immediate family, or on any of the following:
 - i. Any business entity in which the public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more.
 - ii. Any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.
 - iii. Any source of income, other than gifts or other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars (\$500) or more in value provided to, received by or promised to the public official within twelve months prior to the time when the decision is made.
 - iv. Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.
 - v. Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within twelve months prior to the time when the decision is made. The amount of the value of gifts specified by this subdivision shall be adjusted biennially by the commission to equal the same amount determined by the commission pursuant to subdivision (f) of Section 89503.
 - vi. For purposes of this Section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater."
- c) Section 1090: (a) "Members of the legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity. (b) An individual

shall not aid or abet a Member of the Legislature or a state, county, district, judicial district, or city officer or employee in violating subdivision (a). (c) As used in this Section, 'district' means any agency of the state formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries."

- d) Any employees who, in the course of their employment, make, or participate in the making of, decisions which may potentially have a material effect on a financial interest of the employees are deemed 'designated employees' and are required to complete a Statement of Economic Interests (Form 700) on an annual basis, when they assume employment with the County, and when they terminate employment with the County.
- e) Upon discovery of an actual or potential conflict of interest, an employee shall promptly file a written statement of disqualification with the County Procurement Officer or appropriate Deputy Purchasing Agent and shall withdraw from further participation in the transaction involved. The employee may, at the same time, request through his department head an advisory opinion from County Counsel as to what further participation, if any, the employee may have in the transaction.

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

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

§2.1-106 Use of Confidential Information

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

§2.1-107 Purchase of Surplus Material and Equipment

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

§2.1-108 Auction Techniques

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

§2.1-109 Purchase for Personal Use

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

§2.1-110 Equal Opportunity

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

§2.1-111 Incremental Contracting

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

SECTION 2.2

ETHICS IN PUBLIC CONTRACTING - CONTRACTORS

§2.2-101 Conflict of Interest

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

§2.2-102 Vendor/Contractor Code of Conduct

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

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

§2.2-103 Levine Act

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

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

SECTION 2.3

SURETY AND INDEMNIFICATION

§2.3-101 Definitions

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

§2.3-102 Policy

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

- (4) **Insurance:** Insurance will be required where the County may suffer risk of loss due to the nature of the work being performed. It will be the obligation of each department to research and include in the contracts the appropriate insurance requirements for each applicable circumstance as stated in §2.3-103, below.

- a) No insurance is required for the following purchases:
 - i. emergency purchases (as consistent with Section 3.3-122(1)(a)(iii), when applicable),
 - ii. commodity purchases of \$5,000 or less (regardless of method of delivery),
 - iii. off-the-shelf software products, including off-the-shelf software maintenance, or
 - iv. commodity purchases in excess of \$5,000 that are delivered by third party common couriers to County.
- b) For service purchases, no insurance is required for purchases of \$5,000 or less unless the purchase is for:
 - i. maintenance services related to trades (e.g., plumber, electrician or carpenter) that are performed on County property/premise, or
 - ii. services described in §3.3-101(1) subsections (a), (f), (g) or (i).

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

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

§2.3-103 Standard Insurance Requirements

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

SECTION 2.4

PROCUREMENT REQUISITIONS

§2.4-101 Definition

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

§2.4-102 Policy

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

§2.4-103 Procedure

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

§2.4-104 Process

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

SECTION 3 - TYPES OF CONTRACTS

SECTION 3.1

COMMODITIES

§3.1-101 Definition

- (1) Commodities include all supplies and equipment, equipment rentals and leases, certain types of software and software licenses costing less than \$5,000 per unit, including tax and freight, and those costing \$5,000 per unit or more with a useful life expectancy of less than one (1) year. Included in the definition of commodity contracts covered in this Section are the following:
- a) Equipment – Operating Rental/Lease: These contracts are in essence an extended rental contract under which the owner of the equipment allows the County to operate or otherwise make use of the equipment in exchange for periodic lease payments. These types of contracts are “Operating leases” and are characterized by short-term, cancelable terms. The lessor bears the risk of obsolescence and depreciation of the equipment. Operating leases are generally preferable when the county needs the equipment for a short period of time such as for minor office equipment, printers, copiers, and light-duty vehicles and related equipment. Not included in the definition are long-term, "capital," non-cancelable leases.
 - b) Software/Licenses (Retail– Perpetual and Subscription): Contracts for proprietary software licenses where the software publisher grants the use of the software under the end-user license contract (EULA), but ownership of the software remains with the software publisher. These types of purchases typically include terms which define the uses of the software and number of users allowed.
 - i. Perpetual License - The right to use a software program indefinitely with payment of a single fee. License may or may not include a limited Software Maintenance period and/or the option to purchase ongoing Software Maintenance at the time of purchase or at a later date.
 - ii. Subscription License - The right to use a software as designed without customization for a determined fee, which includes general technical support, updates and upgrades to new versions or releases of the software (e.g. Software as a Service (SaaS) or Commercial Off the Shelf (COTS) software) irrespective of where the software is hosted. It may also include other no charge support that is included in the purchase price of the product in the commercial marketplace. No charge support includes items such as user blogs, discussion forums, on-line help libraries and FAQs (Frequently Asked Questions), hosted chat rooms, and limited telephone, email and/or web-based general technical support for users’ self-diagnostics.
 - iii. Software Maintenance - Includes person-to-person communications regardless of the medium used to communicate: telephone support, on-line technical support, and/or technical expertise which are changed commercially.
 - c) Subscriptions/Databases/Cloud Computing: Contracts for access to on-line information, databases or remote servers to be used to enhance or support a County program or project. Contracts of this type involve no on-site visits or work by a vendor and are limited to the digital exchange of information for a predetermined fee.

- d) Software Maintenance: Software maintenance as a product includes the publishing of bug/defect fixes via patches and updates/upgrades in function and technology to maintain the operability and usability of the software product. It may also include other no charge support that is included in the purchase price of the product in the commercial marketplace. No charge support includes items such as user blogs, discussion forums, on-line help libraries and FAQs (Frequently Asked Questions), hosted chat rooms, and limited telephone, email and/or web-based general technical support for users' self-diagnostics. Software Maintenance as a product is billed at the time of purchase or on an annual basis.
- e) Telecommunications/Data Communications: Contracts for technologies that enable the transmission, reception, and exchange of information and digital data between individuals, devices, systems, or networks, which may include wired or wireless connections to transmit data, such as the internet, telephone networks, data networks or satellite systems. These types of contracts typically include a monthly recurring charge for a predetermined fee. This definition does not include any contracts that may be procured under sections 3.4 or 3.5.
- f) Cash Alternatives: Cash alternatives, including gift cards and gift certificates, to purchase travel and food for non-employee County department clients receiving services from the County.

§3.1-102 Solicitation Considerations

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

§3.1-103 Term of Contract

- (1) The duration of all contracts for commodities shall be based upon the County's Best Interest. Consideration will be given to product availability, price volatility, and expectation of need. Except for contracts defined under Section 4.8 of this manual, in no case shall a commodity contract exceed five (5) years, except as specified in Section 3.1-104(2) below.

- (2) All contracts will include a provision for cancellation by the County due to lack of funds, termination of requirement, termination for convenience, termination with cause or prices which no longer reflect reasonable market prices.
- (3) Prior to renewal or extension of an existing contract, the department will document that performance of the contractor has been satisfactory.

§3.1-104 Contract Extensions

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

§3.1-105 Contract Pricing

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

§3.1-106 Vendor Selection

- (1) Selection of vendors for commodities will be based on the competitive process except Sole Source purchases as defined in Section 4.5 of this manual. Solicitations shall be made as follows:

a) Contracts \$25,000 or less over the life of the contract	Minimum of one written quote
b) Contracts \$25,001 to \$50,000 over the life of the contract	Minimum of two written quotes
c) Contracts above \$50,000 over the life of the contract	Written solicitation issued on County's bidding system
- (2) Commodity purchases that are below the solicitation threshold are not required to be competitively bid nor require a sole source justification for award, except as may be required for Federal or State funded purchases.
- (3) For commodities obtained through the IFB solicitation method as detailed in Section 4.2, awards in all cases will be made to the lowest responsive and responsible bidder.

- (4) Consecutive contracts going back three (3) years for purchases that contain substantially the same scope shall not be issued to the same vendor using the written quote(s) solicitation method when the consecutive contracts' cumulative dollar amount exceeds the written solicitation threshold.

§3.1-107 Public Bid Opening

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

§3.1-108 Retroactive Contract and Amendments/Changes

- (1) Retroactive contracts or contract overruns are not permitted. If a retroactive contract or contract overrun occurs, it is invalid unless ratified by the Board of Supervisors or unless one of the following exemptions applies:
- a) Retroactive contracts or contract overruns with a total value of \$500 or less that have the approval of the department head.
 - b) Retroactive contracts or contract overruns that exceed \$500 and are \$25,000 or less that have the approval of the County Procurement Officer or designee and Chief Financial Officer on the form(s) approved and provided by the County Procurement Office.

Retroactive contracts or contract overruns with a total value exceeding \$25,000 shall require approval by the Board of Supervisors.

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

§3.1-109 Contract Increases

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

§3.1-110 Multiple Awards

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

§3.1-111 Incremental Contracting

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

§3.1-112 Commodity Substitutions

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

§3.1-113 Emergencies

- (1) Emergencies are defined as those situations where the welfare of County residents is at stake and/or immediate procurement action is required to prevent serious economic or other hardship to the County. When, due to the nature of the emergency, it is not possible or it is impractical to follow competitive bidding requirements, these requirements may be waived by the County Procurement Officer or Deputy Purchasing Agent.
 - a) Emergency commodity purchases of \$1,000 or less may be made using petty cash or purchasing card, in accordance with Section 4.6 –Petty Cash Purchases.
 - b) For emergency commodity purchases exceeding \$1,000, the requestor will contact the County Procurement Officer or the department Deputy Purchasing Agent. The emergency will be described and the County Procurement Officer or Deputy Purchasing Agent may, if so authorized, use a purchasing card or may issue a contract number for an amount sufficient to resolve the immediate emergency.
 - c) No later than ten (10) business days from the request date, an approved requisition referencing the purchase will be submitted to the County Procurement Officer or Deputy Purchasing Agent.
 - d) The requisition will be accompanied by a memorandum from the department head or designee briefly detailing the emergency situation. The justification will become a permanent part of the procurement file.
 - e) If the emergency occurs during other than normal business hours, the department is authorized to secure the commodities required and contact the County Procurement Officer or Deputy Purchasing Agent on the next regular working day for issuance of a contract.

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

§3.1-114 Board Approval – Sole Source

- (1) Approval by the Board of Supervisors is required prior to the execution of a Sole Source Commodity Contract which costs more than \$250,000 annually. Commodity contracts may not be

Sole Sourced to avoid the bidding requirements contained in this Section. Refer to Section 4.5 – Sole Source Requests for additional policy concerning Sole Source purchases.

§3.1-115 Approval of Non-Standard Contract Terms

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

§3.1-116 Contractor Name/Ownership Changes

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

§3.1-117 Indemnification

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

§3.1-118 Insurance

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

§3.1-119 Opportunity Buy

- (1) An "Opportunity Buy" is a situation where necessary commodities are for sale at significantly reduced rates from what is normally offered in the general market or where an alternative product to the one being bid represents significant cost savings to the County. In the event this situation arises, the Department Head or designee shall prepare a written justification in support of the prompt action taken that shall become part of the permanent procurement file. The justification shall include:
 - a) A detailed description of the commodity to be provided by the vendor and an explanation of the cost savings achieved;
 - b) Why the recommended vendor is the only one capable of providing the required commodities with back-up information included to support the justification;
 - c) Comparison of the recommended vendor's prices or fees to the general market with price and attach quotes for comparable items provided, if available; and,
 - d) County Procurement Officer or designee approval is required for Opportunity Buys exceeding \$1,000,000, and an Agenda Staff Report will be filed with the Board of Supervisors by the appropriate Department Head. The Agenda Staff Report shall include all documentation and justification in support of the purchase.

§3.1-120 Federal and State Funding

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

§3.1-121 Hybrid Contract Definition

- (1) A hybrid contract is a contract which consists of multiple contract type purchases. For example, a contract for the purchase of a commodity and a service is considered a hybrid contract. The solicitation process will be based on the portion with the greater amount; however, each situation should be carefully considered and documented.
- (2) Purchases that are evenly split between commodity and service should be reviewed on a case-by-case basis by the Deputy Purchasing Agent to determine the appropriate Service or Commodity solicitation process, which shall be documented and made a permanent part of the procurement folder.

- (3) If the service portion of a hybrid contract exceeds an annual aggregate cost of \$200,000, or the service portion of a sole source hybrid contract exceeds an annual aggregate cost of \$100,000 or a five (5) year term, refer to Section 3.3-102 (1) a) and b) of this manual.

§3.1-122 Cash Alternative Purchases

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

SECTION 3.2

CAPITAL ASSETS

§3.2-101 Definition

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

§3.2-102 Used Equipment

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

§3.2-103 Board Approval

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

(3) Sole Source Capital Assets:

- a) Approval by the Board of Supervisors is required prior to the procurement of a Sole Source Capital Asset costing more than \$100,000. Procurements may not be Sole Sourced to avoid the bidding requirements contained in this manual. For additional rules and guidelines, refer to Section 4.5 of this manual.

§3.2-104 Approval of Non-Standard Contract Terms

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

§3.2-105 Solicitation Considerations

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

§3.2-106 Vendor Selection

- (1) With the exception of Sole Source purchases, selection of vendors for Capital Assets shall be based on the competitive process. Solicitations shall be made as follows:
 - a) Contracts \$5,000 to \$50,000 over the life of the contract Minimum of two written quotes
 - b) Contracts above \$50,000 over the life of the contract Written solicitation issued on County's bidding system
- (2) Capital Asset purchases that are below the solicitation threshold are not required to be competitively bid nor require a sole source justification for award, except as may be required for Federal or State funded purchases.
- (3) Awards will be made to the lowest responsive and responsible bidder or, in the case of negotiated procurement, the vendor with the most responsive proposal as determined by the County.

§3.2-107 Public Bid Opening

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

§3.2-108 Retroactive Contract and Amendments/Changes

- (1) Retroactive contracts or contract overruns are not permitted. If a retroactive contract or contract overrun occurs, it is invalid unless ratified by the Board of Supervisors or unless one of the following exemptions applies:
 - a) Retroactive contracts or contract overruns with a total value of \$500 or less that have the approval of the department head.
 - b) Retroactive contracts or contract overruns that exceed \$500 and are \$25,000 or less that have the approval of the County Procurement Officer or designee & Chief Financial Officer on the form(s) approved and provided by the County Procurement Office.

Retroactive contracts or contract overruns with a total value exceeding \$25,000 shall require approval by the Board of Supervisors.
- (2) Retroactive contracts in the following categories shall also be exempt from Board of Supervisors approval:
 - a) Contracts governed by separate rules and regulations that conflict with this policy.
 - b) Telephone services requests and emergency contracts in any amount.
 - c) Modifications for computer hardware/software maintenance to add licenses and/or users.

§3.2-109 Indemnification

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

§3.2-110 Insurance

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

§3.2-111 Emergencies

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

§3.2-112 Federal and State Funding

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

§3.2-113 Opportunity Buy

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

SECTION 3.3

SERVICE CONTRACTS

§3.3-101 Definition

- (1) Service contracts encompass all contracts for services either with or without the furnishing of materials. Included in the definition of service contracts covered in this Section are the following:
- a) Professional Services: Services provided by licensed and/or technically trained professionals, including such services as, data processing, accounting, legal, medical, auditing, information-technology (IT) related services that may or may not include: customized software/application, installation and implementation services, creation/development, design, implementation and/or integration of customized changes to software that are not included with the price of the software or software maintenance.
 - 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, etc. Prevailing wage shall be paid pursuant to Labor Code Section 1720 et seq., when applicable. Registration with the Department of Industrial Relations will be required, when applicable, pursuant to Labor Code Section 1771.1(a) and 1725.5.
 - c) Personnel or employee-related services: Services which provide benefit or assistance directly to employees, including such services as temporary employment, security, etc.
 - d) Consultant Service Contracts: Are for those services which are of an advisory nature, which provide a recommended course of action or personal expertise, and which have an end product which is basically a transmittal of information. Consultant service contracts are issued in order to obtain professional or technical advice or expertise which will supplement departmental expertise or advice or where an independent opinion or audit is required. All consultant service contracts shall contain a provision which prohibits “follow-on” projects that prevent the consultant from performing work related to any recommendations being formulated as a result of the consulting work.
 - e) Revenue Generating Contracts (non-real estate): A contract for contractor-provided services on County premises in which the County does not pay a fee, but instead receives a portion of the revenues that are generated from the services such as vending machines, etc.
 - f) Capital Leases (non-real estate): A long-term lease that transfers to the lessee most rights and obligations concerning the asset leased, and usually transfers ownership at the end of the lease.
 - g) Customized Software Maintenance: Software maintenance creates, designs, implements, and/or integrates customized changes to software that solve one or more problems and is not included with the price of the software.
 - h) Architect-Engineer (“A-E”) Consultant Services: Services may include but are not necessarily limited to: investigations, report preparation, cost estimating, shop drawing review, CEQA documentation preparation, regulatory permit application and acquisition, archeology, geological and soils analysis, agronomy, limnology, biology, paleontology, material testing and inspection, real estate appraisal, and property acquisition services.

Services also may include studies addressing engineering, architecture, facilities management, and environmental issues but **shall not** include design or construction drawings used for public works construction projects.

- i) Human Services: Human Services Contracts include all contracts for services that directly maintain or improve the social, economic, physical, or mental well-being of persons for whom the County bears such a responsibility, including food and travel. Included in the definition of Human Services Contracts are services provided in response to or in support of federal, state and/or local service mandates to provide health and human services to a target population.
- (2) Service contracts as defined in, and applied to, this section do not include Architect-Engineer Service Contracts (related to engineering and design of public projects), Public Works Construction Contracts, and Real Estate Contracts. For policies related to Architect-Engineer Service Contracts, refer to Section 3.4. For policies related to Public Works Construction Contracts, refer to Section 3.5. For policies related to Real Estate Contracts, refer to Sections 3.7 and 4.3.1.

§3.3-102 Board Approval

- (1) Approval by the Board of Supervisors is required for all service contracts in accordance with the guidelines listed below.
 - a) Contracts Exceeding \$200,000 – Approval by the Board of Supervisors is required for all service contracts and/or revenue generating contracts where for any year of the contract, the annual value to any one contractor exceeds \$200,000, in accordance with Government Code Section 25502.5.
 - b) Sole Source Service Contracts – Approval by the Board of Supervisors shall be required for all Sole Source service contracts that exceed a total annual amount of \$100,000 or a five (5) year term. Contracts may not be split to avoid this policy, including proposed successor contracts that contain substantially the same scope of work. Renewal of a Sole Source Service where no changes to the scope or the dollar amount of the contract will not require a new Sole Source approved form. For additional information and guidelines refer to Section 4.5 – Sole Source Requests.

§3.3-103 Approval of Non-Standard Contract Terms

- (1) Unless Risk Management agrees in writing that the risk to the County is minimal and County Counsel agrees in writing that the legal risk to the County is minimal, approval by the Board of Supervisors is required prior to the execution of any contract for \$200,000 or less that includes non-standard terms in the indemnification contract provisions and/or limits the vendor's liability. This shall not apply to service purchases of \$5,000 or less, unless the contract contains an indemnification provision that requires the County to indemnify the vendor.
- (2) Unless County Counsel agrees in writing that the legal risk to the County is minimal, approval by the Board of Supervisors is required prior to the execution of a contract for \$200,000 or less that includes non-standard terms in the governing law or arbitration/dispute resolutions contract provisions. This shall not apply to service purchases of \$5,000 or less.

§3.3-104 Contractor Name/Ownership Changes

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

§3.3-105 Term

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

§3.3-106 Contract Extensions

- (1) Service Contracts may be extended up to a five (5) year term without approval by the Board of Supervisors. The extension may be issued by the Deputy Purchasing Agent, without Board of Supervisors approval provided there are no monetary increases that cumulatively exceed the Board of Supervisors approval threshold, while complying with solicitation thresholds.

- (2) Board and non-Board contract extensions may be issued by the Deputy Purchasing Agent for up to one (1) year, beyond the fifth year, with County Procurement Officer or designee approval, provided there are no monetary increases (i.e., within the contract's existing contract amount).

§3.3-107 Renewals

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

§3.3-108 Pricing

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

§3.3-109 Vendor Selection

- (1) With the exception of Sole Source service contracts, selection shall be based on the competitive process. Solicitations shall be made as follows:
- a) Contracts \$100,000 or less over the life of the contract Minimum of one written quote
 - b) Contracts above \$100,000 over the life of the contract Written solicitation issued on County's bidding system
- (2) Services that are below the solicitation threshold are not required to be competitively bid nor require a sole source justification for award, except as may be required for Federal or State funded procurements.

- (3) Awards in Invitation for Bid solicitations will be made to the lowest responsive and responsible bidder as defined in Section 4.2-102 of this manual. In the case of a negotiated procurement, award shall be made to the vendor with the most responsive and responsible proposal as detailed in Section 4.3-114 of this manual.
- (4) Consecutive contracts going back three (3) years for purchases that contain substantially the same scope shall not be issued to the same vendor using the written quote(s) solicitation method when the consecutive contracts' cumulative dollar amount exceeds the written solicitation threshold.

§3.3-110 Public Bid Opening

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

§3.3-111 Retroactive Contract and Amendments/Changes

- (1) Retroactive contracts or contract overruns are not permitted. If a retroactive contract or contract overrun occurs, it is invalid unless ratified by the Board of Supervisors or unless one of the following exemptions applies:
 - a) Retroactive contracts or contract overruns with a total value of \$500 or less that have the approval of the department head.
 - b) Retroactive contracts or contract overruns that exceed \$500 and are \$25,000 or less that have the approval of the County Procurement Officer or designee and Chief Financial Officer on the form(s) approved and provided by the County Procurement Office.

Retroactive contracts or contract overruns with a total value exceeding \$25,000 shall require approval by the Board of Supervisors.

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

§3.3-112 Adjustments to Contract Amount

- (1) Decreases: The department Deputy Purchasing Agents may decrease the amount of a contract without obtaining approval from the Board of Supervisors.
- (2) Increases: With respect to non-Board awarded service contracts, cumulative contract increases may not exceed 10% of the original annual contract amount, unless authorized/approved by the County Procurement Officer or designee on the form(s) approved and provided by the County Procurement Office. The department Deputy Purchasing Agent shall submit a form, which shall

be made a permanent part of the procurement file, to request an increase of the value of a non-Board awarded service contract under the following circumstances:

- a) The need for service could not be accurately projected and the percentage of increase does not justify rebidding.
 - b) An emergency exists which does not permit rebidding.
 - c) Special economic factors justify a contract increase.
- (3) For Board awarded contracts, no increase exceeding the contingency amount will be permitted without approval by the Board of Supervisors.
- (4) Exemptions: Subordinate contracts issued against RCAs, and subordinate contracts issued against CPO approved cooperative programs with a total aggregate contract amount below the thresholds requiring approval by the Board of Supervisors, and contracts awarded via informal solicitations (one written quote) will not require approval from the County Procurement Officer or designee.

§3.3-113 Contingency Funds

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

§3.3-114 Multiple Awards

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

§3.3-115 Incremental Contracting

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

§3.3-116 Indemnification

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

§3.3-117 Insurance

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

§3.3-118 Bid and Performance Bond

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

§3.3-119 Liquidated Damages

- (1) Liquidated damages clauses are enforceable if:
 - a) damages are difficult to ascertain or estimate at the time the contract is formed; and
 - b) the amount is a reasonable forecast of compensatory damages in the case of breach. Specifically, if the liquidated damages amount significantly exceeds the amount of damages prospectively probable, the liquidated damages clause may not be enforceable.
- (2) Liquidated damage clauses may be included in service contracts when the County could suffer financial loss due to delays in performance. Consistent with legal requirements, the amount of damages listed in the contract must be a "reasonable forecast" of the County's actual damages.
- (3) Liquidated Damages Clause:
 - a) It is agreed by and between the Contractor and the County that if this Contract is not fully and completely performed within the terms of the contract, damage will be sustained by the County. Said damage includes any additional costs resulting from a delay in scheduled time frames by the Contractor. Since it is and will be impractical and extremely difficult to determine the actual damage which the County will sustain by reason of such delay, it is therefore agreed that Contractor will pay to the County liquidated damages in a set amount for each and every day of delay as set forth in this document.
 - b) In the event the liquidated damages as set forth herein are not paid by the Contractor, the County will deduct the amount of liquidated damages from any monies due Contractor under this contract.
 - c) This provision may be invoked at the sole option of the County by notification to the Contractor by certified return receipt mail.
 - d) If Contract is delayed by reason of changes or extra services ordered by the County or as a result of the County's failure to perform or delays cause by the County, the time of performance of this Contract will be extended commensurate with the time required for the extra services, and no liquidated damages will accrue during the period of such extension.
 - e) If this Contract is not fully and completely performed within the time set forth herein, the County shall have the right to increase the time for such performance and to waive the liquidated damages. Nothing herein shall be construed as giving the Contractor a right to extra time for performance.

§3.3-120 Contract Administration

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

§3.3-121 Cancellation

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

§3.3-122 Emergencies

- (1) Emergencies are defined as those situations where the welfare of County residents is at stake and/or immediate purchasing action is required to prevent serious economic or other hardship to the County. When due to the nature of the emergency, it is not possible or it is impractical to follow competitive bidding requirements, these requirements may be waived by the County Procurement Officer or Deputy Purchasing Agent.
 - a) Process:
 - i. Emergency service purchases of \$1,000 or less may be made using petty cash or purchasing card, in accordance with Section 4.6- Petty Cash Purchases.
 - ii. For emergency service purchases over \$1,000 the requestor will contact the County Procurement Officer or appropriate department Deputy Purchasing Agent. The emergency will be described and the County Procurement Officer or Deputy Purchasing Agent may use a purchasing card, when so authorized, or may issue a contract for an amount sufficient to resolve the immediate emergency.
 - iii. The requestor will ensure and will confirm with the County Procurement Officer or Deputy Purchasing Agent that the service contractor carries insurance.
 - iv. No later than ten (10) working days from the request date, an approved requisition referencing the purchase will be submitted to the County Procurement Officer or Deputy Purchasing Agent. This requisition will be accompanied by a memorandum from the department head or designee briefly detailing the emergency situation. The justification will become a permanent part of the procurement file.
 - v. If the emergency occurs on other than normal working hours, the department is authorized to secure the services required and contact the County Procurement Officer or Deputy Purchasing Agent on the next regular business day.

- vi. For emergency purchases exceeding \$200,000, an Agenda Staff Report will be filed with the Board of Supervisors by the department administering the contract as soon as possible, after the service is performed.

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

§3.3-123 Contract Planning and Coordination

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

§3.3-124 Contracts for Outside Legal Counsel

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

§3.3-125 HIPAA – Business Associate Language

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

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

§3.3-126 Federal and State Funding

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

§3.3-127 Hybrid Contract Definition

- (1) A hybrid contract is a contract which consists of multiple contract type procurements. For example, a contract for the purchase of a commodity and a service is considered a hybrid contract. The solicitation process will be based on the portion with the greater amount; however, each situation should be carefully considered and documented.

- (2) Procurements that are evenly split between commodity and service should be reviewed on a case-by-case basis by the Deputy Purchasing Agent to determine the appropriate solicitation process, which shall be documented and made a permanent part of the procurement folder.
- (3) If the service portion of a hybrid contract exceeds an annual aggregate amount in excess of \$200,000, refer to Section 3.3-102 (1) a) and b) of this manual.

§3.3-128 County of Orange Procurement Preference Policy Exemption

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

§3.3-129 Opportunity Buy

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

SECTION 3.4

ARCHITECT-ENGINEER SERVICE CONTRACTS

§3.4-101 General Responsibilities

- (1) State and local law, including [Public Contract Code Section 22034](#), [Government Code Section 25502.5](#), [Orange County Codified Ordinances Section 1-8-11 et seq.](#), and [Orange County Codified Ordinances Section 1-4-12 et seq.](#), provide for delegation of authority by the Board of Supervisors to appropriate officials to engage contractors to provide architectural and engineering services within specified dollar limits. Unless otherwise specified, all references in this section to “Director” shall mean the Director of OC Public Works, Sheriff-Coroner or those qualified County officials or department designees identified by the Director of OC Public Works.
 - a) The employees designated by the Director to procure A-E service contracts and public works construction contracts shall be trained under the direction of the County Procurement Officer, adhere to the methods, policies and procedures established by the County Procurement Officer and deputized as Deputy Purchasing Agents to exercise the authority delegated to the County Procurement Officer by the Board of Supervisors as authorized by law.
 - b) The Deputy Purchasing Agents shall procure A-E contracts and public works construction contracts at the direction of the Director or his or her designee(s), including overseeing the processes for the selection of architects, engineers, and construction contractors, entering into design and construction contracts on behalf of the County, and handling related protests and appeals, as allowed by statute and in accordance with Sections 3.4, 3.5 and 3.6.
- (2) Notwithstanding the Architect-Engineer (A-E) services as defined in Section 3.3 above, all other A-E service contracts, including those not requiring Board of Supervisors approval, shall be solicited and executed by the Director of OC Public Works, Sheriff-Coroner or those qualified County officials or department designees identified by the Director of OC Public Works, or the Sheriff-Coroner to solicit and execute A-E service contracts in accordance with this CPM, Resolutions of the Board of Supervisors and applicable law.
- (3) It shall be the duty of the Director to procure all A-E service contracts and public works construction contracts and handle related protests and appeals, for the County of Orange, its agencies and departments, and the Orange County Flood Control District, and any other public entity that elects to adopt this section of the CPM. All references to the Board of Supervisors shall also apply to the governing body of any public entity that elects to adopt this CPM. If the Sheriff-Coroner determines it is in the best interests of the County for the Director of OC Public Works to procure a particular contract or type of contract, the Director of OC Public Works shall have the authority to procure such contracts.
- (4) Although the Director has the responsibility to prepare and procure design and construction contracts, the contracting department is responsible for: identifying the scope of the project; budgeting and funding of the project, including and ensuring the project meets any applicable requirements relating to the funding source; providing support to the Director throughout design and construction, inspections, contract compliance, and payment processing; and

working with the Director to identify the department's roles and responsibilities for each project.

§3.4 - 102 Definition

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

§3.4-103 Statute

- (1) Government Code Section 4525 *et seq.* (Mini-Brooks Act) governs contracts between public entities and private architectural, landscape architectural, engineering, environmental, land surveying, and construction project management firms. These statutes establish a Qualifications-Based Selection (QBS) method that public agencies in California must use to contract for professional services. This method requires that such services be engaged on the basis of demonstrated competence and qualifications for the types of services to be performed and at a fair and reasonable price. Accordingly, public agencies may not utilize competitive bidding for such services, except in the limited instances where the State or local agency head determines that the services needed are more of a technical nature and involve little professional judgment and that requiring bids would be in the public interest (Government Code §4529). In addition, the procedures adopted to implement the Mini-Brooks Act must assure maximum participation of small business firms as defined in Government Code Section 14837.

§3.4-104 Conflicts of Interest

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

- (1) An A-E entity representing a private sector client with an interest in a County project may not also represent the County on the same project; and
- (2) Notwithstanding Paragraph (1), an A-E entity may serve in both design and construction support

roles on a given project if those roles were contemplated as part of the same contract.

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

§3.4-105 Board of Supervisors Approval

- (1) “In Counties having a population of 200,000 or more, the Board may authorize the purchasing agent to engage independent contractors to perform services for the County or County officers, with or without the furnishing of material, when the annual aggregate cost does not exceed two hundred thousand dollars (\$200,000).” Government Code Section 25502.5. Therefore, Board of Supervisor approval is required when the annual aggregate cost exceeds \$200,000.
- (2) Approval by the Board of Supervisors is required for all sole source A-E Service contracts that exceed a total annual aggregate amount of \$100,000 or a five-year consecutive term, inclusive of any amendments, regardless of dollar amount.

§3.4-106 Contractor or Firm Name/Ownership Changes

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

determined that the proposed assignee is qualified to perform according to the terms of the contract and original solicitation requirements and any key staff identified in the contract remain unchanged.

- (3) Upon approval of County Counsel, Deputy Purchasing Agents are authorized to approve a change in contractor name or ownership for non-Board awarded contracts.

§3.4-107 Term

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

§3.4-108 Firm Selection Methods

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

- (2) Request for Qualifications:

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

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

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

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

b) Additional Use of Qualified Vendor List

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

(3) Request for Proposals

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

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

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

(5) Competitive Bidding

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

(6) Sole Source Contracts:

- a) “Sole source contracts” are contracts that are excused from competitive bidding when (1) the service requested is proprietary, or (2) the County’s business needs require expeditious

award of a contract without competitive bidding. Approval by the Board of Supervisors is required for award of all sole source contracts that exceed an annual amount of \$100,000 or a five (5) year consecutive term (Note: firms that are listed on a current Qualified Vendor List have participated in the competitive bidding process, and do not require sole source justification for contract award. However, contracts awarded from a Qualified Vendor List may still require approval by the Board of Supervisors if they exceed the thresholds in Government Code § 25502.5).

(7) **One-Time Contracts:**

- a) In such cases where firms from an existing Qualified Vendor List cannot be utilized, contracts that do not exceed \$100,000 are considered “one-time” contracts and are not required to be competitively bid nor require a sole source justification for award. Alternate submittals should be obtained to ensure the County has validated firm qualifications and competitive pricing.

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

- (1) For multiple award contracts, the following factors are to be utilized prior to deciding which A-E firm will be requested to perform the necessary services:
 - a) **Expertise:** Applicable expertise of the firm to best perform the specific scope of the services identified.
 - b) **Capacity:** Review of the firm’s necessary staff and equipment availability to perform the specific scope of services identified within the County’s requested time period.
 - c) **Price:** Review of the estimated level of effort and resulting cost to complete the services identified.
 - d) **Utilization:** When the above factors are substantially the same, and in the case of equivalent costs for identified services, the County may consider the amount of work each firm has previously performed under the current contract.
 - e) **Performance:** If poor performance becomes an issue for a specific firm, that firm may receive fewer requests for identified services to protect the County from resulting quality or safety issues.

§3.4-110 Quarterly Usage Report

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

§3.4-111 Amendments

- (1) Within the limited authority granted by the Board of Supervisors, the Director or Director’s designee may amend the contract allowing additional work that is related to, and is of a similar nature to, the original scope, as long as the additional work does not exceed the value of the contract approved by the Board of Supervisors.
- (2) If an increase to an A-E service contract is necessary, the estimated not-to-exceed amount will be agreed upon in writing before beginning the additional work.
- (3) If an A-E service contract has not been approved by the Board of Supervisors, any change to

the Contract that increases the annual aggregate amount beyond \$200,000 must be approved by the Board of Supervisors.

- (4) Subject to restrictions set forth in Paragraph (3) above, increases of the A-E service contract amount for services within a contract's existing scope of work may be granted by the Director or Director's designee without Board of Supervisor's approval where the increased amount does not exceed 25 percent of the existing contract price or \$200,000 annually, whichever is less.
- (5) Amendments to an A-E service contract exceeding the Director's authority as described above must be submitted to the Board of Supervisors for approval.
- (6) Amendments to an A-E service contract require Board of Supervisors approval when there is a major change in the scope of the contract or the change would result in a major delay that significantly differs from the original period of performance as agreed upon in the contract.

§3.4-112 Extensions

- (1) Notwithstanding Section 3.4-112, at the Director's discretion, with the concurrence of County Counsel and for the sole purpose of completing work already commenced, the Director may extend the term of a Board-awarded or non-Board awarded A-E service contract for a period of not more than one (1) year so long as there is no increase in cost to the County or change in the scope of work.

§3.4-113 Insurance

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

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

§3.4-114 State And Federal Grant Projects

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

§3.4-115 Prevailing Wage

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

SECTION 3.5

PUBLIC WORKS CONSTRUCTION CONTRACTS

§3.5-101 General Responsibilities

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

§3.5-102 Definition

- (1) As used in this CPM, “public works,” “public works contract,” “public works construction contract” or “public works project” shall share the same meaning as “public project” as defined in [Public Contract Code Section 22002\(c\)](#):
 - a) Public works contract or public works project means any of the following:

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

(2) Prevailing wage shall be paid pursuant to [Labor Code Sections 1720](#) *et seq.*

§3.5-103 Purpose and Scope

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

§3.5-104 Statute

- (1) Public works contracts shall be issued in accordance with the provisions of the [Public Contract Code Sections 22000](#) *et seq.*, also known as the Uniform Public Construction Cost Accounting Act (the Act), and on forms approved for use by County Counsel.
- (2) The provisions of the Act relative to bidding procedures supersede the procedures contained within the code that would otherwise apply to specific projects or public entities.
- (3) Amendments or revisions to the code sections affecting this policy and resulting procedures may be directly incorporated into this CPM when enacted by the California Legislature without further action of the Board of Supervisors.

§3.5-105 Contract Methodology

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

§3.5-106 Design-Bid-Build

- (1) The Design-Bid-Build method splits construction projects into three (3) distinct phases: (1) design, (2) solicitation and (3) construction. During the design phase, the local agency prepares detailed project plans and specifications using its own employees or by hiring outside architects and engineers, as specified in Section 3. The solicitation and construction phases are specified within this Section.
- (2) [Public Contract Code Sections 20100](#) *et seq.* delineates the requirements and procedures that local officials must follow when awarding public works contracts.
- (3) The County of Orange utilizes the Design-Bid-Build method for construction projects resulting in a Fixed-Price Contract, a Fixed-Price Indefinite Quantity Contract, or a Cost Plus Fixed Fee Contract. When using this method, it is required to utilize the prequalification process per Sections 3.5-114 through 3.5-117.

§3.5-107 Invitation for Bid (IFB) Process

- (1) Public works contracts with a value of \$200,000 or less may be procured by using informal bidding procedures as set forth in [Public Contract Code Section 22032](#) and [Orange County Codified Ordinances 1-8-10 through 1-8-14](#).
- (2) Unless the product or service is proprietary, all contracts with a value of between \$60,000 and \$200,000 or less, or those amounts provided by [Public Contract Code Section 22032](#), shall be selected using the following informal bidding procedures:
 - a) The Director shall maintain a list of qualified contractors, identified according to categories of work. Minimum criteria for development and maintenance of the contractors list shall be determined by the Director.
 - b) All contractors on the list for the category of work being bid or all construction trade journals specified in [Public Contract Code Section 22036](#), or both, shall be mailed or emailed a notice inviting informal bids unless the product or service is proprietary.
 - c) All mailing of notices to contractors and construction trade journals pursuant to this section shall be completed not less than ten (10) calendar days before bids are due.
 - d) The notice inviting informal bids shall describe the project in general terms and how to obtain more detailed information about the project, and state the time and place for the submission of bids.
 - e) As provided by [Public Contract Code Section 22034\(d\)](#), if all bids received are in excess of \$200,000, the Board of Supervisors may, by adoption of a resolution by a four-fifths vote, award the contract, at \$212,500 or less, to the lowest responsible bidder, if it determines the cost estimate of the agency or department was reasonable.
- (3) The Director or designee shall approve plans, specifications, working details for its public works projects, and shall issue contracts for all public works contracts with a value of \$200,000 or less.
- (4) Regarding public works contracts with a value of more than \$60,000, which are not Construction Manager at-Risk or Design-Build contracts, the County must award each contract to the lowest

responsive, responsible bidder, except under one of the following circumstances:

- a) The County may award the contract to the bidder of its choice if the two lowest bids are equal per Public Contract Code 22038(b).
 - b) The County may reject any bids presented, furnish a written notice to the apparent low bidder and then:
 - i. Abandon the advertised public works project or re-advertise for bids in the manner described in the Act per Public Contract Code Section 22038(a)(1); or
 - ii. Declare, by passage of a resolution with four-fifths approval of the Board of Supervisors, that the work can be performed more economically by employees of the County, and have the project performed by force account which is work ordered on a construction project without an existing contract on its cost, and performed with the understanding that the contractor will bill the owner according to the cost of labor, materials, and equipment, plus a certain percentage for overhead and profit.
 - c) If no bids are received by formal or informal bid procedure, the County may have the work performed by employees of the County by force account or negotiated contract in accordance with [Public Contract Code Section 22038\(c\)](#).
- (5) Public works contracts valued at over \$200,000 shall be solicited using formal bid procedures as provided by [Public Contract Code 22037](#). The project, plans, and specifications shall be adopted by the Board of Supervisors, unless delegated. The invitation for bids shall be authorized by the Board of Supervisors, unless delegated, and advertised by the Director or designee. The contract shall be awarded by the Board of Supervisors. The approved contract shall be executed by the Board of Supervisors unless the authority has been clearly delegated and authorized to others by the Board of Supervisors.
- (6) Emergency projects shall be performed in accordance with [Public Contract Code Section 22035 or 22050, as applicable](#).

§3.5-108 Change Orders

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

- (4) The Director or designee shall adhere to County procedures for:
 - a) Reviewing change requests;
 - b) Negotiating change order with the contractor;
 - c) Obtaining legal review and approval of change orders, where appropriate; and
 - d) Preparing written documentation on change orders.

§3.5-109 State And Federal Grant Projects

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

§3.5-110 Alternate Project Delivery Methods

- (1) Alternate Project Delivery Methods shall include Design-Build, Construction Manager at-Risk (CMAR), and Job Order Contract (JOC).
- (2) It is the policy of the County of Orange to solicit in full and open competition and award contracts that are consistent with the nature and requirements of the specifications or services to be procured utilizing the most efficient and effective project delivery method.
- (3) The purpose of this section is to provide an overview of the County's options and alternate project delivery methods of contracting for construction, architectural, engineering, and construction-related services. The scope of this section covers Architect-Engineering (A-E) service contracts and/or public works construction contracts.
- (4) This section establishes the available options and applicable statutory provisions for alternate project delivery methods for utilization by each County department. Alternate project delivery methods involve utilizing qualifications as the primary criteria for selection of construction services as an “alternate” to a price-based selection (or low bid/Design-Bid-Build).

§3.5-111 Design-Build

- (1) Design-Build (DB) is a qualification-based selection (QBS), in which both the design and construction services for a project are procured at the same time following the QBS and pursuant to statute, the contract is awarded either to the lowest responsible bidder or by best value to a single entity known as the DB Entity. In contrast to Design-Bid-Build, DB relies on a single point of responsibility contract and is used to minimize risks for the project owner and to shorten the delivery schedule by overlapping the design phase and construction phase of a project.
- (2) Chapter 4 commencing with Public Contract Code Section [22160](#) provides the general authority for DB procurement by local agencies. With Board of Supervisors approval, the County may use DB contracts for public works projects in excess of \$1,000,000, except for projects on the state highway system, and may award such contracts either to the lowest responsible bidder or by best value. Best value means a value determined by objective criteria related to price, features,

functions, life-cycle costs, experience, and past performance.

- (3) Public Contract Code [Section 22161\(g\)\(1\)](#) defines “project” for the purposes of DB procurement as the construction of a building or buildings and improvements directly related to the construction of a building or buildings, county sanitation wastewater treatment facilities, and park and recreational facilities, but does not include the construction of other infrastructure, including, but not limited to, streets and highways, public rail transit, or water resources facilities and infrastructure. For a county that operates wastewater facilities, solid waste management facilities, or water recycling facilities, “project” also includes those facilities.
- (4) Unless subsequently amended, Public Contract Code [Section 22169](#) provides that the statutes authorizing DB contracting are repealed as of January 1, 2025.
- (5) Pursuant to [Public Contract Code Section 22162.6](#), in addition to those projects permitted to be delivered by DB under [Public Contract Code Section 22161\(g\)\(1\)](#), DB contracts may also be used to deliver the following types of projects in Orange County:
 - a) Flood protection improvements
 - b) Harbor and beach improvements
 - c) Bikeway improvements

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

- (6) Pursuant to [Public Contract Code Section 22162.6](#), in addition to the requirements set forth in Section 22164, for a project authorized under Section (5) above, the County shall be responsible for the performance of, and County employees in Orange County Public Works may perform, project development services, including performance specifications, preliminary engineering, procurement services and the preparation of project reports, and construction inspection services, excluding specialty bridge inspections. The County shall also be the responsible agency for, and County employees in Orange County Public Works may perform, the preparation of documents that may include, but need not be limited to, the size, type, and desired design character of the project, performance specifications covering quality of materials, equipment, and workmanship, preliminary plans, and any other information deemed necessary to describe adequately the needs of the County of Orange.
- (7) Orange County Flood Control District may use the Design-Build project delivery method to design, build and perform projects for flood protection improvements. Public Contract Code [Section 22162.7\(a\)](#). The District may perform no more than twelve (12) such projects with a dollar value greater than \$5 million prior to January 1, 2025. Public Contract Code [Section 22162.7\(c\)](#).
- (8) Pursuant to Public Contract Code Section 22162.7, in addition to the requirements set forth in Section 22164, for a project authorized under Section (7) above, the Orange County Flood Control District shall be responsible for the performance of, and County employees in Orange County Public Works may perform, project development services, including performance specifications, preliminary engineering, procurement services and the preparation of project reports, and construction inspection services, excluding specialty bridge inspections. The County shall also be the responsible agency for, and County employees in Orange County Public Works may

perform, the preparation of documents that may include, but need not be limited to, the size, type, and desired design character of the project, performance specifications covering quality of materials, equipment, and workmanship, preliminary plans, and any other information deemed necessary to describe adequately the needs of the Orange County Flood Control District.

- (9) The DB method of project delivery affords a more collaborative approach, which may provide benefits, such as reducing project cost, expediting project completion, or providing design features, not achievable through the design-bid-build process. In addition, DB may yield cost efficiencies by shifting certain liability and risk for cost containment and project completion with the design-builder.
- (10) DB projects must progress in a four-step process: Scope Development, Request for Qualification of DB Entities, Requests for Proposal, and Evaluation of Proposals and Selection of DB Entities:
 - a) **Scope Development**
The County prepares a set of documents defining the scope of the project, generally called performance specifications and plans. These performance specifications and any plans shall be prepared by a design professional duly licensed and registered in California. If the County retains an architect or engineer to assist in the development of the scope or other project-specific documents for a design-build project, that architect or engineer is not eligible to participate in the preparation of a submittal with any DB Entity for that project.
 - b) **Request for Qualification (RFQ) Process**
When utilizing DB, the County shall initially use the RFQ process to identify the most qualified respondents. Only those entities that are selected through RFQ process will be allowed to submit proposals in response to the County's subsequent DB Request for Proposal. Pursuant to [Public Contract Code Section 22164](#), the RFQ must include:
 - i. Identification of the basic scope and needs of the project or contract;
 - ii. The expected cost range;
 - iii. Methodology that will be used to evaluate the Statement of Qualifications (SOQ) and the procedure for final selection of the DB Entity;
 - iv. Significant factors that the agency expects to consider in evaluating qualifications, including technical design and construction expertise, acceptable safety record, and all other non-price related factors; and
 - v. And any other information deemed necessary by the contracting agency to inform interested parties of the contracting opportunity.
 - c) **Request for Proposal (RFP) Process**
Based on the performance specifications and plans, the County shall prepare an RFP inviting those respondents identified as most qualified through the RFQ process to submit competitive sealed proposals. Pursuant to [Public Contract Code Section 22164\(d\)](#), the RFP must include:
 - i. The basic scope and needs of the project, the estimated cost of the project, and other information deemed necessary by the County to inform interested parties of the opportunity;
 - ii. The methodology that will be used by the County to evaluate proposals, specifically if the contract will be awarded to the lowest responsive, responsible respondent or whether it will be awarded based on best-value and other criteria, and significant

objective factors that the County reasonably expects to consider in evaluating proposals, including cost or price and non-price-related factors; and

- iii. The relative importance of weight assigned to each criteria specifically whether evaluation factors other than cost or price are significantly more than, approximately equal to, or less important than cost or price.

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

d) Evaluation of Proposals and Selection

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

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

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

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

§3.5-112 Construction Manager at-Risk

- (1) Construction Manager at-Risk (CMAR) is an alternate project delivery method which entails a commitment by the Construction Manager at-Risk Entity (CMARE) to deliver the project within a Guaranteed Maximum Price (GMP). The CMARE acts as a consultant to the County in the development and design phases (“preconstruction services”) and as a general contractor during construction.
- (2) [SB328 \(2013\)](#) amended [Public Contract Code Section 20146](#), allowing counties to use CMAR for vertical construction. SB 914 (2018) expanded existing statute to allow counties, as well as other public entities for which the members of a county’s board of supervisors make up the membership of the governing legislative body (e.g., the Orange County Flood Control District), to use CMAR to deliver horizontal projects, in addition to vertical projects, subject to some limitations.
- (3) Pursuant to [Public Contract Code 20146](#), A county with approval of the board of supervisors, or

a public entity, with approval of its governing body, may utilize CMAR construction contracts for the erection, construction, alteration, repair, or improvement of any infrastructure, excluding roads, and including, but not limited to, buildings, utility improvements associated with buildings, flood control and underground utility improvements, and bridges, owned or leased by the county. A CMAR construction contract may be used only for projects in the county in excess of one million dollars (\$1,000,000) and may be awarded using either the lowest responsible bidder or best value method to a CMARE that possesses or that obtains sufficient bonding to cover the contract amount for construction services and risk and liability insurance as may be required by the county or public entity. Any payment or performance bond written for the purposes of this section shall be written using a bond form developed by the county or public entity.

- (4) CMAR may not be used to construct roads. [PCC 20146\(a\)](#).
- (5) The authority to use CMAR terminates by operation of law on January 1, 2029, unless a later enacted statute deletes or extends that date. Public Contract Code [Section 20146\(h\)](#).
- (6) A CMAR contract is procured through a Request for Proposal (RFP) process, which results in a qualification based, competitively procured contract that guarantees the cost of a project and furnishes Construction Management services, including preparation and coordination of bid packages, scheduling, cost control, value engineering, evaluation, preconstruction services, and construction administration. Unlike DB, when utilizing a CMAR contract the County retains control of the entire design process.
- (7) On a CMAR project, the County typically retains the CMARE before or during design. The CMARE provides a contractor's perspective during design, assists in value engineering, and performs quality control to reduce common design problems such as coordination and constructability issues. The construction documents are divided into separate "trade packages" suitable for competitive bidding as separate contracts. The CMARE selects the trade contractors through procedures established by the County, and is responsible for scheduling, coordinating and completing the project for a GMP.
- (8) The CMARE is typically paid a fixed sum for its preconstruction services and receives a fee, calculated as a percentage of hard construction cost (e.g., labor, materials), for services during construction. The CMARE may also provide site services for the project, such as security and sanitation, and may, in some cases, perform portions of the work. If it does so, payment for that work may be in addition to the fees charged for preconstruction services.
- (9) The overall price for construction of the project, either a lump sum or GMP, is usually established late in the design phase or after all trade contracts have been bid. The price should change only if the County modifies the project, regulatory changes increase the cost of the work, or unexpected site conditions appear. As with other contracting methods, the County may prequalify the CMARE and/or subcontractors or set minimum qualifications requirements (which do not score but merely qualify the CMARE and subcontractors). It is important that a CMAR contract clearly identifies the risks the County would shift to the CMARE, and that the County's staff is well trained to use the contract to enforce those responsibilities.
- (10) Selection of the CMARE should be by best value, where "best value" means a value determined by objective criteria related to the experience of the entity and project personnel, project plan, financial strength of the entity, safety record of the entity, and price.

§3.5-113 Job Order Contracts - Annual Contracts for Repair, Remodeling, or other Repetitive Work

- (1) An annual contract for repair, remodeling, or other repetitive work based on unit prices including, but not limited to, a Job Order Contract (JOC) is a firm fixed price, competitively bid through the Invitation for Bid (IFB) process, unit priced, indefinite quantity contract designed to accomplish applicable projects as defined in [Public Contract Code Section 20128.5](#). Per statute, these contracts shall not include the performance of design or contract drawing services.
- (2) Public Contract Code Section 20128.5 provides the statutory authority for these contracts for repair, remodeling, or other repetitive work only, and may not be used for new construction. Unit-price contracts may only be up to one year in duration.
- (3) The Board of Supervisors delegates to the Director the ability to utilize Job Order Contracts awarded by the Board of Supervisors to perform activities described in Public Contract Code Section 20128.5.
- (4) Per [Public Contract Code Section 20128.5](#), these contracts may be awarded up to \$3,000,000 plus an annual Consumer Price Index adjustment based on the annual Consumer Price Index published by the California Department of Industrial Relations.
- (5) Per Public Contract Code Section 20128.5, Job Order Contracts may not be used for new construction. Job Order Contracts may only be used for repair, remodeling, or other repetitive work to be done according to unit prices. Job Order Contracts shall only be awarded to the lowest responsible bidder and shall be based on plans and specifications for typical work provided by the County. “Unit price” as used herein means the amount paid for a single unit of an item of work, and “typical work” means a work description applicable universally or applicable to a large number of individual projects, as distinguished from work specifically described with respect to an individual project.
- (6) No task orders may be issued against a Job Order Contract after expiration of the term of contract; provided, however, that the Director may extend the term of a Job Order Contract for a period of six (6) months for the sole purpose of completing any work or project already ordered prior to the expiration of the original term of the Job Order Contract when work has already commenced on that work or project. No new task orders may be issued against a Job Order Contract after expiration of the original term of the contract, except that work already ordered by task order and commenced prior to expiration of the original term of the JOC contract may be modified by supplemental task order so long as (a) the modification does not substantially alter the character of the work already in progress, (b) the changes ordered in all supplemental task orders do not result in an increase in cost of more than 50% in aggregate above that of the original task order, and (c) the supplemental task order does not extend the time to perform the contemplated work beyond six (6) months past the expiration of the original term of the Job Order Contract.
- (7) The annual unit-price contracts program is carried out by either developing in house, or contracting out for the professional services for, the development and customization of a Unit Price Book (UPB) and technical specifications for typical work. A UPB includes pre-priced construction tasks that are specifically tailored for the type of work that the County intends to accomplish and includes labor, material and equipment costs. All unit prices incorporate federal labor standards including Davis-Bacon requirements and other Federal and State wage rate

requirements, if applicable. A UPB is work-segment based and incorporates local activity, climate, and geographic features. Technical specifications take into account quality of materials and workmanship, performance specifications, and detailed specifications furnished on a project by project basis.

- (8) Contractors bid on adjustment factors for work performed during normal working hours and non-normal working hours. These adjustment factors will be applied against the prices set forth in the unit price book and are used to price out fixed price work orders by multiplying the adjustment factors by the unit prices and quantities. Subcontractor's rates are subject to the prime contractor's bid factors. The contractor with the lowest composite factor will be considered the apparent low bidder.
- (9) Subcontractors proposed to be used to perform work under a prime contractor's contract must be identified in a potential contractor's bid, if known at time of bid, or must be approved in writing by the County if identified at a later date. All subcontractor costs and labor are subject to the prime contractor's bid factor.
- (10) Once a contract is awarded, the County will conduct a meeting with the contractor to determine the actual work to be done for each project or task order to be performed under the contract. The contractor will be issued a request for task proposal and will be required to develop a proposal for the work required. The contractor will submit its proposal to the County and this proposal will be evaluated. If the contractor's proposed units are found reasonable, a work order may be issued at the agreed-upon units, which when multiplied by the unit price and appropriate contract adjustment factor will establish the firm fixed price for the task order.
- (11) California Environmental Quality Act (CEQA): Annual contracts are awarded to the lowest responsive, responsible bidder based on plans and specifications for typical work. Based on the fact that the County may award an annual contract without having identified the specific tasks that are to be performed, or their potential environmental impacts, the contracting department must perform a basic CEQA analysis of tasks subsequently ordered under the contract in case those tasks trigger the need for a new CEQA declaration or finding. Applicable CEQA findings must be included in the file for the project.

§3.5-114 Prequalification Criteria

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

- b) To prevent poor project quality and late delivery (going over budget and/or over schedule) due to the lowest bidder's inexperience or ineptitude.
- (5) Use of Prequalification:
- The County will require prequalification of prospective prime contractors for the following types of public works contract construction bid packages:
- a) Single specific projects identified by Department Heads as suitable for prequalification due to uniqueness or complexity of all or a portion of the project.
 - b) All large projects (estimated construction cost over \$5,000,000). If the Director determines that prequalification is not in the best interests of the County for such a project, then the corresponding request for Board of Supervisors action should recommend proceeding without prequalification and provide a justification.
- (6) Formally bid projects under \$5,000,000 will be prequalified by a streamlined prequalification process, unless the Director determines that prequalification is not in the best interest of the County, then the corresponding request for Board action should recommend proceeding without prequalification and provide supporting justification.
- (7) Projects involving the use of the state or Federal Funds may not be able to utilize the prequalification process. A review of specific funding source guidelines is necessary to determine allowance or to establish an alternate process.

§3.5-115 Prequalification of Subcontractors

- (1) Nothing in this section shall preclude the County from prequalifying or disqualifying a subcontractor. The Director may prequalify subcontractors as determined to be in the best interest of the County. However, the disqualification of a subcontractor by the County does not disqualify an otherwise prequalified potential prime contractor. If a subcontractor is not qualified, the potential prime contractor will be given an opportunity to replace that subcontractor with another, which may either be a new subcontractor subject to prequalification, or a subcontractor already prequalified by the County, at the prime contractor's discretion.
- (2) Per [Public Contract Code Section 20101\(a\)](#), prospective bidders seeking prequalification are required to submit to the County completed prequalification documents, which include the Prequalification Questionnaire and all the documents required.. This Prequalification Questionnaire and financial statement shall be verified by oath when provided to the County.
- (3) Pursuant to [Public Contract Code Section 20101](#), the submitted Prequalification Questionnaire and financial statement are not public records and are not open to public inspection. They shall be kept confidential to the extent permitted by law. However, the contents may be disclosed to third parties for purpose of verification or investigation of the statements contained therein or in a hearing. Finally, Public Contract Code [Section 20101](#) provides that the names of prospective bidders applying for prequalification status are public records subject to disclosure, and the first page of the Prequalification Questionnaire shall be used for this purpose. Agencies unsure about whether any information is disclosable under the Public Records Act should seek the advice of County Counsel.
 - a) Each prospective bidder will be determined as either qualified to bid as to each bid

package for which it requested prequalification or not qualified based on the County uniform rating system. No rating other than a positive or negative qualification determination shall be established by this process. The contracting department will evaluate the completed Prequalification Questionnaire and supporting documents to determine whether the prospective bidder is qualified or not qualified to bid on the bid packages identified in the Prequalification Questionnaire.

- b) It is mandatory that prospective bidders who intend to submit a bid for any of the identified bid packages provide a Prequalification Questionnaire and any supporting documents requested and are subsequently determined qualified to construct the work required by the bid packages identified on the Prequalification Questionnaire. The County may not accept any bid from a prospective bidder that has not prequalified by this process.
- c) The County's determination that a prospective bidder is qualified shall apply only to the project(s) identified in the prequalification documents. The Prequalification Questionnaire may request information regarding the prospective bidder's specialized expertise or demonstrated experience pertaining to the individual project as long as such information will not unnecessarily restrict the pool of qualified prospective bidders to unfairly exclude any otherwise qualified prospective bidders.
- d) While it is the intent of this prequalification policy to assist the County in determining bidder responsibility prior to bid and to aid the County in selecting the lowest responsible bidder, the prequalification of a prospective bidder will not preclude the County from post-bid consideration of whether a prospective bidder has the quality, fitness, capacity and experience to satisfactorily perform the proposed work and has demonstrated the requisite trustworthiness. The Deputy Purchasing Agent may waive minor irregularities and omissions in the information contained in the Prequalification Questionnaire and supporting documents.
- e) The County may modify the prequalification determination assigned to a prospective bidder based on subsequently learned information. Prospective bidders previously deemed qualified then subsequently disqualified will be given notice and an opportunity to be heard consistent with the procedures set forth herein.

§3.5-116 Prequalification Standards and Notifications Requirements

- (1) The prospective bidder's Prequalification Questionnaire must be completely filled out and verified under penalty of perjury and all the required supporting documents must be submitted as required by the Prequalification Questionnaire. The completed Prequalification Questionnaire and supporting documents must be submitted to the County within the timeline described therein.
- (2) The prospective bidder must successfully meet or exceed the passing threshold established by the awarding department in accordance with recommendations promulgated by the California Department of Industrial Relations.
- (3) The prospective bidder must not provide any false or misleading information in the Prequalification Questionnaire and/or supporting documents.
- (4) The prospective bidder's completed Prequalification Questionnaire and supporting documents must comply with the following submittal requirements:
 - a) All supplemental documents are to be submitted on 8½" by 11" sheets and must be

organized and identified in accordance with the requirements of the Prequalification Questionnaire.

- b) Prequalification Questionnaires must be signed under penalty of perjury in the manner designated at the end of the Prequalification Questionnaire by an individual who has the legal authority to bind the prospective bidder on whose behalf the person is signing. See, e.g., [Corporations Code Section 313](#).
- c) If any information provided by a prospective bidder becomes false or inaccurate subsequent to the submittal of a Prequalification Questionnaire and supporting documentation, the prospective bidder must immediately notify the County and provide updated accurate information in writing under penalty of perjury.
- d) The completed Prequalification Questionnaire and supporting documents must be submitted to the County per the instructions on the solicitation. Late submittals will not be considered by the County. Prospective bidders are encouraged to submit the Prequalification Questionnaire and supporting documents as soon as possible so that they may be notified of omissions of information which can be remedied or of their prequalification determination well in advance of bid advertisement for the project.
- e) The County may accept the Prequalification Questionnaire fully electronically through the County's online bidding system, if the instructions for that specific project state that it is a fully electronic solicitation.
- f) Completed Prequalification Questionnaires and supporting documents must be sealed and marked "Confidential" in a suitable envelope and mailed or delivered to the following:

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

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

§3.5-117 Prequalification Protest Hearing Procedure

- (1) Where the prospective bidder has made a timely and complete submittal of prequalification documents that result in a determination that the contractor is not qualified, the prospective bidder can contest the department's decision via administrative hearing.
- (2) To petition for a hearing, the prospective bidder must deliver written notice of its desire to

contest the department's decision to County of Orange within seven (7) calendar days of the date of County's notice of determination. Failure to file a timely notice shall result in the prospective bidder's waiver of any and all rights to challenge the prequalification determination, whether by administrative process, judicial process, or any other legal process or proceeding.

- (3) The prospective bidder may request the County to advise it in writing of the basis for the prequalification determination and any supporting evidence that was received from others or adduced as a result of an investigation by the County.
- (4) A Hearing Panel shall be established and consist of three panelists from various County of Orange infrastructure departments, with a maximum of one (1) panelist from the procuring department.
- (5) The Hearing Panel shall render its decision based on all potentially relevant evidence submitted by either the County or the prospective bidder, including but not limited to, the administrative record and testimonial evidence. The prospective bidder may submit on the record, or provide other evidence, including testimony given under oath, to rebut the department's determination of non-qualification. Such a hearing is conducted in an informal manner, and all relevant evidence is admissible. The department rendering the initial determination may rebut any evidence proffered by the prospective bidder in writing or through its own testimony. Finally, the Hearing Panel may ask questions of either the prospective bidder or department before making its decision.
- (6) If the prospective bidder requests to provide testimony, the hearing shall be conducted within five (5) business days after the County's receipt on notice of appeal and no later than 20 business days prior to the last date of receipt of bids on the project. Within three (3) business days after the conclusion of the hearing, the Hearing Panel will render its decision in writing.
- (7) The decision of the Hearing Panel shall be the County's final administrative decision and any judicial review thereof shall be instituted no later than the time period specified in [Section 1094.6 of the Code of Civil Procedure](#).

§3.5-118 Determination of Non-Responsibility

- (1) A responsive, responsible bidder is "a bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the public works contract" ([Public Contract Code Section 1103](#)). In other words, the term "responsible" in the context of public works bidding is not employed to denote a bidder who is merely generally trustworthy, but also refers to the bidder's ability to perform in accordance with the requirements of the bid solicitation.
- (2) Prior to a contract being awarded by the County, the County may determine that a party submitting a bid or proposal is non-responsible for purposes of that contract. In the event that the County determines that a bidder is non-responsible for a particular contract, said bidder shall be ineligible for the award of that contract.
- (3) Procedures:
 - a) It is important that County Counsel be consulted when a department considers a non-responsibility determination. Because of the particular nature of a non-responsibility

finding, the bidder found to be non-responsible is entitled to certain due process protections before a determination of non-responsibility is made.

- b) The County may take into account numerous factors in determining responsibility, including the financial capabilities of the bidder, the bidder's experience and familiarity with the type of work of the project, the bidder's work on previous projects (including any prior failure to perform), and the bidder's resources and facilities. Non-responsibility is determined on a case-by-case basis, so these factors are merely examples enumerated by the courts, and are by no means an exhaustive list. Because prequalification is a method of determining responsibility prior to bid, basic considerations may also include those listed in the standard Prequalification Questionnaire, such as whether:
 - i. Bidder possesses a valid and current California contractor's license for the project;
 - ii. Bidder has sufficient liability insurance and bonding capacity;
 - iii. Bidder has current workers' compensation insurance;
 - iv. Bidder can provide a financial statement demonstrating the capacity to perform the project;
 - v. Bidder has had its license revoked in the past, and the reasons for such revocation;
 - vi. A surety has completed a project on behalf of the bidder;
 - vii. Bidder is barred from bidding or being awarded a contract under California law;
 - viii. Bidder has been debarred by another jurisdiction;
 - ix. Bidder or any of its owners, officers, or other principals have been convicted of a crime relevant to the bidder's trustworthiness or ability to perform the contract.
- c) The responsibility of each bidder must be evaluated independently. No consideration can be made of each bidder's relative responsibility among all bidders, so once a finding has been made of the bidders' responsibility all such bidders are deemed equally responsible.

§3.5-119 Notice of Non-responsibility Hearing

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

§3.5-120 Non-Responsibility Hearing Procedure

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

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

§3.5-121 Contract Award and Notice To Proceed

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

§3.5-122 Payments

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

- (6) The contractor may substitute securities for funds withheld in accordance with the Public Contract Code Section 22300.
- (7) Escrow agreements for security deposit in lieu of retention shall be approved by County Counsel.

§3.5-123 Liquidated Damages Clause For Use In Public Works Contracts

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

§3.5-124 Notice of Completion

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

§3.5-125 General Requirements

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

§3.5-126 Bonds

- (1) Public Contract Code Section 20129 requires bidder’s security and performance bonds.
- (2) All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder’s security in an amount not less than 10 percent of the bid:
 - a) cash;
 - b) a cashier’s check made payable to the County;

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

§3.5-127 Regulatory Permit Approvals

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

SECTION 3.6

ADDITIONAL POLICIES RELATED TO DESIGN AND CONSTRUCTION SERVICES

§3.6-101 Protest & Appeal

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

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

§3.6-102 Justification of Variance From Engineer's Estimate

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

figures are not adversely affected by market conditions.

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

§3.6-103 Operations & Maintenance Future Costs

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

of occurrence; and

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

§3.6-104 Sample ASR Language for Ongoing Maintenance Costs

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

§3.6-105 California Environmental Quality Act (CEQA)

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

§3.6-106 Lobbying

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

§3.6-107 County of Orange Procurement Preference Policy

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

SECTION 3.7

REAL ESTATE TRANSACTIONS AND CONTRACTS

§3.7-101 General Responsibilities

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

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

§3.7-102 Delegated Authority

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

Delegated Authority Chart

Revenue Lease/License of County Property	Acquisitions of Real Property Interests for Flood	Acquisition Lease/License for County or Flood Use	Acquisitions of Real Property Interests for County	Collateral Instruments	Donated Space Agreements for County Use	Authorize Full Reconveyance	Grants or Conveyance of Easements of County OCFCD OCDA OCHA Property	Revenue Licenses of Orange County Flood Control District Property	Temporary Right of Entry Permits for Flood or County Use
Execute leases/licenses if the monthly rental does not exceed \$15,000 per month and the lease term does not exceed 10 years.	Approve and accept acquisitions of real property interests not exceeding \$250,000 in value and other criteria are met.	Amend and execute leases/licenses if rental over term of lease/license does not exceed \$10,000 per month and a (5) year term and other criteria are met.	Approve and accept acquisitions of real property interests not exceeding \$250,000 in value and other criteria are met.	If instrument is on County's standard form. Instruments are defined as: Attornments Subordination Non-Disturbance.	If agreement is in County's standard form, County's indemnification of donor is limited to \$1,000,000, and agreement is approved by County Counsel and Risk Management.	Execute requests for reconveyance upon approval of County Counsel and receipt of notification from the Auditor- Controller's Office that all sums due and payable under an installment note have been paid in full.	If Easement does not exceed \$25,000 in value and is granted to City, County, State or other public agency with County Counsel approval.	Execute licenses of OCFCD property if the monthly rental does not exceed \$10,000 per month and the license term does not exceed 10 years.	If permit is required by County or Flood Control District from a public or private entity for ingress and egress, construction staging, and other purposes. Permits may include indemnification of others.
per Resolution No. 19-002 and Minute Order dated January 8, 2019. (Gov. Code 25537)	per Resolution No. 20-040 and Minute Order dated May 5, 2020. (Gov. Code 25350.60)	per Resolution No. 20-016 and Minute Order dated March 10, 2020 (Gov. Code 25350.51)	per Ordinance No. 20-004 and Minute Order dated May 19, 2020 (Gov. Code 25350.60)	per Resolution No. 98-75 and Minute Order dated March 10, 1998.	per Resolution No. 21-031 and Minute Order dated April 13, 2021 (Gov. Code 25355)	per Resolution No. 76-1642 dated November 9, 1976.	per Ordinance No. 3898 and Codified Ordinance Section 1-4-225 (Gov. Code 25526.6).	per Minute Order dated February 25, 2014.	per Resolution No. 08-151 and Minute Order dated December 9, 2008.
Delegated Authority expires January 8, 2024	NO EXPIRATION	NO EXPIRATION	Delegated Authority expires May 19, 2025	NO EXPIRATION	NO EXPIRATION	NO EXPIRATION	NO EXPIRATION	NO EXPIRATION	NO EXPIRATION
ANNUAL REPORT	ANNUAL REPORT	ANNUAL REPORT	ANNUAL REPORT		ANNUAL REPORT QUARTERLY REPORT FOR VALUES OVER \$10,000		ANNUAL REPORT	ANNUAL REPORT	
Chief Real Estate Officer, CEO Director, JWA as designee	Chief Real Estate Officer, CEO	Chief Real Estate Officer, CEO Director, JWA as designee	Chief Real Estate Officer, CEO	Chief Real Estate Officer, CEO	Chief Real Estate Officer, CEO	Chief Real Estate Officer, CEO	Director, OCPW	Director, OCPW	Director, OCPW Director, JWA as designee

Revised 4-7-2022

§3.7-103 Specific Duties

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

SECTION 3.8

MEMORANDUM OF UNDERSTANDING (MOU)

3.8-101 Definition

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

3.8-102 Board/CEO Approval

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

§3.8-103 Approval of Non-Standard Contract Terms

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

administrative approval and includes non-standard terms in the governing law or arbitration/dispute resolutions contract provisions.

§3.8-104 Term

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

§3.8-105 Increases

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

SECTION 3.9

UNILATERAL PROCUREMENTS

§3.9-101 Unilateral Procurement Definition

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

SECTION 4 – METHODS OF SOLICITATION

SECTION 4.1

REQUEST FOR INFORMATION (RFI)

§4.1-101 Definition

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

SECTION 4.2

INVITATION FOR BID (IFB)

§4.2-101 Definition

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

§4.2-102 Solicitation Document

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

or cashier's check, letter of credit, or certificate of deposit redeemable by the County. Upon award to the successful bidder, all such sureties will be returned to unsuccessful bidders.

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

§4.2-103 Lobbying

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

§4.2-104 Pre-Bid Conference

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

§4.2-105 Acceptance of Bids

- (1) Except as noted below, bids must be:
 - a) Received no later than the time specified in the IFB;

- b) Unconditionally accepted without alteration or correction;
- c) All bids must be received by someone other than the person who conducted the bid solicitation and must be time and date stamped upon receipt;
- d) All bids must be kept in a secure, locked location for access by personnel so authorized by the department head; and,
- e) Bids become public information immediately after the closing date and time.

§4.2-106 Waivable Informalities

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

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

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

§4.2-108 Tied Bids

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

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

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

§4.2-110 Award

- (1) Award will be made to the lowest, responsive, responsible bidder.
 - a) References:
 - i. Reference checks must be conducted prior to contract award.
 - ii. References will be obtained from outside the County of Orange whenever possible.
 - iii. References shall not be provided by the same department conducting the solicitation.

SECTION 4.3

REQUEST FOR PROPOSAL (RFP)

§4.3-101 Definition

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

§4.3-102 Solicitation Document

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

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

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

§4.3-103 Lobbying

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

§4.3-104 Pre-Proposal Conference

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

§4.3-105 Receipt and Acceptance of Proposals

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

§4.3-106 Waivable Informalities

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

§4.3-107 Confidentiality

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

§4.3-108 Evaluation Committee

- (1) Proposals shall be evaluated by an evaluation committee. When possible, evaluation committees shall be comprised of an odd number of at least three (3) members. Members shall have no conflict of interest with the selection process. Members of evaluation committees shall be selected based

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

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

§4.3-109 Presentations/Interviews

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

All members of the evaluation committee must sit in on the interviews with all respondents.

§4.3-110 Proposal Revisions

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

§4.3-111 Scope of Work Revisions

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

§4.3-112 Evaluation Scores

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

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

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

§4.3-114 Award

- (1) Award of contract will be made to the responsible respondent who is ranked the highest. This will be determined by the evaluation committee using the evaluation criteria, which may include proposed cost.
 - a) References:
 - i. If a reference check is not part of the RFP evaluation criteria it must be conducted prior to contract award.
 - ii. References will be obtained from outside the County of Orange whenever possible.
 - iii. References shall not be provided by the same department conducting the solicitation.
- (2) Should the County Procurement Officer or appropriate Deputy Purchasing Agent fail to concur with the recommendation submitted by the evaluation committee, the County Procurement Officer

or appropriate Deputy Purchasing Agent will meet with the evaluation committee members to discuss the reasons for the disagreement.

- a) No recommendation shall go forward to the Board of Supervisors from the County Procurement Officer or the Deputy Purchasing Agent, unless there is concurrence among the County Procurement Officer or Deputy Purchasing Agent, the using department, and the evaluation committee.

SECTION 4.3.1

RFP FOR REAL ESTATE INTEREST

§4.3.1-101 Policy

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

§4.3.1-102 Prior to RFP Process

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

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

§4.3.1-103 Process

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

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

§4.3.1-104 Protest Process

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

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

§4.3.1-105 Evaluation Committee

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

§4.3.1-106 Presentation/Interviews

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

§4.3.1-107 Evaluation Scores

- (1) In addition to the scoring process set out in Section 4.3-112, above, evaluators shall score proposals individually, and scoring will be divided into evaluation of the written proposal and the interview. The initial score sheets containing the evaluators' notes and comments shall remain in the possession of the individual evaluators, and at no time shall this information become part of the permanent procurement file or retained as a County record. Evaluators' individual scores will be discussed with the entire evaluation panel and combined and tallied after the interviews (if conducted). The total number of points earned for the written proposals and interviews will be combined for each respondent resulting in a ranked slate of respondents.

§4.3.1-108 Award

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

SECTION 4.4

TWO-STEP PROCESS

§4.4-101 Definition

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

§4.4-102 Process

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

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

- viii. A statement that only SOQs from respondents who are prequalified during Step One shall be considered for Step Two.
- b) The County Procurement Officer or the department Deputy Purchasing Agent may hold a conference with the potential respondents before submission of the SOQs or at any time during the evaluation of unpriced technical offers.
- c) SOQs shall be due at the time and date specified. The contents of SOQs shall be disclosed only to County personnel having a legitimate interest in them or persons assisting in their evaluation.
- d) SOQs must be received no later than the date and time specified in the RFQ.
- e) At any time during Step One, SOQs may be withdrawn without penalty.

(2) Step Two

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

§4.4-103 Lobbying

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

§4.4-104 Protest Process

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

(3) Protests received after the five (5) business day deadline will not be considered by the County.

SECTION 4.5

SOLE SOURCE REQUESTS

§4.5-101 Policy

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

§4.5-102 Justification

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

§4.5-103 Proprietary Source Requests

- (1) Proprietary means confidentially owned and controlled. The term may be used to refer to such items as property, computer software, or intellectual property. The vendor owning items that are proprietary is known as a sole proprietor and there is no other source available from which to purchase the commodities or services.

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

§4.5-104 Renewals and Amendments

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

§4.5-105 Agenda Staff Report

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

§4.5-106 Solicitation Exemption

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

§4.5-107 County of Orange Procurement Preference Policy Exemption

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

SECTION 4.6**PETTY CASH****§4.6-101 Definition**

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

§4.6-102 Types of Small Dollar Purchases:

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

SECTION 4.7

COOPERATIVE PROCUREMENT

§4.7-101 Definition

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

§4.7-102 Policy

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

§4.7-103 Collaborative Procurement

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

§4.7-104 Responsibility

- (1) The County Procurement Office is responsible for identifying and approving cooperative programs. The County Procurement Office may authorize and make use of cooperative contracts and programs including the pricing, terms and conditions of the contract of another public entity provided that:
 - a) Except as permitted pursuant to Section 4.7-104 (3), the initial procurement the County is relying upon shall be consistent with County procurement rules and requirements, which shall include specific descriptions of the commodities, capital assets and/or services available under the cooperative contract; and,
 - b) The vendor holding the contract extends the same pricing, terms and conditions to the County.

- (2) Before deciding whether or not to use the contract of another public entity or program, Deputy Purchasing Agents will review the contract to determine that the use of the contract serves the best interest of the County of Orange and that minimum County procurement requirements have been followed with respects to competitive bidding. Deputy Purchasing Agents shall ensure that all terms and conditions associated with the cooperative agreement to which the subordinate contract will be subject, are reviewed and incorporated as appropriate as part of this review and approval process. Should multiple vendors possess a cooperative contract for the same services/products, a pricing analysis will be conducted to ensure the most advantageous contract is utilized.
- (3) For commodity and capital asset purchases, as defined in Sections 3.1-101 and 3.2-101 respectively, subordinate to cooperative contracts with a contract value of \$250,000 annually or less, the requirement for a “specific description” as stated in Section 4.7-104 (1) a) shall not apply as long as the item and name of the commodity and/or capital asset is listed within the cooperative contract. Such contracts shall be considered to have satisfied the written solicitation requirement in this manual.

§4.7-105 Board Approval

- (1) Individual departments utilizing cooperative contracts to purchase services and commodities are required to receive Board approval on individual purchases that exceed the established dollar thresholds for the appropriate contract types as set forth in Section 3 of this manual.

§4.7-106 Term

- (1) The duration of a contract executed as a subordinate to a cooperative contract will depend upon the County’s need, prevailing market conditions, contract start-up costs, and the County’s best economic interest.
- (2) With respect to non-Board of Supervisors awarded contracts, in no case will a contract executed as a subordinate to a cooperative contract exceed five (5) years in duration, unless specifically approved by the Board of Supervisors.
- (3) Board and Non-Board subordinate contract extensions may be issued by the Deputy Purchasing Agent for up to one (1) year, beyond the fifth year, with County Procurement Officer or designee approval, provided there are no monetary increases (i.e., within the contract’s existing contract amount).

§4.7-107 County of Orange Procurement Preference Policy Exemption

- (1) County of Orange Procurement Preference Policy requirement is not applicable to cooperative procurements.

SECTION 4.8

REGIONAL COOPERATIVE AGREEMENTS (RCAs)

§4.8-101 Definition

- (1) A Regional Cooperative Agreement (RCA) is a cooperative contract for commonly used services and commodities executed by the Office of the County Procurement Officer to take advantage of the County's economies of scale and reduce the duplication of efforts across the County.

§4.8-102 Policy

- (1) At the County Procurement Officer's discretion, the County Procurement Officer may delegate responsibility to other County departments to establish RCAs pursuant to requirements set forth by County Procurement Office.

§4.8-103 Responsibility

- (1) County departments are required to use RCAs as stated in Section 1.1.1-102 (2) of this manual.
- (2) The County may allow other public entities to take advantage of RCAs which the County has competitively bid, although the County shall not be a signer on these contracts and shall have no legal liability to either the contracting entities or to third parties as a result of the contracts, including, but not limited to:
 - a) Issuing their own contract documents;
 - b) Providing for their own acceptance of the pricing, terms & conditions of the contract;
 - c) Obtaining required certificates of insurance, endorsements and bonds; and,
 - d) Making any payments due to the vendor.
 - e) Limitation of Liability – Orange County: The contracting entities shall hold harmless the County of Orange from all claims, demand actions, or causes of actions of every kind resulting directly or indirectly, arising out of, or in any way connected with the use of County issued cooperative contracts.
 - f) The Deputy Purchasing Agent shall ensure the Contractor maintains a list of the County departments and public entities that have used the County's cooperative RCAs. This list shall report dollar volumes and shall be provided to the Deputy Purchasing Agent upon request.

§4.8-105 No Usage Guarantee

- (1) The terms of the RCA shall include a provision indicating that the County of Orange makes no guarantee of usage.

§4.8-106 Board Approval

- (1) Individual departments utilizing RCAs to procure services are required to receive Board approval on individual contracts that exceed the established dollar thresholds for the appropriate contract types as set forth in Section 3 of this manual; the County Procurement Officer or designee, at their discretion, may obtain Board approval on behalf of County departments.

§4.8-107 Term

- (1) The duration of a RCAs will depend upon the County's need, prevailing market conditions, contract start-up costs, and the County's best economic interest.
- (2) RCAs issued by the Office of the County Procurement Officer may extend beyond five (5) years in duration, without approval by the Board of Supervisors.
 - a) Any department subordinate contracts may be extended to the same duration as the RCAs that are issued by the Office of the County Procurement Officer.

SECTION 4.9

REQUEST FOR APPLICATION (RFA)

§4.9-101 Definition

- (1) When it is not in the County's best interest to acquire services and commodities through one or more of the other solicitation processes specified in Section 4 of this manual, services and commodities may be solicited using the Request For Applications (RFA) process. Such a situation may arise for any number of reasons including, but not limited to:
- a) The County's need for services may exceed the available supply of applicants;
 - b) The County's need is to secure as many prospective qualified applicants as possible;
 - c) The County's need is for specialized service by licensed or certified applicants; and/or
 - d) The solicitation may remain open for longer periods of time, or indefinitely to allow qualified applicants to obtain required certifications or meet the minimum requirements set forth in the solicitation.

§4.9-102 Requirements

- (1) The RFA shall consist of the following:
- a) Adequate Public Notice: Adequate public notice shall be given to provide potential applicants sufficient time to prepare and submit applications by the due date specified in the RFA.
 - b) Requirements Statement: This will be a statement of the County's objectives in issuing the solicitation. It shall explain the County's need(s) as clearly as possible. It may include any special requirements which the County may have in regard to its overall objectives, such as requests for special reports, critical timelines, unique services to be provided, cost or pricing data required, duration of service, etc.
 - c) Qualification/Certification Statement: The County will include minimum qualification criteria in the RFA. The criteria will be utilized to ensure a certain level of expertise and/or certification.
 - d) Terms and Conditions: The terms and conditions which are intended to become part of the final contract shall be included in the RFA. Included in the terms and conditions are such items as indemnification, contract termination, payment terms, applicable laws, etc.
 - e) Instructions: These are items which relate directly to the procedures on how the application must be submitted. Included in the instructions are items related to number of submittals required, format, procedure for information clarification, etc.
 - f) Indemnification: Where the County may have exposure to an appreciable risk of financial or property loss as the result of the performance by vendor, the RFA must specify that the terms and conditions which are intended to become part of the final contract include a

requirement that vendor indemnify, defend and hold harmless the County against and from such risk.

- g) Insurance: The RFA must specify that the County may require that prior to the award of a final contract, the selected applicant submit an insurance certificate that will be in an amount adequate to protect the County and will name the County as an additional insured. The RFA must clearly specify the County's insurance requirements as recommended by CEO/Risk Management.
- h) Application Review and Award Criteria: An administrative review of the applications submitted by interested vendors must be performed to ensure they meet the instructions and minimum requirements specified in the RFA. Those applications that meet the instructions and minimum requirements will be considered for contract award. The County department and/or agency issuing the RFA may make contract awards on a continuous basis and up until it has been determined that the needs of the department or agency have been met.

§4.9-103 Lobbying

- (1) All RFAs will include as part of their language the following vendor advisory: "The County of Orange does not require and neither encourages nor discourages the use of lobbyists or other consultants for the purpose of securing business."

§4.9-104 Pre-Application Conference

- (1) When it is in the County's best interest, a pre-application conference may be held. The purpose of the conference will be to further define or illustrate the County's needs and/or to answer any questions which may exist on the part of prospective applicants. Any changes, deletions, additions, or clarification to the RFA that may result from the pre-application conference shall be issued as an addendum and sent to all prospective applicants. Pre-application conferences shall not be mandatory for prospective applicants unless it is clearly in the County's best interest and specifically stated in the RFA.

§4.9-105 Receipt and Acceptance of Applications

- (1) Applications are to be received by the date and time specified in the RFA. Applications shall be unconditionally accepted without alteration or correction. All applications must be received by someone other than the person who conducted the solicitation and must be time and date stamped immediately upon receipt. All applications must be kept in a secure locked location for access by only authorized personnel.
- (2) Late applications may be accepted depending on the best interest of the County. No application will be accepted which is received by the County Procurement Officer or Deputy Purchasing Agent later than 24 hours from the due date and time specified in the RFA. The designated Deputy Purchasing Agent in the RFA, for purposes of administering the RFA, will have sole discretion in deciding to accept late applications. In the event the designated Deputy Purchasing Agency accepts a late application, he or she must also accept all applications that are received within 24 hours of the specified date and time.

§4.9-106 Waivable Informalities

- (1) When considered in the best interest of the County, certain requirements specified in the RFA may be waived by the County Procurement Officer or the designated Deputy Purchasing Agent in the RFA. Examples of waivable informalities include such items as:
 - a) Failure by an applicant to submit information as a result of clerical error;
 - b) Failure by an applicant to sign or date the application; and/or,
 - c) Failure by an applicant to submit the requested number of application copies.
- (2) Waivable informalities will be considered on a case-by-case basis, and a waiver will be granted only when in the County's best interest.

§4.9-107 Confidentiality

- (1) The RFA must advise that prospective applicants are not to mark their applications as confidential or proprietary, and that applications submitted in response to a RFA may be subject to public disclosure in accordance with the California Public Records Act. The RFA must also advise that all applications and attached documents shall become the property of the County, and that the County reserves the right to make use of any information or ideas in the applications submitted unless such use is prohibited by law.
- (2) The RFA must advise that regardless of any identification otherwise, including marking some or all pages as "confidential" or "proprietary", information in applications shall become a part of County's record and subject to possible public disclosure without further notice to the applicant.
- (3) The RFA must advise that the County shall not in any way be liable or responsible for the disclosure of any such records.

§4.9-108 Protest Process

- (1) In accordance with Section 1.3 of this manual, any actual or prospective applicant or contractor who alleges a grievance by an error or impropriety in the solicitation or award of a contract may submit a grievance or protest to the appropriate department Deputy Purchasing Agent administering the RFA.

§4.9-109 Presentations/Interview

- (1) Interviews may be conducted when deemed necessary to verify an applicant's qualifications/certifications and to verify requirements, as set forth in the RFA, have been met. Such interviews will be conducted by the appropriate County department staff for applicant(s) who have submitted a responsive application.
 - a) Applicants shall be given fair and equal treatment with respect to any opportunity for discussion and revision to their applications;
 - b) Discussions with applicants will be recorded either in writing or digital media, and that record will become part of the procurement file; and
 - c) In conducting interviews, there shall be no disclosure of any information derived from applications submitted by other applicants.

§4.9-110 Scope of Work Revisions

- (1) If discussions reveal the need to change the RFA's original scope of work, either an addendum detailing the revised scope will be sent to all those submitting applications, or, if appropriate, the County will issue a revised RFA and begin the solicitation process again. The County Procurement Officer or appropriate Deputy Purchasing Agent shall be the final authority as to which process will be used.

§4.9-111 Award

- (1) Award of contract(s) will be made by the Board of Supervisors to applicants whose applications meet the County's requirements. Awards may be made on a continuous basis until the needs of the County have been met. Contract awards shall be submitted for Board of Supervisors (Board) approval in accordance with Section 3.3-102 of this manual.
- (2) All Contracts will be submitted to the Board in accordance with Section 3.3-102 of this manual. When requesting Board of Supervisors' approval of a contract, the initial applicant(s) will also be brought to the Board for approval. The County department or agency may request, in the Agenda Staff Report (ASR), the delegated authority to add future applicant(s) to the contract, without further Board approval, provided the original, Board approved, dollar amount on the contract is not exceeded.

SECTION 5 – GLOSSARY

SECTION 5

GLOSSARY

1. Addendum: A written change, addition, alteration, correction or revision to a bid, proposal or contract document.
2. Agenda Staff Report (ASR): A document by which matters are submitted to the Board of Supervisors for consideration during its regular meetings.
3. Amendment: An agreed addition to, deletion from, correction or modification of a document or contract.
4. Appeal: A written notice of disagreement, signed by a person of authority, from a protestor to the County Procurement Officer in appealing a decision of department Deputy Purchasing Agent.
5. Arbitration: A process by which a dispute between two contending parties is presented to one or more disinterested parties for a decision; a process whereby a disagreement is resolved.
6. Architect-Engineer: Services include but are not limited to: architectural, landscape architectural, engineering, environmental, land surveying services, and construction project management as well as incidental services that members of these professions may logically or justifiably perform.
7. Award: The execution of a contract to a vendor.
8. Best Interest: The discretionary rationale used by a procurement official in taking action most advantageous to the jurisdiction when it is impossible to adequately delineate a specific response by law or regulation.
9. Best Practice: A business process, activity or operation that is authorized by the County Procurement Officer.
10. Bid: The offer submitted by a bidder in response to an Invitation for Bid (IFB), a request for quotation, or a two-step solicitation process procedure. A bid includes a cost for commodities or services to be provided per the specifications included in the bid solicitation issued by the County.
11. Bid Bond: An insurance instrument in which a third party agrees to be liable to pay a certain amount of money in the event that a specific bidder, if its bid is accepted, fails to accept the contract as bid.
12. Bid Opening: The formal process through which bids are opened and the contents revealed for the first time to the jurisdiction, other bidders, and, usually, to the public.
13. Bid Surety: A guarantee, in the form of a bond or deposit, that the bidder, if awarded a contract will accept the contract as bid, otherwise the bidder (in the case of a deposit) or the guarantor (in the case of a bond) will be liable for the amount of the deposit or bond, respectively.

14. Bidders List: A list maintained by the county's bidding system setting out the names and addresses of vendors of various services and commodities from whom bids, proposals, and quotations can be solicited.
15. Brand Name: A name which serves to identify a product of a particular manufacturer; a trade name.
16. Business Day: Any day during which normal business operations are conducted.
17. Calendar Day: Every day shown on the calendar, including Saturdays, Sundays and holidays.
18. Capital Asset: A tangible property costing \$5,000 or more per unit, including tax, delivery and installation, with a useful life expectancy exceeding one (1) year.
19. California Environmental Quality Act (CEQA): A 1970 California state law which requires state and local government agencies to inform decision makers and the public about the potential environmental impacts of proposed projects or actions that are subject to a discretionary approval before they are approved, and to reduce the environmental impacts of proposed projects or actions to the extent feasible.
20. Cash Alternatives: Gift cards, gift certificates, gift vouchers, etc. to purchase travel and food for non-employee County department clients receiving services from the County.
21. Change Order: See Modification.
22. Closing Date/Time: Refers to the date and time for a bid or proposal closing.
23. Cloud Computing: The delivery of software/applications/infrastructure and other resources providing remote or on-demand network access to remote servers, or applications hosted on the Internet to conduct business operations. This may include the storage, management, and processing of data (e.g., Platform as a Service (PaaS), allows for the development, management, and delivery of applications without infrastructure, Infrastructure as a Service (IaaS) provides virtualized computing resources over the Internet or Software as a Service (SaaS) functionally delivers software applications over the Internet).
24. Collusion: A secret contract or cooperation between two or more persons to accomplish a fraudulent, deceitful or unlawful act.
25. Commodities: All supplies and all equipment costing less than \$5,000 per item, including tax and freight, etc., or more than \$5,000 but with a useful life of less than one (1) year.
26. Competitive Process: The process by which two or more vendors vie to secure the business of a purchaser by offering the most favorable terms as to price, quality, delivery, and/or service.
27. Compliance Monitoring: A process whereby the County Procurement Officer, or designee, selects and audits procurement transactions conducted by departments for the purpose of ensuring that the County procurement process is fair, efficient, and compliant with legal requirements and County policies and procedures.

28. Conflict of Interest: A situation where the personal interests of a contractor, public official and/or designated employee are/is, or appear to be, at odds with the interests of the jurisdiction.
29. Consent Agenda Items: Those agenda items, as identified by the CEO and the Board of Supervisors, which are placed in the section of the Board of Supervisors agenda for approval as a group of items. Items on the Consent Calendar may be pulled by the Board, County staff, or a member of the public for discussion and individual Board action.
30. Construction: Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility paid for using public funds; Painting or repainting of any publicly owned, leased, or operated facility.
31. Construction Manager at Risk (CMAR): an alternate project delivery method which entails a commitment by the Construction Manager (CM) to deliver the project within a Guaranteed Maximum Price (GMP).
32. Consultant: A person or firm who provides professional or expert advice and/or recommendations.
33. 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.
34. Contract: A legally enforceable agreement between two or more parties to do or not do a certain thing, which meets the requisite statutory elements of: (a) Parties capable of contracting, (b) Consent, (c) A lawful object and (d) A sufficient cause or consideration. Cal. Civ. Code §§ 1549-1550.
35. Contract Administration: The management of various aspects of contracts to assure that the contractor's total performance is in accordance with the contractual commitments and that the contractor's obligations are fulfilled.
36. Contract Award: The act of executing a final signed contract between the County and a vendor.
37. Contract Extension: An action to extend a contract term upon written mutual agreement by both parties.
38. Contract Renewal: A renewal clause allows a contract to continue for a defined term.
39. Contract Task Order: A contract for A-E services that includes, price, and scope for the performance of tasks during the period of the A-E On-Call contract.
40. Cooperative Procurement: A strategy used by governmental entities to procure services and commodities from contracts awarded by other governmental entities or programs to take advantage of volume purchasing discounts and reduce administrative expenses.
41. Contractor: A vendor having a contract with a governmental body.

42. County of Orange Procurement Preference Policy: An initiative approved by the Orange County Board of Supervisors to encourage local small businesses and disabled veteran businesses to compete in new solicitations released by the County of Orange.
43. Consumer Price Index (CPI): The Consumer Price Index measures the overall change in consumer prices based on a representative basket of goods and services over time.
44. Debarment: A shutting out or exclusion, through due process, for cause, e.g., a bidder from a list of qualified prospective bidders.
45. Department of Industrial Relations (DIR): A California state agency that monitors state labor laws.
46. Deputy Purchasing Agent: An employee of the County of Orange appointed by a department head who is trained and certified/deputized under the direction of the County Procurement Officer to act in the capacity of the County Procurement Officer to procure commodities and/or services for the department.
47. Design-Bid-Build: A procurement method for construction projects resulting in a Fixed-Price Contract, a Fixed-Price Indefinite Quantity Contract, or a Cost Plus Fixed Fee Contract, and is required to utilize the prequalification process
48. Design Build: A qualification-based selection (QBS), in which both the design and construction services for a project are procured at the same time following the QBS.
49. Designated Employees: Those employees of the County of Orange who are required to file conflict of interest statements because those employees, in the course of their employment make or participate in the making of decisions which may potentially have a material effect on the financial interest of the employees.
50. Director: Shall mean all such designated officials or departments.
51. Discount: An allowance or deduction from a normal or list price extended by a seller to a buyer to make the net price more competitive.
52. Discussion Agenda Items: Those agenda items, as identified by the CEO and the Board of Supervisors, which are placed in the section of the Board of Supervisors agenda for discussion and individual Board action. All items requiring the Board to select from a slate or a list of recommendation options, among others, are placed on the Discussion Calendar.
53. Dispute: A difference between a contractor and a jurisdiction over performance or other elements of a contract calling for appropriate administrative action with the intent of achieving a remedial result.
54. Electronic Waste (E-Waste): An electronic device powered by electricity or a battery that has a printed circuit board or video display attached that has reached the end of its useful life and is being discarded by the user. Examples include: televisions, computers, computer peripherals and components, hard drives, CD/DVD drives, printers, facsimile machines, copiers and wireless phones and devices.

55. **Emergency:** Those situations where the welfare of County residents is at stake and/or immediate procurement action is required to prevent serious economic or other hardship to the County.
56. **Equal or Equivalent:** A phrase used to indicate the acceptability of products of similar or superior function.
57. **Equipment:** Personal property of a durable nature which retains its identity throughout its useful life.
58. **Evaluation Committee:** A committee which advises and assists in proposal evaluation and award of contract.
59. **Evaluation Criteria:** Those criteria set forth in the solicitation and used by the evaluation committee to score and rank respondents.
60. **Express Warranty:** Any affirmation of fact or promise made by a seller to a buyer which relates to the commodities and becomes part of the basis of the bargain.
61. **Findings:** The identification of facts or documentations which are not in compliance with procurement policy, procedures, or Best Practices.
62. **Firms:** A business that provides professional or technical advice or expertise which will supplement departmental expertise or advice or where an independent opinion or audit is required.
63. **Firm Bid:** A bid that binds the vendor until a specified time of expiration of the bid.
64. **Fixed Price Contract:** A contract which provides for a firm price under which the contractor bears the full responsibility for profit or loss.
65. **Force Account:** Use of internal (County) labor.
66. **Formal Advertising:** The placement of a notice in a newspaper or other publication according to legal requirements to inform the public that the government is requesting proposal/bids on a specific solicitation.
67. **Formal Bidding:** As to formal bids referenced in Sections 3.5, formal bids are those in excess of \$ the Board of Supervisors threshold, requiring a four-fifths ($\frac{4}{5}$) vote for the award the contract, The project plans and specifications shall be adopted by the Board of Supervisors, unless delegated. For all other procurements, formal bids are those that require a competitive bid solicitation process for contracts/purchases exceeding the oral/written quote dollar thresholds. All formal solicitations will be advertised via the County's bidding system. This process may or may not requiring require a Public Bid Opening with the date, time and location set forth in the bid solicitation.
68. **Government Code:** The general laws of the State of California as applied to the County of Orange and other governmental entities.
69. **Gratuity:** A payment, loan, subscription, advance deposit of monies, services or anything of more than nominal value presented or promised for consideration of a procurement decision or recommendation.

- 70. Guarantee: To warrant, stand behind, or ensure performance or quality of services or commodities.
- 71. Horizontal: A road maintenance project, such as paving, slurry seal, etc. in reference to construction or maintenance projects.
- 72. Human Services: Services which maintain or improve the social, economic, physical, or mental well-being of persons for whom the County bears such a responsibility.
- 73. Hybrid Contract: A contract which consists of multiple procurement types.
- 74. Incremental Contracting: Contracting in small segments to avoid solicitation requirements or Board of Supervisors approval.
- 75. Indemnification: Protection against incurred loss, damage, or hurt, usually by monetary compensation.
- 76. Informal Bidding: A process of procurement that does not exceed of the Board of Supervisors thresholds to require Board approval.
- 77. Insurance: A contractual relationship where an insurance company agrees, for a premium paid, to reimburse the insured or other party for a loss to a specified subject caused by designated hazards or risks.
- 78. Interviews: A process facilitated by the Deputy Purchasing Agent during a solicitation, between the evaluation committee and prospective contractor who responded to the solicitation.
- 79. Invitation for Bid (IFB): The solicitation process used for competitive sealed bidding for the purchase of equipment, materials, supplies, services, and construction, for which clear specifications can be written.
- 80. Job Order Contract (JOC): An annual contract for repair, remodeling, or other repetitive work based on unit prices, which is a firm fixed price, competitively bid, unit priced, indefinite quantity contract designed to accomplish applicable projects.
- 81. Liquidated Damages: Liquidated damages clauses are enforceable if: (1) damages are difficult to ascertain or estimate at the time the contract is formed; and (2) the amount is a reasonable forecast of compensatory damages in the case of breach. Specifically, if the liquidated damages amount significantly exceeds the amount of damages prospectively probable, the liquidated damages clause may not be enforceable. Thus, liquidated damage clauses may be included in service contracts when the County could suffer financial loss due to delays in performance. Consistent with legal requirements, the amount of damages listed in the contract must be a “reasonable forecast” of the County’s actual damages.
- 82. Lobbyist: Any person who receives compensation of \$500.00 or more in any calendar month for engaging in lobbying activities or is employed by his or her employer and receives compensation of \$500.00 or more in any calendar month for engaging in lobbying activities, as defined in Article 5 Sec. 1-1-80 of the Orange County Codified Ordinances.

83. **Maintenance Work:** Routine, recurring, and usual work for the preservation or protection of any publicly owned or publicly operated facility for its intended purpose, including: minor repainting; resurfacing of streets and highways at less than one inch; landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems; work performed to keep, operate, and maintain publicly owned water, power, or waste disposal systems, including, but not limited to, dams, reservoirs, power plants, and electrical transmission lines of 230,000 volts and higher.
84. **Modification:** A non-material change that does not require signatures of contracting parties.
85. **Negotiation:** The discussion or correspondence between the County and a contractor in order to develop a contract with terms and conditions that serve the best interest of the County.
86. **One-Time Contract:** Procurements for particular commodities or services which cover a particular need. These types of procurements are distinguished from annual or blanket contracts which cover a continuing need of an item or service.
87. **Opportunity Buys:** A situation where necessary commodities, capital assets, or services are for sale at significantly reduced rates from what is normally offered in the general market or where an alternative product to the one being bid represents significant savings.

Original Contract Term: The period of time first specified in the contract at the time the contract was initially established.
88. **Payment Bond:** A legal contract, a type of bond, that guarantees certain employees, subcontractors, and vendors are protected against non-payment.
89. **Performance Bond:** A bond issued by a bank or other financial institution, guaranteeing the fulfillment of a particular contract.
90. **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.
91. **Pre-Bid/Pre-Proposal Conference:** A meeting set up between the County parties issuing a solicitation and the potential bidders/respondents for the purpose of clarifying the solicitation and answering any questions.
92. **Prequalification:** A process used prior to solicitation of bids to determine if potential vendors have the ability to fulfill the contract requirements for which the solicitation will be issued and/or to determine if the potential vendors products will meet the cost and performance criteria required to meet the County's needs.
93. **Prevailing Wage:** The California Department of Industrial Relations determines that the general prevailing rate of per diem wages for a particular craft, classification, or type of worker is uniform throughout an area, the director issues a determination enumerated county by county, but covering the entire area.
94. **Procurement Appeals Board:** A body comprised of County department senior management and a member of the public chaired by the County Procurement Officer for the purpose of hearing vendor protests to a specific County procurement process.

95. Procurement Council: A committee of County employees appointed by department heads and chaired by the County Procurement Officer to discuss procurement issues and make recommendations regarding County-wide procurement policies and procedures.
96. Proposal: The document submitted by a respondent in response to a Request for Proposal (RFP). A proposal includes a detailed description of the commodities or services to be provided to the County per the scope of work included in the Request for Proposal (RFP), including, but not limited to cost, time frame for completion of work or delivery of commodities, and method of accomplishment of services.
97. Proprietary Product: A proprietary item or service is one that must meet particular restrictive specifications but may be available from a number of sources, e.g., “Brand ‘X’ computers - no substitutions”.
98. Protest: A written objection of grievance from an actual or prospective bidder who alleges an error or impropriety in the solicitation or award of a contract.
99. Public Bid Opening: The process of opening and reading bids at the time and place specified in the solicitation and in presence of anyone who wishes to attend.
100. Public Contract Code: Statutory authority applicable in one respect or another to virtually all public entities in California in relation to certain procurements. Pursuant principally to the California Public Contract Code, with limited exceptions, public agencies have a duty to publicly bid certain contracts, particularly construction contracts.
101. Public Works Procurements: Contracts procured via Sections 3.4 or 3.5 of this CPM.
102. Public Works Project: Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility paid for using public funds; painting or repainting of any publicly owned, leased, or operated facility.
103. Qualified Vendor List (QVL): A list of qualified A-E firms that have been deemed responsive through the Request for Qualification (RFQ) process.
104. Real Estate Contracts: Legal instruments necessary to effectuate a real estate transaction such as a lease, license, easement, grant deed, or other similar document, but shall not include procurement contracts related to services provided for the transaction nor departmental issued permits, such as County construction permits or encroachment permits. This includes acquiring, leasing, licensing constructing, operation, and maintaining County-owned or County-occupied facilities and assets. contracts concerning the purchase or use of County owned or private sector parking spaces are considered real estate contracts.
105. Regional Cooperative Agreement (RCA): A cooperative contract for commonly used services and commodities executed by the Office of the County Procurement Officer or designee to take advantage of the County’s economies of scale and reduce the duplication of efforts across the County.
106. Rejection of Bid(s): The non-acceptance of submitted bid(s).
107. Request for Information (RFI): A request for information is used to obtain price, delivery, other market information, or capabilities for planning purposes. Responses to request for information

notices are not offers and cannot be accepted by the County to form a binding contract unless otherwise specified in the solicitation.

108. Request for Proposal (RFP): The solicitation method that includes a scope of work and terms and conditions used to secure proposals for services or commodities not clearly defined by the County in terms of exact specifications or manner of delivery of services or where price is not the sole selection criteria.
109. Request for Qualifications (RFQ): A solicitation method that describes the project or services required and solicits qualifications from potential vendors or contractors for purposes of evaluating those qualifications for screening or for award of contract.
110. 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.
111. Responsive Bidder: A bidder whose bid conforms in all material respects to the terms and conditions, the specifications and other requirements of the solicitation.
112. Retroactive Contract: When goods and services have been ordered, performed or delivered without a requisition and/or contract in place.
113. Requesting Department: A County agency, which requests goods and services procured by the Deputy Purchasing Agent.
114. Services: The furnishing of labor, time or effort by a contractor involving the delivery of a specific performance.
115. Sole Source: A procurement of a commodity or service to the only known capable vendor, occasioned by the unique nature of the requirement, the vendor, or market conditions.
116. Sole Source Justification: A document submitted by department staff for approval to contract with a particular party without competitive bidding.
117. Solicitation: A good faith effort to obtain a bid or proposal for the provision of commodities or services.
118. Specifications: A description of what is requested to be procured.
119. Statement of Qualifications (SOQ): A submitted response to a Request for Qualifications.
120. Subcontractor: A vendor who is performing work on behalf of the contractor.
121. Surplus County Department Property: Tangible supplies, materials or equipment to which the County acquired title by means of purchase, donation, grant, or other lawful means, that a County department has determined is no longer needed by the department.
122. Surplus County Property: Surplus County Department Property that the County Procurement Officer or designee has determined is not needed for public use by any other County department.

123. Task Order: A contract for Job Order Contracts that includes, price, and scope for the performance of tasks during the period of the contract.
124. Terms and Conditions: A general reference applied to the provisions under which bids/proposals must be submitted and which are applicable to most contracts.
125. Terms of Payment: Methods and timelines by which the County must render payment under a contract.
126. Two Step Solicitation: A method of soliciting services and commodities where a preliminary evaluation of the respondent's qualifications is conducted, and a final evaluation for recommendation of award is made based on the RFP process.
127. Unilateral Procurement: A vehicle to pay for critical, ongoing services provided by exclusive entities within a County geographical area that is not subject to County's standard terms and conditions (i.e., utility services). The payment mechanism for unilateral procurements include, but are not limited to: Procurement card(s), County financial system documents, request for checks, etc.
128. 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.
129. Vertical: Construction projects that include constructing a building or performing work to a building or structure.
130. Waiver of Bid(s): A process authorized by law or rule whereby the County Procurement Officer or Deputy Purchasing Agents may procure items without competitive solicitation procedures because of unique circumstances related to a particular need or procurement.
131. Waiver of Mistake or Informality: The act of disregarding errors or technical nonconformities in the bid/proposal which do not go to the substance of the bid/proposal and will not adversely affect the competition between bidders/respondents.
132. Warranty: A representation of utility, condition, and durability made by a bidder or proposer for a product offered.



2024 CONTRACT POLICY MANUAL



COUNTY OF ORANGE



CONTRACT POLICY MANUAL

Adopted by the
Orange County Board of Supervisors

October 31, 2023

Effective: January 1, 2024

~~ANDREW DO~~ DONALD P. WAGNER
CHAIRMAN
~~FIRST-THIRD~~ DISTRICT

~~DOUG CHAFFEE~~ ANDREW DO
VICE CHAIRMAN
~~FOURTH-FIRST~~ DISTRICT

<u>VICENTE</u>	<u>DOUG CHAFFEE</u>	<u>KATRINA</u>
<u>SARMIENTO</u>	DOUG P.	<u>FOLEY</u>
KATRINA	<u>WAGNER</u>	LISA A.
<u>FOLEY</u>	SUPERVISOR	<u>BARTLETT</u>
SUPERVISOR	THIRD	SUPERVISOR
SECOND DISTRICT	<u>FOURTH</u> DISTRICT	FIFTH DISTRICT

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SECTION 1 – GENERAL RESPONSIBILITIES

SECTION 1.1

OFFICE OF THE COUNTY PROCUREMENT OFFICER

§1.1-101 Statute

- (1) Title 3, Division 2, Part 2, Chapter 5, Article 7 (Secs. 25500 et seq.) of the California Government Code authorizes the County Board of Supervisors to employ a County Purchasing Agent to perform certain duties on behalf of the County. These duties are defined in Government Code §25501 and the Codified Ordinances of the County of Orange, Title 1, Division 4, Article 2, Sections 1-4-12 through 1-4-38. Additional statutes, particularly those applicable to Public Works, Architect-Engineering and Real Estate contracts and procurements, have been further included herein as applicable, however all procurement procedures remain subject to all applicable laws whether or not expressly cited herein.

§1.1-102 Policy

- (1) The County Purchasing Agent, also referred to herein as the County Procurement Officer, shall establish methods and procedures necessary for the proper functioning of County ~~purchasing~~ procurement in an efficient, transparent and economical manner.
- (2) All County procurement contracts shall be solicited and executed in accordance with the provisions of this Contract Policy Manual (CPM) unless otherwise authorized by the County Board of Supervisors.

§1.1-103 Ethical Statement

- (1) The County Procurement Officer, as well as all those involved in County ~~purchasing~~ procurement shall discharge their duties in accordance with high ethical standards by practicing their profession with integrity, honesty, truthfulness, transparency, and adherence to the absolute obligation to safeguard the public trust.

§1.1-104 Scope

- (1) It shall be the duty of the County Procurement Officer and others, as set forth herein, to purchase for the County of Orange, its offices, and any special district whose affairs and funds are under the supervision and control of the Board of Supervisors all services, materials, supplies, furnishings, equipment, livestock, and other personal property of whatever kind and nature required to conduct County business.

§1.1-105 Contracts Outside Scope of County Procurement Officer Authority

- (1) ~~Except as otherwise provided herein, The authority to execute Public Works Construction Contracts, Public Works Architect Engineer Service Contracts (related to engineering and design of public projects), and Real Property Estate Contracts~~ the contract types listed below has been delegated by the Board of Supervisors to the respective department head or their authorized representatives. ~~Those authorized representatives positions in these departments, with the exception of Real Estate Contracts, are will not be required to be deputized by the County Procurement Officer, but and will~~ avail themselves of the training opportunities provided by the Office of

~~the County Procurement Officer. Except as otherwise provided by statute or ordinance, or as otherwise delegated by the Board of Supervisors herein, the Board of Supervisors has delegated authority to the County Procurement Officer pursuant to the legal authority provided in §1.1-101 above. To the extent that the Board of Supervisors has delegated its authority to execute contracts contemplated herein to other department heads or their authorize representatives, those authorized representatives, with the exception of Real Estate Contracts, are required to be deputized by the County Procurement Officer and will avail themselves of the training opportunities provided by the Office of the County Procurement Officer.~~

- ~~a) Real Property Contracts~~
- ~~b) Public Works Contracts*~~
- ~~c) Architect Engineering Contracts (related to engineering and design of public projects)*~~
- ~~d) Human Services Contracts (refer to section 3.4)~~

~~* For policies related to these types of contracts, refer to Design and Construction Procurement Policy Manual <http://www.oepublicworks.com/civicax/filebank/blobdload.aspx?BlobID=62794>~~

- ~~(2) Human Services Contracts as referenced in Section 3.4 101 shall abide by the Contract Policy Manual unless state and federal laws or regulations prevail.~~

§1.1-106 Delegation of Authority

- (1) In this capacity, the County Procurement Officer ~~will~~ may delegate their ~~his/her~~ this authority to other employees of the County of Orange, its offices, or any special districts whose affairs and funds are under the supervision and control of the Board of Supervisors.

- a) These employees shall be those designated by department heads, and shall be trained under the direction of the County Procurement Officer and deputized as Deputy Purchasing Agents to perform in the County Procurement Officer's capacity, except as otherwise provided herein.
- b) The delegation of authority by the County Procurement Officer to Deputy Purchasing Agents in no way grants authority to persons who have not been authorized by department heads.

~~Delegation of purchasing authority to the Deputy Purchasing Agents delineated in this manual is subject to approval of department heads, who may, at their discretion, require approval by higher authority levels within their departments.~~

§1.1-107 Authority to Procure

- (1) ~~Except as otherwise provided herein, no purchase contract~~ procurement of personal property, services, ~~or commodities~~ (including cash alternatives and court-ordered commodities and services), food or travel by any person other than the County Procurement Officer or Deputy Purchasing Agents shall be binding upon the County, or constitute a lawful charge against any County funds, except in emergencies and as may be otherwise provided through action by the Board of Supervisors.

- (2) Employees responsible for procuring personal property, services and commodities on behalf of the County cannot also be responsible for approving requisitions for purchases, receiving the commodities purchased, or the approval/processing of invoices for payment for their department.

§1.1-108 Specific Duties

- (1) Except as otherwise provided herein, or where statutes or ordinances dictate otherwise, the County Procurement Officer and Deputy Purchasing Agents are authorized to carry out the specific duties listed in this manual plus any additional duties as provided by resolution of the Board of Supervisors, Codified Ordinances of the County of Orange, or laws of the State of California. The County Procurement Officer and Deputy Purchasing Agents are authorized to:
- a) Solicit and purchase all services, commodities, materials, supplies, furnishings, equipment, livestock, food, travel and other personal property of whatever kind and nature required to conduct County business, except in cases of emergency and as otherwise provided through Board of Supervisors action;
 - b) Negotiate and execute all Contracts, as detailed in Section 3 of this manual;
 - b)c) Execute Memoranda of Understanding (MOUs), as detailed in Section 3 of this manual;
 - e)d) Approve and confirm emergency purchases;
 - d)e) Encourage the procurement of “environmentally preferable” products in all solicitations, where practical, that are executed by the County in accordance with current federal and/or state regulations;
 - e)f) Review specifications written for the acquisition of services and commodities to ensure that they are not unnecessarily restrictive and provide the County with the benefits of open and fair competition; and,
 - f)g) Develop and maintain a procurement process which is fair, effective, and efficient.

§1.1-109 Responsibilities of the County Procurement Officer:

- (1) The County Procurement Officer or authorized designee is responsible for the following:
- a) Solicit bids/proposals for cooperative contracts used for County-wide procurement of services and commodities by for departments;
 - b) Establish Procurement policies and procedures to be followed by departments in the procurement of services and commodities;
 - c) Establish policies and procedures to be followed by departments for the use of a Purchasing Card Program to promote efficiencies for low dollar purchases;
 - d) Maintain the “vendors bidders list”, as may be required, for use by departments purchasing units for solicitation of bids and proposals;
 - e) Verify, on a periodic basis, that each Deputy Purchasing Agent obtains insurance certificates and endorsements for department purchasing contracts;
 - f) Identify and pursue other governmental department and other organizations cooperative purchasing contracts, that may be executed, that would be beneficial for County use and where appropriate, make these contracts available for use by each department in accordance with Section 4.7 of this manual;

- g) Manage a centralized program for the reuse of surplus County personal property to foster reuse by other departments in accordance with Section 1.6 of this manual;
- h) Sell and dispose of personal property, including electronic equipment, no longer required for County use, in accordance with the current County “E-Waste Policy”, as well applicable state, federal and county regulations;
- i) Assist in identifying new advancements in technology and other innovations in public sector procurement that would be beneficial for County use, and working with the County’s Chief Information Officer (CIO), as appropriate, implement these innovations for County-wide use;
- j) Develop training materials and conduct training programs for Deputy Purchasing Agents, their supervisors, and others, as designated by department heads that ensures a County-wide procurement process which is fair, effective and efficient, and ensures the integrity of the County’s procurement process;
- k) Deputize those trained in the procurement process when assured that they are adequately trained to perform with the delegated authority of the County Procurement Officer;
- l) Provide assistance on a consultative basis, as requested by department heads or their designees, in the development of solicitations and contracts and the handling of vendor protests;
- m) Review solicitations and contracts when so requested by department personnel;
- n) Develop and implement a compliance monitoring plan with performance measures to review the procurement documents prepared by the Deputy Purchasing Agents, and to report to the appropriate Procurement Council Representative department head or designee with recommendations for corrective action to ensure the County procurement process is fair, efficient, and compliant with legal requirements and County policies and procedures; integrity and efficiency of County procurement processes;
- o) Chair the Procurement Council;
- p) Convene and chair the Procurement Appeals Board;
- q) Encourage County involvement in public procurement organizations in an effort to promote the public procurement profession through education and peer networking;
- r) Amend this manual to include additional Board policy, as directed by the Board of Supervisors or the County Executive Officer; ~~and;~~
- s) Carry out the other duties and responsibilities as defined in this manual;:-
- t) Implement and maintain a Procurement Procedure Manual consistent with this CPM to guide the procurement and management of all contracts in a manner consistent with law, in consultation with County Counsel; and
- u) Amend this CPM to make clerical, ministerial, or other non-material edits, subject to review and approval of such clerical, ministerial, or other non-material edits by County Counsel, including updating provisions based on statutory authority that is cited in the CPM (e.g., statutory dollar triggers and limits, restrictions and authorizations).and update specifics of provisions relying on cited State code (for example, dollar triggers and limits, statutory restrictions, and statutory authorizations where a specific code section is identified);- CPO will communicate to the Board any proposed increases to thresholds as a result of changes in statutory authority. All other changes will be made only as

approved by the Board of Supervisors.

§1.1-110 Custodian of Documents

- (1) All standardized procurement contract templates shall be the sole documents utilized for purposes of County business, except as otherwise approved by the County Procurement Office. Excluding Real Estate Contracts, and except as deemed necessary by OC Sheriff's Department for security and screening purposes, the County Procurement Officer shall be the custodian of these documents and provide the appropriate updates and controls and shall be authorized to modify, add or delete documents as necessary. All standardized contract documents templates, and any subsequent material changes thereto, shall require legal review and approval by of County Counsel.

SECTION 1.1.1

DEPUTY PURCHASING AGENTS

§1.1.1-101 Policy

- (1) Unless otherwise directed by the Board of Supervisors and/or the County Executive Officer and executed by the County Procurement Officer, or as otherwise set forth herein, department heads shall be fully responsible for the procurement of all services and commodities required for those operations under their direction, subject to the following conditions:-
- ~~Except as otherwise provided herein, e~~ Employees referred by the heads of departments to receive training and certification as Deputy Purchasing Agents will be the only persons authorized to procure services and commodities on behalf of their respective department.
 - Deputy Purchasing Agents shall be trained and certified under the sole direction of the County Procurement Officer.
 - Deputy Purchasing Agents shall follow the procurement policies established herein, as well as; those procedures established by the County Procurement Officer as set forth in the Procurement Procedures Manual, to ensure a procurement system which is fair, effective, efficient, and in compliance with legal requirements and Board of Supervisors policy.

§1.1.1-102 Scope

- Except as otherwise provided ~~for here~~in this manual or as directed by the Board of Supervisors, only those employees who are trained and deputized by the County Procurement Officer and authorized by their department head or designee, have the authority to procure services, ~~and~~ commodities, ~~etc.~~, for the County pursuant to the CPM.
- Deputy Purchasing Agents are required to use Regional Cooperative Agreements (RCAs) issued by the office of the County Procurement Officer or provide valid written justification detailing the reasons for not using available RCAs in the procurement file, or as specified by the County Procurement Officer.
- Deputy Purchasing Agents may utilize other cooperative contracts issued by other governmental jurisdictions and organizations that have been approved and made available for use by the County Procurement Officer in accordance with Section 4.7 of this manual.

§1.1.1-103 Specific Duties

- The specific duties of the Deputy Purchasing Agents are defined in Section 1.1 of this document, Office of the County Procurement Officer.

SECTION 1.2

PROCUREMENT COUNCIL

§1.2-101 Definition

- (1) The Procurement Council will be chaired by the County Procurement Officer or authorized designee and comprised of the Purchasing—Procurement Manager or designee from each department. —This council will meet regularly to discuss procurement issues and make recommendations regarding procurement policies, procedures and processes.

§1.2-102 Specific Duties

- (1) The Procurement Council will, among other duties:
- a) Review and evaluate purchasing policies and procedures;
 - b) Identify services and commodities appropriate for County-wide contracts;
 - c) Review potential operational areas for standardization;
 - d) Identify and discuss new operational concepts;
 - e) Evaluate resource-sharing to identify areas of mutual benefit among departments;
 - f) Recommend and encourage the lead department to issue and coordinate small multi-department contracts with less than six users;
 - g) Assist in the identification, development, and implementation of new technology on a County-wide basis, when appropriate;
 - h) ~~Responsible to Dd~~ Disseminate and share information with their staff or department in a timely manner;
 - i) Discuss issues of concern in the procurement process;
 - j) Identify and discuss legislation and County policies that, if implemented, could potentially impact County procurement processes;
 - k) Develop and review performance measures for use by the County Procurement Officer in monitoring procurement processes; and,
 - l) Evaluate and provide feedback on the performance of department procurement operations on an ongoing basis.

SECTION 1.3

PROTEST

§1.3-101 Policy

- (1) Any actual or prospective bidder, ~~or respondent~~~~proposer~~ ~~or contractor~~ who alleges an error or impropriety in the solicitation or award of a contract may submit a grievance or protest to the appropriate department Deputy Purchasing Agent, as set forth herein.
- (2) ~~For Section 3.5-1203.6-101~~ shall govern procedures for Public Works Architect-Engineer Service Contracts and Public Works Construction Contracts solicitations Bid-Protests and Appeals; ~~see 3.5-121.~~
- (3) ~~Section 4.9~~ shall govern procedures for Real Estate RFPsolicitations. ~~Bid-Protests and Appeals.~~

§1.3-102 Procedure

- (1) All protests shall be typed under the protester's letterhead and submitted in accordance with the provisions stated herein. All protests shall include at a minimum the following information:
- The name, address and telephone number of the protester;
 - The signature of the protester or the protester's representative;
 - The solicitation ~~or contract~~ number;
 - A detailed statement of the legal and/or factual grounds for the protest; and
 - The form of relief requested.

§1.3-103 Protest of Solicitation~~Bid/Proposal~~ Specifications

- (1) All protests related to bid or proposal solicitation specifications must be submitted to the appropriate soliciting department's representative or Deputy Purchasing Agent no later than five (5) business days prior to the close of the bid or proposalsolicitation. Protests received after the five (5) business day deadline will not be considered by the County.
- In the event the protest of specifications is denied, and the protester wishes to continue in the solicitation process, they must still submit a bid or proposal prior to the close of the solicitation in accordance with the bid/proposalsolicitation submittal procedures provided in the solicitationbid/proposal.

§1.3-104 Protest of Award of Contract – Invitation for Bid (IFB)

- (1) In accordance with Section 4.2 of this manual, ~~and §3.4-107 where applicable~~, protests related to the award of a contract based on the Invitation for Bid (IFB) process, a protest must be submitted no later than five (5) business days after the Nnotice of ~~the proposed Intent to Award~~contract award is provided by the Deputy Purchasing Agent.

- a) Protests relating to a proposed contract award ~~which are~~ received after the five (5) business day deadline will not be considered by the County.
- b) If the five (5) business day period expires without the ~~receipt~~lodging of a protest, the department may move forward with the contract award or if necessary, file the item for approval by the Board of Supervisors.

§1.3-105 Protest of Award of Contract – Request for Proposals (RFP)

- (1) ~~In accordance with §4.3-109 of this manual, and §3.4-107 where applicable, immediately upon completion of negotiations with the top ranked vendorrespondent(s), but p~~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 interested Partiesparticipating vendors which will initiate the protest period.
 - a) Vendors will have five (5) business days from the date of the notice in which to file a protest concerning the award of the cContract.
 - b) Protests relating to a proposed contract award ~~which are~~ received after the five (5) business day deadline will not be considered by the County.
 - c) During the five (5) business day period, RFP information, including the final evaluator score sheets with the names of individual evaluators redacted, are subject to public disclosure.
 - d) If the five (5) business day period expires without the ~~lodging receipt~~ of a protest, the department may move forward with the contract award or if necessary, filing the item for approval by the Board of Supervisors.

§1.3-106 Protest Process

- (1) In the event of a timely protest, the County shall not proceed with the solicitation or award of the contract until the Deputy Purchasing Agent ~~renders issues~~ a decision on the protest.
- (2) Upon receipt of a timely protest, the Deputy Purchasing Agent will within ten (10) business days of the receipt of the protest, issue a decision in writing which shall state the reasons for the actions taken.
- (3) The County may, after providing written justification to be included in the procurement file, make the determination that an immediate award of the contract is necessary to protect the substantial interests of the County. The award of a contract shall in no way compromise the protester's right to the protest procedures outlined herein.
- (4) If the protester disagrees with the decision of the Deputy Purchasing Agent, in accordance with Section 1.3-107, the protestor may submit a written notice to the Office of the County Procurement Officer requesting an appeal to the Procurement Appeals Board.

§1.3-107 Appeal Process

- (1) If the protester wishes to appeal the decision of the Deputy Purchasing Agent, the protester must submit, within three (3) business days from receipt of the Deputy Purchasing Agent's decision, a written appeal to the Office of the County Procurement Officer.
- (2) Within fifteen (15) business days, the County Procurement Officer will review all materials in connection with the appeal, assess the merits of the appeal and provide a written determination that shall contain ~~his or her~~their decision on whether the appeal shall be forwarded to the Procurement Appeals Board as described in Section 1.4 of this manual.
- (3) The decision of the County Procurement Officer on whether to allow the appeal to go forward will be final and there shall be no right to any administrative appeals of this decision.

SECTION 1.4

PROCUREMENT APPEALS BOARD

§1.4-101 Definition

- (1) The Procurement Appeals Board is an administrative review board convened by the County Procurement Officer for the sole purpose of hearing vendor protests that have not been resolved at the department level.

§1.4-102 Purpose

- (1) It will be the purpose of the Procurement Appeals Board to determine whether a solicitation or contract award is in accordance with applicable case law, statutes, code, County ordinances, policies and procedures, and accepted standards of fairness and ethics.

§1.4-103 Policy

- (1) The County Procurement Officer has the authority to establish a Procurement Appeals Board. The Procurement Appeals Board will meet to hear vendor protests that have not been resolved at the department level.
- a) Upon receipt of written determination by the County Procurement Officer that a hearing is to be convened, the protester and the County department will be given advanced notice of at least ten (10) business days prior to the hearing date, time and location.
 - b) No postponement of the hearing shall be granted, unless good cause is shown by the party seeking the postponement. Whether or not good cause exists shall be in the sole discretion of the County Procurement Officer.

(2) For Public Works Construction Contracts and Architect-Engineer Service Contracts and Public Works Construction Contracts solicitations, see Section 3.6-101 3.5-12101

§1.4-104 Composition

- (1) The Procurement Appeals Board will be chaired by the County Procurement Officer or designee. The County Procurement Officer has the authority to request participation on the Procurement Appeals Board by specific County ~~managers~~ personnel. The Procurement Appeals Board shall be comprised of:
- a) One (1) Deputy County Counsel to serve as legal counsel to the Procurement Appeals Board.
 - b) Three (3) Administrative or Executive Managers from various County departments. The County personnel selected for the Procurement Appeals Board shall have no ~~connection~~ conflict whatsoever with the solicitation ~~or bid~~ being protested.
 - c) One (1) Member of the Public - The County Procurement Officer shall also include a member of the public whenever reasonably possible. ~~The non-County Procurement Appeals Board member shall be familiar with general public procurement processes and~~

ethical standards, including applicable State and county laws and ordinances, and shall be available on short notice so that protests can be resolved quickly.

§1.4-105 — Appointment

- ~~(1) Upon approval by the County Procurement Officer and the department head, County employees may serve a one (1) year term on the Procurement Appeals Board. The County Procurement Officer shall also include a member of the public whenever reasonably possible.~~

§1.4-106 Conflict of Interest – Procurement Appeals Board

- (1) Whenever a protest is considered by the Procurement Appeals Board, all members, including the outside member must sign a County Conflict of Interest Statement certifying that they have no conflict or apparent conflict of interest with the protest being heard.

§1.4-107 Procedures/Support

- ~~(1)~~ The County Procurement Officer may adopt administrative procedures as may be necessary in the execution of the Procurement Appeals Board functions. Any administrative support to the Procurement Appeals Board will be provided by the Office of the County Procurement Officer.

§1.4-108 No Right To Administrative Appeal

- (1) The decision of the Procurement Appeals Board will be final and there shall be no right to further protest or appeal to the Board of Supervisors.

SECTION 1.5

COMPLIANCE MONITORING

§1.5-101 Policy

(1) The County Procurement Officer or designee shall regularly audit~~review~~ the procurement records and processes of all County departments. The frequency of such ~~reviews~~ audits shall be determined ~~in at~~ the discretion of the County Procurement Officer based on ~~his or her~~their assessment in the best interest of the County.

~~(1)(2) in of the best interest of the County. This monitoring will be done on a sample basis.~~ The compliance monitoring of the department procurement records will be conducted to facilitate~~audit~~ and enforce the procurement processes in accordance with County policies, procedures, and Best Practices and will not be construed to place responsibility for department procurement on the County Procurement Officer.

§1.5-102 Specific Duties

(1) The County Procurement Officer or designee shall select procurement ~~documents~~records from each department ~~on a regularly scheduled basis~~ for compliance monitoring. Selected ~~documents~~records will include ~~as an~~ the range of the procurement ~~process~~types. ~~Documents~~Records will be monitored using the following performance measures:

- ~~a) compliance with legal and procurement processes outlined in this manual;~~
- a) compliance with the Procurement Procedures Manual;
- b) compliance with legal requirements and Board policy set forth in this manual;
- c) cost effectiveness ~~of services and commodities acquired;~~
- d) timeliness of procurement process;
- e) operational efficiencies of processes used; and,
- f) other policies, procedures, or Best Practices as determined by the County Procurement Officer.

§1.5-103 Audit~~Review~~ Process

(1) The ~~review~~compliance process is intended to be educational and will be used ~~as a forum~~ to provide guidance and clarification for procurement policies, procedures and Best Practices, ~~policy clarification and to discuss Best Practices.~~ ~~As part of the review process, department being reviewed will be expected to make necessary corrections to bring the file folders into compliance.~~

(2) Upon completion of the ~~review~~audit, the County Procurement Officer or designee will provide the Department Procurement Council Representative a written Final Report that will include, where applicable, a summary of the Findings and R~~e~~commendations for corrective action. ~~As part of the compliance process, departments will be expected to make necessary corrections to bring procurement processes into compliance.~~ ~~shall meet to discuss the discoveries with the appropriate Deputy Purchasing Agent and Purchasing Manager.~~

- (3) ~~A final written report will be submitted to the appropriate Purchasing Council member that will include, where appropriate, a summary of the discoveries and recommendations for corrective action.~~
- (4)(3) The County Procurement Officer shall, ~~on an annual basis,~~ submit a report to the ~~department -Procurement~~Purchasing Council that contains general Findings and Recommendations ~~discoveries~~ and identifies areas that may require changes to ensure a procurement process that is fair, effective, efficient, and in compliance with legal requirements and Board of Supervisors policy.

SECTION 1.6

SURPLUS COUNTY PROPERTY

§1.6-101 Policy

- (1) The County Procurement Officer shall establish methods and procedures necessary for the proper disposition of Surplus County Property. The methods and procedures shall be those that, in the County Procurement Officer's judgment, will return the best value to the County.
- (2) The proper disposition of Surplus County Property must comply with the provisions of this manual and must be conducted in an efficient, transparent and economical manner.

§1.6-102 Definition

- (1) Surplus County Department Property is defined as tangible supplies, materials or equipment to which the County acquired title by means of purchase, donation, grant, or other lawful means, that a County department has determined is no longer needed by the department.
- (2) Surplus County Property is defined as Surplus County Department Property that the County Procurement Officer or designee has determined is not needed for public use by any other County department.
- (2)(3) Electronic Waste (E-Waste) is defined as an electronic device powered by electricity or a battery that has a printed circuit board or video display attached that has reached the end of its useful life and is being discarded by the user. Examples include: televisions, computers, computer peripherals and components, hard drives, CD/DVD drives, printers, facsimile machines, copiers and wireless phones and devices.

§1.6-103 Authority

- (1) Codified Ordinances of the County of Orange, Title 1, Division 4, Article 2, Section 1-4-36, authorizes the County Procurement Officer or designee to sell or otherwise dispose of Surplus County Property in accordance with Sections 25503 through 25507, plus Sections 25372 and 26227, of the Government Code, unless otherwise directed by the Board of Supervisors.

§1.6-104 Disposition Methods

- (1) A department must attempt to dispose of Surplus County Department Property through internal transfer to a claiming department, until the County Procurement Officer determines the Surplus County Department Property is not needed by any other County department. At that time, the Surplus County Department Property must be disposed of as Surplus County Property.
 - a) Surplus County Department Property for which disposition is otherwise covered under law, regulation, code, or other Board of Supervisors policy are exempted from Section 1.6; provided that departments notify the County Procurement Officer or designee prior to disposition.
- (2) Surplus County Property shall be disposed of by the following methods, in the order listed below:

- a) donation of Surplus County Property with a fair market value less than \$5,000 per lot to the Orange County Department of Education, local government agencies, special districts, and not-for-profit organizations
 - b) auction (non-electronic items) or e-waste recycling (electronic items)
 - c) direct sale by department or by County Procurement Officer or designee
 - d) recycling
 - e) trash
- (3) Departments may seek approval from the County Procurement Officer or designee for an exception to Section 1.6-104.
- (4) The procedures for the disposition methods shall be those established by the County Procurement Officer as set forth in the ~~County Surplus Personal Property Procedure~~Procurement Procedures Manual.
- (5) When purchasing personal property for which it is not necessary to advertise for bids, the County Procurement Officer or Deputy Purchasing Agent may solicit and accept advantageous trade-in allowances for Surplus County Property that has a scrap value of less than ten thousand dollars (\$10,000.00).

§1.6-105 Board Approval

- (1) Approval from the Board of Supervisors is required prior to the donation of any Surplus County Property that is a capital asset or with an estimated market value that exceeds \$5,000, with the exception of donations specified above in Section 1.6-104.

SECTION 1.6.1

DISPOSITION OF REAL PROPERTY BY SALE

§1.6.1-101 Definitions

- (1) “County Exempt Surplus Land” is County Real Property which has been declared as exempt surplus land pursuant to applicable law.
- (2) “County Real Property” is land owned by the County, or special districts whose affairs and funds are under the supervision and control of the Board of Supervisors, such as the Orange County Flood Control District or Orange County Housing Authority (Special Districts), in fee simple.
- (3) “County Surplus Land” is County Real Property which has been declared as surplus land pursuant to applicable law.
- (4) “HCD” shall mean the Department of Housing and Community Development for the state of California.

§1.6.1-102 Policy

- (3) Unless otherwise directed by the Board of Supervisors, the Chief Real Estate Officer (CREO) shall establish methods and procedures necessary for the disposition by sale of County Real Property declared as County Surplus Land or County Exempt Surplus Land consistent with the Surplus Land Act, Government Code section 54220 *et seq.*, and the Surplus Land Act Guidelines (Surplus Land Act).
- (4) The methods and procedures shall be those that, in the CREO’s judgment, will return the best value to the County or serve the County’s best interests. The proper disposition of County Surplus Land must comply with the provisions of this manual and must be conducted in an efficient, transparent and economical manner.
- (5) To administer and implement this policy, CEO Real Estate has implemented this procedure. It is important to determine that County agencies, departments, and districts have no need for the property before deeming the property to be County Surplus Property and holding discussions and negotiations with non-County public sector entities as mandated by Resolution No. 82-677. Notice, as set forth below, is therefore required to be provided to these County entities to determine this need.

§1.6.1-103 Real Property Need

The sale and disposition of certain types of County Real Property require unique procedures in addition to these otherwise required, including the following:

- (1) County Exempt Surplus Land: This is land that is exempt from the Surplus Land Act pursuant to Section 103 of the Surplus Land Act Guidelines.
- (2) OC Parks Real Property: The sale of any real property dedicated for, or deed restricted to, park purposes is subject to the provisions of the County Park Abandonment Law of 1959 [Government Code sections 25580-25588] or Orange County Codified Ordinance Section 2-5-301, as applicable. Except for limited circumstances authorized by applicable law, the park property dedication must be abandoned prior to sale of any such County Real Property.

§1.6.1-104 Notice to County Entities

- (1) To determine the real property needs for the County, CEO Real Estate will prepare and distribute a “Notice of Availability of Surplus Land” (Form P8-5) to County agencies, departments, and districts governed by the Board of Supervisors, which describes the property and includes a map showing its location. The notice shall request that if there is any interest in utilizing the property that notification be sent to CEO Real Estate within thirty (30) days of the notice date.
- (2) If any County agency, department, or Special District expresses an interest in the County Real Property, the CREO and CEO Real Estate will coordinate with such agency, department, or Special District regarding their possible use of the property.
- (3) If the property is not needed by a County agency, department, or district, in the reasonable discretion of the CREO, the property may be deemed surplus to the needs of the County internally and CEO Real Estate can proceed to appraise the property and proceed to the Board to have it declared County Surplus Real Property and for authority to provide notice in Section 1.6.1-107 to other public agencies pursuant to the Surplus Land Act.

§1.6.1-105 Appraisal of Real Property

- (1) After County Real property has been determined internally to be surplus to the needs of the County, an appraisal must be done to determine the value of the property before it can be taken to the Board to have it declared County Surplus Real Property and offered for sale.
- (2) Appraisal services are contracted out and CEO Real Estate keeps a list of qualified appraisers currently on retainer that can be contacted for appraisal services. There are two steps to the appraisal process. A self-contained, highest and best use appraisal shall be procured for the real property, followed by a review appraisal, which is essentially a review of the original appraisal by another appraiser.

§1.6.1-106 Request for Authorization to Solicit Bidder

- (1) After real property has internally been determined to be surplus to the needs of the County and an appraisal has been completed, a request for a finding that the property is County Surplus Property, authority to provide notice to other public agencies under the Surplus Land Act (see Section 1.6.1-107, below) and solicit bids for the sale of the property will be submitted to the Board of Supervisors for approval.
- (2) In the event that the property is County Exempt Surplus Land (see Section 1.6.1-108, below), the facts supporting such finding shall be presented to the Board and the Board requested to make such a finding by resolution.
- (3) The Agenda Staff Report (ASR) requesting authority to solicit bids will be accompanied by a complete sales package recommended by CEO Real Estate for Board approval. The request will also indicate that the package has been approved as to form by County Counsel. At a minimum, the sales package will contain:

- a) A “Notice of Availability and Intent to Dispose of Surplus Land” (see Section 1.6.1-107, below)
 - b) A copy of the Notice of Sale, which will give general information as to the terms of the sale, the time and place of the public sale, a description of the property to be sold, and the minimum acceptable bid. Attached to the Notice will be a map properly depicting the property to be sold.
 - c) A copy of the Offer and Agreement to Purchase Real Property. This Agreement shall include all the terms of sale.
 - d) The proposed bidding procedure.
- (4) If allowed under the code section applicable to the sale, the ASR can include a request that the Board delegate authority to the CREO to execute the contract with the highest bidder. Otherwise, the final sale will have to be brought back to the Board for approval. If this request is made, the ASR should also include a recommendation to the Board that “CEO Real Estate be authorized to return the deposits of unsuccessful bidders.”
- (5) CEO Real Estate may choose to utilize a broker or agent to solicit bids for the property and coordinate the bidding process, in which case authority to hire such broker shall be obtained from the Board of Supervisors as part of the ASR authorizing the sale.

§1.6.1-107 Notice to Other Public Agencies (Surplus Land Act Compliance)

A “Notice of Availability and Intent to Dispose of Surplus Land” (Form P8-5.1), either by sale, lease, or both, shall be prepared and presented to the Board (see Section 1.6.1-106, above), after it is determined that no County agency, department, or Special District has a need for the property. Once the Board has acted and found the property County Surplus Land (but not County Exempt Surplus Land), Government Code Section 54222 and County policy require that the notice be sent by certified [mail](#) or email to:

- (1) The HCD, any local public entity within whose jurisdiction the land is located, as defined in Section 50079 of the Health and Safety Code and, upon written request, “Housing Sponsors” as defined in Section 50074 of the Health and Safety Code, for the purpose of developing low and moderate-income housing and any such sponsors who have notified HCD of their interest in surplus land that is located in Orange County or in all California counties. Priority is to be given to development of the land to provide affordable housing for lower income elderly or disabled persons or households, and other lower income households.
- (2) Any park and recreation department of any city and county within which the land is located. Park, Recreation and Open Space availability notices shall comply with the conditions and follow the requirements as described in Government Code Sections 54221(f)(2), 54222, and 54227(b).
- (3) Any regional park authority having jurisdiction within the area in which the land is located.
- (4) The State Resources Agency or any agency which succeeds its powers.

- (5) The nonprofit neighborhood enterprise association corporation for the area if the land is within an area designated as an enterprise zone, pursuant to Section 7073 of the Government Code. Check with the Planning Department of the city to determine if such a zone and corporation exist.
- (6) The city within which the land is situated. The notice should be addressed to the city manager or city administrator.
- (7) The city managers or city administrator of any other city the boundaries of which are within three miles of the surplus land.

The most recent code sections should be checked to be sure that all currently required notifications are met. Public entities or nonprofit neighborhood enterprise association corporations must respond in writing within 60 days after their receipt of the notice. After notice is received from an entity desiring to purchase (or lease if offered) the land, the CREO will enter into good faith negotiations to determine if a mutually acceptable agreement can be reached. If the price or terms cannot be agreed upon after a good faith negotiation period of not less than sixty (60) days, the land may be disposed of without further regard to Government Code Sections 54220, *et seq.* (Note: The RFP process for real estate is addressed in §4.3.1 of the CPM. Leases may require Surplus Land Act compliance. Please consult with County Counsel for assistance.)

§1.6.1-108 County Exempt Surplus Land

Government Code Section 54222.3 provides that County Exempt Surplus Land is exempt from the notification requirements of Section 54222. The Surplus Land Act is subject to several exemptions, some of the more common exemptions being land that is~~To be County Exempt Surplus Land, the surplus land must:~~

- (1) Transferred to a public entity for public uses; or
- (2) ~~Be~~ Less than 5,000 square feet in area;
- (3) ~~Be~~ Less than the minimum legal residential building lot size, or 5,000 square feet in area, whichever is less; or;
- (4) Have no record access and be less than 10,000 square feet in area; and is not contiguous to land owned by a state or local agency which is used for park, recreational, open space or low and moderate income housing purposes, and is not located within an enterprise zone pursuant to Section 7073 nor a designated program area as defined in Section 7082 of the Government Code.
- (5) If the surplus land is not sold to an owner of contiguous land, it is not considered exempt surplus land and notification must be given. The following properties are not considered exempt land and notification must be given, unless some other exemption applies (*see, e.g. Government Code Section 54221(f)(1)(H)*):
 - a) Land within the coastal zone.
 - b) Land within 1,000 yards of a historical unit of the State Park System.
 - c) Land within 1,000 yards of any property that has been listed on, or determined by the State Office of Historic Preservation to be eligible for, the National Register of Historic Places.

For further guidance on further exemptions, please consult with County Counsel. A finding that real property is County Exempt Surplus Property shall be made by the Board of Supervisors in a resolution, which shall be provided to HCD at least 30 days prior to a sale of the Exempt Surplus Property.

§1.6.1-109 Solicitation of Bids

- (1) After the Board of Supervisors has declared the property to be County Surplus Property, authorized solicitation of bids for its sale and notices have been provided to applicable public agencies under the Surplus Land Act (see Section 1.6.1-107, above), the Notice of Sale will be given wide circulation by CEO Real Estate in order to reach as many potential buyers as feasible, including posting on applicable County websites.
- (2) A list of all persons interested in buying surplus County real property is maintained by CEO Real Estate. Each person on this list is to be sent a Notice of Sale.
- (3) Legal advertisements are to be made if required by applicable statutes affecting the property.
- (4) Whenever necessary to reach potential buyers and when specifically approved by the Board of Supervisors, advertisements will be placed in newspapers and trade magazines.
- (5) If appropriate, press releases covering the sale will be prepared by the CEO Real Estate staff member, approved by the CREO and forwarded to CEO Media Affairs for distribution.
- (6) CEO Real Estate may choose to utilize a broker or agent to solicit bids for the property and coordinate the bidding process, in which case authority to hire such broker shall be obtained from the Board of Supervisors.

§1.6.1-110 Selection of the Successful Bidder

- (1) Sealed Offers and Agreements to Purchase will be received by the CEO Real Estate and opened at a specified time.
- (2) Immediately after the sealed Offers have been opened, a call for verbal bids will be made. At this time, all persons who have not already submitted bids and who wish to bid on the property will have the opportunity to enter the bid process upon presentation of the required bid deposit in the manner prescribed in the bid package.
- (3) Once the verbal bidders have been identified, then the verbal bidding process will begin, with the requirement that the first verbal bid exceed the highest written bid by a predetermined percentage amount as set forth in the proposal package, as reasonably determined by the CREO.
- (4) At the close of verbal bidding, the high bidder shall execute the Offer and Agreement to Purchase Real Property and shall be notified that the total sum to be paid outside of escrow is due and must be delivered to CEO Real Estate on or before the date specified in the purchase agreement.

- (5) If the Board has not previously delegated the CREO to execute the agreement, the CEO Real Estate staff member will prepare an ASR that includes information concerning the number of bids received, the highest bidder, a financial resume, and other pertinent facts. The ASR shall be submitted to the Board at the earliest practicable date for final approval of the sale and permission to execute all applicable documents to close escrow, if any.
- (6) The ASR shall include a recommendation to the Board of Supervisors that “CEO Real Estate be authorized to return the deposits of unsuccessful bidders.”
- (7) All procedures and record-keeping shall be closely adhered to so that all those wishing to purchase County property are given an equal opportunity. Every action the County takes must evidence that these procedures are open and fair to all prospective bidders.

SECTION 1.7

PURCHASING-PROCUREMENT CARDS**§1.7-101 Definition**

- (1) Under the direction of the CEO, the County Procurement Officer shall oversee and administer the County's Purchasing-Procurement Card Program. Purchasing-Procurement cards are County credit cards issued to Deputized Purchasing Agents ~~County of Orange employees authorized by department heads~~ to make purchases on behalf of the department in accordance with ~~established Purchasing Card Program policies and procedures~~ this CPM, and the Procurement Procedures Manual and Section 3.6 of this manual, ~~as well as, applicable procurement policies and procedures.~~

§1.7-102 Authorized Use

- (1) The Purchasing-Procurement Card is imprinted with the County of Orange logo and the cardholder's name. Cards may be used to purchase-procure services and commodities for County use only; using the card for personal purchases is strictly prohibited. Any employee who willingly uses the card for personal purchases shall be subject to:
- a) reimbursing the County for all costs associated with the personal purchases,
 - b) having the card immediately revoked,
 - c) ~~subject to~~ possible referral to the County District Attorney; and ~~be~~
 - d) ~~subject to~~ further disciplinary action as authorized by applicable County procedures, up to and including termination from employment.

§1.7-103 Responsibilities

- (1) Program Administrator: The Program Administrator is responsible for program questions, contract administration, account coordination, card issuance and cancellation, report management and review, and administrative training.
- (2) Department Coordinator: ~~Department heads and designees~~ authorized to request new cards, modifications to card limits, cancel cards, and assign Approving Officials.
- (3) Billing Officials: ~~Department employee responsible for managing the billing, payment and approval processes for department~~ purchases procurements. Billing Officials cannot also be cardholders.
- (4) Approving Official: ~~Department employees~~ authorized to approve payments for purchases procurements made by department cardholders.
- (5) Cardholders: ~~County Deputy Purchasing Agents of Orange employees~~ authorized to make Purchasing-Procurement Card purchases-procurements on behalf of their assigned department in accordance with established program policy and procedures and applicable procurement policies and procedures.

§1.7-104 Controls

- (1) In addition to other internal controls and procedures as detailed in the ~~Purchasing Card Program Policies and Procurement~~ Procedures ~~Manual and s~~Section 3.6 of this manual, use of County issued ~~Purchasing-Procurement~~ Cards are subject to the following controls:
- a) 30-Day Purchase Limit per Card: Each card is established with a monthly, not-to-exceed amount predetermined by the Cardholder's department head or designee and approved by the County Procurement Officer. Except as set forth in this Section, there is no other limit on the card's monthly, not-to-exceed amount.
 - b) Single Purchase Limit per Card: Each card is established in the ~~purchasing-procurement~~ card system with a single transaction limit that is controlled to ensure adherence to all policies and procedures.
 - c) Merchant Code Blocking: Every County issued ~~Purchasing-Procurement~~ Card is blocked to prohibit the Cardholder from making purchases from certain types of vendors.

(2) Department heads may impose additional restrictions on commodities or services that may not be ~~purchased-procured~~ using the ~~Purchasing-Procurement~~ Card.

§1.7-105 Adherence to Procurement Policy

- (1) County purchasing policies, as delineated in this manual ~~and the Procurement Procedures Manual~~, may not be circumvented when using the ~~Purchasing-Procurement~~ Card. ~~In~~ accordance with County policies and procedures outlined herein, where appropriate Cardholders are required to obtain the appropriate number of price quotes before ~~making purchases-procuring~~ and must document the quotes received with the transaction information and invoice.

SECTION 1.8**COUNTY OF ORANGE PROCUREMENT PREFERENCE POLICY****§1.8-101 Policy**

- (1) Purpose: To establish Orange County Board of Supervisors procedures to facilitate Orange County Local Small Business' (OCLSB) and Disabled Veteran Business Enterprises' (DVBE) ability to procure County contracts.
- (2) In alignment of the County of Orange's Procurement Preference Policy (Preference Policy) with applicable law, the County Procurement Officer is hereby authorized to implement the preferences provided herein to increase the participation of certified OCLSB and DVBE businesses.
- (3) The Preference Policy shall be applied to all procurements where competitive bidding (low bid or scored proposals) is required, except as otherwise provided herein or as otherwise required by Federal, State or County laws and regulations.
- (4) The Preference Policy requirement is not applicable to Emergencies.
- (5) Further rules and application of the Preference Policy for different types of procurements are referenced in the following sections: 3.1, 3.2, 3.3, 3.4, 3.5, 3.7, 4.5 and 4.7.

§1.8-102 Business Eligibility Requirements

- (1) OCLSB Eligibility - To qualify as an OCLSB, a business shall meet a), b), and c) requirements below:
 - a) Local Business requirements:
 - i. maintains their principal center of operations (i.e. headquarters) within Orange County; and;
 - ii. has:
 - 1) a business address located in the County of Orange that is not a post office box, or
 - 2) a valid business license or certificate of occupancy issued by the County of Orange or by an Orange County city, or other documentation acceptable to the County of Orange.
 - b) Small Business requirements:
 - i. must be certified as a Small Business by the State of California Department of General Services (DGS); and;
 - c) Above requirements must be valid at the time of proposal submittal.

(2) DVBE Eligibility – To qualify as a DVBE, the DVBE must meet the following requirements:

- a) must be certified as a DVBE by the State of California DGS; and
- b) DGS DVBE requirements must be valid at the time of bid/proposal submittal.

(3) Eligibility for Contractors Using OCLSB/DVBE Subcontractors – As applied to procurements with a total estimated contract value in excess of \$200,000, prime contractors that do not otherwise meet the OCLSB/DVBE certification requirements may still qualify for OCLSB/DVBE preferences by virtue of their use of OCLSB/DVBE subcontractors. To qualify for the preferences by using certified OCLSB/DVBE subcontractor(s), twenty percent (20%) of the total proposed contract amount must be allocated to OCLSB and/or DVBE subcontractor(s) meeting the qualifications and certification requirements provided in subsections (1) and (2) above.

§1.8-103 Requests for Proposals

(1) A Contractor deemed qualified for the Preference Policy pursuant to one of the eligibility categories detailed in subsections (1), (2) and (3) of Section 1.8-102 above shall receive an additional five percent (5%) of the total available points to be added to the contractor's total tallied score. A-E services as defined in Section 3.4 shall not include a DVBE preference.

(2) Except as applied to A-E services as defined in Section 3.4, a Contractor deemed qualified for the Preference Policy pursuant to more than one of the eligibility categories detailed in subsections (1) and (2) of Section 1.8-102 above, or a contractor deemed eligible pursuant to subsection (3) of Section 1.8-102 that includes both certified OCLSB and DVBE subcontractors, shall receive an additional eight percent (8%) of the total available points to be added to the contractor's total tallied score.

(3) If the final score of any OCLSB or DVBE matches the final score of a proposer who is not an OCLSB or DVBE, preference shall be given to the certified OCLSB or DVBE. If two or more OCLSBs and/or DVBEs have the same final score, the County shall determine the contract award based on the County's best interests. Notwithstanding these preference procedures, the Orange County Board of Supervisors reserves the right to award contracts in any other permissible manner in consideration of the County's best interests.

§1.8-104 Invitation for Bids / Low Bid Contracts

(1) For solicitations that are based on the lowest responsive and responsible bid, the preference to be granted to a certified bidder pursuant to Section 1.8-102 above shall be equal to five percent (5%) of the lowest bid. Public Works Procurements shall not include a DVBE preference.

(2) Except as applied to Public Works Procurements, a bidder deemed qualified for the Preference Policy pursuant to both of the eligibility categories detailed in subsections (1) and (2) of Section 1.8-102 above, or a bidder deemed eligible pursuant to subsection (3) of Section 1.8-102 that includes both certified OCLSB and DVBE subcontractors, the preference to be granted shall be equal to eight percent (8%) of the lowest bid.

- (3) Such preference shall be applied to all certified bidders that requested the preference, even if the certified bidder is the lowest responsible bidder meeting specifications. The contract award shall be the bidder's original bid price, not the price used for bid evaluation purposes.
- (4) In no instance shall any of the preference programs be combined to exceed a total of eight percent (8%), or a maximum of \$150,000, in response to any County solicitation.

§1.8-105 Waivers/Limitations

- (1) The County Procurement Officer or designee may consider a departmental request to waive the County of Orange Procurement Preference Policy requirement under special circumstances and/or if it is determined to be in the best interest of the County. Prior to approving a Preference Policy waiver request, the County Procurement Office will notify the Board of Supervisors of the request.
- (2) The Preference Policy waiver request must be approved by the County Procurement Officer or designee and the Chief Financial Officer, on the form(s) approved and provided by the CPO, and shall be made part of the procurement file.
- (3) The County of Orange Procurement Preference Policy requirements shall not apply when prohibited by this policy or applicable laws or regulations including, but not limited to, specific state or federal funded projects.

SECTION 2 – GENERAL RULES AND PROCEDURES

SECTION 2.1

ETHICS IN PUBLIC CONTRACTING - COUNTY EMPLOYEES

§2.1-101 Policy

- (1) Public employment is a public trust. Public employees must discharge their duties impartially to assure fair, competitive access to government procurement by responsible contractors. Moreover, they shall conduct themselves in such a manner as to foster public confidence in the integrity of the County procurement process. Additional guidelines may be found in the County's *Procurement Ethics Manual* maintained by the Office of the County Procurement Officer.

§2.1-102 "Arm's Length" Principle

- (1) All procurements must be "arm's-length" transactions; meaning that the parties to a transaction have no conflict of interest in the transaction. Arm's length transactions create an equitable contract that will stand up to legal scrutiny.

§2.1-103 General Standards of Ethical Conduct

- ~~(1) Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the employee's duties is a breach of public trust.~~
- ~~(2) Title 1, Article 2, Division 3 of the Codified Ordinances of the County of Orange prohibits the donation and receipt of gifts to public officials. This article is referred to as the Orange County Gift Ban Ordinance. The Board of Supervisors has found that the receipt of gifts by public officials from persons who do business with the County erodes public confidence in the impartiality of decisions made by those officials.~~
- ~~(3) Violation of the County of Orange Gift Ban Ordinance may constitute a misdemeanor, and any employee found in violation shall be subject to discipline, including, in appropriate cases, termination of employment.~~
- (1) It is the duty of all County and Orange County Flood Control District employees to ensure fairness and transparency in contracting by complying with State and local laws and regulations, including those pertaining to conflicts of interest in threefour areas: (1) contracting (those governed by Government Code Sections 1090 et seq.); (2) incompatible activities (Government Code sections 1126 et seq.); (3) financial interests (those governed by Government Code Sections 87100 et seq. including regulations promulgated by the Fair Political Practices Commission (FPPC)); and (43) the County Git Ban Ordinance (those governed by Sections 1-3-21 et seq. of the Orange County Codified Ordinances.)-(Gift Ban Ordinance). These conflict of interest provisions are only briefly described here; any question arising from a potential conflict of interest or ambiguity under any of these provisions should be addressed to County Counsel.
- ~~(4)(2)~~ (2) 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.
- (3) The Code of Ethics and Commitment to County Public Service adopted by the Board of Supervisors states, "A public official or employee shall not meet or confer with a former County official or

employee who is acting as a lobbyist within one (1) year following termination of the former official or employee from County employment.”

- (4) The Gift Ban Ordinance prohibits County officers and certain designated employees, as defined therein, from soliciting or accepting gifts from persons or entities doing or seeking business with the County. A County officer or someone who does business with the County who violates the Gift Ban Ordinance is subject to criminal liability, and designated employees are subject to discipline, including termination of employment. A more extensive discussion of the Gift Ban Ordinance is contained in a guide, which can be found on the County Counsel intranet site.
- (5) Procurement documents including RFQs, RFPs, RFI's, RFA's, and IFB's will include language that prohibits contacting County staff by non-County interested parties during an active, ongoing procurement process/solicitation. Prospective bidders or respondents are not allowed to receive information concerning any bid/solicitation details of the specific procurement process except with through the designated Procurement staff member Deputy Purchasing Agent who is managing/overseeing the procurement process. This prohibition extends to the firm/vendor's prospective bidder's or respondent's employees, representatives, agents, lobbyists, attorneys, sub-consultants, or anyone else acting on the behalf of the interested party. Contacts that are prohibited include those with members of the evaluation panel, the County Executive Officer, and other County staff; provided, however, this prohibition shall not extend to members of the County's Board of Supervisors and Countywide Elected Officials or members of their respective staffs.

§2.1-104 Conflict of Interest

(1) The State of California Government Code addresses conflicts of interest as follows:

- a) Section 87100: -“No public official at any level of state or local government shall make, participate in making, or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.”
- b) Section 87103: -“A ~~public~~ official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of the official's or member of his or her immediate family, or on any of the following:
 - i. Any business entity in which the public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more.
 - ii. Any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.
 - iii. Any source of income, other than gifts or other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars (\$500) or more in value provided to, received by or promised to the public official within twelve months prior to the time when the decision is made.
 - iv. Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

- v. Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within twelve months prior to the time when the decision is made. The amount of the value of gifts specified by this subdivision shall be adjusted biennially by the commission to equal the same amount determined by the commission pursuant to subdivision (f) of Section 89503.
- vi. For purposes of this Section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a ~~ten-10-~~percent interest or greater."

c) Section 1090:- (a) "Members of the legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.

(b) An individual shall not aid or abet a Member of the Legislature or a state, county, district, judicial district, or city officer or employee in violating subdivision (a).

(c) As used in this Section, 'district' means any agency of the state formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries."

~~e)d)~~ Any employees who, in the course of their employment, make, or participate in the making of, decisions which may potentially have a material effect on a financial interest of the employees are deemed 'designated employees' and are required to complete a Statement of Economic Interests (Form 700) on an annual basis, when they assume employment with the County, and when they terminate employment with the County.

~~d)e)~~ Upon discovery of an actual or potential conflict of interest, an employee shall promptly file a written statement of disqualification with the County Procurement Officer or appropriate Deputy Purchasing Agent and shall withdraw from further participation in the transaction involved. The employee may, at the same time, request through his department head an advisory opinion from County Counsel as to what further participation, if any, the employee may have in the transaction.

§2.1-105 Restrictions on Employment of Present and Former Employees

- (1) A County public official or employee shall not meet or confer with a former County official or employee who is acting as a lobbyist within one (1) year following termination of the former official or employee from County employment. Moreover, no County official or employee shall engage in any business, transaction or activity, or have a financial interest, which is in conflict with the proper discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties.

§2.1-106 Use of Confidential Information

- (1) Confidential information is defined as that information which is available only because of one's status as a County employee. It shall be a breach of ethical standards for any employee or former

employee to use confidential information for actual or anticipated personal gain or for the actual or anticipated personal gain of another person.

§2.1-107 Purchase of Surplus Material and Equipment

- (1) For any employee who participates in the decision to put materials or equipment in surplus status, it shall be a breach of ethical standards for that employee or any members of that employee's immediate family to offer to purchase the same through sealed bid, auction, or any other manner, or request that acquisition be made on his or her behalf by another person or persons.

§2.1-108 Auction Techniques

- (1) It shall be a breach of ethical standards for any employee to engage in the practice of ~~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, or other classifications protected by law.

§2.1-111 Incremental Contracting

- (1) Contracts shall not be intentionally split to avoid approval by the Board of Supervisors or to bypass solicitation requirements.
- (2) "In any county, it is unlawful to split or separate into smaller work orders or projects any public works project for the purpose of evading the provisions of this article requiring public work to be done by contract after competitive bidding. Every person who willfully violates the provisions of this section is guilty of a misdemeanor." Public Contract Code §20123.5.

SECTION 2.2

ETHICS IN PUBLIC CONTRACTING - CONTRACTORS

§2.2-101 Conflict of Interest

- ~~(1) Upon County Counsel approval, the County shall 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~~
 - ~~May arise during the performance of the required services and, therefore, would provide reason for termination with cause~~
- (1) Upon County Counsel approval, the County shall require that a respondent to a solicitation provide, at the time it submits its response or bid, client lists, disclosure statements, or any other information that the County may require to determine if a respondent has a conflict of interest which:
- a) May be detrimental to the County's interests and, therefore, would cause the County not to enter into a contract; or
 - b) May arise after award and during the performance required under a contract and, therefore, foreseeably could provide reason for termination of that contract ~~with cause~~.
- (2) The County may require that a respondent provide the information described in Paragraph (1) above for each subcontractor a respondent has identified as likely to perform work on a given project.
- (3) The County may also require that a respondent self-identify any present or potential future relationships or business interests, for both the respondent and any of its officers, which the respondent believes may give rise to a conflict of interest detrimental to the County's interests or which could require the County to terminate any contract after award.
- ~~(2)(4)~~ (4) The County will be the sole judge in determining if such a conflict would preclude the County from entering into a contract or be reason for termination ~~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.~~
- (5) By participating in any solicitation, respondents to a solicitation agree to furnish the required information as requested and accept the County's decision in regard to the existence of an actual or potential conflict of interest that would preclude award of a contract as final.

§2.2-102 Vendor/Contractor Code of Conduct

- (1) Vendors shall independently and honestly prepare and submit bids or proposals without collusion or otherwise obtaining information about a competitor's bid or proposal.
- (2) Prospective V~~endors and prospective contractors~~ shall truthfully disclose who owns and controls their company or firm, as well as the company or firm's current financial condition during solicitation and contract phases.

- (3) Vendors shall not share price information with competitors for the purpose of manipulating the winning bid of the contract, also known as “price-fixing” or “bid-rigging or collusion”.
- (4) Vendors shall not submit low dollar bids with the expectation of making up the difference after the contract has been won through change orders or amended contracts.
- (5) Strict observance of all local, state, and federal laws is a minimal requirement in all aspects of vendor/contractor conduct.
- (6) Vendors must adhere to the County’s gift ban limits.
- (7) Failure to meet these standards could result in sanctions including, but not limited to, voidance of current or future contracts.

§2.2-103 Levine Act

- (1) Government Code section 84308, a provision of the Political Reform Act known as the “Levine Act,” generally prohibits campaign contributions of more than \$250 by a party or a party’s agent within the preceding 12 months of a proceeding, ~~or~~ and within 12 months after there has been a final decision on the matter, to officials participating in a decision regarding a “license, permit, or other entitlement for use,” which includes contracts and franchises. These restrictions do not apply to labor, personal employment contracts, or contracts where the County has little, if any, discretion in choosing the contractor. For example, a circumstance where bidders submit fixed amounts in their bids and the County is required to award the contract to the lowest responsible bidder (such as public works contracts under the Public Contracts Code).

Licenses, permits, and contracts subject to the Levine Act must comply with the County’s Levine Act ~~p~~Policy. Departments and ~~d~~Deputy ~~p~~Purchasing ~~a~~Agents shall ensure compliance with the policy, including requiring that all applications and solicitations contain Levine Act notices and disclosures referenced in the policy. Failure of an applicant or a bidder to complete required disclosures may be a basis to reject an application or ~~bid, or~~ bid or deny the award of a contract.

SECTION 2.3

SURETY AND INDEMNIFICATION

§2.3-101 Definitions

(1) As used in this Section, the following terms have the meanings set forth:

- a) Indemnification: The agreement of one party to assume financial responsibility for the liability of another party. The County's standard indemnification provision transfers the risk associated with the contract to the Contractor.
- b) Insurance: A contractual relationship where an insurance company agrees, for a premium paid, to reimburse the insured or other party for a loss to a specified subject caused by designated hazards or risks.
- c) Bid Bond: Used in conjunction with the bidding process. The bond acts as a guarantee that, if awarded the contract based on the bid submitted, the contractor will enter into a contract to perform the work at the price quoted. If the contractor declines to enter into a contract to perform the work at the agreed-upon price, the bid bond will reimburse the County the difference between the defaulting contractor's bid and the next lowest bid, up to the maximum amount covered under the bond.
- d) Labor and Materials Bond: Labor and materials payment bond is an agreement in which security is provided by a surety company to the County on behalf of a contractor. Such bond guarantees the County that all bills for labor and materials contracted for and used by the contractor will be paid by the surety if the contractor defaults.
- e) Performance Bond: A performance bond guarantees that the contractor will perform the work in accordance with the contract and related documents, thus protecting the County from financial loss up to the maximum amount covered under the bond in the event the contractor fails to fulfill its contractual obligations.

§2.3-102 Policy

- (1) It is County policy for Deputy Purchasing Agents, as well as those individuals with the delegated authority to issue contracts on behalf of their department and/or County, to assess the risks involved in the contract and to seek review/approval from the County's Risk Manager or authorized designee when a vendor takes exceptions to the County's standard insurance requirements (as stated in §2.3-103).
- (2) It is County policy for Deputy Purchasing Agents, as well as those individuals with the delegated authority to issue contracts on behalf of their department and/or County, to assess the risks involved in the contract and to seek review/approval from the County's Risk Manager or authorized designee and County Counsel for bonds and when a vendor limits its liability or takes exception to the County's indemnification clause (as stated below).
- (3) Indemnification: Contractors doing business with the County will indemnify the County against losses, liabilities, and/or claims that arise from contractor's performance including, but not limited to, patent violations, copyright violations, unauthorized use of materials, wrongful acts, injuries to persons or property, and any other loss, liability or claim unless stated otherwise in this manual.

- (4) **Insurance:** Insurance will be required where the County may suffer risk of loss due to the nature of the work being performed. It will be the obligation of each department to research and include in the contracts the appropriate insurance requirements for each applicable circumstance as stated in §2.3-103, below.

- a) No insurance is required for the following purchases:
 - i. emergency purchases (as consistent with §3.3-123(1)(a)(iii), when applicable),
 - ii. commodity purchases of \$5,000 or less (regardless of method of delivery),
 - iii. off-the-shelf software products, including off-the-shelf software maintenance, or
 - iv. commodity purchases in excess of \$5,000 that are delivered by third party common couriers to County.
- b) For service purchases, no insurance is required for purchases of \$5,000 or less unless the purchase is for:
 - i. maintenance services related to trades (e.g., plumber, electrician or carpenter) that are performed on County property/premise, or
 - ii. services described in §3.3-101(1) subsections (a), (f), ~~and (g)~~, and/or (i).
~~human services as defined in Section 3.4-101~~

If the department believes that a particular purchase falls under one of the exemptions above so as to not require insurance, the department may still seek County Risk Manager or authorized designee's review and assessment regarding the appropriateness of including County's standard insurance requirements (as stated in §2.3-103, below) as part of that purchase.

- (5) **~~Bid and Performance Bonds:~~** Bid Bonds, Labor and Materials Payment Bonds, and pPerformance Bbonds will be required from vendors in those situations where they are required by statute or ordinance or when less than faithful performance of the contract would create considerable loss to the County. In requiring bid and performance bonds, consideration will be given to the impact these requirements will have on the ability of small businesses to participate in the contracting process. Bond information should be submitted to CEO/Risk Management as early in the contract development process as possible. Submission of the bond information to CEO/Risk Management allows the confirmation that the bond issuer meets financial, rating, licensing and other legal criteria.
- (6) **Liquidated Damages:** Liquidated damages clauses are enforceable if: (1) damages are difficult to ascertain or estimate at the time the contract is formed; and (2) the amount is a reasonable forecast of compensatory damages in the case of breach. Specifically, if the liquidated damages amount significantly exceeds the amount of damages prospectively probable, the liquidated damages clause may not be enforceable. Thus, liquidated damage clauses may be included in service contracts when the County could suffer financial loss due to delays in performance. Consistent with legal requirements, the amount of damages listed in the contract must be a "reasonable forecast" of the County's actual damage.

§2.3-103 Standard Insurance Requirements

- (1) For standard insurance requirements, refer to the Insurance Requirements and Reference Manual maintained on the County Risk Management website:

<https://ocgov.sharepoint.com/sites/FIN/risk/programs/Pages/Contract-Insurance-Requirements.aspx>

SECTION 2.4

PURCHASING-PROCUREMENT REQUISITIONS**§2.4-101 Definition**

- (1) A request which authorizes the commencement of a a-purchasing procurement transaction and includes a description of the need and other information as specified by County Procurement Officer.

§2.4-102 Policy

- (1) In compliance with Government Code 25501 and Orange County Codified Ordinance Sec. 1-4-26 - Requisition Procedure, each of the following provisions shall apply:
- a) All purchases, rentals and contracts shall be made only upon receipt of proper written/authorized requisitions, which shall be supplied by the Procurement Officer to the several offices of the County.
 - b) No purchase order shall be issued unless approved budget appropriation is shown according to the budget procedure established by the Auditor-Controller and the County Executive Officer.
 - c) The head of any County office, department or institution or theirhis 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 theirhis deputies, assistants or employees within the department.

§2.4-103 Procedure

- (1) An approved/signed requisition shall be forwarded-submitted in advance, to the County Procurement Officer or appropriate Deputy Purchasing Agent for the processing of any procurement or contract transaction, in accordance with County procurement policies and procedures. A justification which explains the purpose of the purchase must be included in the requisition. Unless otherwise provided for in this manual, only those employees who are trained and deputized by the County Procurement Officer have the authority to procure services and commodities for the County.

§2.4-104 Process

- (1) Approved County requisitions shall be processed and executed in accordance with the procurement policies contained in this manual, as well as, those Procurement procedures outlined in the Procurement Procedures Manual, established by the County Procurement Officer to be followed by departments, in the procurement of services and commodities

SECTION 3 - TYPES OF CONTRACTS

SECTION 3.1

COMMODITIES

§3.1-101 Definition

(1) Commodities include all supplies and equipment, equipment rentals and leases, certain types of software and software licenses costing less than \$5,000 per unit, including tax and freight, and those costing \$5,000 per unit or more with a useful life expectancy of less than one (1) year. Included in the definition of commodity contracts covered in this Section are the following:

- a) Equipment – Operating Rental/Lease: These contracts are in essence an extended rental contract under which the owner of the equipment allows the County to operate or otherwise make use of the equipment in exchange for periodic lease payments. These types of contracts are “Operating leases” and are characterized by short-term, cancelable terms. The lessor bears the risk of obsolescence and depreciation of the equipment. Operating leases are generally preferable when the county needs the equipment for a short period of time such as for minor office equipment, printers, copiers, and light-duty vehicles and related equipment. Not included in the definition are long-term, "capital," non-cancelable leases.

~~Publications/Newsprint: Contracts to receive periodicals, magazines, trade journals, etc., either in print or electronic/digital subscriptions.~~

- b) Software/Licenses (Retail– Perpetual and Subscription): Contracts for proprietary software licenses where the software publisher grants the use of the software under the end-user license contract (EULA), but ownership of the software remains with the software publisher. These types of purchases typically include terms which define the uses of the software and number of users allowed.

- i. Perpetual License - The right to use a software program indefinitely with payment of a single fee. License may or may not include a limited Software Maintenance period and/or the option to purchase ongoing Software Maintenance at the time of purchase or at a later date.

- ii. Subscription License - The right to use a software as designed without customization for a determined fee, which includes general technical support, updates and upgrades to new versions or releases of the software (e.g. Software as a Service (SaaS) or Commercial Off the Shelf (COTS) software) irrespective of where the software is hosted. It may also include other no charge support that is included in the purchase price of the product in the commercial marketplace. No charge support includes items such as user blogs, discussion forums, on-line help libraries and FAQs (Frequently Asked Questions), hosted chat rooms, and limited telephone, email and/or web-based general technical support for users’ self-diagnostics.

- iii. Software Maintenance - Includes person-to-person communications regardless of the medium used to communicate: telephone support, on-line technical support, and/or technical expertise which are changed commercially.

- c) Subscriptions/Databases/Cloud Computing: Contracts for access to on-line information, databases or remote servers to be used to enhance or support a County program or project.

Contracts of this type involve no on-site visits or work by a vendor and are limited to the digital exchange of information for a predetermined fee.

- d) Software Maintenance: Software maintenance as a product includes the publishing of bug/defect fixes via patches and updates/upgrades in function and technology to maintain the operability and usability of the software product. It may also include other no charge support that is included in the purchase price of the product in the commercial marketplace. No charge support includes items such as user blogs, discussion forums, on-line help libraries and FAQs (Frequently Asked Questions), hosted chat rooms, and limited telephone, email and/or web-based general technical support for users' self-diagnostics. Software Maintenance as a product is billed at the time of purchase or on an annual basis.
- e) Telecommunications/Data Communications: Contracts for technologies, other than those procured under sections 3.4 and 3.5, that enable the transmission, reception, and exchange of information and digital data between individuals, devices, systems, or networks, which may include wired or wireless connections to transmit data, such as the internet, telephone networks, data networks or satellite systems. These types of contracts typically include a monthly recurring charge for a predetermined fee. This definition does not include any contracts that may be procured under sections 3.4 or 3.5.
- f) Cash Alternatives: Cash alternatives, including gift cards and gift certificates, to purchase travel and food for non-employee County department clients receiving services from the County.

§3.1-102 Solicitation Considerations

- (1) Solicitations for commodities shall be written so that critical factors associated with the acquisition shall be considered. These factors may include, but are not necessarily limited to the following:
 - a) Item capabilities - Will it carry out the functions for which it is being acquired?
 - b) Size, dimensions - Will it fit within the space where it is to be used?
 - c) Power requirements - Does the County possess the necessary mechanisms for powering the item as it requires?
 - d) Safety - Does the item meet all local, state, and federal safety requirements?
 - e) Pollution - Can the item be used without unnecessarily harming the environment? Does it require special Air Quality Management District permits?
 - f) Maintenance - Are service and spare parts readily available? Are maintenance contracts available?
 - g) Life cycle cost - What is the total cost of ownership including initial acquisition cost, cost of operating supplies, cost of maintenance, cost of required space, residual value, etc.?
 - h) Liability insurance - If the item is being installed by vendor, use the standard insurance requirements, as set forth in Section 2.3-103.

§3.1-103 Term of Contract

- (1) The duration of all contracts for commodities shall be based upon the County's Best Interest. Consideration will be given to product availability, price volatility, and expectation of need. Except for contracts defined under Section 4.8 of this manual, in no case shall a commodity contract exceed five (5) years, except as specified in Section 3.1-104(2) below.
- (2) All contracts will include a provision for cancellation by the County due to lack of funds, termination of requirement, termination for convenience, termination with cause or prices which no longer reflect reasonable market prices.
- (3) Prior to ~~recommending~~ renewal or extension of an existing contract, the department will document that performance of the contractor has been satisfactory.

§3.1-104 Contract Extensions

- (1) ~~Non-Board~~ Contracts ~~of less than five (5) years~~ may be extended ~~for up to one (1) year from the Original Contract Term up to a five (5) year term~~ without approval by the Board of Supervisors. ~~in no event shall the contract term exceed five (5) years.~~ The extension(s) may be issued by the Deputy Purchasing Agent, without Board of Supervisors approval provided there are no monetary increases that cumulatively exceed the average annual value of the prior years of the contract the Board of Supervisors approval threshold, while complying with solicitation thresholds. ~~and if it is determined to be in the best interest of the County.~~
- (+)(2) Board and non-Board contract extensions may be issued by the Deputy Purchasing Agent for up to one (1) year, beyond the fifth year, with County Procurement Officer or designee approval, provided there are no monetary increases (i.e., within the contract's existing contract amount).

§3.1-105 Contract Pricing

- (1) Contracts will be written so that pricing is controlled and monitored during the contract period. This may be done in several ways, including, but not limited to the following:
 - a) A contract may show a firm price for the contract period.
 - b) A contract may show a percentage increase which will occur during the contract period.
 - c) A contract's prices may be tied to an index, such as the Consumer Price Index, during the contract period.

§3.1-106 Vendor Selection

- (1) Selection of vendors for commodities will be based on the competitive process except Sole Source purchases as defined in Section 4.5 of this manual. Solicitations shall be made as follows:

a) Contracts \$2540,000 or less over the life of the contract	Minimum of one <u>written</u> quote, written or oral
b) Contracts \$2540,001 to \$5025,000 over the life of the contract	Minimum of two <u>written</u> quotes, written or oral
c) Contracts above \$5025,000 over the life of the contract	Written solicitation issued on County's bidding system

(2) Commodity purchases that are below the solicitation threshold are not required to be competitively bid nor require a sole source justification for award, except as may be required for Federal or State funded purchases.

~~(2)~~(3) For commodities obtained through the IFB solicitation method as detailed in Section 4.2, awards in all cases will be made to the lowest responsive and responsible bidder.

~~(3)~~(4) Consecutive contracts going back three (3) years for purchases that contain substantially the same description-scope shall not be issued to the same vendor using the written/~~oral~~ quote(s) solicitation method when the consecutive contracts' cumulative dollar amount exceeds the written solicitation threshold.

§3.1-107 Public Bid Opening

(1) A public bid opening will be held at a time and place announced in the solicitation for purchases exceeding \$100,000 annually.

a) The amount of each bid, together with the name of each bidder, shall be recorded and made available for public inspection.

b) In cases where bids are submitted and tabulated electronically, bid openings will be considered public as long as the individual bids are electronically ~~accessible~~-available immediately after the bids close.

~~b)~~—

§3.1-108 Retroactive Contract and Amendments/Changes

(1) Retroactive contracts or contract overruns are not permitted. If a retroactive contract or contract overrun occurs, it is invalid unless ratified by the Board of Supervisors or unless one of the following exemptions applies:

a) Retroactive contracts or contract overruns with a total value of ~~≤~~\$500 or less that have the approval of the department head.

b) Retroactive contracts or contract overruns ~~with a total value between~~that exceed \$500 ~~and \$9,999 and are \$25,000 or less~~ that have the approval of the County Procurement Officer or designee and Chief Financial Officer on the form(s) approved and provided by the County Procurement Office.

~~Retroactive~~ ~~Contracts~~ or contract overruns with a total value exceeding ~~of~~ \$10,000 ~~\$25,000 and above~~ shall require approval by the Board of Supervisors.

(2) Retroactive contracts in the following categories shall also be exempt from Board of Supervisors approval:

a) Contracts governed by separate rules and regulations ~~such as Human Services Contracts~~that conflict with this policy.

b) -Telephone services requests and emergency contracts in any amount.

c) -Modifications for computer hardware/software maintenance to add licenses and/or users.

§3.1-109 Contract Increases

(1) A contract's total expenditure may not increase by more than 30 percent (30%) of the original contract amount, unless it is demonstrated to be in the best interest of the County and reflective of good ~~procurement~~~~releasing~~ practices and approved by the County Procurement Officer or designee.

- a) Exemptions: Subordinate contracts issued against RCAs, and subordinate contracts issued against CPO approved cooperative programs, that are below the thresholds requiring approval by the Board of Supervisors, and contracts awarded via informal solicitations (one or two ~~oral~~ written quotes) will not require approval from the County Procurement Officer or designee.

§3.1-110 Multiple Awards

(1) Awards of commodity contracts may be on an individual basis, a group basis, or on a low total bid basis for the total contract amount, whichever is determined to be in the County's best interest.

§3.1-111 Incremental Contracting

(1) Contracts shall not be split to avoid approval by the Board of Supervisors or to bypass competitive bidding requirements.

~~§3.1-112 Secondary Awards~~

~~(1) Awards may be made to secondary, and, in some cases, third and fourth vendors when there is a reasonable possibility of supply disruption and having an alternate source is clearly in the County's best interest.~~

- ~~a) Primary award will go to the lowest responsive and responsible bidder; secondary award will go to the second lowest responsive and responsible bidder, etc.~~
- ~~b) For any commodity requirement, the primary contractor will always be contacted first and, only if that contractor is unable to provide the required commodity within the time required, will the secondary contractor, etc., be contacted.~~

§3.1-11~~23~~³⁴ Commodity Substitutions

(1) If a commodity in the contract is temporarily unavailable, upon approval by the County department administering the contract, the vendor may provide a substitute item, if the item is of equivalent or better quality and the price is the same or less than the price of the contract item.

§3.1-11~~34~~³² Emergencies

(1) Emergencies are defined as those situations where the welfare of County residents is at stake and/or immediate ~~procurement~~~~releasing~~ action is required to prevent serious economic or other hardship to the County. When, due to the nature of the emergency, it is not possible or it is impractical to follow competitive bidding requirements, these requirements may be waived by the County Procurement Officer or Deputy Purchasing Agent.

- a) Emergency commodity purchases of \$1,000 or less may be made using petty cash or purchasing card, in accordance with Section 4.6 —~~Small Dollar Petty Cash~~ Purchases.
- b) For emergency commodity purchases exceeding \$1,000, the requestor will contact the County Procurement Officer or the ~~appropriate~~ department Deputy Purchasing Agent. The emergency will be described and the County Procurement Officer or Deputy Purchasing Agent may, if so authorized, use a purchasing card or may issue a ~~purchase order number~~contract number for an amount sufficient to resolve the immediate emergency.
- c) No later than ten (10) business days from the request date, an approved requisition~~purchase request~~ referencing the purchase will be submitted to the County Procurement Officer or Deputy Purchasing Agent ~~by a department employee authorized to approve purchase requests.~~
- d) The ~~requisition~~request will be accompanied by a memorandum from the department head or designee briefly detailing the emergency situation. The justification will become a permanent part of the procurement file.
- e) If the emergency occurs during other than normal business hours, the department is authorized to secure the commodities required and contact the County Procurement Officer or Deputy Purchasing Agent on the next regular working day for issuance of a ~~purchase~~ contract.

(2) County of Orange Procurement Preference Policy requirement is not applicable to Emergencies.

§3.1-115 — Multi-Department Contracts

~~Multi-Department Contracts: are those which are issued for use by multiple County departments which use like commodities and would benefit from the contract pricing resulting from economies of scale. County departments listed on the contracts may order directly off multi-department contracts.~~

§3.1-1146 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 Sole Sourced to avoid the bidding requirements contained in this Section. Refer to Section 4.5 – Sole Source Requests for additional policy concerning Sole Source purchases.

§3.1-1157 Approval of Non-Standard Contract Terms

- (1) Unless Risk Management agrees in writing that the risk to the County is minimal and County Counsel agrees in writing that the legal risk to the County is minimal, approval by the Board of Supervisors is required prior to the execution of the commodity contract that includes non-standard terms in the indemnification contract provisions and/or limits the vendor's liability. This shall not apply to off-the-shelf software products and commodity purchases of \$5,000 or less.
- (2) Unless County Counsel agrees in writing that the legal risk to the County is minimal, approval by the Board of Supervisors is required prior to the execution of the commodity contract that includes non-standard terms in the governing law or arbitration/dispute resolutions contract provisions. This shall not apply to off-the-shelf software products and commodity purchases of \$5,000 or less.

§3.1-11~~68~~ Contractor Name/Ownership Changes

- (1) Except as provided herein, Board of Supervisors approval is ~~not~~ required for Board awarded contracts where there is a change in a contractor's ownership or control resulting in the assignment of rights and responsibilities from one entity to another contractor name changes when control of the contracted entity remains unchanged, or when an assignment of the County contract occurs pursuant to a sale, merger, or other change in ownership of the contracted entity, and County Counsel determines that the assignment does not require Board approval.
- (2) Deputy Purchasing Agents are authorized to approve the following changes to Board awarded contracts in the absence of a novation or other release from liability, and upon approval of County Counsel: In all cases where the result of the assignment is that the contracted entity has been released from further performance under the County contract, Board approval shall be required.
 - a) There is a change in the contractor company name only, but there is no change in the company's:
 - i. ownership or control,
 - ii. key staff identified in an existing contract, or
 - iii. tax identification (e.g., EIN).
 - b) There is a proposed assignment of the existing Board awarded contract to a different legal entity based on bankruptcy, merger, sale of the company (as opposed to a mere sale or acquisition of assets), restructuring or dissolution, and the Deputy Purchasing Agent has determined that the proposed assignee is qualified to perform according to the terms of the contract and original solicitation requirements and any key staff identified in the contract remain unchanged.
- (3) Upon approval of County Counsel, Deputy Purchasing Agents are authorized to approve a change in contractor name or ownership for non-Board awarded contracts.

§3.1-11~~79~~ Indemnification

- (1) Except for contracts in which ~~Section~~ §3.1-11~~65~~⁷ (1) applies, contractors doing business with the County will indemnify the County against losses, liabilities and/or claims that arise from contractor performance including, but not limited to, patent violations, copyright violations, unauthorized use of materials, wrongful acts, and injuries to persons or property, and any other loss, liability or claim unless stated otherwise in this manual.

§3.1-11~~82~~ Insurance

- (1) All contractors will provide the Deputy Purchasing Agent administering the contract with a certificate of insurance and required endorsements unless such certificate and endorsements are not required as provided in §2.3-102(4) or waived by County's Risk Manager or authorized designee.
- (2) For appropriate insurance levels and requirements, see Section 2.3-103.

§3.1-11~~92~~ Opportunity Buy

(1) An “Opportunity Buy” is a situation where necessary commodities are for sale at significantly reduced rates from what is normally offered in the general market or where an alternative product to the one being bid represents significant cost savings to the County. In the event this situation arises, the Department Head or ~~duly authorized~~ designee shall prepare a written justification in support of the prompt action taken that shall become part of the permanent procurement file. The justification shall include:

- a) A detailed description of the commodity to be provided by the vendor and an explanation of the cost savings achieved;
- b) Why the recommended vendor is the only one capable of providing the required commodities with back-up information included to support the justification;
- c) Comparison of the recommended vendor’s prices or fees to the general market with price and attach quotes for comparable items provided, if available; and,
- d) County Procurement Officer or designee approval is required for ~~For~~ Opportunity Buys exceeding \$1,000,000, and an Agenda Staff Report will be filed with the Board of Supervisors by the appropriate Department Head. The Agenda Staff Report shall include all documentation and justification in support of the purchase.

§3.1-1202 Federal and State Funding

(1) Should any portion of the funding for a commodities contract be derived from federal and/or state funding sources, the solicitation process and selection of vendors must be conducted in accordance with the applicable federal and/or state regulations. In the event of a contradiction between County policy and federal and/or state requirements, the more restrictive method must be followed.

~~The most recent federal regulations will be available on the County Procurement Office’s intranet website at: CPO website — Federal Uniform Guidance~~

- a) On federally funded projects, DPAs will be required to consult the System for Award Management (SAM) at SAM.gov to comply with funding source requirements.

§3.1-1213 Hybrid Contract Definition

(1) A hybrid contract is a contract which consists of multiple contract type purchases. For example, a contract for the purchase of a commodity and a service is considered a hybrid contract. The solicitation process will be based on the portion with the greater amount; however, each situation should be carefully considered and documented.

(2) Purchases that are evenly split between commodity and service should be reviewed on a case-by-case basis by the Deputy Purchasing Agent to determine the appropriate Service or Commodity solicitation process, which shall be documented and made a permanent part of the procurement folder.

(3) If the service portion of a hybrid contract exceeds an annual aggregate cost of \$200,000, or ~~is at the service portion of a~~ sole source hybrid contract exceeding ~~\$75,000~~ an annual aggregate cost of \$100,000 or a ~~two (2) five (5)~~ year term, refer to Section 3.3-102 (1) a); and b) ~~and e)~~ of this manual.

§3.1-1223 Cash Alternative Purchases

- (1) Deputy Purchasing Agents are authorized to purchase Cash Alternatives in accordance with the Cash Alternative Procedures outlined in the Procurement Procedures Manual. County departments shall develop and maintain written Departmental Cash Alternative Procedures that are consistent with the Cash Alternative Procedures, and which set forth internal controls for the purchase and distribution of Cash Alternatives including procedures to ensure compliance with applicable tax requirements relating to the distribution of Cash Alternatives.
- (2) The purchase of Cash Alternatives in amounts of more than \$500 per unit must be approved by the County Procurement Officer, or designee, other than the purchasing Deputy Purchasing Agent, and department head.
- (3) Debit cards, such as a prepaid Visa or Mastercard, cannot be purchased as Cash Alternatives without approval of the Board of Supervisors.

SECTION 3.2

CAPITAL ASSETS

§3.2-101 Definition

- (1) Capital Assets are tangible property costing \$5,000 or more per unit, including tax, delivery and installation, with a useful life expectancy exceeding one (1) year. The Auditor-Controller is responsible for setting the Capital Asset amount and making a Capital Asset determination on questionable items.

§3.2-102 Used Equipment

- (1) If opportunities arise to ~~procure~~purchase used equipment, such equipment may be ~~procured~~purchased without competitive bidding, provided all the following conditions are met:
- a) The equipment being sold is under warranty or, in the case of an “as-is, where-is” purchase, there is an inspection by a qualified party who certifies that the condition of the item is acceptable and adequate for efficient County use.
 - b) The dealer of the equipment is qualified reputable dealer as verified through reference checks, or the equipment is being purchased from another governmental entity.
 - c) The selling price of the equipment is less than \$100,000, including tax, installation, freight, applicable training, etc.
- (2) Justification for the Sole Source purchase of used equipment must be documented and maintained as part of the procurement file.
- (3) The ~~procurement~~purchase of used equipment is not a way to avoid the competitive bidding process for the acquisition of new equipment.

§3.2-103 Board Approval

- (1) Unbudgeted Capital Assets:
- a) Approval of the Board of Supervisors is required prior to the ~~purchase~~procurement of unbudgeted Capital Assets which cost more than \$50,000 each.
 - b) Unbudgeted vehicle ~~purchases~~procurements of any amount requires prior Board approval.
- (2) Budgeted Capital Assets:
- a) Budgeted Capital Assets within the budgeted amount approved by the Board require no further Board approval prior to ~~procurement~~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. ~~This shall not apply to budgeted Capital Assets originally budgeted at \$50,000 or less. This requirement shall not apply to budgeted Capital Assets originally budgeted at \$50,000 or less when the revised increased cost does not exceed \$55,000.~~

(3) Sole Source Capital Assets:

- a) Approval by the Board of Supervisors is required prior to the ~~procurement~~~~purchase~~ of a Sole Source Capital Asset costing more than ~~\$75,000~~~~\$100,000~~. ~~Purchases~~~~Procurements~~ may not be Sole Sourced to avoid the bidding requirements contained in this manual. For additional rules and guidelines, refer to Section 4.5 of this manual.

§3.2-104 Approval of Non-Standard Contract Terms

- (1) Unless Risk Management agrees in writing that the risk to the County is minimal and County Counsel agrees in writing that the legal risk to the County is minimal, approval by the Board of Supervisors is required prior to the execution of a Capital Asset contract that includes non-standard terms in the indemnification contract provisions and/or limits vendor's liability.
- (2) Unless County Counsel agrees in writing that the legal risk to the County is minimal, approval by the Board of Supervisors is required prior to the execution of a Capital Asset contract that includes non-standard terms in the governing law or arbitration/dispute resolutions contract provisions.

§3.2-105 Solicitation Considerations

- (1) Solicitations for Capital Assets shall be written so that critical factors associated with the acquisition shall be considered. These factors may include, but are not necessarily limited to the following:
 - a) Item capabilities - Will item carry out the functions for which it is being acquired?
 - b) Size, dimensions - Will item fit within the space where it is to be used?
 - c) Power requirements - Does the County possess the necessary mechanisms for powering the item as it requires?
 - d) Safety - Does the item meet all local, state, and federal safety requirements?
 - e) Pollution - Can the item be used without unnecessarily harming the environment? Does it require special AQMD permits?
 - f) Certification/licensing Requirements – Does the Capital Asset being purchased require special licensing/certification/training for the operator?
 - g) Maintenance - Are service and spare parts readily available? Are maintenance contracts available?
 - h) Life cycle cost - What is the total cost of ownership including initial acquisition cost, cost of operating supplies, cost of maintenance, cost of required space, residual value, etc.?
 - i) Liability insurance - If the item is being installed by vendor, use the standard insurance requirements, as set forth in Section 2.3-103.

§3.2-106 Vendor Selection

(1) With the exception of Sole Source purchases, selection of vendors for Capital Assets shall be based on the competitive process. Solicitations shall be made as follows:

- | | |
|------------------------------------------------------------------------------|------------------------------------------------------------------|
| a) Contracts \$5,000 to \$5025 ,000 over the life of the contract | Minimum of two <u>written</u> quotes, written or oral |
| b) Contracts above \$5025 ,000 over the life of the contract | Written solicitation issued on County's bidding system |

(2) Capital Asset purchases that are below the solicitation threshold are not required to be competitively bid nor require a sole source justification for award, except as may be required for Federal or State funded purchases.

~~(2)~~(3) Awards will be made to the lowest responsive and responsible bidder or, in the case of negotiated procurement, the vendor with the most responsive proposal as determined by the County.

§3.2-107 Public Bid Opening

(1) A public bid opening will be held at a time and place announced in the bid solicitation for purchases exceeding \$100,000.

- a) The amount of each bid, together with the name of each bidder, shall be recorded and made available for public inspection.
- b) In cases where bids are submitted and tabulated electronically, bid openings will be considered public as long as the individual bids are electronically available ~~accessible~~ immediately after the bids close.

§3.2-108 Retroactive Contract and Amendments/Changes

(1) Retroactive contracts or contract overruns are not permitted. If a retroactive contract or contract overrun occurs, it is invalid unless ratified by the Board of Supervisors or unless one of the following exemptions applies:

- a) Retroactive contracts or contract overruns with a total value of <\$500 or less that have the approval of the department head.
- b) Retroactive contracts or contract overruns ~~with a total value between that exceed \$500 and \$9,999 and are \$25,000 or less~~ that have the approval of the County Procurement Officer or designee & Chief Financial Officer on the form(s) approved and provided by the County Procurement Office.

Retroactive Contracts or contract overruns with a total ~~cost overrun~~ value exceeding of \$10,000 \$25,000 and above shall require approval by the Board of Supervisors.

(2) Retroactive contracts in the following categories shall also be exempt from Board of Supervisors approval:

- a) Contracts governed by separate rules and regulations ~~such as Human Services contracts that conflict with this policy.~~

- b) Telephone services requests and emergency contracts in any amount.
- c) Modifications for computer hardware/software maintenance to add licenses and/or users.

§3.2-109 Indemnification

- (1) Except for contracts in which Section 3.2-104 (1) applies, contractors doing business with the County will indemnify the County against losses, liabilities and/or claims that arise from contractor performance including, but not limited to, patent violations, copyright violations, unauthorized use of materials, wrongful acts, and injuries to persons or property, and any other loss, liability or claim unless stated otherwise in this manual.

§3.2-110 Insurance

- (1) All contractors will provide the Deputy Purchasing Agent administering the contract with a certificate of insurance and required endorsements unless such certificate and endorsements are not required as provided in §2.3-102(4) or waived by County's Risk Manager or ~~authorized~~ designee.
- (2) For appropriate insurance levels and requirements, see Section 2.3-103.

§3.2-111 Emergencies

- (1) Emergencies are defined as those situations where the safety and/or welfare of County residents or employees is at stake and/or immediate purchasing action is required to prevent serious economic or other hardship to the County. When due to the nature of the emergency, it is not possible or it is impractical to follow competitive bidding requirements, these requirements may be waived, by the County Procurement Officer or ~~appropriate~~ Deputy Purchasing Agent.
 - a) For emergency procurement of Capital Assets costing less than \$75,000 emergency procedures under §3.1-114, Commodities, shall be followed.
 - b) When an emergency requiring the acquisition of a Capital Asset exceeding \$75,000 arises, the department will first call the CEO to receive budget approval for the ~~procurement~~~~purchase~~; and
 - c) The County Procurement Officer or department Deputy Purchasing Agent will issue a ~~contract~~ ~~Purchase Order number~~ for an amount sufficient to resolve the immediate emergency.
 - d) If the item cost is over \$75,000, a ~~requisition~~~~Purchasing Request~~ with ~~written~~ CEO approval shall be submitted to the County Procurement Officer or the Deputy Purchasing Agent, as appropriate, within ten (10) working days of the emergency.
 - e) A memorandum from the department head or designee briefly detailing the emergency situation shall accompany the ~~Purchase-Procurement~~ Request. This justification should become a permanent part of the procurement file.
 - ~~f) If the requested Capital Asset is unbudgeted, the item will be filed for approval by the Board of Supervisors when the item exceeds \$50,000.~~
- (2) County of Orange Procurement Preference Policy requirement is not applicable to Emergencies.

§3.2-112 Federal and State Funding

- (1) Should any portion of the funding for a capital asset contract be derived from federal and/or state funding sources, the solicitation process and selection of vendors must be conducted in accordance with the applicable federal and/or state regulations. In the event of a contradiction between County policy and federal and/or state requirements, the more restrictive method must be followed.

~~The most recent federal regulations will be available on the County Procurement Office's intranet website at: CPO website — Federal Uniform Guidance.~~

—On federally funded projects, DPAs will be required to consult the System for Award Management (SAM) at SAM.gov to comply with funding source requirements.

§3.2-113 Opportunity Buy

- (1) An “Opportunity Buy” is a situation where necessary capital assets are for sale at significantly reduced rates from what is normally offered in the general market or where an alternative product to the one being bid represents significant cost savings to the County. In the event this situation arises, the Department Head or designee shall prepare a written justification in support of the prompt action taken that shall become part of the permanent procurement file. The justification shall include:
- e) A detailed description of the capital asset to be provided by the vendor and an explanation of the cost savings achieved;
 - f) Why the recommended vendor is the only one capable of providing the required capital asset with back-up information included to support the justification;
 - g) Comparison of the recommended vendor's prices or fees to the general market with price and attach quotes for comparable items provided, if available; and,
 - h) County Procurement Officer or designee approval is required for Opportunity Buys exceeding Board thresholds as specified in Section 3.2-103 (1) and (2) above. An Agenda Staff Report will be filed with the Board of Supervisors by the appropriate Department Head as soon as possible, after the purchase has been made. The Agenda Staff Report shall include all documentation and justification in support of the purchase.

SECTION 3.3

SERVICE CONTRACTS

§3.3-101 Definition

(1) Service contracts encompass all contracts for services either with or without the furnishing of materials. Included in the definition of service contracts covered in this Section are the following:

- a) Professional Services: Services provided by licensed and/or technically trained professionals, including such services as, data processing, accounting, legal, medical, auditing, information-technology (IT) related services that may or may not include: customized software/application, installation and implementation services, creation/development, design, implementation and/or integration of customized changes to software that are not included with the price of the software or software maintenance.
- 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, etc. Prevailing wage shall be paid pursuant to Labor Code Section 1720 et seq., when applicable. Registration with the Department of Industrial Relations will be required, when applicable, pursuant to Labor Code Section 1771.1(a) and 1725.5.
- c) Personnel or employee-related services: Services which provide benefit or assistance directly to employees, including such services as temporary employment, security, etc.
- d) Consultant Service Contracts: Are for those services which are of an advisory nature, which provide a recommended course of action or personal expertise, and which have an end product which is basically a transmittal of information. Consultant service contracts are issued in order to obtain professional or technical advice or expertise which will supplement departmental expertise or advice or where an independent opinion or audit is required. All consultant service contracts shall contain a provision which prohibits "follow-on" projects that prevent the consultant from performing work related to any recommendations being formulated as a result of the consulting work.
- e) Revenue Generating Contracts (non-real estate): A contract for contractor-provided services on County premises in which the County does not pay a fee, but instead receives a portion of the revenues that are generated from the services such as vending machines, etc.
- f) Capital Leases (non-real estate): A long-term lease that transfers to the lessee most rights and obligations concerning the asset leased, and usually transfers ownership at the end of the lease.
- g) Customized Software Maintenance: Software maintenance ~~as a service~~ creates, designs, implements, and/or integrates customized changes to software that solve one or more problems and is not included with the price of the software. ~~Software maintenance as a service includes person to person communications regardless of the medium used to communicate: telephone support, on-line technical support, customized support, and/or technical expertise which are changed commercially.~~
- h) Architect-Engineer ("A-E") Consultant Services: Services may include but are not necessarily limited to: investigations, report preparation, cost estimating, shop drawing

review, CEQA documentation preparation, regulatory permit application and acquisition, archeology, geological and soils analysis, agronomy, limnology, biology, paleontology, material testing and inspection, real estate appraisal, and property acquisition services. Services also may include studies addressing engineering, architecture, facilities management, and environmental issues but **shall not** include design or construction drawings used for public works construction projects.

- i) Human Services: Human Services Contracts include all contracts for services that directly maintain or improve the social, economic, physical, or mental well-being of persons for whom the County bears such a responsibility, including food and travel. Included in the definition of Human Services Contracts are services provided in response to or in support of federal, state and/or local service mandates to provide health and human services to a target population.
- (2) Service contracts ~~for County procurement purposes in this section as defined in, and applied to, this section~~ do not include ~~contracts for~~ Public Works Architects-Engineer Service Contracts (related to engineering and design of public projects), Public Works Construction Contracts, Architects-Engineers (related to engineering and design of public projects), and Real Property Estate Contracts. For policies related to Public Works Architects-Engineer Service Contracts, refer to Section 3.4. For policies related to Public Works Construction Contracts, refer to Section 3.5. For policies related to Real Estate Contracts, refer to Sections 3.7 and 4.94.3.1.

§3.3-102 Board Approval

- (1) Approval by the Board of Supervisors is required for all service contracts in accordance with the guidelines listed below.
 - a) Contracts Exceeding \$200,000 – Approval by the Board of Supervisors is required for all service contracts and/or revenue generating contracts where for any year of the contract, the annual value to any one contractor exceeds \$200,000, in accordance with Government Code Section 25502.5.
 - ~~b) Multi Year Contracts Exceeding \$1,000,000 – Approval by the Board of Supervisors is required for all service contracts where the total contract value exceeds or is anticipated to exceed \$1,000,000 when the total contract term, inclusive of all extensions and renewals, all contract years are taken into consideration.~~
 - e)b) Sole Source Service Contracts – Approval by the Board of Supervisors shall be required for all Sole Source service contracts that exceed a total annual amount of ~~\$75,000~~ \$100,000 or a five (5) year term or a two (2) year consecutive term, regardless of dollar amount. Contracts may not be split to avoid this policy, including proposed successor contracts that contain substantially the same scope of work. Renewal of a Sole Source Service where no changes to the scope or the dollar amount of the contract will not require a new Sole Source approved form. For additional information and guidelines refer to Section 4.5 – Sole Source Requests.

§3.3-103 Approval of Non-Standard Contract Terms

- (1) Unless Risk Management agrees in writing that the risk to the County is minimal and County Counsel agrees in writing that the legal risk to the County is minimal, approval by the Board of Supervisors is required prior to the execution of any contract for \$200,000 or less that includes non-

standard terms in the indemnification contract provisions and/or limits the vendor's liability. This shall not apply to service purchases of \$5,000 or less, unless the contract contains an indemnification provision that requires the County to indemnify the vendor.

- (2) Unless County Counsel agrees in writing that the legal risk to the County is minimal, approval by the Board of Supervisors is required prior to the execution of a contract for \$200,000 or less that includes non-standard terms in the governing law or arbitration/dispute resolutions contract provisions. This shall not apply to service purchases of \$5,000 or less.

§3.3-104 Contractor Name/Ownership Changes

- (1) Except as provided herein, Board of Supervisors approval is ~~not~~ required for Board awarded contracts where there is a change in a contractor's ownership or control resulting in the assignment of rights and responsibilities from one entity to another contractor name changes when control of the contracted entity remains unchanged, or when an assignment of the County contract occurs pursuant to a sale, merger, or other change in ownership of the contracted entity, and County Counsel determines that the assignment does not require Board approval.
- (2) Deputy Purchasing Agents are authorized to approve the following changes to Board awarded contracts in the absence of a novation or other release from liability, and upon approval of County Counsel: In all cases where the result of the assignment is that the contracted entity has been released from further performance under the County contract, Board approval shall be required.
- a) There is a change in the contractor company name only, but there is no change in the company's:
- i. ownership or control,
- ii. key staff identified in an existing contract, or
- iii. tax identification (e.g., EIN).
- b) There is a proposed assignment of the existing Board awarded contract to a different legal entity based on bankruptcy, merger, sale of the company (as opposed to a mere sale or acquisition of assets), restructuring or dissolution, and the Deputy Purchasing Agent has determined that the proposed assignee is qualified to perform according to the terms of the contract and original solicitation requirements and any key staff identified in the contract remain unchanged.
- (3) Upon approval of County Counsel, Deputy Purchasing Agents are authorized to approve a change in contractor name or ownership for non-Board awarded contracts.

§3.3-105 Term of Contract

- ~~(3)~~(4) 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.
- ~~(4)~~ With respect to Board awarded contracts, the initial term of a service contract shall not exceed three (3) years, with a two-year renewable term, unless otherwise approved by the Board.

- (5) In no case shall a service contract exceed five (5) years in duration unless the contract is specifically approved by the Board of Supervisors, or is extended from the original contract term by one (1) year in accordance with Section 3.3-106 in this manual.
- (6) Prior to ~~recommending~~ renewal or extension of an existing contract, the department will document that performance of the contractor has been at least satisfactory.

§3.3-106 Contract Extensions

- (1) Service Contracts ~~of less than five (5) years duration~~ may be extended ~~for up to one (1) year from the Original Contract Term up to a five (5) year term~~ without approval by the Board of Supervisors. ~~; in no event shall the contract term exceed five (5) years.~~ The extension may be issued by the Deputy Purchasing Agent, without Board of Supervisors approval provided there are no monetary increases that cumulatively exceed ~~the average annual value of the prior years of the contract or \$200,000 annually, whichever is less~~ the Board of Supervisors approval threshold, while complying with solicitation thresholds. ~~s and if it is determined to be in the best interest of the County.~~
- ~~(1)(2)~~ Board and Non-Board contract extensions may be issued by the Deputy Purchasing Agent for up to one (1) year, beyond the fifth year, with County Procurement Officer or designee approval, provided there are no monetary increases (i.e., within the contract's existing contract amount).

§3.3-107 Contract Renewals

- (1) Applicable to all service contracts with a value that exceeds \$200,000 per year.
 - a) All renewals are subject to Board of Supervisors approval.
 - b) In the event the total service contract amount for all contract years exceeds ~~\$750,000~~ 1,000,000, the Agenda Staff Report (ASR) shall be filed on the Board's "Discussion Calendar".
 - c) All service contract renewals shall be stated in the Recommended Action portion of the Agenda Staff Report (ASR) for consideration by the Board.

§3.3-108 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 ~~R~~ate/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) Human Services Contracts shall determine cost pricing as deemed to be in the best interest of the County. Generally, Human Services Contracts will utilize the Cost Reimbursement method under which allowable and reasonable costs incurred by the contractor in performance of the contract and reimbursed in accordance of the terms of the contract.~~

~~(4) Human Services Contracts may also be written with one, or a combination, of the following preferred basis for reimbursement:~~

~~a) Fee for Service;~~

~~b) Actual Cost; or,~~

~~c) Negotiated Rates~~

§3.3-109 Vendor Selection

(1) With the exception of Sole Source service contracts, selection shall be based on the competitive process. Solicitations shall be made as follows:

a) Contracts ~~\$50,000-\$100,000~~ or less over the life of the contract

Minimum of one written quote

b) Contracts above ~~\$50,000~~ \$100,000 over the life of the contract

Written solicitation issued on County's bidding system

(2) Services that are below the solicitation threshold are not required to be competitively bid nor require a sole source justification for award, except as may be required for Federal or State funded procurements.

~~(2)~~(3) Awards in Invitation for Bid solicitations will be made to the lowest responsive and responsible bidder as defined in Section 4.2-10~~23~~ of this manual. In the case of a negotiated procurement ~~(RFP)~~, award shall be made to the vendor with the most responsive and responsible proposal as detailed in Section 4.3-11~~56~~ of this manual.

~~(3)~~(4) Consecutive contracts going back three (3) years for purchases that contain substantially the same ~~description-scope~~ shall not be issued to the same vendor using the written quote(s) solicitation method when the consecutive contracts' cumulative dollar amount exceeds the written solicitation threshold.

§3.3-110 Public Bid Opening

(1) ~~In accordance with Section 4.2-111, a~~ A public bid opening will be held at a time and place announced in the ~~bid~~ solicitation for the procurement~~purchases of for~~ services exceeding \$200,000 annually. The amount of each bid, together with the name of each bidder, shall be recorded and made available for public inspection.

- a) In cases where bids are submitted and tabulated electronically, bid openings will be considered public as long as the individual bids are electronically available-accessible immediately after the bids close.

§3.3-111 Retroactive Contract and Amendments/Changes

- (1) Retroactive contracts or contract overruns are not permitted. If a retroactive contract or contract overrun occurs, it is invalid unless ratified by the Board of Supervisors or unless one of the following exemptions applies:

- a) Retroactive contracts or contract overruns with a total value of <\$500 or less that have the approval of the department head.
- b) Retroactive contracts or contract overruns ~~with a total value between that exceed \$500 and \$9,999 and are \$25,000 or less~~ that have the approval of the County Procurement Officer or designee and Chief Financial Officer on the form(s) approved and provided by the County Procurement Office.

~~Retroactive C~~contracts or contract overruns with a total ~~contract overrun~~ value exceeding of \$10,000-\$25,000 and above shall require approval by the Board of Supervisors.

- (2) Retroactive contracts in the following categories shall also be exempt from Board of Supervisors approval;

- a) Contracts governed by separate rules and regulations ~~such as Human Services Contracts that conflict with this policy.~~
- b) Telephone services requests and emergency contracts in any amount.
- c) Modifications for computer hardware/software maintenance to add licenses and/or users.

§3.3-112 Adjustments to Contract Amount

- (1) Decreases: The department Deputy Purchasing Agents may decrease the amount of a contract without obtaining approval from the Board of Supervisors.
- (2) Increases: With respect to non-Board awarded service contracts, cumulative contract increases may not exceed 10% of the original annual contract amount, unless authorized/approved by the County Procurement Officer or designee on the form(s) approved and provided by the County Procurement Office. The department Deputy Purchasing Agent shall submit a form, which shall be made a permanent part of the procurement file, to request an increase of the value of a non-Board awarded service contract under the following circumstances:
 - a) The need for service could not be accurately projected and the percentage of increase does not justify rebidding.
 - b) An emergency exists which does not permit rebidding.
 - c) Special economic factors justify a contract increase.
- (3) For Board awarded contracts, no increase exceeding the contingency amount will be permitted without approval by the Board of Supervisors.
- (4) Exemptions: Subordinate contracts issued against RCAs, and subordinate contracts issued against CPO approved cooperative programs that are with a total aggregate contract amount below the

thresholds requiring approval by the Board of Supervisors, and contracts awarded via informal solicitations (one written quote) will not require approval from the County Procurement Officer or designee.

§3.3-113 Contingency Funds Amounts

- (1) When requesting approval for award of a service contract from the Board of Supervisors, a contingency amount may also be requested. Justification for this contingency will be presented to the Board of Supervisors in the Agenda Staff Report (ASR) in accordance with the following:
 - a) The total amount requested shall not exceed a total of 10 percent (10%) of the original amount for the first year of the contract.
 - b) This amount, if approved by the Board, may be used over the entire term of the contract.
 - c) Contingencies shall only be used to cover services already provided in the scope of work, or additional services substantially similar to those already provided in the scope of work, as set forth in the contract.
 - ~~d) The use of the contingency amount is subject to approval requirements established by the County Procurement Officer.~~

§3.3-114 Multiple Awards

- (1) Awards of service contracts may be broken up by individual service required, groups of related services required, or low total bid basis, whichever the County determines to be in its own best interest.

§3.3-115 Incremental Contracting

- (1) Contracts shall not be split to avoid approval by the Board of Supervisors or to bypass competitive bidding solicitation 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.~~

§3.3-11~~6~~7 Indemnification

- (1) Except for contracts in which Section 3.3-103 (1) applies, contractors doing business with the County will indemnify the County against losses, liabilities and/or claims that arise from contractor performance including, but not limited to, patent violations, copyright violations, unauthorized use

of materials, wrongful acts, and injuries to persons or property, and any other loss, liability or claim unless stated otherwise in this manual.

§3.3-11~~78~~ **Insurance**

- (1) All service contractors will provide the Deputy Purchasing Agent administering the contract with a certificate of insurance and required endorsements unless such certificate and endorsements are not required as provided in 2.3-102 (4) or waived by the County's Risk Manager or ~~authorized~~ designee.
- (2) For appropriate insurance levels and requirements, see Section 2.3-103.

§3.3-11~~89~~ **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.

§3.3-1~~920~~ **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.

§3.3-1201 Contract Administration

- (1) All service contracts will be monitored for efficient performance by the project manager/department designee named in the contract documents. The service(s) to be provided will be clearly stated in the contract and it will be the job of the representative to monitor the contractor's performance to ensure that those services are provided in adherence to all contract requirements and expectations and, where applicable, all funding requirements are satisfied.
 - a) All contract deficiencies will be noted in writing to the contractor and sent to the County Procurement Officer or Deputy Purchasing Agent, as appropriate.
 - b) No contractor will be paid in full for any service which has not been satisfactorily performed.

§3.3-1212 Cancellation

- (1) Any service contract may be canceled or terminated by the department Deputy Purchasing Agents, as appropriate, without approval by the Board of Supervisors.

§3.3-1223 Emergencies

- (1) Emergencies are defined as those situations where the welfare of County residents is at stake and/or immediate purchasing action is required to prevent serious economic or other hardship to the County. When due to the nature of the emergency, it is not possible or it is impractical to follow competitive bidding requirements, these requirements may be waived by the County Procurement Officer or Deputy Purchasing Agent.
 - a) Process:
 - i. Emergency service purchases of \$1,000 or less may be made using petty cash or purchasing card, in accordance with Section 4.6-~~Small-Dollar~~ Petty Cash Purchases.
 - ii. For emergency service purchases over \$1,000 the requestor will contact the County Procurement Officer or appropriate department Deputy Purchasing Agent. The emergency will be described and the County Procurement Officer or Deputy Purchasing Agent may use a purchasing card, when so authorized, or may issue a purchase order number contract for an amount sufficient to resolve the immediate emergency.
 - iii. The requestor will ensure and will confirm with the County Procurement Officer or Deputy Purchasing Agent that the service contractor carries insurance.
 - iv. No later than ten (10) working days from the request date, an approved purchasing request requisition referencing the purchase will be submitted to the County Procurement Officer or Deputy Purchasing Agent by a department employee

~~authorized to approve purchase requests.~~ This ~~requisition request~~ will be accompanied by a memorandum from the department head or designee briefly detailing the emergency situation. The justification will become a permanent part of the procurement file.

- v. If the emergency occurs on other than normal working hours, the department is authorized to secure the services required and contact the County Procurement Officer or Deputy Purchasing Agent on the next regular business day.
- vi. For emergency purchases exceeding \$200,000, an Agenda Staff Report will be filed with the Board of Supervisors by the department administering the contract as soon as possible, after the service is performed.

(2) County of Orange Procurement Preference Policy requirement is not applicable to Emergencies.

§3.3-12~~34~~ Multi-Department Contract Planning and Coordination

~~(1) Multi-Department Contracts: are those which are issued for use by multiple County departments which use like services and would benefit from the contract pricing resulting from economies of scale. County departments listed on the contracts may order directly off multi-department contracts.~~

~~At the discretion of department heads, every reasonable effort shall be made to ensure, through interdepartmental coordination, that Human Services and funding provided by other County departments are not duplicated.~~

~~(1) County departments responsible for Human Services Contracts and their funding The County Procurement Office should compare/evaluate Countywide contract inventories to ensure, where possible, departments are not duplicating efforts and to facilitate collaboration across departments to maximize efficiencies and effectiveness. at least once annually and share appropriate information which will assist such coordination efforts.~~

§3.3-12~~45~~ Contracts for Outside Legal Counsel

- (1) The Board of Supervisors has sole authority to select outside legal counsel. All department and district requests to employ outside legal counsel (other than CEO/Risk Management counsel and bond counsel) shall be presented to the Board by the Office of County Counsel. The hiring and management of outside legal counsel are governed by the principal policies and procedures titled County of Orange outside counsel policies and procedures adopted by the Board on August 6, 1991, and subsequently amended.

§3.3-12~~56~~ HIPAA – Business Associate Language

- (1) With the passage of the Health Insurance Portability and Accountability Act (“HIPAA”) Protected Health Information (“PHI”) has become a key legal consideration in the drafting of County contracts for departments subject to the HIPAA rules. For services to be performed in situations where either the County or a contractor under contract with the County are creating or working with PHI, the County approved business associate Sections covering HIPAA activities should be included in the governing contracts. Sections approved for use will be available on the County Procurement Office’s intranet website at:

<http://intra2k3.ocgov.com/procurement/>

<http://www.ocgov.com/gov/risk>

§3.3-1267 Federal and State Funding

- (1) Should any portion of the funding for a services contract be derived from federal and/or state funding sources, the solicitation process and selection of vendors must be conducted in accordance with the applicable federal and/or state regulations. In the event of a contradiction between County policy and federal and/or state requirements, the more restrictive method must be followed.

~~The most recent federal regulations will be available on the County Procurement Office's intranet website at: CPO website—Federal Uniform Guidance~~

- a) On federally funded projects, DPAs will be required to consult the System for Award Management (SAM) at SAM.gov to comply with funding source requirements.

§3.3-1278 Hybrid Contract Definition

- (1) A hybrid contract is a contract which consists of multiple contract type ~~purchases~~procurements. For example, a contract for the purchase of a commodity and a service is considered a hybrid contract. The solicitation process will be based on the portion with the greater amount; however, each situation should be carefully considered and documented.
- (2) ~~Purchases-Procurements~~ that are evenly split between commodity and service should be reviewed on a case-by-case basis by the Deputy Purchasing Agent to determine the appropriate solicitation process, which shall be documented and made a permanent part of the procurement folder.
- (3) If the service portion of a hybrid contract exceeds an annual aggregate amount in excess of \$200,000~~annually~~, refer to Section 3.3-102 (1) a); and b) ~~and c)~~ of this manual.

§3.3-1289 County of Orange Procurement Preference Policy Exemption

- (1) Solicitations directed at non-profit organizations may be exempt from the County of Orange Procurement Preference Policy with approval of the County Procurement Officer, subject to any funding requirements associated with State or Federally funded contracts.

§3.3-129 Opportunity Buy

- (2) An "Opportunity Buy" is a situation where necessary services are for sale at significantly reduced rates from what is normally offered in the general market or where an alternative product/service to the one being solicited represents significant cost savings to the County. In the event this situation arises, the Department Head or designee shall prepare a written justification in support of the prompt action taken that shall be approved by the County Procurement Officer or designee and become part of the permanent procurement file. The justification shall include:

- i) A detailed description of the services to be provided by the vendor and an explanation of the cost savings achieved;

- j) Why the recommended vendor is the only one capable of providing the required services with back-up information included to support the justification;
- k) Comparison of the recommended vendor's prices or fees to the general market with price and attach quotes for comparable services provided, if available; and,
- l) County Procurement Officer or designee approval is required for Opportunity Buys exceeding Board thresholds as specified in Section 3.3-102 above. An Agenda Staff Report will be filed with the Board of Supervisors by the appropriate Department Head as soon as possible, after the purchase has been made. The Agenda Staff Report shall include all documentation and justification in support of the purchase.

§3.4-101 — Definition

- ~~(1) Human Services Contracts include all contracts for services that directly maintain or improve the social, economic, physical, or mental well-being of persons for whom the County bears such a responsibility. Included in the definition of Human Services Contracts are services provided in response to or in support of federal, state and/or local service mandates to provide health and human services to a target population.~~

§3.4-102 — Responsibility

- ~~(1) Human Services Contracts with federal, state and/or local funding shall be solicited and executed in accordance with the provisions of this manual. In the event of a contradiction between county policy and federal and/or state rules and regulations, the more restrictive rules and regulations shall take precedence.~~
- ~~(2) The departments responsible for providing human services will also be directly responsible for Human Services Contracts, including the responsibility for:~~
- ~~a) issuing solicitations;~~
 - ~~b) accepting or rejecting proposals;~~
 - ~~c) developing and administering the proposal evaluation process;~~
 - ~~d) selecting proposal evaluation committee members;~~
 - ~~e) making the final selection recommendation for contract issuance or forwarding the recommendation to the Board of Supervisors for final selection; and~~
 - ~~f) contract administration and oversight, ensuring services are provided in adherence to all contract requirements and expectations and, where applicable, all funding requirements are satisfied.~~
- ~~(3) The procurement/contract administrator staff in these departments are required to be deputized by the County Procurement Officer, unless justified in writing to and approved by the County Procurement Officer.~~

§3.4-103 — Emergencies

- ~~(1) Emergencies are defined as those situations where the welfare or safety of County residents is at stake and/or immediate purchasing action is required to prevent serious economic or other hardship to the County. In the event funding source regulations do not exist, Section 3.3-123 of this manual shall govern.~~

§3.4-104 — Contract Planning and Coordination

- ~~(1) At the discretion of department heads, every reasonable effort shall be made to ensure, through interdepartmental coordination, that services and funding provided by other County departments are not duplicated.~~
- ~~(2) County departments responsible for Human Services Contracts and their funding should compare contract inventories at least once annually and share appropriate information which will assist such coordination efforts.~~
- ~~(3) Interdepartmental contracts may be used if required by funding source regulations or deemed advisable by the affected County departments.~~

~~§3.4-105~~ — **Contracts**

- ~~(1) Contracts will be developed, implemented, and evaluated in accordance with County policy, applicable law and good business practice.~~
- ~~(2) In the event County policy conflicts with rules and regulations of the funding source, the funding source rules and regulations shall take precedence over the provisions contained in this Section.~~
- ~~(3) Further, the provisions within Section 3.3 of this manual shall also apply to Human Services Contracts to the extent they are not inconsistent with the funding source rules and regulations or the provisions within this Section.~~
- ~~(4) Contracts requiring approval by the Board of Supervisors must be approved as to form by County Counsel.~~

~~§3.4-106~~ — **Competitive Bidding**

- ~~(1) The competitive bid process and selection of vendors for Human Service Contract will be conducted in accordance with applicable federal and/or state regulations/guidelines and Section 4 of this manual. In the event of a contradiction between Section 4 of this manual and federal and/or state regulations/guidelines, the more restrictive regulations/guidelines shall take precedence.~~

~~§3.4-107~~ — **Protest Process**

- ~~(1) Human services solicitations and contract awards shall follow County protest procedure as set out in Section 1.3 of this manual unless alternative procedures are approved in writing by County Procurement Officer.~~
 - ~~a) If it is determined to be in the best interest of the County, Notice of Intent to Award may be sent out prior to negotiations, after the evaluation panel has scored the proposal and a recommendation of award has been made. Procurement folder must be documented with justification when Notice of Intent to Award is sent out prior to negotiations.~~

~~§3.4-108~~ — **Board Approval**

- ~~(1) The Board of Supervisors must approve all Human Services Contracts in excess of \$200,000 per year, regardless of the contract duration.~~

~~(2) Board approval shall be required for the Sole Source Human Services Contracts that exceed an annual amount of \$75,000 or two (2) year consecutive term, regardless of dollar amount. Contract may not be split to avoid this policy.~~

~~a) Renewal of Sole Source Human Service Contracts may not be renewed without approval by the Board of Supervisors. For additional information, refer to Section 4.5—Sole Source Requests.~~

~~§3.4-109~~ Contractor Name/Ownership Changes

~~(1) Board approval is not required for contractor name changes when control of the contracted entity remains unchanged, or when an assignment of the County contract occurs pursuant to a sale, merger, or other change in ownership of the contracted entity, and County Counsel determines that the assignment does not require Board approval.~~

~~(2) In all cases where the result of the assignment is that the contracted entity has been released from further performance under the County contract, Board approval shall be required.~~

~~§3.4-110~~ Term of Contract

~~(1) The duration of a Human Services contract will depend on the County's need, prevailing market conditions, contract start-up costs and the County's best economic interest.~~

~~(2) With respect to Board awarded contracts, the initial term of a Human Service contract shall not exceed three (3) years, with a two year renewable term, unless otherwise approved by the Board and/or determined by the funding source rules and regulations.~~

~~(3) Except when determined otherwise by the funding source, a Human Services Contract shall not exceed five (5) years in duration unless the term beyond five (5) years is specifically approved by the Board of Supervisors.~~

~~(4) Prior to recommending renewal or extension of an existing contract, the department will document that performance of the contractor has been satisfactory.~~

~~§3.4-111~~ Contract Renewals

~~(1) Applicable to all contracts with a value that exceeds \$200,000 per year.~~

~~a) All renewals are subject to Board of Supervisors approval.~~

~~b) In the event the total service contract amount for all contract years exceeds \$750,000, the Agenda Staff Report (ASR) shall be filed on the Board's "Discussion Calendar".~~

~~§3.4-112~~ Contract Pricing

~~(1) Human Services Contracts shall determine cost pricing as it deems to be the best interest of the County. Generally Human Services Contracts will utilize the Cost Reimbursement method under which allowable and reasonable costs incurred by the contractor in performance of the contract and reimbursed in accordance of the terms of the contract.~~

~~(2) Human Services Contracts may also be written with one, or a combination of, the following preferred basis for reimbursement:~~

- ~~a) Fee for Service;~~
- ~~b) Actual Cost; or,~~
- ~~c) Negotiated Rates~~

~~§3.4-113~~ Adjustments to Contract Amount

- ~~(1) Decreases: The department head or designee may decrease the amount of a contract without obtaining approval from the Board of Supervisors.~~
- ~~(2) Increases: With respect to non Board awarded service contracts, cumulative contract increases may not exceed 10% of the original annual contract amount unless authorized/approved by the County Procurement Officer on the form(s) approved and provided by the County Procurement Office. The department head or designee shall submit a form, which shall be made a permanent part of the procurement file, to request an increase of the value of a non Board awarded service contract under the following circumstances:~~
 - ~~a) The need for service could not be accurately projected and the percentage of increase does not justify rebidding.~~
 - ~~b) An emergency exists which does not permit rebidding.~~
 - ~~c) Special economic factors justify a contract increase.~~
- ~~(3) For Board awarded contracts, no increase exceeding the contingency amount will be permitted without approval by the Board of Supervisors.~~
- ~~(4) Exemptions: Subordinate contracts issued against RCAs, and contracts awarded via informal solicitations (one written quote) will not require approval from the County Procurement Officer or designee.~~

~~§3.4-114~~ Contingency Amounts

- ~~(1) When requesting approval for award of a Human Service Contract from the Board of Supervisors, a contingency amount may also be requested. Justification for this contingency will be presented to the Board of Supervisors in the Agenda Staff Report (ASR) in accordance with the following:~~
 - ~~a) The total amount requested shall not exceed a total of 10 percent (10%) of the original amount for the first year of the contract.~~
 - ~~b) This amount, if approved by the Board, may be used over the entire term of the contract.~~
 - ~~c) Contingencies shall only be used to cover services already provided in the scope of work, or additional services substantially similar to those already provided in the scope of work, as set forth in the contract.~~
 - ~~d) The use of the contingency amount is subject to approval requirements established by the County Procurement Officer.~~

~~§3.4-115~~ **Vendor Selection**

~~(1) Except where applicable federal and/or state regulations dictate otherwise and with the exception of Sole Source Human Services Contracts as defined in Section 4.5 of this manual, selection shall be based on the competitive process. Solicitations shall be made as follows:~~

- | | |
|------------------------------------------------------------------------|-------------------------------------------------------------------|
| a) Contracts \$50,000 or less over the life of the contract | Minimum of one written quote |
| b) Contracts above \$50,000 over the life of the contract | Written solicitation issued on County's bidding system |

~~(2) Awards in Invitation for Bid solicitations will be made to the lowest responsive and responsible bidder as defined in Section 4.2-103 of this manual. In the case of a negotiated procurement (RFP), award shall be made to the vendor with the most responsive and responsible proposal as detailed in Section 4.3-116 of this manual.~~

~~(3) Consecutive contracts for purchases that contain substantially the same description shall not be issued to the same vendor using the written quote(s) solicitation method when the consecutive contracts' cumulative dollar amount exceeds the written solicitation threshold.~~

~~§3.4-116~~ **Retroactive Contract and Amendments/Changes**

~~(1) Retroactive contracts or contract overruns are not permitted. If a retroactive contract or contract overrun occurs, it is invalid unless ratified by the Board of Supervisors or unless one of the following exemptions applies:~~

- ~~a) Retroactive contracts or contract overruns with a total value <\$500 that have the approval of the department head.~~
- ~~b) Retroactive contracts or contract overruns with a total value between \$500 and \$9,999 that have the approval of the County Procurement Officer and Chief Financial Officer on the form(s) approved and provided by the County Procurement Office.~~

~~Contracts with a total value of \$10,000 and above shall require approval by the Board of Supervisors.~~

~~(2) Retroactive contracts in the following categories shall also be exempt from Board of Supervisors approval;~~

- ~~a) Contracts governed by separate rules and regulations such as Human Services Contracts.~~
- ~~b) Telephone services requests and emergency contracts in any amount.~~
- ~~c) Modifications for computer hardware/software maintenance to add licenses and/or users.~~

~~§3.4-117~~ **HIPAA Business Associate Language**

~~(1) With the passage of the Health Insurance Portability and Accountability Act ("HIPAA") Protected Health Information ("PHI") has become a key legal consideration in the drafting of County contracts for departments subject to the HIPAA rules. For services to be performed in situations where either the County or a contractor under contract with the County are creating or working with PHI, the County approved Business Associate Sections covering HIPAA activities should be~~

~~included in the governing contracts. Sections approved for use will be available on the County Procurement Office's intranet website at:~~

~~<http://intra2k3.ocgov.com/procurement/>~~

~~<http://www.ocgov.com/gov/risk>~~

~~§3.4-118~~ Public Notice

- ~~(1) Public notices for human services solicitations must be posted prior to the release of the solicitations in accordance to the applicable funding source requirements.~~

~~§3.4-119~~ Hybrid Contract Definition

- ~~(1) A hybrid contract is a contract which consists of multiple contract type purchases. For example, a contract for the purchase of a commodity and a service is considered a hybrid contract. The solicitation process will be based on the portion with the greater amount; however, each situation should be carefully considered and documented.~~
- ~~(2) Purchases that are evenly split between commodity and service should be reviewed on a case by case basis by the Deputy Purchasing Agent to determine the appropriate Service or Commodity solicitation process, which shall be documented and made a permanent part of the procurement folder.~~
- ~~(3) If the service portion of a hybrid contract exceeds \$200,000, refer to Section 3.3-102 (1) a), b) and c) of this manual.~~

~~§3.4-120~~ County of Orange Procurement Preference Policy Exemption

- ~~(1) Solicitations directed at non-profit organizations may be exempt from the County of Orange Procurement Preference Policy.~~

SECTION 3.4

ARCHITECT-ENGINEER SERVICE CONTRACTS§3.4-101 General Responsibilities

(1) State and local law, including Public Contract Code Section 22034, Government Code Section 25502.5, Orange County Codified Ordinances Section 1-8-11 *et seq.*, and Orange County Codified Ordinances Section 1-4-12 *et seq.*, provide for delegation of authority by the Board of Supervisors to appropriate officials to engage contractors to provide architectural and engineering services within specified dollar limits. Unless otherwise specified, all references in this section to “Director” shall mean the Director of OC Public Works, Sheriff-Coroner or those qualified County officials or department designees identified by the Director of OC Public Works.

~~— It is the policy of the Board of Supervisors to delegate authority to the Director to oversee the processes for the selection of architects, engineers, and construction contractors and to enter into design and construction contracts on behalf of the County as allowed by statute and described in Sections 3.4 and 3.5.~~

a) The employees designated by the Director to procure A-E service contracts and public works construction contracts, ~~such as the Procurement Section,~~ shall be trained under the direction of the County Procurement Officer, adhere to the methods, policies and procedures established by the County Procurement Officer and deputized as Deputy Purchasing Agents to exercise the authority delegated to the County Procurement Officer by the Board of Supervisors as authorized by law.

b) The Deputy Purchasing Agents shall procure A-E contracts and public works construction contracts at the direction of ~~t~~The Director of OC Public Works or his or her designee(s), including overseeing the processes for the selection of architects, engineers, and construction contractors, entering into design and construction contracts on behalf of the County, and handling related protests and appeals, as allowed by statute and in accordance with ~~shall have discretion to delegate authority to other County officials or department designees to procure design and construction contracts in accordance with Sections 3.4 and 3.5.~~

(2) Notwithstanding the ~~the~~ Architect-Engineer (A-E) services as defined in Section 3.3 above, all other A-E service contracts and public works construction contracts, including those not requiring Board of Supervisors approval, shall be solicited and executed by the Director of OC Public Works, Sheriff-Coroner or those qualified County officials or department designees identified by the Director of OC Public Works, or the Sheriff-Coroner to solicit and execute A-E service contracts and public works construction contracts in accordance with this Contract Policy Manual (CPM), Resolutions of the Board of Supervisors and applicable law. Unless otherwise specified, all references hereinafter in this section to “Director” shall mean all such designated officials or departments.

(3) It shall be the duty of the Director to procure all A-E service contracts and public works

construction contracts and handle related protests and appeals, for the County of Orange, its agencies and departments, and the Orange County Flood Control District, and any other public entity that elects to adopt this section of the CPM. All references to the Board of Supervisors shall also apply to the governing body of any public entity that elects to adopt this CPM. If the Sheriff-Coroner determines it is in the best interests of the County for the Director of OC Public Works to procure a particular contract or type of contract, the Director of OC Public Works shall have the authority to procure such contracts.

- (4) Although the Director has the responsibility to prepare and procure design and construction contracts, the contracting department is responsible for: identifying the scope of the project; budgeting and funding of the project, including and ensuring the project meets any applicable requirements relating to the funding source; providing support to the Director throughout design and construction, inspections, contract compliance, and payment processing; and working with the Director to identify the department's roles and responsibilities for each project.

§3.4 - 102 Definition

- (1) Architect-Engineer (A-E) services for the purposes herein shall mean those services set forth in Government Code Section 4525, subdivisions (d), (e), and (f), include but are not limited to: architectural, landscape architectural, engineering, environmental, land surveying services, and construction project management as well as incidental services that members of these professions may logically or justifiably perform. Environmental services are further defined to mean those services performed in connection with project development and permit processing that facilitates compliance with state and federal environmental laws.
- (2) Services which are considered A-E services may include but are not limited to: investigations; design, plan and specification development; report preparation; cost estimation; shop drawing preparation and review; construction supervision; land survey; CEQA documentation preparation; and regulatory permit application preparation and permit acquisition.
- (3) A-E services may also include other related services, including, but not limited to: archeology, geological and soils engineering, agronomy, limnology, biology, paleontology, construction claims consulting, material testing and inspection, real estate appraisal, and property acquisition services.
- ~~(1)~~(4) If the service provided is a specialized service and performed by private architectural, landscape, engineering, environmental, land surveying, or construction project management, the contract should adhere to the procurement requirements set forth in this section.

§3.4-103 Statute

- (1) Government Code Section 4525 *et seq.* (Mini-Brooks Act) governs contracts between public entities and private architectural, landscape architectural, engineering, environmental, land surveying, and construction project management firms. These statutes establish a Qualifications-Based Selection (QBS) method that public agencies in California must use to contract for professional services. This method requires that such services be engaged on the basis of demonstrated competence and qualifications for the types of services to be performed and at a fair and reasonable price. Accordingly, public agencies may not utilize competitive bidding for such services, except in the limited instances where the State or local agency head determines that the services needed are more— of a technical nature and involve little

professional judgment and that requiring bids would be in the public interest (Government Code §4529). In addition, the procedures adopted to implement the Mini-Brooks Act must assure maximum participation of small business firms as defined in Government Code Section 14837.

§3.4-104 A-E Conflicts of Interest

The acceptance of submittals and execution of contracts with A-E firms are governed by the following restrictions:

- (1) An A-E entity representing a private sector client with an interest in a County project may not also represent the County on the same project; and
- (2) Notwithstanding Paragraph (1), an A-E entity may serve in both design and construction support roles on a given project if those roles were contemplated as part of the same contract.
- (3) In most cases, an A-E entity that prepared design documents, including plans, specifications, cost estimates and reports, for a given project may not bid on that project as a construction contractor or construction manager. This general prohibition extends to sub-consultants of the prime A-E entity. However, an A-E, or its sub-consultants, that provided limited pre-design phase work to assist with scoping a project for bid need not be automatically excluded from bidding on the design-phase work, provided that all of the following conditions are met:
 - c) The A-E in question does not gain a competitive advantage over other bidders, and is not privy to confidential information, due to its pre-design phase services;
 - d) The A-E in question did not assist in preparing the actual bid documents;
 - e) The A-E in question is not involved in evaluating proposals for design-phases services and is not assisting the County in that evaluation; and
 - f) No County personnel or contractors who worked with the A-E in question on pre-design phase services are members of the panel evaluating submissions for design-phase work.

§3.4-105 Board of Supervisors Approval

- (1) “In Counties having a population of 200,000 or more, the Board may authorize the purchasing agent to engage independent contractors to perform services for the County or County officers, with or without the furnishing of material, when the annual aggregate cost does not exceed two hundred thousand dollars (\$200,000).” Government Code Section 25502.5. Therefore, Board of Supervisor approval is required when the annual aggregate cost exceeds \$200,000.
- (2) Approval by the Board of Supervisors is required for all sole source A-E Service contracts that exceed a total annual aggregate amount of \$100,000 or a five-year consecutive term, inclusive of any amendments, regardless of dollar amount.

§3.4-106 Contractor or Firm Name/Ownership Changes

- (1) Except as provided herein, Board of Supervisors approval is required for Board awarded contracts where there is a change in a contractor’s ownership or control resulting in the assignment of rights and responsibilities from one entity to another.

(2) Deputy Purchasing Agents are authorized to approve the following changes to Board awarded contracts in the absence of a novation or other release from liability, and upon approval of County Counsel:

a) There is a change in the contractor company name only, but there is no change in the company's:

- i. ownership or control,
- ii. key staff identified in an existing contract, or
- iii. tax identification (e.g., EIN).

b) There is a proposed assignment of the existing Board awarded contract to a different legal entity based on bankruptcy, merger, sale of the company (as opposed to a mere sale or acquisition of assets), restructuring or dissolution, and the Deputy Purchasing Agent has determined that the proposed assignee is qualified to perform according to the terms of the contract and original solicitation requirements and any key staff identified in the contract remain unchanged.

(3) Upon approval of County Counsel, Deputy Purchasing Agents are authorized to approve a change in contractor name or ownership for non-Board awarded contracts.

§3.4-107 -Term 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 staff and shall be subject to negotiation with the A-E entity.
- (2) If the A-E services to be completed are not project-specific, the initial term of the contract term shall not exceed three years, unless otherwise approved by the Board of Supervisors.
- (3) Notwithstanding the provisions of Paragraph (2) above, contracts for A-E services that are not project-specific and were not required to be awarded by the Board of Supervisors, the term of such contracts shall not exceed five (5) years, unless otherwise extended in accordance with Section 3.4-111(7);

§3.4-108 Firm Selection Methods

(1) Selection shall be based on a competitive process with the exception of those covered in Section 5, below. The method used depends upon the scope of work, the services required, the size of the project or potential projects, the complexity of projects, and the time available for selection. A-E services as defined in this section shall not include a DVBE preference. The Director or designee has the discretion to choose which selection method will be utilized. The A-E procurement methods are:

(2) Request for Qualifications:

The Request for Qualifications (RFQ) method is used primarily for establishing capacity contracts through a qualification-based selection of ~~professional~~ A-E services when future services are necessary from numerous firms for an undefined project scope of services as required by A-Es of the same or similar discipline. An RFQ will be advertised and firms will submit a

Statement of Qualifications (SOQ).

a) Establishment of the Qualified Vendor List and On-Call Contracts

The firm is required to submit a SOQ in response to a RFQ. A minimum score is established as a pass point for respondents to qualify for inclusion in the Qualified Vendor List (QVL). An evaluation panel scores the respondents' SOQs with all responsive SOQs meeting the minimum pass point, those who meet the minimum will be included in the QVL. The highest scored respondents may, at the discretion of the evaluation panel and based on the County needs, -be invited for interviews -for determining which firms will be recommended for on-call contracts with specific dollar amounts. The Director may use the QVL for various services as required. The QVL is typically solicited at least once every three to five years to give additional firms an opportunity to participate. At the time A-E services are required:

- i. For contracts up to an annual aggregate cost of \$200,000, a contract may be issued to a QVL firm by negotiating the fee and scope of work, or a task order may be issued against an existing on-call contract awarded from a RFQ.
- ii. For services with an annual aggregate cost of over \$200,000 a contract task order may be issued against an existing on-call contract awarded from a RFQ.
- iii. Contracts over an annual aggregate cost of \$200,000 per year may also be awarded to a QVL firm, by negotiated contract, however, Board of Supervisors approval will be required.

b) Additional Use of Qualified Vendor List

The QVL may also be utilized as the first step of the two-step solicitation process defined in Subsection (4), below. An invitation request to submit proposals on a specific scope of work can be sent to all vendors-firms within the QVL and the proposals will be evaluated based on the established criteria set forth in the invitationrequest.

(3) Request for Proposals

The Request for Proposals (RFP) method is used for projects with a defined scope, such as a one-time well defined project, or for repetitive services with a defined scope. In this method, firms may be required to submit a technical proposal and may be required to submit a price proposal. Proposals by all firms are evaluated by an evaluation panel based on criteria outlined in the RFP. The evaluation panel scores the proposals at which point final price negotiations may begin with the firm having the highest evaluation ratingscores. The contract may be awarded to one firm for project specific services or for repetitive services that may be required over the term of the contract. The selection and award of these contracts will require approval by the Board of Supervisors when exceeding the thresholds in Section 3.4-105.

(4) Request for Qualifications/Request for Proposals (Two-Step)

The Request for Qualifications/Request for Proposals (RFQ/RFP) method is generally used for larger projects and when the scope of work is complex or unusual or where innovative approaches to the project may be of value. This method requires a firm to submit a SOQ in response to a RFQ. Responding submittals are scored by an evaluation panel, which then prepares a list of the most qualified firms. Those most qualified firms are then invited to respond

to a RFP issued by the County. Submitted proposals are then evaluated by an evaluation panel based on the criteria outlined in the RFP and the highest ranked firm with the highest rated proposal is recommended for award to the Board of Supervisors.

(5) Competitive Bidding

If the services needed are of a technical nature, ~~are~~ well defined, and involve only limited professional judgment, the Invitation for Bid (IFB) process is allowed. Examples of where the IFB process may be appropriate include, but are not limited to: drafting of as-built or record drawings, drafting of standard plans, certain laboratory testing, and certain survey services. All awards resulting in a contractor receiving more than an aggregate amount of \$200,000 per year in aggregate of non-Board approved contracts will require Board of Supervisors approval.

(6) Sole Source Contracts/One-Time Contracts for A-E Services:

- a) ~~Sole Source Contracts:~~ “Sole source contracts” are contracts that are excused from competitive bidding when (a1) the service requested is proprietary, or (b2) the County’s business needs require expeditious award of a contract without competitive bidding. Approval by the Board of Supervisors is required for award of all sole source contracts that exceed an annual amount of \$100,000 or a five (5) year consecutive term, regardless of dollar amount. (Note: ~~vendors~~ firms that are listed on a current Qualified Vendor List have participated in the competitive bidding process, and do not require sole source justification for contract award. However, contracts awarded from a Qualified Vendor List may still require approval by the Board of Supervisors if they exceed the dollar value thresholds in ~~of~~ Government Code § 25502.5).

(7) One-Time Contracts:

- a) ~~One-Time Contracts:~~ In such cases where firms from an existing Qualified Vendor List cannot be utilized, contracts that do not exceed \$100,000 are considered a “one-time” contract, and ~~are~~ is not required to be competitively bid nor require a sole source justification for award. Alternate submittals should be obtained to ensure the County has validated firm qualifications and competitive pricing.

§3.4-109 Guidelines for Selecting Firms from Established Contract Lists

- (1) For multiple award contracts, the following factors are to be utilized prior to deciding which A-E firm will be requested to perform the necessary services:
 - a) **Expertise:** Applicable expertise of the firm to best perform the specific scope of the services identified.
 - b) **Capacity:** Review of the firm’s necessary staff and equipment availability to perform the specific scope of services identified within the County’s requested time period.
 - c) **Price:** Review of the estimated level of effort and resulting cost to complete the services identified.
 - d) **Utilization:** When the above factors are substantially the same, and in the case of equivalent costs for identified services, the County may consider the amount of work each firm has previously performed under the current contract.

- e) **Performance:** If poor performance becomes an issue for a specific firm, that firm may receive fewer requests for identified services to protect the County from resulting quality or safety issues.

§3.4-110 ~~Quarterly Usage Report~~

- (1) A quarterly usage report from the previous quarter will be submitted by the Director to the Board of Supervisors for all On-Call Contracts, via a Board Memo.

§3.4-111- ~~A-E Service Contract Changes, Amendments, Extensions~~

- (1) ~~An A-E service contract and its incorporated scope of work define the total contract. Within the limited authority granted by the Board of Supervisors, the Director or Director's designee may amend the contract allowing additional work that is related to, and is of a similar nature to, the original scope, as long as the additional work does not exceed the value of the contract approved by the Board of Supervisors.~~
- (2) ~~If an increase to an A-E service contract aggregate cost is necessary, the estimated not-to-exceed cost amount will be agreed upon in writing before beginning the additional work.~~
- (3) ~~If an A-E service contract has not been approved by the Board of Supervisors, any change to the amount of that Contract that increases the annual aggregate dollar amount of non-Board awarded contracts with an A-E firm beyond \$200,000 must be approved by the Board of Supervisors.~~
- (4) ~~Subject to restrictions set forth in Paragraph (3) above, increases in of the A-E service contract cost or amount for services within a contract's existing scope of work may be granted by the Director or Director's designee without Board of Supervisor's approval where the increased amount does not exceed 25 percent of the existing contract price or \$200,000 annually, whichever is less.~~
- (5) ~~Amendments to an A-E service contract exceeding the limits placed on Director's authority as described above must be submitted to the Board of Supervisors for approval.~~
- (6) ~~Amendments to an A-E service contract also require Board of Supervisors approval when there is a major change in the scope of the contract or the change would result in a major delay that significantly differs from the original period of performance contemplated as agreed upon in by the contract.~~
- (7) ~~Notwithstanding Section 3.4-111, at the Director's discretion, with the concurrence of County Counsel and for the sole purpose of completing work already commenced, the Director may extend the term of a Board-awarded or non-Board-awarded A-E service contract for a period of not more than one (1) year so long as there is no increase in cost to the County or change in the scope of work.~~

§3.4-112 Extensions

- (1) Notwithstanding Section 3.4-111, at the Director's discretion, with the concurrence of County Counsel and for the sole purpose of completing work already commenced, the Director may extend the term of a Board-awarded or non-Board-awarded A-E service contract for a period of not more than one (1) year so long as there is no increase in cost to the County or change in the scope of work.

§3.4-113 Insurance

All recommendations for award of a contract for A-E services shall include information by the appropriate department indicating that either:

- (1) Professional liability insurance is required, County's professional liability insurance coverage requirements have been met by the A-E firm; or
- (2) Good cause exists to allow the A-E firm to be exempt from the County's liability insurance requirements, with an explanation justifying the exemption.

§3.4-114 State And Federal Grant Projects

(1) All applicable State or Federal Regulations will be followed for projects involving State or Federal grants. Standard County contract language and procurement documents may be modified as necessary to meet the eligibility requirements for State or Federal programs.

- a) On federally funded projects, DPAs will be required to consult the System for Award Management (SAM) at SAM.gov to comply with funding source requirements.

§3.4-115 Prevailing Wage In A-E Contracts

- (1) Construction-related work performed under A-E service contracts may meet the definition of "public works" under Labor Code § 1720 *et seq.* Contracts for A-E services shall include provisions for prevailing wages where mandated by law. Registration with the Department of Industrial Relations will be required, when applicable, pursuant to Labor Code Section 1771.1(a) and 1725.5.

SECTION 3.5

PUBLIC WORKS CONSTRUCTION CONTRACTS§3.5-101 General Responsibilities

(1) State and local law, including Public Contract Code Section 22034, Government Code Section 25502.5, Orange County Codified Ordinances Section 1-8-11 *et seq.*, and Orange County Codified Ordinances Section 1-4-12 *et seq.*, provide for delegation of authority by the Board of Supervisors to appropriate officials to engage contractors to provide public works construction projects within specified dollar limits. The Director of OC Public Works, Sheriff Coroner or those qualified County officials or department designees identified by the Director of OC Public Works, or the Sheriff Coroner shall have the authority to procure and engage contractors to provide public works construction projects as set forth herein and handle related protests and appeals. Unless otherwise specified, all references in this section to “Director” shall mean all such designated officials or departments. Unless otherwise specified, all references in this section to “Director” shall mean the Director of OC Public Works, Sheriff-Coroner or those qualified County officials or department designees identified by the Director of OC Public Works.

— It is the policy of the Board of Supervisors to delegate authority to the Director to oversee the processes for the selection of architects, engineers, and construction contractors and to enter into design and construction contracts on behalf of the County as allowed by statute and described in Sections 3.4 and 3.5.

a) The employees Those designated by the Director to procure A-E service contracts and public works construction contracts, such as the Procurement Section, shall be trained under the direction of the County Procurement Officer and deputized as Deputy Purchasing Agents to exercise the authority delegated to the County Procurement Officer by the Board of Supervisors as authorized by law. The employees designated by the Director to procure A-E service contracts and public works construction contracts, such as the Procurement Section, shall be trained under the direction of the County Procurement Officer, adhere to the methods, policies and procedures established by the County Procurement Officer and deputized as Deputy Purchasing Agents to exercise the authority delegated to the County Procurement Officer by the Board of Supervisors as authorized by law.

b) The Director of OC Public Works shall have discretion to delegate authority to other County officials or department designees to procure design and construction contracts in accordance with Sections 3.4 and 3.5. The Deputy Purchasing Agents shall procure A-E contracts and public works construction contracts at the direction of the Director or his or her designee(s), including overseeing the processes for the selection of architects, engineers, and construction contractors, entering into design and construction contracts on behalf of the County, and handling related protests and appeals, as allowed by statute and in accordance with Sections 3.4 and 3.5.

(2) Director or designees shall Pursue project delivery methods in accordance with the Public Contract Code and methods available through agreements with other governing entities (for

example, via a Joint Powers Authority) in order to obtain cost savings for or limit liability of the County;

(3) The Director or designees shall have the authority to issue change orders. Changes shall not exceed the limits as stated in Public Contract Code Section 20142. The Board of Supervisors may also delegate additional change order authority to individual officials and their designees when approving specific contracts.

(4) Although the Director has the responsibility to prepare and procure design and construction contracts, the contracting department is responsible for: identifying the scope of the project; budgeting and funding of the project, including and ensuring the project meets any applicable requirements relating to the funding source; providing support to the Director or designee throughout design and construction, inspections, contract compliance, and payment processing; and working with the Director or designee to identify the department's roles and responsibilities for each project.

§3.5-102 Definition

(1) As used in this CPM, "public works," "public works contract", "public works construction contract" or "public works project" shall share the same meaning as "public project" as defined in Public Contract Code Section 22002(c):

a) Public works contract or public works project means any of the following:

i. Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility paid for using public funds;

ii. Painting or repainting of any publicly owned, leased, or operated facility.

b) "Maintenance work" as defined in Public Contract Code Section 22002(d) is not a public works contract for the purposes of this CPM. Maintenance work includes all of the following:

i. Routine, recurring, and usual work for the preservation or protection of any publicly owned or publicly operated facility for its intended purpose;

ii. Minor repainting;

iii. Resurfacing of streets and highways at less than one inch;

iv. Landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems; and

v. Work performed to keep, operate, and maintain publicly owned water, power, or waste disposal systems, including, but not limited to, dams, reservoirs, power plants, and electrical transmission lines of 230,000 volts and higher.

(2) Prevailing wage shall be paid pursuant to Labor Code Sections 1720 *et seq.*

§3.5-103 Purpose and Scope

(1) The purpose of this section is to provide guidelines for the solicitation and procurement of

public works contracts. The scope of this section covers all public works contracts issued by all departments and agencies under the budgetary jurisdiction of the Board of Supervisors.

§3.5-104 Statute

- (1) Public works contracts shall be issued in accordance with the provisions of the Public Contract Code Sections 22000 *et seq.*, also known as the Uniform Public Construction Cost Accounting Act (the Act), and on forms approved for use by County Counsel.
- (2) The provisions of the Act relative to bidding procedures supersede the procedures contained within the code that would otherwise apply to specific projects or public entities.
- (+)(3) Amendments or revisions to the code sections affecting this policy and resulting procedures may be directly incorporated into this CPM when enacted by the California Legislature without further action of the Board of Supervisors.

§3.5-105 Contract Methodology

- (1) On projects with a total value of \$60,000 or less, the County may complete the work pursuant to Public Contract Code Section 22032(a) utilizing the employees of a public agency by force account, through a negotiated contract, or by purchase order.

§3.5-106 Design-Bid-Build

- (1) The Design-Bid-Build method splits construction projects into three (3) distinct phases: (1) design, (2) solicitation and (3) construction. During the design phase, the local agency prepares detailed project plans and specifications using its own employees or by hiring outside architects and engineers, as specified in Section 3. The solicitation and construction phases are specified within this Section.
- (2) Public Contract Code Sections 20100 *et seq.* delineates the requirements and procedures that local officials must follow when awarding public works contracts.
- (3) The County of Orange utilizes the Design-Bid-Build method for construction projects resulting in a Fixed-Price Contract, a Fixed-Price Indefinite Quantity Contract, or a Cost Plus Fixed Fee Contract. When using this method, it is required to utilize the prequalification process per Sections 3.5-1143 through 3.5-1176.

§3.5-107 Invitation for Bid (IFB) Process:

- (1) Public works contracts with a value of \$200,000 or less may be procured by using informal bidding procedures as set forth in Public Contract Code Section 22032 and Orange County Codified Ordinances 1-8-10 through 1-8-14.
- (2) Unless the product or service is proprietary, all contracts with a value of between \$60,000 and \$200,000 or less, or those amounts provided by Public Contract Code Section 22032, shall be selected using the following informal bidding procedures:
 - a) The Director shall maintain a list of qualified contractors, identified according to categories of work. Minimum criteria for development and maintenance of the contractors list shall be determined by the Director.

- b) All contractors on the list for the category of work being bid or all construction trade journals specified in Public Contract Code Section 22036, or both, shall be mailed or emailed a notice inviting informal bids unless the product or service is proprietary.
 - c) All mailing of notices to contractors and construction trade journals pursuant to this section shall be completed not less than ten (10) calendar days before bids are due.
 - d) The notice inviting informal bids shall describe the project in general terms and how to obtain more detailed information about the project, and state the time and place for the submission of bids.
 - a)e) As provided by Public Contract Code Section 22034(d), if all bids received are in excess of \$200,000, the Board of Supervisors may, by adoption of a resolution by a four-fifths vote, award the contract, at \$212,500 or less, to the lowest responsible bidder, if it determines the cost estimate of the agency or department was reasonable.
- (3) The Director or designee shall approve plans, specifications, working details for its public works projects, and shall issue contracts for all public works contracts with a value of \$200,000 or less.
- (4) ~~In regard to~~Regarding public works contracts with a value of more than \$60,000, which are not Construction Manager at-Risk or Design-Build contracts, the County must award each contract to the lowest responsive, responsible bidder, except under one of the following circumstances:
- a) The County may award the contract to the bidder of its choice if the two lowest bids are equal per Public Contract Code 22038(b).
 - b) The County may reject any bids presented, furnish a written notice to the apparent low bidder and then:
 - i. Abandon the advertised contract-public works project or re-advertise for bids in the manner described in the Act per Public Contract Code Section 22038(a)(1); or
 - ii. Declare, by passage of a resolution with four-fifths approval of the Board of Supervisors, that the work can be performed more economically by employees of the County, and have the project performed by force account which is work ordered on a construction project without an existing contract on its cost, and performed with the understanding that the contractor will bill the owner according to the cost of labor, materials, and equipment, plus a certain percentage for overhead and profit.
 - c) If no bids are received by formal or informal bid procedure, the County may have the work performed by employees of the County by force account or negotiated contract in accordance with Public Contract Code Section 22038(c).
- (5) Public works contracts valued at over \$200,000 shall be solicited using formal bid procedures as provided by Public Contract Code 22037. The project, plans, and specifications shall be adopted by the Board of Supervisors, unless delegated. The invitation for bids shall be authorized by the Board of Supervisors, unless delegated, and advertised by the Director or designee. The contract shall be awarded by the Board of Supervisors. The approved contract shall be executed by the Board of Supervisors unless the authority has been clearly delegated and authorized to others by the Board of Supervisors.
- (6) Emergency projects shall be performed in accordance with Public Contract Code Section 22035 or 22050, as applicable.

§3.5-108 Change Orders

- (1) The Director or designee may approve contract cost increases limited to:
 - a) \$5,000 per change for contracts up to \$50,000;
 - b) 10 percent of the original contract amount per change for contracts from \$50,000 to \$250,000; and
 - c) \$25,000 per change for contracts in excess of \$250,000, plus 5 percent of the original contract amount— in excess of \$250,000 up to a total maximum amount of \$210,000 in accordance with Public Contract Code Section 20142(b).
- (2) Changes in excess of the limits specified above require Board of Supervisors approval.
- (3) Any material change that significantly alters the contract scope of work will require Board of Supervisors approval. Reallocation of funds from one item of work to another with zero net change in the contract amount only requires Board of Supervisors approval where the character of the work in each item is significantly changed from the original scope.
- (4) The Director or designee shall adhere to County procedures for:
 - a) Reviewing change requests;
 - b) Negotiating change order with the contractor;
 - c) Obtaining legal review and approval of change orders, where appropriate; and
 - d) Preparing written documentation on change orders.

§3.5-109 State And Federal Grant Projects

- (1) All applicable State or Federal Regulations will be followed for projects involving State or Federal grants. Standard County contract language and procurement documents may be modified as necessary to meet the eligibility requirements for State or Federal programs.
 - a) On federally funded projects, DPAs will be required to consult the System for Award Management (SAM) at SAM.gov to comply with funding source requirements.

§3.5-110 Alternate Project Delivery Methods

- ~~—Alternate Project Delivery Methods shall include Design-Build, Construction Manager at-Risk (CMAR, and Job Order Contract (JOC), Construction Manager at Risk (CMAR), and Design-Build. (Refer to Public Contract Code Sections 6950, 6951).~~
- (1) It is the policy of the County of Orange to solicit offers in full and open competition and award contracts that are consistent with the nature and requirements of the specifications or services to be procured utilizing the most efficient and effective project delivery method.
 - (2) The purpose of this section is to provide an overview of the County's options and alternate project

delivery methods of contracting for construction, architectural, engineering, and construction-related services. The scope of this section covers Architect-Engineering (A-E) service contracts and/or public works construction contracts.

- (3) This section establishes the available options and applicable statutory provisions for alternate project delivery methods for utilization by each County department. Alternate project delivery methods involve utilizing qualifications as the primary criteria for selection of construction services as an “alternate” to a ~~price-based~~ price-based selection (or low bid/Design-Bid-Build).

§3.5-111 Design-Build

- (1) Design-Build (DB) is a qualification-based selection (QBS), in which both the design and construction services for a project are procured at the same time following the QBS- and pursuant to statute, the contract is awarded either to the lowest responsible bidder or by best value to a single entity known as the design-builder or design-build contractor. In contrast to Design-Bid-Build, DB relies on a single point of responsibility contract and is used to minimize risks for the project owner and to shorten the delivery schedule by overlapping the design phase and construction phase of a project.

- (2) Chapter 4 (~~commencing with Public Contract Code Section 22160~~) of the Public Contract Code provides the general authority for DB procurement by local agencies. With Board of Supervisors approval, the County may use DB contracts for public works projects in excess of \$1,000,000, except for projects on the state highway system, and may award such contracts either to the lowest responsible bidder or by best value. Best value means a value determined by objective criteria related to price, features, functions, ~~and~~ life-cycle costs, experience, and past performance.

- ~~(1)(3)~~ Section 22161(g)(1) defines “project” for the purposes of DB procurement as the construction of a building or buildings and improvements directly related to the construction of a building or buildings, county sanitation wastewater treatment facilities, and park and recreational facilities, but does not include the construction of other infrastructure, including, but not limited to, streets and highways, public rail transit, or water resources facilities and infrastructure. For a county that operates wastewater facilities, solid waste management facilities, or water recycling facilities, “project” also includes those facilities.

- ~~(2)(4)~~ Unless subsequently amended, Public Contract Code Section 22169 provides that the statutes authorizing DB contracting are repealed as of January 1, 2025.

- (5) Pursuant to Public Contract Code Section 22162.6, in addition to those projects permitted to be delivered by DB under Public Contract Code Section 22161(g)(1), DB contracts may also be used to deliver the following types of projects in Orange County:

- a) Flood protection improvements
- b) Harbor and beach improvements
- c) Bikeway improvements

The County is limited to no more than one (1) DB project per year valued in excess of \$5,000,000 of the types listed in Subsections (a-c) above. Public Contract Code Section 22162.6(c).

- (6) Pursuant to Public Contract Code Section 22162.6, in addition to the requirements set forth in Section 22164, for a project authorized under Section (54) above, the ~~e~~County shall be responsible

for the performance of, and eCounty employees in Orange County Public Works may perform, project development services, including performance specifications, preliminary engineering, procurement services and the preparation of project reports, and construction inspection services, excluding specialty bridge inspections. The eCounty shall also be the responsible agency for, and eCounty employees in Orange County Public Works may perform, the preparation of documents that may include, but need not be limited to, the size, type, and desired design character of the project, performance specifications covering quality of materials, equipment, and workmanship, preliminary plans, and any other information deemed necessary to describe adequately the needs of the County of Orange.

- (7) Orange County Flood Control District may use the Design-Build project delivery method to design, build and perform projects for flood protection improvements. Public Contract Code Section 22162.7(a). The District may perform no more than twelve (12) such projects with a dollar value greater than \$5 million prior to January 1, 2025. Public Contract Code Section 22162.7(c).
- (8) Pursuant to Public Contract Code Section 22162.7, in addition to the requirements set forth in Section 22164, for a project authorized under Section (7) above, the Orange County Flood Control District shall be responsible for the performance of, and County employees in Orange County Public Works may perform, project development services, including performance specifications, preliminary engineering, procurement services and the preparation of project reports, and construction inspection services, excluding specialty bridge inspections. The County shall also be the responsible agency for, and County employees in Orange County Public Works may perform, the preparation of documents that may include, but need not be limited to, the size, type, and desired design character of the project, performance specifications covering quality of materials, equipment, and workmanship, preliminary plans, and any other information deemed necessary to describe adequately the needs of the Orange County Flood Control District.
- (9) DB is a procurement process in which both the design and construction of a project are procured from a single entity known as the design-builder or design-build contractor entity. The design-build method of project delivery affords a more collaborative approach, which may provide benefits, such as reducing project cost, expediting project completion, or providing design features, not achievable through the design-bid-build process. In addition, DB may yield cost efficiencies by shifting certain liability and risk for cost containment and project completion with the design-builder.
- (10) DB projects must progress in a four-step process: Scope Developmenting, Request for Qualification of DB Entities, Requests for Proposal, and Evaluation of Proposals and Selection of DB Entities:

a) **Scope Developmenting**

The County prepares a set of documents defining the scope of the project, generally called performance specifications and plans. These performance specifications and any plans shall be prepared by a design professional duly licensed and registered in California. If the County retains an architect or engineer to assist in the development of the scope or other project-specific documents for a design-build project, that architect or engineer is not eligible to participate in the preparation of a submittal with any DB entity for that project.

—b) **Request for Qualification (RFQ) Process of DB Entities**

When utilizing DB~~-procurement~~, the County shall initially use the RFQ process to identify the most qualified DB entities. Only those entities that are selected through RFQ process will be allowed to submit proposals in response to the County's subsequent DB Request for Proposal. Pursuant to Public Contract Code Section 22164, the RFQ must include:

- i. Identification of the basic scope and needs of the project or contract;
- ii. The expected cost range;
- iii. Methodology that will be used to evaluate the Statement of Qualifications (SOQ) and the procedure for final selection of the DB entity
- iv. Significant factors that the agency expects to consider in evaluating qualifications, including technical design and construction expertise, acceptable safety record, and all other non-price related factors
- v. And any other information deemed necessary by the contracting agency to inform interested parties of the contracting opportunity

b) Request for Proposal (RFP) Process

Based on the performance specifications and plans, the County shall prepare an RFP inviting those DB entities identified as most qualified through the RFQ process to submit competitive sealed proposals. Pursuant to Public Contract Code Section 22164(d), the RFP must include:

- i. The basic scope and needs of the project, ~~expected cost range~~ the estimated cost of the project, and other information deemed necessary by the County to inform interested parties of the opportunity;
- ii. The methodology that will be used by the County to evaluate proposals, specifically if the contract will be awarded to the lowest responsive, responsible respondent or whether it will be awarded based on best-value and other criteria, and significant objective factors that the County reasonably expects to consider in evaluating proposals, including cost or price and non-price-related factors; and
- iii. The relative importance of weight assigned to each ~~factor~~criteria specifically whether evaluation factors other than cost or price are significantly more than, approximately equal to, or less important than cost or price.

If the County reserves the right to hold negotiations with respondents, it must specify as such in the RFP and must include applicable rules and procedures to be observed by the County to ensure that any negotiations are conducted in good faith.

c) Evaluation of Proposals and Selection ~~of the DB Entity~~

Final selection of the DB entity may be based on either a competitive bidding process resulting in lump-sum bids, with the award being made to the lowest responsible respondent, or based upon best value and other criteria. When the best-value method is selected, competitive proposals must be evaluated using only the criteria and selection procedures identified in the RFP and shall progress as specified by Public Contract Code Section 22164(f). Proposals shall be evaluated by using only the criteria and selection procedures identified in the RFP. Consideration must be given to each of the following: price, technical design, construction experience, life-cycle costs for at least 15 years, skilled labor force availability, and acceptable safety record.

Once the evaluation is complete, the ~~highest scored~~ responsive respondents are scored and the ~~recommendation of award of the highest ranked respondent whose proposal is determined and documented to be most advantageous is made to the Board of Supervisors. to the responsible respondent whose proposal is determined and documented to be most advantageous once award is authorized by the Board of Supervisors. The award and written decision will then be publicly announced.~~

If the County chooses to reserve the right to hold discussions or negotiations with responsive respondents, such right will be specified in the RFP. Applicable rules and procedures to be observed by the County will be published separately or incorporated into the RFP to ensure that any discussions or negotiations are conducted in good faith.

Pursuant to Public Contract Code Section 22167, if the County elects to award a DB project, retention proceeds withheld by the County from the DB entity shall not exceed 5 percent if a performance and payment bond, issued by an admitted surety insurer, is required in the solicitation of bids per Public Contract Code.

§3.5-112 Construction Manager at-Risk

- (1) Construction Manager at-Risk (CMAR) is an alternate project delivery method which entails a commitment by the Construction Manager at-Risk ~~Entity~~ (CMAR~~E~~) to deliver the project within a Guaranteed Maximum Price (GMP). The CMAR~~E~~ acts as a consultant to the County in the development and design phases (“preconstruction services”) and as a general contractor during construction.
- (2) SB328 (2013) amended Public Contract Code Section 20146, allowing counties to use CMAR ~~procurement~~ for vertical construction. SB 914 (2018) expanded existing statute to allow counties, as well as other public entities for which the members of a county’s board of supervisors make up the membership of the governing legislative body (e.g., the Orange County Flood Control District), to use CMAR to deliver horizontal projects, in addition to vertical projects, subject to some limitations.
- (3) Pursuant to Public Contract Code 20146, A county with approval of the board of supervisors, or a public entity, with approval of its governing body, may utilize ~~construction manager at-risk~~CMAR construction contracts for the erection, construction, alteration, repair, or improvement of any infrastructure, excluding roads, and including, but not limited to, buildings, utility improvements associated with buildings, flood control and underground utility improvements, and bridges, owned or leased by the county. A CMAR~~construction manager at-risk~~ construction contract may be used only for projects in the county in excess of one million dollars (\$1,000,000) and may be awarded using either the lowest responsible bidder or best value method to a ~~construction manager at-risk entity~~CMAR~~E~~ that possesses or that obtains sufficient bonding to cover the contract amount for construction services and risk and liability insurance as may be required by the county or public entity. Any payment or performance bond written for the purposes of this section shall be written using a bond form developed by the county or public entity.
- (4) CMAR may not be used to construct roads. PCC 20146(a).
- (5) The authority to use CMAR terminates by operation of law on January 1, 2023~~9~~, unless a later enacted statute deletes or extends that date. Public Contract Code Section 20146(h).

- (6) A CMAR contract is procured through a Request for Proposal (RFP) process, which results in a qualification based, competitively procured contract that guarantees the cost of a project and furnishes CM services, including preparation and coordination of bid packages, scheduling, cost control, value engineering, evaluation, preconstruction services, and construction administration. Unlike DB, when utilizing a CMAR contract the County retains control of the entire design process.
- (7) On a CMAR project, the County typically retains the CMARE before or during design. The CMARE provides a contractor's perspective during design, assists in value engineering, and performs quality control to reduce common design problems such as coordination and constructability issues. The construction documents are divided into separate "trade packages" suitable for competitive bidding as separate contracts. The CMARE selects the trade contractors through procedures established by the County, and is responsible for scheduling, coordinating and completing the project for a GMP.
- (8) The CMARE is typically paid a fixed sum for its preconstruction services and receives a fee, calculated as a percentage of hard construction cost (e.g., labor, materials), for services during construction. The CMARE may also provide site services for the project, such as security and sanitation, and may, in some cases, perform portions of the work. If it does so, payment for that work may be in addition to the fees charged for preconstruction services.
- (9) The overall price for construction of the project, either a lump sum or GMP, is usually established late in the design phase or after all trade contracts have been bid. The price should change only if the County modifies the project, regulatory changes increase the cost of the work, or unexpected site conditions appear. As with other contracting methods, the County may prequalify the CMARE and/or subcontractors or set minimum qualifications requirements (which do not score but merely qualify the CMARE and subcontractors). It is important that a CMAR contract clearly identifies the risks the County would shift to the CMARE, and that the County's staff is well trained to use the contract to enforce those responsibilities.
- (10) Selection of the CMARE entity should be by best value, where "best value" means a value determined by objective criteria related to the experience of the entity and project personnel, project plan, financial strength of the entity, safety record of the entity, and price.

§3.5-113 Job Order Contracts - Annual Contracts for Repair, Remodeling, or other Repetitive Work (Job Order Contracts)

- (1) An annual contract for repair, remodeling, or other repetitive work based on unit prices including, but not limited to, a Job Order Contract (JOC) is a firm fixed price, competitively bid through the Invitation for Bid (IFB) process, unit priced, indefinite quantity contract designed to accomplish applicable projects as defined in Public Contract Code Section 20128.5. Per statute, these contracts shall not include the performance of design or contract drawing services.
- (2) Public Contract Code Section 20128.5 provides the statutory authority for these contracts for repair, remodeling, or other repetitive work only, and may not be used for new construction. Unit-price contracts may only be up to one year in duration.
- (3) The Board of Supervisors delegates to the Director the ability to utilize Job Order Contracts awarded by the Board of Supervisors to perform activities described in Public Contract Code Section 20128.5.

- (4) Per Public Contract Code Section 20128.5, these contracts may be awarded up to \$3,000,000 plus an annual Consumer Price Index adjustment based on the annual Consumer Price Index published by the California Department of Industrial Relations.
Public Contract Code Section 20128.5.
- (5) See Per Public Contract Code Section 20128.5, Job Order or Annual Contracts may not be used for new construction. Job Order Contracts may only be used for repair, remodeling, or other repetitive work to be done according to unit prices. Job Order Contracts shall only be awarded to the lowest responsible bidder and shall be based on plans and specifications for typical work provided by the County. "Unit price" as used herein means the amount paid for a single unit of an item of work, and "typical work" means a work description applicable universally or applicable to a large number of individual projects, as distinguished from work specifically described with respect to an individual project. See Public Contract Code Section 20128.5.
- (6) No task orders may be issued against a Job Order Contract after expiration of the term of contract; provided, however, that the Director may extend the term of a Job Order Contract for a period of six (6) months for the sole purpose of completing any work or project already ordered prior to the expiration of the original term of the Job Order Contract when work has already commenced on that work or project. No new task orders may be issued against a Job Order Contract after expiration of the original term of the contract, except that work already ordered by task order and commenced prior to expiration of the original term of the JOC contract may be modified by supplemental task order so long as (a) the modification does not substantially alter the character of the work already in progress, (b) the changes ordered in all supplemental task orders do not result in an increase in cost of more than 50% in aggregate above that of the original task order, and (c) the supplemental task order does not extend the time to perform the contemplated work beyond six (6) months past the expiration of the original term of the Job Order Contract.
- (7) The annual unit-price contracts program is carried out by either developing in house, or contracting out for the professional services for, the development and customization of a Unit Price Book (UPB) and technical specifications for typical work. A UPB includes pre-priced construction tasks that are specifically tailored for the type of work that the County intends to accomplish and includes labor, material and equipment costs. All unit prices incorporate federal labor standards including Davis-Bacon requirements and other Federal and State wage rate requirements, if applicable. A UPB is work-segment based and incorporates local activity, climate, and geographic features. Technical specifications take into account quality of materials and workmanship, performance specifications, and detailed specifications furnished on a project by project basis.
- (8) Contractors bid on adjustment factors for work performed during normal working hours and non-normal working hours. These adjustment factors will be applied against the prices set forth in the unit price book and are used to price out fixed price work orders by multiplying the adjustment factors by the unit prices and quantities. Subcontractors rates are subject to the prime contractor's bid factors. The contractor with the lowest composite factor will be considered the apparent low bidder.
- (9) Subcontractors proposed to be used to perform work under a prime contractor's contract must be identified in a potential contractor's bid, if known at time of bid, or must be approved in writing by the County if identified at a later date. All subcontractor costs and labor are subject to the prime contractor's bid factor.

- (10) Once a contract is awarded, the County will conduct a meeting with the contractor to determine the actual work to be done for each project or task order to be performed under the contract. The contractor will be issued a request for task proposal and will be required to develop a proposal for the work required. The contractor will submit its proposal to the County and this proposal will be evaluated. If the contractor's proposed units are found reasonable, a work order may be issued at the agreed-upon units, which when multiplied by the unit price and appropriate contract adjustment factor will establish the firm fixed price for the task order.

~~§3.5-113~~ (11) California Environmental Quality Act (CEQA):

Annual contracts are awarded to the lowest responsive, responsible bidder based on plans and specifications for typical work. Based on the fact that the County may award an annual contract without having identified the specific tasks that are to be performed, or their potential environmental impacts, the contracting department must perform a basic CEQA analysis of tasks subsequently ordered under the contract in case those tasks trigger the need for a new CEQA declaration or finding. Applicable CEQA findings must be included in the file for the project.

~~§3.5-114~~ Prequalification Criteria

- (1) Public Contract Code Section 20101 authorizes the County to establish procedures to prequalify prospective bidders for the construction of public works projects.
- (2) In order to prequalify, prospective bidders are required to complete and submit standard prequalification documents and provide specified supporting documentation verified under penalty of perjury by the contractor as set forth in this CPM. Only prospective bidders that are prequalified may bid on the project.
- (3) Prequalification- cannot- be- used- to- score- prospective bidders,- but- only- to- determine- whether they- meet- minimum- project- qualification requirements such that they would be eligible to submit proposals for a specific project.
- (4) Purposes of Prequalification:
 - a) To ensure that the County obtains qualified contractors who have the proven capability and the experience to complete projects similar to the project being considered.
 - b) To -prevent -poor- project -quality -and -late -delivery -(going -over -budget -and/or -over schedule) -due -to -the- lowest -bidder's inexperience or ineptitude.

~~(4)~~(5) Use of Prequalification:

The County will require prequalification of prospective prime contractors for the following types of public works contract construction bid packages:

- a) Single specific projects identified by Department Heads as suitable for prequalification due to uniqueness or complexity of all or a portion of the project.
- b) All large projects (estimated construction cost over \$5,000,000). If the Director determines that prequalification is not in the best interests of the County for such a project, then the

corresponding request for Board of Supervisors action should recommend proceeding without prequalification and provide a justification.

- (6) Formally bid projects under \$5,000,000 will be prequalified by a streamlined prequalification process, unless the Director determines that prequalification is not in the best interest of the County, then the corresponding request for Board action should recommend proceeding without prequalification and provide supporting justification.
- (2)(7) Projects involving the use of the state or Federal Funds may not be able to utilize the prequalification process. A review of specific funding source guidelines is necessary to determine allowance or to establish an alternate process.

§3.5-115 Prequalification of Subcontractors

- (1) Nothing in this section shall preclude the County from prequalifying or disqualifying a subcontractor. The Director may prequalify subcontractors as determined to be in the best interest of the County. However, the disqualification of a subcontractor by the County does not disqualify an otherwise prequalified potential prime contractor. If a subcontractor is not qualified, the potential prime contractor will be given an opportunity to replace that subcontractor with another, which may either be a new subcontractor subject to prequalification, or a subcontractor already prequalified by the County, at the prime contractor's discretion.
- (2) Per Public Contract Code Section 20101(a), ~~Prospective bidders seeking prequalification are required to submit to the County completed prequalification documents, which include the Prequalification Questionnaire and all the documents required. by the Prequalification Questionnaire.~~ This Prequalification Questionnaire and financial statement shall be verified by oath when provided to the County. Public Contract Code Section 20101(a).
- (3) Pursuant to Public Contract Code Section 20101, the submitted Prequalification Questionnaire and financial statement are not public records and are not open to public inspection. They shall be kept confidential to the extent permitted by law. However, the contents may be disclosed to third parties for purpose of verification or investigation of the statements contained therein or in a hearing. Finally, Section 20101 provides that the names of prospective bidders applying for prequalification status are public records subject to disclosure, and the first page of the Prequalification Questionnaire shall be used for this purpose. Agencies unsure about whether any information is disclosable under the Public Records Act should seek the advice of County Counsel.
- a) Each prospective bidder will be determined as either qualified to bid as to each bid package for which it requested prequalification or not qualified based on the County uniform rating system. No rating other than a positive or negative qualification determination shall be established by this process. The contracting department will evaluate the completed Prequalification Questionnaire and supporting documents to determine whether the prospective bidder is qualified or not qualified to bid on the bid packages identified in the Prequalification Questionnaire.
- b) It is mandatory that prospective bidders who intend to submit a bid for any of the identified bid packages provide a Prequalification Questionnaire and any supporting documents requested and are subsequently determined qualified to construct the work required by the bid packages identified on the Prequalification Questionnaire. The County may not accept any bid from a prospective bidder that has not prequalified by this process.

- c) The County's determination that a prospective bidder is qualified shall apply only to the project(s) identified in the prequalification documents. The Prequalification Questionnaire may request information regarding the prospective bidder's specialized expertise or demonstrated experience pertaining to the individual project as long as such information will not unnecessarily restrict the pool of qualified prospective bidders to unfairly exclude any otherwise qualified prospective bidders.
- d) While it is the intent of this prequalification policy to assist the County in determining bidder responsibility prior to bid and to aid the County in selecting the lowest responsible bidder, the prequalification of a prospective bidder will not preclude the County from post-bid consideration of whether a prospective bidder has the quality, fitness, capacity and experience to satisfactorily perform the proposed work and has demonstrated the requisite trustworthiness. ~~After consulting with County Counsel, the Deputy Purchasing Agent~~County may waive minor irregularities and omissions in the information contained in the Prequalification Questionnaire and supporting documents.
- e) The County may modify the prequalification determination assigned to a prospective bidder based on subsequently learned information. Prospective bidders previously deemed qualified then subsequently disqualified will be given notice and an opportunity to be heard consistent with the procedures set forth herein.

§3.5-116 Prequalification Standards and Notifications Requirements

- (1) The prospective bidder's Prequalification Questionnaire must be completely filled out and verified under penalty of perjury and all the required supporting documents must be submitted as required by the Prequalification Questionnaire. The completed Prequalification Questionnaire and supporting documents must be submitted to the County within the timeline described therein.
- (2) The prospective bidder must successfully meet or exceed the passing threshold established by the awarding department in accordance with recommendations promulgated by the California Department of Industrial Relations.
- (3) The prospective bidder must not provide any false or misleading information in the Prequalification Questionnaire and/or supporting documents.
- (4) The prospective bidder's completed Prequalification Questionnaire and supporting documents must comply with the following submittal requirements:
 - a) All supplemental documents are to be submitted on 8½" by 11" sheets and must be organized and identified in accordance with the requirements of the Prequalification Questionnaire.
 - b) Prequalification Questionnaires must be signed under penalty of perjury in the manner designated at the end of the Prequalification Questionnaire by an individual who has the legal authority to bind the prospective bidder on whose behalf the person is signing. See, e.g., Corporations Code Section 313.
 - c) If any information provided by a prospective bidder becomes false or inaccurate subsequent to the submittal of a Prequalification Questionnaire and supporting documentation, the prospective bidder must immediately notify the County and provide

updated accurate information in writing under penalty of perjury.

- d) The completed Prequalification Questionnaire and supporting documents must be submitted to the County per the instructions on the solicitation. Late submittals will not be considered by the County. Prospective bidders are encouraged to submit the Prequalification Questionnaire and supporting documents as soon as possible so that they may be notified of omissions of information which can be remedied or of their prequalification determination well in advance of bid advertisement for the project.
- e) The County may accept the Prequalification Questionnaire fully electronically through the County's online bidding system, if the instructions for that specific project state that it is a fully electronic solicitation.
- a)f) Completed Prequalification Questionnaires and supporting documents must be sealed and marked "Confidential" in a suitable envelope and mailed or delivered to the following:

County of Orange
[DEPARTMENT
NAME]
[ADDRESS]
[CITY, CA. ZIP]
Attn.: [NAME], DPA

- g) The County will inform prospective bidders, in writing, of the prequalification determination upon receipt and evaluation by the County of the completed Prequalification Questionnaire and supporting documents. If a prospective bidder receives a negative prequalification decision, the County will, in its notification of the decision, advise the prospective bidder of the reasons for that determination.
- b)h) Joint ventures may prequalify as prospective bidders if (i) at least one of the jointly venturing entities holds the appropriate license at the time that prequalification is conducted, (ii) each of the jointly venturing entities completes the prequalification questionnaire, (iii) the jointly venturing entities, when examined as a whole, meet the prequalification requirements, and (iv) the joint venture is properly licensed at the time of contract award.

§3.5-117 Prequalification Protest Hearing Procedure

- (1) Where the prospective bidder has made a timely and complete submittal of prequalification documents that result in a determination that the contractor is not qualified, the prospective bidder can contest the department's decision via administrative hearing.
- (2) To petition for a hearing, the prospective bidder must deliver written notice of its desire to contest the department's decision to County of Orange within seven (7) calendar days of the date of County's notice of determination. Failure to file a timely notice shall result in the prospective bidder's waiver of any and all rights to challenge the prequalification determination, whether by administrative process, judicial process, or any other legal process or proceeding.
- (3) The prospective bidder may request the County to advise it in writing of the basis for the prequalification determination and any supporting evidence that was received from others or

adduced as a result of an investigation by the County.

- (4) A Hearing Panel shall be established and consist of three panelists from various County of Orange infrastructure departments, with a maximum of one (1) panelist from the procuring department.
- (5) The Hearing Panel shall render its decision based on all potentially relevant evidence submitted by either the County or the prospective bidder, including but not limited to, the administrative record and testimonial evidence. The prospective bidder may submit on the record, or provide other evidence, including testimony given under oath, to rebut the department's determination of non-qualification. Such a hearing is conducted in an informal manner, and all relevant evidence is admissible. The department rendering the initial determination may rebut any evidence proffered by the prospective bidder in writing or through its own testimony. Finally, the Hearing Panel may ask questions of either the prospective bidder or department before making its decision.
- (6) If the prospective bidder requests to provide testimony, the hearing shall be conducted within five (5) business days after the County's receipt on notice of appeal and no later than 20 business days prior to the last date of receipt of bids on the project. Within three (3) business days after the conclusion of the hearing, the Hearing Panel will render its decision in writing.
- ~~(4)~~(7) The decision of the Hearing Panel shall be the County's final administrative decision and any judicial review thereof shall be instituted no later than the time period specified in Section 1094.6 of the Code of Civil Procedure.

§3.5-118 Determination of Non-Responsibility

- (1) A responsive, responsible bidder is "a bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the public works contract" (Public Contract Code Section 1103). In other words, the term "responsible" in the context of public works bidding is not employed to denote a bidder who is merely generally trustworthy, but also refers to the bidder's ability to perform in accordance with the requirements of the bid solicitation.
- (2) Prior to a contract being awarded by the County, the County may determine that a party submitting a bid or proposal is non-responsible for purposes of that contract. In the event that the County determines that a bidder is non-responsible for a particular contract, said bidder shall be ineligible for the award of that contract.
- (3) Procedures:
 - a) It is important that County Counsel be consulted when a department considers a non-responsibility determination. Because of the particular nature of a non-responsibility finding, the bidder found to be non-responsible is entitled to certain due process protections before a determination of non-responsibility is made.
 - b) The County may take into account numerous factors in determining responsibility, including the financial capabilities of the bidder, the bidder's experience and familiarity with the type of work of the project, the bidder's work on previous projects (including any prior failure to perform), and the bidder's resources and facilities. Non-responsibility is determined on a case-by-case basis, so these factors are merely examples enumerated by the courts, and are by no means an exhaustive list. Because prequalification is a method

of determining responsibility prior to bid, basic considerations may also include those listed in the standard Prequalification Questionnaire, such as whether:

- i. Bidder possesses a valid and current California contractor's license for the project;
 - ii. Bidder has sufficient liability insurance and bonding capacity;
 - iii. Bidder has current workers' compensation insurance;
 - iv. Bidder can provide a financial statement demonstrating the capacity to perform the project;
 - v. Bidder has had its license revoked in the past, and the reasons for such revocation;
 - vi. A surety has completed a project on behalf of the bidder;
 - ±vii. Bidder is barred from bidding or being awarded a contract under California law;
 - viii. Bidder has been debarred by another jurisdiction;
 - ix. Bidder or any of its owners, officers, or other principals have been convicted of a crime relevant to the bidder's trustworthiness or ability to perform the contract.
 - x. The responsibility of each bidder must be evaluated independently. No consideration can be made of each bidder's relative responsibility among all bidders, so once a finding has been made of the bidders' responsibility all such bidders are deemed equally responsible.
- c) The responsibility of each bidder must be evaluated independently. No consideration can be made of each bidder's relative responsibility among all bidders, so once a finding has been made of the bidders' responsibility all such bidders are deemed equally responsible.

§3.5-119 Notice of Non-responsibility Hearing

- (1) A bidder subject to a potential finding of non-responsibility for a particular contract shall be given 30 days' advance written notice of the hearing in which that bidder's responsibility is to be determined, sent by the Director and approved by County Counsel, and sent via certified mail to the bidder's last known address (or to the bidder's attorney, if applicable).
- a) The notice shall include the date, time, and place of the hearing as described above before the Director or designee.
 - b) The notice must specify the basis for the proposed recommendation of non-responsibility and a summary of any evidence to support such recommendation.
 - c) The notice shall advise the bidder that the parties may agree to submit the matter on the basis of documentary evidence only; otherwise, the bidder is required to confirm with the department that the bidder or its representative intends to attend the hearing as described above, and bidder's failure to appear may result in the bidder waiving all rights to a hearing.

§3.5-120 Non-Responsibility Hearing Procedure

- (1) The bidder shall be given the opportunity of a hearing at which to contest the County's determination.
- (2) A hearing officer will be designated, who cannot be the same person as the staff who conducted the non-responsibility investigation. It is strongly recommended that the hearing officer be a neutral third party - e.g., not an employee of the County. At the hearing, the burden of proof is on the department and must be established by a preponderance of the evidence. The hearing is conducted in a relatively informal manner, and the formal rules of evidence do not apply. The hearing officer may consider any relevant information presented at the hearing as described above. County Counsel may provide legal advice to the department and hearing officer.
- (3) The County's administrative record will be considered, so it shall contain adequate evidence of the basis of the County's determination as well as evidence that the bidder has been given adequate notice and opportunity to rebut that determination.
- (4) The Director should designate a Project Manager who will investigate information concerning bidder's non-responsibility, and who will present such findings at the hearing.
- (5) The bidder or its representative will then have the opportunity to present evidence, through witnesses and/or submitted documents, rebutting the County's finding of non-responsibility, as well as evidence that it is qualified to perform the work. In the event the evidence or documentation is new or was unavailable to the County when the non-responsive determination was made, information can still be considered.
- (6) Each party will then have the opportunity to rebut evidence previously presented by the other.
- (7) The Director may ask questions, seek clarification, and request additional information from the parties at any time during the hearing. The hearing officer has discretion to continue the hearing to a later time or date as necessary.
- (8) The Director shall close the hearing after the presentation of all evidence; no evidence submitted after the close of the hearing will be considered unless otherwise specified by the hearing officer.
- (9) The Director shall consider evidence proffered by the department and contractor in rendering its decision.
- (10) The Director will present the proposed decision and recommendation to the Board of Supervisors based on the record of the hearing regarding whether the contractor should be found non-responsible.
- (11) The Director shall give notice to the bidder via certified mail of the proposed decision and recommendation, which will also specify the date, time, and place of the Board of Supervisors hearing.
- (12) The final decision as to non-responsibility lies with the Board of Supervisors. The Board may limit any further hearing to the presentation of evidence not previously presented. The Board can modify, deny, or adopt the recommendation of the Director. The Board of Supervisors' findings are final, and if a finding of non-responsibility is determined, the bidder is ineligible for award of the contract.

NOTE: On awarding the contract to the lowest responsible bidder, the Board of Supervisors must also

make the finding that any lower bidders were deemed non-responsible and are therefore excluded from consideration.

§3.5-121 Contract Award and Notice To Proceed

- (1) Contracts are awarded by the Board of Supervisors and signed by the Director or designee pursuant to the Board of Supervisors' authorization, unless authority to award and sign a contract without further Board of Supervisors action has been appropriately delegated to the Director.
- (2) Upon approval of the contractor's bonds and insurance after award of the contract and on satisfaction of any other prerequisites to the contractor's performance, a Notice to Proceed will be issued which begins the performance period of the contract.

§3.5-122 Payments

- (1) The contracting department prepares and processes all documents necessary for preparation and issuance of payments to the contractor in accordance with the terms established in the contract documents.
 - a) Projects less than \$5,000 will be paid in full upon acceptable completion of the work and receipt of an invoice from the contractor and approved by the contracting department.
 - b) Projects from \$5,000 to \$75,000 may be paid by progress payments or by payment upon completion of the work as established in the contract documents. The contracting department will prepare and process payment(s) up to 95 percent of the actual value of the work completed. Not less than 5 percent of the total contract price shall be withheld until the work is complete in accordance with Public Contract Code Section 9203.
 - c) Projects of \$75,000 or more will be paid by progress payments. The contracting department will prepare and process payments up to 95 percent of the actual value of the work completed. Not less than 5 percent of the total contract price shall be withheld until the work is complete in accordance with Public Contract Code Section 9203.
- (2) If, after 50 percent of the project has been completed and the contracting department finds that satisfactory progress has been made, the contracting department may make any of the remaining progress payments in full for actual work completed in accordance with Public Contract Code Section 9203.
- (3) "Complete" shall mean acceptance, as evidenced by a notice of completion, beneficial occupancy accompanied by cessation of labor, a cessation of labor for 100 continuous days or more due to factors beyond the control of the contractor, or a cessation of labor for 30 continuous days following the filing of a notice of completion or a notice of cessation in accordance with Public Contract Code Section 7107.
- (4) At the Directors option, the contracting department may, withhold amounts for up to 30 days in accordance with "Stop Notice Rules" corresponding to work in dispute pending resolution of the dispute in accordance with Public Contract Code Section 7107.
- (5) All funds, including withheld funds, will be paid in accordance with the time frames specified in accordance with Public Contract Code Section 7107.

- (6) The contractor may substitute securities for funds withheld in accordance with the Public Contract Code Section 22300.
- (7) Escrow agreements for security deposit in lieu of retention shall be approved by County Counsel.

§3.5-123 Liquidated Damages Clause For Use In Public Works Contracts

- (1) Sample Language: “In accordance with Government Code Section 53069.85, contractor agrees to forfeit and pay to County the sum of (\$ XXX) per day for each calendar day work is delayed beyond the time allowed, and such sum shall be deducted from any payments due to or to become due to contractor. Contractor will be granted an extension of time and will not be assessed liquidated damages for unforeseeable delays beyond the control of and without the fault or negligence of contractor including delays caused by County.”
- (2) Changes to the standard Liquidated Damages provision may be made upon County Counsel approval.

§3.5-124 Notice of Completion

- (1) The contracting department will file a notice of completion for all public works projects (those requiring payment of prevailing wage) of \$5,000 or more; these notices do not need to be approved by the Board of Supervisors. Notices of Completion shall be recorded in the Clerk Recorder’s Office within 15 days of the earlier of (1) acceptance of the project by the Director or (2) cessation of labor on a work of improvement for a continuous period of sixty (60) days. Civil Code Sections 9200, 9204 and 9208.

§3.5-125 General Requirements

- (1) Projects are not to be intentionally split in order to avoid informal or formal bidding or to avoid approval by the Board of Supervisors per Public Contract Code Section 22033.
- (2) All contractors performing public works projects shall be properly licensed in accordance with the requirements of the State of California Contractor’s License Board.
- (3) All contractors performing public works projects shall pay prevailing wages in accordance with the California Labor Code Section 1720.
- (4) All contractors must register with the Department of Industrial Relations, per Labor Code Section 1771.1(a) and 1725.5.

§3.5-126 Bonds

- (1) Public Contract Code Section 20129 requires bidder’s security and performance bonds.
- (2) All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder’s security in an amount not less than 10 percent of the bid:
 - a. cash;
 - b. a cashier’s check made payable to the County;
 - c. a certified check made payable to the County;
 - d. a bidder’s bond executed by an admitted surety insurer, made payable to the County.
- (3) Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the county beyond 60 days

from the time the award is made.

- (4) The person to whom the contract is awarded shall execute a bond to be approved by County Counsel and CEO/Risk Management for the faithful performance of the contract.
- (5) Civil Code §9554, the labor and materials payment bond must be for at least 100 percent of the total amount of the public works contract.
- (6) Faithful-performance bonds and labor-and-materials bonds shall be submitted on the forms approved by County Counsel and shall be subject to approval by CEO/Risk Management and County Counsel.

§3.5-127 Regulatory Permit Approvals

- (1) This policy applies to all public works construction projects requiring Board of Supervisors approval to advertise or award.
- (2) Any application, plan, permit, letter, report, agreement, waiver, memorandum of understanding or other document requiring approval by an Authority Having Jurisdiction (AHJ) over the project in any capacity. Examples may include Building & Grading Permits, Construction General Permits, Biological Opinions, Waste Excavation Permits, Construction Quality Assurance Plans, Geotechnical Reports, Environmental Impact Reports, Mitigation Monitoring Plans, or Development Agreements.
- (3) Departments shall ensure that all necessary Regulatory Permit Approvals from all AHJs are secured prior to approval of the advertisement by the Director or designee. If an approval has not been secured by the date that the related ASR is due to the County Executive Officer, the ASR is to be delayed.
- (4) In certain cases, a determination may be made to proceed with the advertisement without a regulatory approval, such as when delaying advertisement may jeopardize funding. In these cases, departments shall indicate in the ASR that not all Regulatory Permit Approvals have been secured. The ASR background shall also indicate the following:
 - a) Which Regulatory Permit Approvals have not been secured;
 - b) Why they have not been secured;
 - c) When they are likely to be secured;
 - d) Why the Director recommends proceeding with advertisement prior to approval; and
 - e) What the likely risks are of proceeding without approval. At a minimum, cost, scope, and schedule should be addressed.

SECTION 3.6

ADDITIONAL POLICIES RELATED TO DESIGN AND CONSTRUCTION SERVICES

§3.6-101 Protest & Appeal

- (1) Any ~~respondent~~Party who alleges an error or impropriety in the solicitation or award of a contract procured pursuant to Sections 3.4 or 3.5 of this policy manual may submit a grievance or protest to the awarding department and the following procedures will apply.
- (2) Prior to the filing of an Agenda Staff Report (ASR) for award of contract for Board of Supervisor approved contracts, the ~~Director or~~ Deputy Purchasing Agent (DPA) shall ~~transmit~~ issue a Notice of Intent to Award ~~a Contract to all interested Parties-participating vendors and also submit a copy of said Notice to the Clerk of the Board.~~ This Notice shall initiate the protest period as follows:
 - a) ~~Respondents~~Parties will have five (5) business days from the date of the Notice described above in which to file a protest concerning the award of the Contract.
 - b) Protests relating ~~to a 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 protest period subsequent to the release of the County's Notice of Intent to Award, the solicitation information, including bid summaries, proposals, and final evaluator score sheets with the names of individual evaluators redacted, are subject to public disclosure.
 - d) Upon expiration of the five (5) business day period or proper resolution of a protest/appeal, the department may move forward with the contract award or, if necessary, filing the item for approval by the Board of Supervisors.
- (3) In the event of a timely protest, the County shall not proceed with award of the contract until the ~~D~~Deputy Purchasing AgentPA, ~~or the Director,~~ renders a decision on the protest, unless the exception in Section (5) below applies.
- (4) Upon receipt of a timely protest, the Deputy Purchasing AgentDPA will within ten (10) business days of the receipt of the protest, issue a decision in writing which shall state the reasons for the actions taken.
- (5) The County may, after providing written justification to be included in the procurement file, make the determination that an immediate award of the contract is necessary to protect the substantial interests of the County. The award of a contract shall in no way compromise the ~~bidder's~~protestor's right to exercise the protest procedures outlined herein.
- (6) If the protest~~ing bidder~~ disagrees with the decision of the Deputy Purchasing AgentDPA, the protestor may submit a written appeal to the Office of the Director requesting an appeal, in accordance with the process stated below.
- (7) If the protest~~ing respondent~~ wishes to appeal the decision of the Deputy Purchasing AgentDPA, the protest~~ing respondent~~ must submit, within three (3) business days from receipt of the Deputy Purchasing AgentDPA's decision, a written appeal to the Office of the Director.
- (8) Within (15) business days, the Office of the Director will conduct a third-party review of all

materials in connection with the grievance, assess the merits of the protest and provide a written determination that shall contain ~~his or her~~their decision.

- ~~(4)~~(9) The decision of the Director will be final and there shall be no right to any administrative appeals of this decision.

§3.6-102 Justification of Variance From Engineer's Estimate

- (1) An engineer's estimate is a point in time estimate based on a defined estimation methodology.
- (2) The County relies on an engineer's estimate prior to bidding out a project, primarily for budgetary purposes. It is also used to determine which procedures should be used for advertising and awarding a project.
- (3) Respondents/Bidders use the engineer's estimate range to determine whether the project is within their capacity to perform and/or ~~to~~ability to obtain bid bonds.
- (4) There is no legal requirement that the County prepare an estimate, nor any prohibition of such a process.
- (5) A cost estimate should be prepared for all projects regardless of size and complexity.
 - a) Cost estimates for projects not requiring Board of Supervisors approval may be completed by the contracting department or contracted out.
 - b) Estimates for projects requiring Board of Supervisors approval shall be prepared by an engineer or third-party estimator.
 - c) A certified engineer's estimate shall be obtained for all capital construction prior to solicitation.
- (6) Methodology for Preparation
 - a) Types of engineer's estimates:
 - i. Unit cost line item (bid history);
 - ii. Cost-based estimating;
 - iii. Combination;
 - iv. Rough Order of Magnitude (Calculations based on industry standards or data such as cost per square foot or cost per acre if and when applicable); and
 - v. Other best practices.
- (7) Methodology/approach should be provided to and reviewed by project staff.
- (8) Engineer's estimates may be provided in-house or contracted out. They should be reviewed and validated by County staff.
- (9) When possible, departments should include a secondary review of their engineer's estimates. This may include other County departments or a contracted professional estimator.
- (10) The final engineer's estimate should be completed in a timely manner to ensure that estimated figures are not adversely affected by market conditions.

(11) All A-E design contracts should include an engineer's estimate as part of the A-E's Scope of Work as a deliverable.

(12) ~~Submittals~~Bids Above/Below the Engineer's Estimate:

- a) Because it is a point in time estimate, it is common for the engineer's estimate to deviate from the ~~lowest responsible, responsive bid~~.~~submittal~~submittal.
- b) When the ~~bids~~submittal is either above/below the engineer's estimate, the ~~submittal~~bid and the estimate should undergo an additional review. This review shall be performed by a qualified County staff member or by contract with a third party. These reviews and justifications shall depend on the value of the project as follows:
 - i. If a project is above \$200,000, but less than \$1,000,000, the threshold for explaining the difference is 20 percent.
 - ii. If a project is greater than \$1,000,000, the threshold is 10 percent.
 - iii. If a project does not meet one of the above thresholds, no justification is required.

(13) Any review conducted and justification required from the above thresholds shall be discussed in the background of the ASR.

(14) Release of the Engineer's Estimate

- a) The engineer's estimate may be released when the Notice of Intent to Award ~~for the contract~~ is released. It will be included in the body of the ASR in a table which includes all of the ~~submittals~~bids with the engineer's estimate included in the list from lowest to highest. In the ASR, it should be stated, that, "The lowest responsive and responsible bid submitted by XXX for this Project is approximately XX% above/below the Engineer's Estimate of \$XXX." An explanation of any deviation over 20 percent, or 10 percent, as indicated by the preceding subsection must be included (e.g., identifying changed economic conditions such as price of fuel, cost of supplies, rental prices, or the competitive bidding environment).

§3.6-103 Operations & Maintenance Future Costs

- (1) This policy applies to all public works new construction and major renovation projects requiring Board of Supervisors approval to advertise or award.
- (2) Operations and Maintenance (O&M): The recurring, day-to-day, periodic, or scheduled work required to preserve, control deterioration and provide for the basic operation of a facility. This type of maintenance is routine and is based on frequency schedules, responding to service requests, or through periodic inspection and correction efforts. O&M is typically funded through operational budgets.
- (3) Departments shall ensure that O&M costs for new facilities have been considered and include appropriate staff during the planning and design phases of renovation and new construction projects. Project operating and maintenance impact estimates shall include the following:
 - a) The effect of infrastructure replacement and upgrades required for the facility in the year(s) of occurrence; and

~~a)~~b) Projections and funding plans for direct costs to County departments for maintenance, internal services and utilities.

(4) These O&M costs shall be included in all public works renovation and new construction project ASR's or as part of the attachments to the ASR. The ASR and/or ASR attachments should also indicate if any of the following were conducted:

- a) Industry standards and other locality approaches were considered prior to initiation of infrastructure replacement or upgrades;
- b) Any County attempts at value engineering;
- c) Any total life cycle cost analysis conducted; and/or
- d) Development of an O&M manual was included in the statement of work of the project.

§3.6-104 Sample ASR Language for Ongoing Maintenance Costs

- (1) The subject project will require an additional annual maintenance cost of approximately \$ XXX for a period of X years. The above mentioned costs are a based on a life cycle cost analysis conducted by staff as shown in Attachment X. Life cycle cost is the sum of all recurring and one-time (non-recurring) costs over the full life span of this asset. It includes total project costs, operating costs, maintenance and upgrade costs, and remaining (residual or salvage) value at the end of ownership or its useful life."
- (2) "No new operations and maintenance costs are anticipated as a result of his project."
- (3) "This project is anticipated to reduce annual operations and maintenance costs by approximately \$XXX for a period of X years." [If appropriate, include language referencing a life cycle cost analysis as in Section (1) above].

§3.6-105 California Environmental Quality Act (CEQA)

- (1) The majority of public works projects will require compliance with the California Environmental Quality Act (CEQA) and any projects involving federal funding may additionally require compliance with the National Environmental Policy Act (NEPA). Such requirements must be complied with before approval of the project.
- (2) For projects that do not require approval by the Board of Supervisors:
 - a) The Director or designee shall ensure that ~~he or she~~they have received a memorandum from the OC Public Works/Development Services Division documenting that the requirements of CEQA have been complied with;
 - b) If a negative declaration or mitigated negative declaration has been prepared, the declaration must be signed by the Director or designee; or
 - c) If OC Public Works/Development Services Division determines that the project is statutorily or categorically exempt, then it shall provide to the Director or designee a memorandum specifying the exemption and the facts supporting its determination.

d) The Director or designee shall file the appropriate Notice of Determination or Notice of Exemption, as applicable.

§3.6-106 Lobbying

(1) Capital projects solicited shall not include "no lobbying" verbiage as standard language without express approval of the Board of Supervisors. Capital projects that are greater than \$25,000,000 and involve special circumstances because of the complexity and scope of work may insert the "no lobbying" clause after Board of Supervisors approval is obtained.

§3.6-107 County of Orange Procurement Preference Policy

(1) Unless otherwise required by Federal or State funding, for Public Works Projects estimated to exceed five million dollars (\$5,000,000), 3% of the total project amount must be awarded to the OCLSB/DVBE subcontractor(s).

(2) Public Works Procurements shall not include a DVBE preference.

SECTION 3.7

REAL ESTATE TRANSACTIONS AND CONTRACTS

§3.7-101 General Responsibilities

- (1) The policies of the County of Orange regarding Real Estate are adopted and approved by the Orange County Board of Supervisors and implemented by the Chief Real Estate Officer (CREO) through the CEO Real Estate Department (CEO Real Estate). These policies and procedures shall apply to any Real Estate Contracts involving the County of Orange, and any of its departments (County) or special districts whose affairs and funds are under the supervision and control of the Board of Supervisors, such as the Orange County Flood Control District or Orange County Housing Authority (Special Districts). All references to the Board of Supervisors shall also apply to the governing body of any public entity that elects to adopt this CPM. While other departments may handle certain aspects of real estate transactions (i.e., John Wayne Airport and Orange County Sheriff), this manual is meant to establish clear standards and policies that should be followed in regard to any County Real Estate transactions (i.e., the actual granting or accepting of an interest in real estate on behalf of the County or a Special District), and any deviations shall be specifically approved by the Board of Supervisors unless the Board has delegated authority for such a transaction. As used herein, the term “Real Estate Contracts” shall refer to the legal agreements necessary to effectuate a real estate transactions such as a lease, license, easement, grant deed, or other similar document, but shall not include procurement contracts related to services provided for the transaction nor departmental issued permits, such as County construction permits or encroachment permits. In the event of a question about the applicability of this section to a particular contract, please contact CEO Real Estate.
- (2) All Real Estate Contracts (e.g., leases, licenses, easements, etc., but not departmental issued permits, e.g. County encroachment permits), including those not requiring Board of Supervisors approval, shall be transacted through the CREO or those authorized County officials or department designees identified by the Board of Supervisors, CEO, or the CREO to transact Real Estate Contracts consistent with this CPM, Resolutions of the Board of Supervisors and applicable law. In addition, the CREO is authorized to solicit and procure any and all required real estate services and contractors necessary and intended to supplement or support and carry out real estate transactions and contracts on behalf of the County through compliance with other applicable sections of the CPM. Unless otherwise specified, all references hereinafter to “CREO” shall mean all such designated officials or departments.
- (3) The CREO supervises County real estate staff and contractors in conformance with the real estate policy of the County of Orange found herein, Resolutions of the Board of Supervisors and applicable law. In addition, the CREO and CEO Real Estate department coordinate with other County departments on real estate transactions and this CPM is meant to standardize, to the extent possible, the real estate transaction process carried out on behalf of the County of Orange and its departments and Special Districts.
- (4) The CREO and CEO Real Estate will identify policy elements from time to time that need to be amended, added or deleted in order to meet the real estate needs of the County and to stay in conformance with changes in state law, local ordinances and resolutions.

- (5) County of Orange Procurement Preference Policy requirement is not applicable to Real Estate Solicitations and Transactions, except as directed by the Chief Real Estate Officer in consultation with County Counsel.

§3.7-102 Delegated Authority

- (1) State and local law, including but not limited to California Government Code Sections 25520, et seq., Orange County Codified Ordinances Section 1-4-153, et seq., provide for delegation of authority by the Board of Supervisors to appropriate officials to execute certain real estate agreements~~contracts~~ and engage in real estate transactions. These delegations are limited in scope and substantially reduce administrative processing time, thereby allowing CEO Real Estate to provide enhanced customer service when processing minor real estate transactions.
- (2) In addition to the authorities and responsibilities set out in this policy manual, the CREO is authorized to take specific actions identified under previously issued delegated authority as detailed below. These specific authorities delegated to the CREO, and to any of their designees in writing, are to solicit, award and execute on behalf of the County. These delegations have been authorized and approved by prior actions of the Orange County Board of Supervisors. In addition, the CREO may sub-delegate to other employees of the County of Orange, its offices, or Special Districts.
- (3) CEO Real Estate shall comply with the Board's requirement, per the granting authority, that specific uses of delegated authority be reported to the Board annually via Agenda Staff Report, to keep the Board informed as to the number and types of property transactions that have been executed. It is the responsibility of CREO and CEO Real Estate and each designee acting under delegated authority to maintain records of transactions sufficient to support the annual report to the Board.
- (4) The attached Delegated Authority Chart summarizes the types of real estate transactions and their limits, as established by state statutes and Board authority, that have been granted to the CREO and other select County officers as of the date of this CPM.

Delegated Authority Chart

Revenue Lease/License of County Property	Acquisitions of Real Property Interests for Flood	Acquisition Lease/License for County or Flood Use	Acquisitions of Real Property Interests for County	Collateral Instruments	Donated Space Agreements for County Use	Authorize Full Reconveyance	Grants or Conveyance of County OCFCD OCDA OCHA Property	Revenue Licenses of Orange County Flood Control District Property	Temporary Right of Entry Permits for Flood or County Use
Execute leases/licenses if the monthly rental does not exceed \$15,000 per month and the lease term does not exceed 10 years.	Approve and accept acquisitions of real property interests not exceeding \$250,000 in value and other criteria are met.	Amend and execute leases/licenses if rental over term of lease/license does not exceed \$10,000 per month and a (5) year term and other criteria are met.	Approve and accept acquisitions of real property interests not exceeding \$250,000 in value and other criteria are met.	If instrument is on County's standard form. Instruments are defined as: Attornments Subordination Non-Disturbance.	If agreement is in County's standard form, County's indemnification of donor is limited to \$1,000,000, and agreement is approved by County Counsel and Risk Management.	Execute requests for reconveyance upon approval of County Counsel and receipt of notification from the Auditor- Controller's Office that all sums due and payable under an installment note have been paid in full.	If Easement does not exceed \$25,000 in value and is granted to City, County, State or other public agency with County Counsel approval.	Execute licenses of OCFCD property if the monthly rental does not exceed \$10,000 per month and the license term does not exceed 10 years.	If permit is required by County or Flood Control District from a public or private entity for ingress and egress, construction staging, and other purposes. Permits may include indemnification of others.
per Resolution No. 19-002 and Minute Order dated January 8, 2019. (Gov. Code 25537)	per Resolution No. 20-040 and Minute Order dated May 5, 2020. (Gov. Code 25350.60)	per Resolution No. 20-016 and Minute Order dated March 10, 2020 (Gov. Code 25350.51)	per Ordinance No. 20-004 and Minute Order dated May 19, 2020 (Gov. Code 25350.60)	per Resolution No. 98-75 and Minute Order dated March 10, 1998.	per Resolution No. 21-031 and Minute Order dated April 13, 2021 (Gov. Code 25355)	per Resolution No. 76-1642 dated November 9, 1976.	per Ordinance No. 3898 and Codified Ordinance Section 1-4-225 (Gov. Code 25526.6).	per Minute Order dated February 25, 2014.	per Resolution No. 08-151 and Minute Order dated December 9, 2008.
Delegated Authority expires January 8, 2024	NO EXPIRATION	NO EXPIRATION	Delegated Authority expires May 19, 2025	NO EXPIRATION	NO EXPIRATION	NO EXPIRATION	NO EXPIRATION	NO EXPIRATION	NO EXPIRATION
ANNUAL REPORT	ANNUAL REPORT	ANNUAL REPORT	ANNUAL REPORT		ANNUAL REPORT QUARTERLY REPORT FOR VALUES OVER \$10,000		ANNUAL REPORT	ANNUAL REPORT	
Chief Real Estate Officer, CEO Director, JWA as designee	Chief Real Estate Officer, CEO	Chief Real Estate Officer, CEO Director, JWA as designee	Chief Real Estate Officer, CEO	Chief Real Estate Officer, CEO	Chief Real Estate Officer, CEO	Chief Real Estate Officer, CEO	Director, OCPW	Director, OCPW	Director, OCPW Director, JWA as designee

Revised 4-7-2022

§3.7-103 Specific Duties

The CREO and CEO Real Estate are authorized to carry out the specific duties listed in the CPM, plus any other ancillary duties consistent with this manual and/or pre-existing delegated authority. In this role, and consistent with applicable law such as Government Code Section 23004, the CREO and CEO Real Estate are authorized to, among other things:

- (1) Solicit and procure any real estate interests necessary for the operation and administration of the County of Orange, and other real property of whatever kind and nature required to conduct County business, except in cases of emergency and as otherwise granted by the Board of Supervisors (see also Government Code Section 25350);
- (2) Advertise and offer for lease or license County or Special District property that has been determined by the County, its departments, and/or its Special Districts to be available for lease or licenses consistent with the CPM and policies and procedures established by the CREO (see also Government Code Section 23004);
- (3) Negotiate and execute all Real Estate Contracts required to conduct County business;
- (4) Sell and dispose of surplus real property no longer required for County and/or Special District use, in accordance with this CPM, Resolutions of the Board of Supervisors and applicable state, federal, and county laws and regulations (see also Government Code Sections [25365](#), [25526](#) and [25363](#));
- (5) Establish policies and procedures to be followed by departments in the solicitation or procurement of real property interests;
- (6) Standardize County real estate forms, including, but not limited to, leases and licenses, for use on behalf of County departments and Special Districts; and
- (7) Review real estate solicitations and contracts being entered into on behalf of the County, its department and Special Districts to ensure consistency.

SECTION 3.8

MEMORANDUM OF UNDERSTANDING (MOU)

3.8-101 Definition

- (1) A Memorandum of Understanding (MOU) is an agreement between two or more parties that describes the broad outlines and expectations reached by the parties, which is not otherwise covered by the CPM-
- (2) While parties often do not intend for MOUs to be legally binding, determining the legal effect of an MOU depends on the presence or absence of the legal elements necessary to create a binding contract. California Civil Code Section 1550 provides the essential elements of a contract, including: (1) Parties capable of contracting; (2) Their consent; (3) A lawful object; and (4) A sufficient cause or consideration.
- (3) An MOU under this Section 3.8 does not include agreements pursuant to which an elected county official coordinates the performance of his or her statutory duties on a State or regional level where the agreement does not require the County to pay or indemnify third parties.
- (4) Any interdepartmental agreement between County of Orange departments shall not use the title of MOU and shall instead be entitled "Interdepartmental Agreement" (IA). IAs shall not be construed as legally binding on any department or the County of Orange.

3.8-102 Board/CEO Approval

- (1) Any MOU that would legally bind the County such that Board Approval would otherwise be required under this policy shall require approval by the Board of Supervisors, except as otherwise provided herein. Staff shall consult with County Counsel for any questions concerning the legal effect of an MOU or its terms on the County.
- (2) MOUs shall be approved by the department head or designee. The department head shall direct any legal questions to County Counsel and shall obtain the CEO's approval of any MOU that the director deems likely to create controversy or liability for the County. The CEO shall then determine whether any further review from County Counsel or approval by the Board of Supervisors is required.
- (3) IAs do not require Board of Supervisors approval, unless the CEO determines otherwise.

§3.8-103 Approval of Non-Standard Contract Terms

- (1) Unless Risk Management agrees in writing that the risk to the County is minimal and County Counsel agrees in writing that the legal risk to the County is minimal, approval by the Board of Supervisors is required prior to the execution of any MOU that is otherwise subject to administrative approval and includes non-standard terms in the indemnification contract provisions and/or limits the vendor's liability.

- (2) Unless County Counsel agrees in writing that the legal risk to the County is minimal, approval by the Board of Supervisors is required prior to the execution of an MOU that is otherwise subject to administrative approval and includes non-standard terms in the governing law or arbitration/dispute resolutions contract provisions.

§3.8-104 Term

- (1) The duration will depend upon the County's need, prevailing market conditions, contract start-up costs, and the County's best economic interest.
- (2) In no case shall the term of an MOU exceed five years, except as approved by the Board of Supervisors.
- (3) MOUs that require approval by the Board of Supervisors may not be extended or renewed without approval by the Board of Supervisors.

§3.8-105 Increases

- (1) MOUs that require approval by the Board of Supervisors may not be increased without approval by the Board of Supervisors.

SECTION 3.9UNILATERAL ~~CONTRACTS~~ PROCUREMENTS§3.9-101 Unilateral Contract Procurement Definition

- (1) A unilateral ~~contract~~ Procurement is a ~~document utilized by the County as a~~ vehicle to pay for critical, ongoing services provided by exclusive entities within a County geographical area that is not subject to County's standard terms and conditions (i.e., utility services). The payment mechanism for unilateral procurements include, but are not limited to: Procurement card(s), County financial system documents, petty cash, and request for checks.
- (2) The following ~~entities~~ unilateral procurements are preapproved ~~for unilateral contract~~:
- a) Utility services: electric, gas, water, telephone
 - b) Cable/Satellite TV companies
 - c) Exclusive franchise trash contracts
 - d) Department of Justice
 - e) US Postal Service
 - f) The Toll Roads/FasTrak
 - g) Publications/Newsprint: Industry related or news periodicals, magazines, trade journals, etc., either in print or electronic/digital subscriptions.
 - ~~g)h)~~ Memberships
 - i. Memberships ~~procured/purchased~~ under this Section are limited to wholesale memberships such as Costco, Sam's Club, Smart & Final, Amazon, etc., and memberships in associations formed for a purpose directly related to the primary work of the department and memberships held exclusively for the purpose of obtaining a periodical, journal, or other reference materials that are directly related to the primary work of the department.
 - ~~1. A membership must be held in a manner that allows the membership to remain with the County should the individual leave County employment. To the extent feasible, the membership shall be held in the name of the County, rather than in the name of an individual employee.~~
 - ~~2. A membership may not be purchased/procured if the membership would duplicate the services of a current membership.~~
 - ii. Memberships ~~purchased/procured~~ under this Section do not include memberships in social, religious and fraternal organizations, professional or occupational organizations (such as accountants in accounting societies, physicians in medical associations, and engineers in engineering associations), or memberships that are included under the County's Personnel and Salary Resolutions.

(3) In accordance with the competitive bidding policies stated in this manual, if a service/commodity can be provided by another vendor, a solicitation should be conducted.

(4) Entities not listed above must be approved by the County Procurement Officer or designee on the forms approved and provided by the County Procurement Office and approval must be obtained prior to any services or commodities being provided.

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SECTION 4 – METHODS OF SOLICITATION

SECTION 4.1

REQUEST FOR INFORMATION (RFI)

§4.1-101 Definition

- (1) A Request ~~f~~For Information (RFI) is used to obtain price, delivery, other market information, or capabilities for planning purposes. Responses to requests for information notices are not offers and cannot be accepted by County to form a binding contract, unless otherwise specified in the solicitation.

SECTION 4.2

INVITATION FOR BID (IFB)

§4.2-101 Definition

(1) Invitations for Bids (IFBs) are competitive bidding documents used for ~~acquiring~~ procuring supplies, services, or equipment for which clear specifications can be written and contract award is made generally to the lowest responsive, responsible bidder.

~~(1)(2)~~ IFB policies and procedures contained in this Section 4.2 shall apply, except as otherwise required for procurements pursuant to Sections 3.4, 3.5, and 3.6[3.7, and 4.3.1].

~~§4.2-102~~ Protest IFB:

~~(1) Protest of Bid Specifications: Except as otherwise set forth herein, in accordance with Section 1.3 of this manual, all protests related to bid specifications must be submitted to the Deputy Purchasing Agent no later than five (5) business days prior to the close of the bid. Protests received after the five (5) business day deadline will not be considered by the County.~~

~~a) In the event the protest of specifications is denied and the protester wishes to continue in the solicitation process, they must still submit a bid prior to the close of the solicitation in accordance with the bid submittal procedures provided in the bid.~~

~~(2) Protest of Award of Contract: In accordance with Section 1.3 of this manual, protests related to the award of a contract based on the IFB, the protest must be submitted no later than five (5) business days after the notice of the proposed contract award is provided by the Deputy Purchasing Agent.~~

~~(3) Protests relating to a proposed contract award which are received after the five (5) business day deadline will not be considered by the County.~~

§4.2-1023 IFB Solicitation Document

(1) The IFB shall include a ~~purchase~~ description and all contractual terms and conditions applicable to the procurement. All invitations for bids will include the following:

a) Adequate Public Notice: Adequate public notice will be given to provide potential bidders sufficient time to prepare and submit bids by the due date specified in the invitation for bid.

b) Specifications - General: Clear, concise specifications must be included in all bid documents. ~~The specification is a description of the physical or functional characteristics of the commodity, equipment, or service desired. Specifications shall be written to encourage maximum and fair competition. A Statement of Desired Purpose will~~ may be included in ~~all~~ specifications and only those characteristics essential to the final performance of the product or service will be included. ~~Unless only one brand of commodity or equipment is acceptable due to compatibility or other restrictive requirements, any brand name used in the specifications will be used only for the purpose of establishing descriptive information and will not be used to restrict competitive bidding.~~

- c) Proprietary Specification (no substitute): -Proprietary specifications shall be used only when the end user has presented justification that only the named product will function in the end use required. -Proprietary items will be competitively bid whenever there is more than one ~~supplier~~-vendor from whom the product is available.
- d) Terms and Conditions: All IFBs will include terms and conditions which will become part of the contract. -The County Procurement Officer shall maintain, by type of contract, applicable and appropriate terms and conditions to be included in contracts and shall make these available to departments for inclusion in the contracts they issue.
- e) Bid and Performance Surety: -When required by law or determined to be in the best interest of the County, the County Procurement Officer or the Deputy Purchasing Agent ~~may~~shall include in the terms and conditions a requirement for bid and/or performance surety. -A Bid Surety will guarantee that a bidder enters into the contract per its bid, and a performance surety will guarantee that the bidder will carry out the contract per the specifications and terms and conditions set down by the County. -Such surety, when required, will not be designed to be restrictive, but will only be in an amount necessary to protect the County's interest. Bidders shall be permitted to provide such surety in the form of a bond, certified or cashier's check, letter of credit, or certificate of deposit redeemable by the County. -Upon award to the successful bidder, all such sureties will be returned to unsuccessful bidders.
- f) Indemnification: -Where the County may experience financial or physical risk in the performance of a contract by a vendor, the contract terms and conditions will require that the vendor hold the County harmless from such risk.
- g) Insurance: -The County may also require that the successful bidder submit an insurance certificate prior to contract award. Such certificate will be in an amount adequate to protect the County and will name the County as an additional insured.
- h) Criteria for Award: -The IFB will include criteria for award. -Award will be based on lowest responsive and responsible bidder.
- i) Responsiveness: -A bidder's responsiveness will be determined in accordance with judged according to the requirements set forth in the invitation to bid. -No criteria may be used in the determination of a bidder's responsiveness that is not set forth in the IFB. -In order to determine lowest responsive bidder, criteria which affect bid price and may be objectively measured, such as discounts, transportation costs, and life cycle cost, may be considered. Award may not be made to a bidder submitting a higher quality item than the minimum required unless the bidder's price is also determined to be the lowest in accordance with the criteria established in the IFB. The unreasonable failure of a bidder to promptly supply information or documents required for bid review may be grounds for "determination of non-responsiveness" made by the appropriate Deputy Purchasing Agent. -All findings of non-responsiveness shall be documented and made part of the contract ~~award~~-file.
- j) Responsibility: -A bidder's responsibility will be ~~judged-determined~~ according to the bidder's ability to successfully carry out the proposed contract. -Criteria to be used may include financial capacity, experience, facilities, equipment, and integrity. -The County may also consider any of its own past dealings with the bidder.

§4.2-10~~34~~34 Vendor Advisory~~Lobbying~~

- (1) All IFBs will include as part of their language the following vendor advisory: “The County of Orange does not require and neither encourages nor discourages the use of lobbyists or other consultants for the purpose of securing business.”

§4.2-10~~45~~55 Pre-Bid Conference

- (1) When it is in the County’s best interest, a pre-bid conference may be held. ~~–The purpose of the conference will be to further define or illustrate the County’s needs and/or to answer any questions which may exist on the part of the bidders. –The conference shall be hosted by the County Procurement Officer or by the appropriate Deputy Purchasing Agent. –Any changes, deletions, additions or clarification to the bid solicitation shall be issued as an Addendum and sent to all prospective~~ proposers/bidders. ~~–Pre-bid conferences shall not be mandatory for potential bidders unless it is clearly in the County’s best interest, and a (5) five business day notice is given.~~

§4.2-10~~56~~56 Acceptance of Bids

- (1) Except as noted below, bids must be:
- a) Received no later than the time specified in the IFB. ~~Late bids shall not be considered and shall be returned to the bidder unopened unless authorized for acceptance and approval by the County Procurement Officer or Deputy Purchasing Agent with written justification, unless otherwise indicated in (e) below;~~
 - b) Unconditionally accepted without alteration or correction;
 - c) All bids must be received by someone other than the person who conducted the bid solicitation and must be time and date stamped upon receipt;
 - d) All bids must be kept in a secure, locked location for access by personnel so authorized by the department head; and,
 - e) Bids become public information immediately after the closing date and time. ~~When only one (1) bid is received in response to a solicitation, if that bid is received within 24 hours of the time specified in the IFB and if it is in the County’s best interest, the County Procurement Officer or Deputy Purchasing Agent may accept that bid.~~

§4.2-10~~67~~67 Waivable Informalities

- (1) When considered in the best interest of the County, certain bid requirements may be waived by the County Procurement Officer or Deputy Purchasing Agent. ~~–Such waivers will be only for minor requirements which will not provide a material advantage for one bidder over another. Examples of waivable informalities are:~~
- a) Failure of a bidder to submit information due to oversight (i.e. descriptive literature) consistent with Section 4.2-10~~78~~78;
 - b) Failure of a bidder to sign or date bid documents; or,
 - c) Failure of a bidder to submit the requested number of bid copies.
- (2) Waivable informalities will be considered on a case by case basis and will occur only when in the County’s best interest.

§4.2-1078 Correction, Clarification, or Withdrawal of Bids

- (1) Correction, clarification, or withdrawal of erroneous bids before or after award shall be permitted by the County Procurement Officer or Deputy Purchasing Agent under the following circumstances:
 - a) Where there is a mistake clearly evident from examining the bid document, such as an extension of unit pricing or errors in addition, the bidder should be permitted to correct the error and the bid remain valid;
 - b) Where a bidder alleges a material mistake of fact and there is reasonable proof a mistake was made and the intended bid cannot be ascertained with reasonable certainty, the bidder shall be permitted to withdraw the submitted bid without penalty; and,
 - c) Where a bidder fails to supply information requested in the IFB due to oversight, the bidder should be permitted the opportunity to ~~furnish~~ provide the information. ~~This shall be permitted so long as the information does not affect the bidders' submitted price, specifications or substantive obligations and does not affect the position of the bid relative to others properly submitted.~~
- (2) Where a bidder committed errors in judgment, the County will not permit withdrawal of the submitted bid without penalty, unless it is determined to be in the best interest of the County.
- (3) Nothing in this Section is intended to prohibit the County from accepting a voluntary reduction in price or more favorable terms from a successful bidder after award, provided that such is not conditioned on a modification or deletion of any conditions required in the IFB which would result in a contract less favorable to the County.

§4.2-1089 Tied Bids

- (1) When all other factors are determined to be equal, the County Procurement Officer and Deputy Purchasing Agents have the right to ~~award tied bids only by performing a re-solicitation request a best and final offer from~~ of the tied firms vendors and award to the lowest.

§4.2-10910 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 procurement file. Reasons for cancellation or rejection shall be provided upon request to bidders.~~

~~§4.2-111~~ Public Bid Openings

- ~~(1) A public bid opening will be held at a time and place announced in the bid solicitation subject to the guidelines for each contract type as detailed in Section 3 of this manual.~~
 - ~~a) The amount of each bid, together with the name of each bidder, shall be recorded and made available for public inspection.~~
 - ~~b) In cases where bids are submitted and tabulated electronically, bid openings will be considered public as long as the individual bids are electronically accessible after the bids close.~~

§4.2-110-12 Award

(1) Award will be made to the lowest responsive, responsible bidder.

a) References:

- i. Reference checks must be conducted prior to contract award.
- ii. References will be obtained from outside the County of Orange whenever possible.
- iii. References shall not be provided by the same department conducting the solicitation.

~~§4.2-113 County of Orange Procurement Preference Policy~~

~~(1) Orange County Local Small Business (OCLSB) — To qualify as an OCLSB, a business shall meet a), b), and c) requirements below:~~

~~a) Local Business requirements:~~

- ~~i. maintains their principal center of operations (i.e. headquarters) within Orange County, and;~~
- ~~ii. has:~~
 - ~~1) a business address located in the County of Orange that is not a post office box, or~~
 - ~~2) a valid business license or certificate of occupancy issued by the County of Orange or by an Orange County city, or other documentation acceptable to the County of Orange.~~

~~b) Small Business requirements:~~

- ~~i. must be certified as a Small Business by the State of California Department of General Services (DGS); and,~~

~~c) OCLSB requirements must be valid at the time of bid submittal.~~

~~(2) Disabled Veteran Business Enterprise (DVBE) — To qualify as a DVBE, the DVBE must meet the following requirements:~~

- ~~a) must be certified as a DVBE by the State of California Department of General Services (DGS)~~
- ~~b) DGS DVBE requirements must be valid at the time of bid submittal.~~

~~When the lowest responsive and responsible bidder is not an OCLSB/DVBE, the sole lowest certified OCLSB or DVBE within five percent (5%), or the lowest OCLSB and DVBE within 8% of the lowest bid shall be given the opportunity to price match. To participate in the County of Orange Procurement Preference Policy, the sole lowest qualified OCLSB and/or DVBE must accept the County's offer to price match within three (3) business days from the County's offer, unless otherwise specified by the County. If two or more OCLSBs or DVBEs have tied bids within the 5%, or two or more OCLSBs and DVBEs have tied bids within 8%, the County shall request best and final bids from each OCLSB and/or DVBE, which shall price match the lowest bid or~~

~~better. If the best and final bids are tied, the County shall determine the contract award based on the County's best interest.~~

- ~~(5) The County Procurement Officer or designee may consider a departmental request to waive the County of Orange Procurement Preference Policy requirement under special circumstances and/or if it is determined to be in the best interest of the County. Prior to approving a Preference Policy waiver request, the County Procurement Office will notify the Board of Supervisors of the request.~~
- ~~(6) The Preference Policy waiver request must be approved by the County Procurement Officer or designee and Chief Financial Officer, on the form(s) approved and provided by the CPO, and shall be made part of the procurement file.~~
- ~~(7) The County of Orange Procurement Preference Policy requirements shall not apply when prohibited by this policy, law or regulation including, but not limited to specific state or federal funded projects.~~

SECTION 4.3

REQUEST FOR PROPOSAL (RFP)

§4.3-101 Definition

(1) When it is not in the County's best interest to acquire commodities or services through normal competitive bidding, a contract may be solicited using the Request ~~f~~or Proposal (RFP) method. Such a situation may arise for any number of reasons, including, but not limited to:

- a) The County's requirements are not well-defined;
- b) The County is interested in evaluating a range of offers so that it may take advantage of technical innovation and developments in the market place; and,
- c) Factors such as availability, expertise, and quality override price as a criteria for award.

(2) RFP policies and procedures contained in Section 4.3 shall apply, except as otherwise required for procurements pursuant to Sections 3.4, 3.5, and 3.7-and 4.94.3.11.

§4.3-102 RFP Solicitation Document~~Process~~

(1) RFP will be issued with the intent of providing a competitive process from which the County may select a vendor to satisfy its requirements. -The RFP will consist of the following:

- a) Adequate Public Notice: -Adequate public notice shall be given to provide potential ~~proposers-respondents~~ sufficient time to prepare and submit proposals by the due date specified in the RFP.
- b) Requirements Statement: -This will be a statement of the County's objectives in issuing the request. -It shall explain the County's need as clearly as possible. -It shall include any special requirements which the County may have in regard to its overall objectives. Included may be requests for special reports, critical timelines, unique items or services to be provided, cost or pricing data required, duration of service, etc.
- c) Qualification Statement: -The County may include minimum qualification criteria in the RFP. The criteria shall not be used to limit competition, but may be used to assure a certain level of expertise and quality of service.
- d) Terms and Conditions: -The terms and conditions which are intended to become part of the final contract shall be included in the RFP. Included in the terms and conditions are such items as indemnification, contract termination, payment terms, applicable laws, etc. -The County Procurement Officer shall maintain, by type of contract, applicable and appropriate terms and conditions to be included in contracts and shall make these available to departments for inclusion in the contracts they issue.
- e) Instructions: -These are items which relate directly to the procedures on how the proposal must be submitted. -Included in the instructions are items related to number of submittals required, format, procedure for information clarification, etc.
- f) Bid and Performance Surety: -When required by law or determined to be in the best interest of the County, the County Procurement Officer or the Deputy Purchasing Agent ~~may shall~~ include in the terms and conditions a requirement for bid and/or performance surety. -A

bid surety will guarantee that ~~respondentproposers~~ enter into the contract as agreed upon, and a performance surety will guarantee that the ~~respondentproposer~~ 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~~Respondents shall be permitted to provide such surety in the form of a bond, certified or cashier's check, letter of credit, or certificate of deposit redeemable by the County. -Upon execution of contract with the successful ~~respondentproposer~~, all such sureties will be returned to unsuccessful ~~respondentproposers~~.

- 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 ~~awardedsuccessful proposer~~-respondent submit an insurance certificate prior to contract award. -Such certificate will be in an amount adequate to protect the County and will name the County as an additional insured.
- i) Liquidated Damages: -When determined to be appropriate by the Deputy Purchasing Agent, a provision for liquidated damages may be included in the contract terms and conditions. -Liquidated damages may not be a penalty, but must be an approximation of the County's actual damages. -See Liquidated Damages provision under Section 3.3 for Service Contracts.
- j) Evaluation Criteria: The RFP will list the criteria which will be used to evaluate submitted proposals. -The factors shall relate to the ~~respondentproposer~~'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 ~~resondentrespondentproposer~~. Values/weights for evaluation criteria must be ~~included in the RFP, established and submitted to the County Procurement Officer or appropriate Deputy Purchasing Agent prior to distribution of the proposals to the evaluation committee.~~ It is recommended cost be included as ~~part of thea~~ criteria. When cost is a factor in the evaluation criteria, cost analysis must be conducted, scored, and recorded by the Deputy Purchasing Agent~~in the evaluation process in accordance with procedures set forth by the County Procurement Officer.~~

~~§4.3-103~~ — Prequalification of Proposers

- ~~(1) The County reserves the right to prequalify proposers when deemed to be in the best interest of the County. Prequalification may be done as the first step in a two-step solicitation bidding process or can be conducted as minimum qualifications in the solicitation. 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' demonstrating their ability to fulfill the contract conditions.~~
 - ~~a) Qualification criteria may include:~~
 - ~~i. financial capacity/stability;~~

- ii. ~~company history;~~
- iii. ~~capacity to perform;~~
- iv. ~~relevant experience; and,~~
- v. ~~any other criteria relevant to the services and commodities being sought by the County.~~

~~(3) Prequalification requirements will be reasonable and will constitute the minimum requirements necessary to fulfill the terms of the contract.~~

§4.3-1034 Vendor Advisory Lobbying

- (1) All RFPs will include as part of their language the following vendor advisory: ~~“The County of Orange does not require and neither encourages nor discourages the use of lobbyists or other consultants for the purpose of securing business.”~~

§4.3-1045 Pre-Proposal Conference

- (1) When it is in the County’s best interest, a pre-proposal conference may be held. ~~The purpose of the conference will be to further define or illustrate the County’s needs and/or to answer any questions from potential which may exist on the part of proposers~~~~respondent~~~~respondent~~. ~~The conference shall be facilitated~~~~hosted~~ by the County Procurement Officer or by the appropriate Deputy Purchasing Agent. ~~Any changes, deletions, additions, or clarification to the RFP shall be issued as an addendum and sent to all prospective respondents~~~~proposers~~. ~~Pre-proposal conferences shall not be mandatory for potential proposers-respondents unless it is clearly in the County’s best interest, and a (5) five business day notice is given.~~

§4.3-1056 Receipt and Acceptance of Proposals

- (1) Except as noted below, ~~proposals~~~~proposals~~ must be:

~~a) Received no later than the time specified in the RFP. Late proposals may be accepted or rejected depending on the best interest of the County. Rejected proposals shall be returned to the respondent unless authorized for acceptance and approval by the County Procurement Officer or Deputy Purchasing Agent with written justification. If a late proposal is accepted, however, all proposals received within 24 hours of the specified date and time will be accepted.;~~

~~b) Unconditionally accepted without alteration or correction;~~

~~c) All proposals must be received by someone other than the person who conducted the solicitation and must be time and date stamped upon receipt;~~

~~d) All proposals must be kept in a secure, locked location for access by personnel so authorized by the department head; and,~~

~~e) Proposals become public information immediately after the closing date and time. When only one (1) proposal is received in response to a solicitation, if that proposal is received within 24 hours of the time specified in the RFP and if it is in the County’s best interest, the County Procurement Officer or Deputy Purchasing Agent may accept that proposal.~~

f) If conducted as an electronic solicitation, all proposal materials must be kept in a secured electronic location for access only by authorized personnel until provided to the evaluation committee.

- ~~(1)(2)~~ Proposals are to be received by the date and time specified in the RFP. Proposals shall be unconditionally accepted without alteration or correction. All proposals must be received by someone other than the person who conducted the solicitation and must be time and date stamped immediately upon receipt. If conducted as a paper solicitation, all proposals must be kept in a secure locked physical location for access by only authorized personnel until provided to the evaluation committee. If conducted as an electronic solicitation, all proposal materials must be kept in a secured electronic location for access only by authorized personnel until provided to the evaluation committee.
- ~~(2) Late proposals may be accepted or rejected depending on the best interest of the County. No proposal will be accepted which is received by the County Procurement Officer or Deputy Purchasing Agent later than 24 hours from the due date and time specified in the solicitation. The appropriate Deputy Purchasing Agent will have sole discretion in deciding to accept or reject late proposals. If a late proposal is accepted, however, all proposals received within 24 hours of the specified date and time will be accepted.~~

§4.3-1067 Waivable Informalities

- (1) When considered in the best interest of the County, certain proposal requirements may be waived by the County Procurement Officer or Deputy Purchasing Agent. ~~Such waivers will be only for minor requirements which will not provide a material advantage for one proposer over another. Examples of waivable informalities are:~~
- a) Failure of a proposer to submit information due to oversight, consistent with Section 4.3-1145;
 - b) Failure of a proposer to sign or date a bid document; or,
 - c) Failure of a proposer to submit the requested number of proposal copies.
- (2) Waivable informalities will be considered on a case by case basis and will occur only when in the County's best interest.

§4.3-1078 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-required by the California Public Records Act. Additionally, all proposals shall become the property of the County. The County reserves the right to make use of any information or ideas in the proposals submitted.~~
- (2) Regardless of any identification otherwise, including marking some or all pages as "confidential" or "proprietary", information in proposals shall become a part of the public record and subject to disclosure without further notice to the proposer.
- (3) The County shall not in any way be liable or responsible for the disclosure of any such records.

§4.3-109 Protest RFP

- (1) ~~In accordance with Section 1.3 of this manual, any actual or prospective proposer or contractor who alleges a grievance by an error or impropriety in the solicitation or award of a contract may submit a grievance or protest to the appropriate department Deputy Purchasing Agent administering the RFP.~~
- (2) Release of Proposal Information: ~~In accordance with §1.3-105, immediately upon completion of negotiations with the top ranked vendor(s), but prior to the filing of an ASR for award of contract, the Deputy Purchasing Agent shall send a “notice of intent to award” to all participating vendors. For Human Services solicitations, and when it is determined to be in the best interest of the County, Notice of Intent to Award may be sent out prior to negotiations, after the evaluation panel has scored the proposal and a recommendation of award has been made. Procurement folder must be documented with justification when Notice of Intent to Award is sent out prior to negotiations.~~
- a) ~~Vendors will then have five (5) business days from the date of the notice in which to request and obtain proposal documents that are available for disclosure, including final score sheets with the names and notes of individual evaluators redacted.~~
 - i. ~~Proposal documents should be released as early as possible after a vendor’s request to allow all participating vendors a fair protest.~~
 - b) ~~Upon expiration of the five (5) day period, the department may move forward with the contract award or as necessary, filing the item for approval by the Board of Supervisors.~~

§4.3-1080910 Evaluation Committee

- (1) Proposals shall be evaluated by an evaluation committee. When possible, evaluation committees shall be comprised of an odd number of at least ~~a minimum of~~ three (3) ~~or more~~ members. Members shall ~~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. If only one (1) proposal is received in response to an RFP, the ~~DPA~~Deputy Purchasing Agent, after verifying that the minimum qualifications have been met, may waive the standard evaluation process and allow project manager/department designee(s) to review the proposal to determine whether to proceed with negotiations and/or contract award.
- a) It is County policy that when practical and appropriate, private citizens with appropriate expertise who are free of any potential conflict of interest will be included on the proposal evaluation committee.
 - b) The composition of the selection committee will be determined by using the contracting department or by the County Procurement Officer or designee for those contracts issued by the County Procurement Office.
 - c) All members of the evaluation committee must ~~sign a form~~ certifying, under penalty of perjury, that they have no conflict of interest with the selection.
 - d) During the proposal ~~evaluation~~ process, evaluators shall not discuss any issues related to the evaluation or selection process with any proposed contractors/~~respondents~~ or their advocates, except in scheduled proposer ~~interviews~~ as discussed below.
 - e) A member that serves on the evaluation committee shall not ~~also~~ be listed as a reference for the same RFP. ~~If the evaluation committee member is listed as a reference, that member shall be excused from that particular RFP.~~

§4.3-10911 Proposer Oral Presentations/Interviews

- (1) ~~Proposer~~ Interviews must be conducted when the total contract value is anticipated to exceed \$1,000,000, unless otherwise justified ~~to~~ and approved by the County Procurement Officer or designee in writing. The evaluation committee will conduct interviews with respondents ~~proposers~~ who have submitted responsive proposals and have scored high enough on the written portion of the RFP ~~to remain eligible for the contract award. If the contract value is determined to be under \$1,000,000 and it is determined that interviews will not be conducted, the procurement file must be documented with justification.~~
- (2) When the total contract value is anticipated to not exceed \$1,000,000, the evaluation committee may elect to conduct interviews with respondents ~~proposers~~ who have submitted responsive proposals and have scored high enough on the written portion of the RFP ~~to remain eligible for the contract award.~~
- (3) During all interviews conducted under sub-sections (1) and (2) above:
 - a) Proposers-Respondents shall be given fair and equal treatment with respect to any opportunity for discussion and revision to proposals;
 - b) Discussions with respondents ~~proposers~~ may be ~~will be~~ documented ~~recorded either~~ in writing ~~or digital media~~, and that record will become part of the procurement file;
 - c) In conducting interviews there shall be no disclosure of any information derived from proposals submitted by competing respondents ~~proposers~~; and,
 - ~~d)~~ All members of the evaluation committee must sit in on the interviews with all respondents ~~proposers~~. ~~An exception may be made with the approval of the Deputy Purchasing Agent if in the best interest of the County.~~

§4.3-1102 Proposal Revisions

- (1) Revisions may be requested after submissions and prior to award for the purpose of obtaining best and final offers. Late best and final offers will not be accepted.

§4.3-1123 Scope of Work Revisions

- (1) If discussions reveal the need to change the original scope of work, either an addendum detailing the revised scope will be sent to all those submitting proposals, or, if appropriate, the County will issue a revised RFP and begin the solicitation process again. The County Procurement Officer or appropriate Deputy Purchasing Agent shall be the final authority as to which process will be used.

§4.3-1134 Evaluation Scores

- (1) Evaluators shall initially score proposals individually. The initial score sheets containing the evaluators notes and comments shall remain in the possession of the individual evaluators, and at no time shall this information become part of the permanent procurement file or retained as County record.

- (2) Evaluators' individual scores will be discussed with the entire evaluation panel and combined and tallied.
- (3) After scores have been tallied and discussed by the panel of evaluators and a recommended proposal(s) determined, a Memorandum of Recommendation that includes the ranking of all proposals based on the aggregate scores, will be signed by the evaluators and made part of the procurement file. The final scores will be recorded on a single consolidated score sheet.
- (4) The aggregate scores will be documented and be part of the procurement file. Furthermore, the finalized individual scoring sheet(s), with evaluators names redacted, will be provided to the Board of Supervisors as an attachment to the Agenda Staff Report (ASR).

§4.3-11~~45~~⁵⁶ Correction, Clarification, or Withdrawal of Proposals~~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.
- ~~(1)(2)~~ After the time and date set for the receipt of proposals, proposers may not make any changes to their submitted proposals.
- ~~(3) After the receipt of best and final offers, a proposer may be permitted to withdraw its proposal without penalty if evidence is provided of a material error and the fulfillment of the contract by the proposer would create unconscionable hardship or financial loss.~~

§4.3-11~~56~~⁵⁶ Award

- (1) Award of contract will be made to the responsible ~~proposer~~ respondent who is ranked the highest whose proposal best meets the County's requirements. This will be determined by the evaluation committee using the evaluation criteria, which ~~may~~ should include proposed cost.
 - a) References:
 - i. If a reference check is not part of the RFP evaluation criteria it must be conducted prior to contract award.
 - ii. References will be obtained from outside the County of Orange whenever possible.
 - iii. References shall not be provided by the same department conducting the solicitation.
- (2) Should the County Procurement Officer or appropriate Deputy Purchasing Agent fail to concur with the recommendation submitted by the evaluation committee, the County Procurement Officer or appropriate Deputy Purchasing Agent will meet with the evaluation committee members to discuss the reasons for the disagreement.
 - a) No recommendation shall go forward to the Board of Supervisors from the County Procurement Officer or the Deputy Purchasing Agent, unless there is concurrence among the County Procurement Officer or Deputy Purchasing Agent, the using department, and the evaluation committee.

~~§4.3-117 County of Orange Procurement Preference Policy~~

- ~~(1) Orange County Local Small Business (OCLSB) — To qualify as an OCLSB, a business shall meet a), b), and c) requirements below:~~
- ~~a) Local Business requirements:~~
 - ~~i. maintains their principal center of operations (i.e. headquarters) within Orange County, and;~~
 - ~~ii. has:~~
 - ~~1) a business address located in the County of Orange that is not a post office box, or~~
 - ~~2) a valid business license or certificate of occupancy issued by the County of Orange or by an Orange County city, or other documentation acceptable to the County of Orange.~~
 - ~~b) Small Business requirements:~~
 - ~~i. must be certified as a Small Business by the State of California DGS; and,~~
 - ~~c) OCLSB requirements must be valid at the time of proposal submittal.~~
- ~~(2) Disabled Veteran Business Enterprise (DVBE) — To qualify as a DVBE, the DVBE must meet the following requirements:~~
- ~~a) must be certified as a DVBE by the State of California DGS~~
 - ~~b) DGS DVBE requirements must be valid at the time of proposal submittal.~~
- ~~(3) An extra five percent (5%) shall be applied to the tallied score of each certified OCLSB or DVBE, or eight percent (8%) for each certified OCLSB and DVBE, to obtain the final score. If the final score of any OCLSB or DVBE matches the final score of a proposer who is not an OCLSB or DVBE, preference shall be given to the certified OCLSB or DVBE. If two or more OCLSBs and/or DVBEs have the same final score, the County shall determine the contract award based on the County's best interest.~~
- ~~(4) The County Procurement Officer may consider a departmental request to waive the County of Orange Procurement Preference Policy requirement under special circumstances and/or if it is determined to be in the best interest of the County. Prior to approving a Preference Policy waiver request, the County Procurement Office will notify the Board of Supervisors of the request.~~
- ~~(5) The Preference Policy waiver request must be approved by the County Procurement Officer and Chief Financial Officer, on the form(s) approved and provided by the CPO, and shall be made part of the procurement file.~~
- ~~(6) The County of Orange Procurement Preference Policy requirements shall not apply when prohibited by this policy, law or regulation including, but not limited to specific state or federal funded projects.~~

SECTION 4.3.1**RFP FOR REAL ESTATE INTEREST****§4.3.1-101 Policy**

- (1) This Section 4.3.1 shall apply to Requests For Proposals (RFP(s)) for real estate interests short of fee simple interest (i.e., lease, and licenses, etc.), where existing delegated authority is not applicable. See also, e.g. Government Code Section 25537 and Orange County Codified Ordinance Section 1-4-154.
- (2) It is the policy of the County of Orange to solicit competitive bids and proposals for surplus real estate interest short of a fee simple interest, including, but not limited to leases and licenses, except where existing delegated authority applies and dictates a different procedure, or as otherwise provided for herein or in applicable law. In addition, Section 25520, et seq., of the Government Code expresses a legal preference for competitive proposals or bidding, except as otherwise provided for in the law.
- (3) The County and its Special Districts shall receive fair market value for any interest in real property unless there is a specific public purpose and a below market value is authorized by applicable law (see, e.g., ~~for example~~ California Government Code Section 25365(a)).
- (4) When the CREO, in conjunction with a County department or Special District, identifies surplus County property that may be utilized by another party and is not currently needed for County, or other governmental uses, but is not appropriate for sale, an RFP process shall be used, except for instances where specific delegated authority applies, or applicable law otherwise dictates.

§4.3.1-102 Prior to RFP Process

- (1) Prior to engaging in an RFP process for the lease or license of County or Special District property, the CREO and CEO Real Estate shall first determine that the County Property at issue is not needed by a different County department or Special District for a public use. (Note: The disposition of real estate by sale and the Surplus Land Act are addressed in §1.6.1 of the CPM. Leases may require Surplus Land Act compliance. Please consult with County Counsel for assistance.)
- (2) The CREO and CEO Real Estate shall determine if the real property interest at issue is marketable or of such minor value that a direct transaction can be processed by law. California Government Code Section 25526.5 permits the sale of County land without competitive bidding if it is of limited utility or unmarketable (i.e., if competitive proposals would be futile or would not produce any advantage to the County). See also, *Meakins v. Steveland, Inc.*, 68 Cal.App.3d 490, 498 (1977). However, the buyer still must pay fair market value. In the event that the real property interest in minor or unmarketable, the CREO and CEO Real Estate shall coordinate with County Counsel to ensure that the proper procedure is followed for a direct sale, including insuring that the proper findings are made by the Board of Supervisors.
- (3) The CREO and CEO Real Estate shall then comply with any and all legal requirements to ensure that the interest in real property proposed to be conveyed can be done so, including, but not limited to (as applicable), complying with:
 - a. The Surplus Land Act (see §1.6.1-107 of the CPM).

- b. The Park Abandonment Act (see §1.6.1-103 of the CPM).
- c. Orange County Codified Ordinances Section 1-4-153, et seq., which allows the Board of Supervisors to grant a lease or license of real property when “bids posted in at least three (3) public places for not less than fifteen (15) days and published for not less than two (2) weeks in a newspaper of general circulation, if any such newspaper is published in the County, or reject all bids.”
- d. Any other applicable noticing requirements pursuant to applicable procedure and law.
- (4) The CREO and CEO Real Estate shall determine the specific objective of the RFP for the County.

§4.3.1-103 RFP Process

- (1) The RFP process to be followed for the leasing and licensing of real estate, shall be consistent with the process outlined in §4.3, above, except that the tasks to be conducted by the County Procurement Officer or the Deputy Purchasing Agent shall be performed by the CREO and CEO Real Estate, and except as further outlined below. Any issues addressed in 4.3, above, and not addressed or revised below shall remain as set forth in 4.3.
- (2) The real estate RFP shall state with specificity the County’s objectives in releasing the RFP (as determined by the CREO and CEO Real Estate in conjunction with the effected department and the applicable Supervisorial District), the use being sought for the property by the County, and if no specific use is being solicited, set forth any constraints on the property, if any, pursuant to zoning or County preference.
- (3) Real estate RFPs will be posted on the County Real Estate website, among other locations, such as the County’s online bidding system BidSyne, as determined by the CREO and CEO Real Estate to be in the best interest of the County.
- (4) Once an RFP has been released, responses shall be required no sooner than 60 days from the release but may be extended in the reasonable discretion of the CREO and CEO Real Estate.
- (5) After release of the RFP and prior to receipt of proposals:
 - a) Any and all questions regarding the RFP shall be submitted in writing, and responses shall be provided to all potential proposers through an addendum to the RFP.
 - b) No discussion with County department staff involved with the RFP (i.e., CEO Real Estate or any department managing or occupying the applicable property) shall take place while the RFP is posted, except through the project contact identified in the RFP. Any nonpermitted contact with County department staff could result in disqualification of the proposer.
 - c) CEO Real Estate may host a Bidder’s Pre-Proposal Conference if it is deemed useful for the RFP process in the reasonable discretion of the CREO.
- (6) At any time during the real estate RFP process, the CREO reserves the right to:
 - a) Amend the RFP and any proposed key dates, and/or
 - b) Solicit new proposals on the same project, or on a modified project, which may include portions of the original RFP, as the County may deem necessary.
- (7) After receipt of proposals the CREO reserves the right to:

- a) Request clarification of any information contained in a proposal;
 - b) Allow for the correction of errors and/or omissions;
 - c) Accept or reject any and all proposals or any part of any proposal, and to waive minor defects or technicalities in same;
 - d) Disregard all non-conforming, nonresponsive, or conditional proposals;
 - e) Reject any proposal that does not pass the ~~minimum requirements outlined in the RFP~~evaluation to the County's satisfaction;
 - f) Schedule interviews with any or all ~~proposers~~respondent;
 - g) Select the ~~respondent~~proposal that will best meet the needs of the County; and/or
 - h) Negotiate the ~~applicable real estate contract~~Real Estate Contract with a primary ~~respondent~~proposer or alternate ~~respondent~~proposer as determined through the RFP process.
- (8) Based on the complexity of the Real Estate Contract ~~real estate contract~~ and transaction contemplated in the RFP, a good faith deposit may be required to be provided by the successful ~~proposer~~respondent prior to the start of negotiations in the reasonable discretion of the CREO and CEO Real Estate. The good faith deposit will be held by the County subject to the terms and conditions of a letter agreement between the successful ~~respondent~~proposer and the County, which will specify the terms and conditions upon which such deposit will be forfeited or refunded. In the event that a final Real Estate Contract ~~real estate contract~~ is negotiated and entered into by the County and a ~~respondent~~proposer, any amounts remaining from the good faith deposit may be refunded or applied to any required payment under the contract as agreed to by the County and the successful ~~respondent~~proposer. In any of the following instances the County's staff, attorney, and consultant time and fees during negotiations and in addressing these unanticipated issues may be deducted from the good faith deposit if, during negotiations, successful ~~respondent~~proposer:
- a) Materially changes the terms of their financial offer;
 - b) Changes the proposed development plan (if any) or schedule; or
 - c) Fails to respond to the County's requests for additional information or clarifications in a timely manner; fails to provide proof of financing, insurance, or bonding; or previously failed to disclose substantive background information (e.g., major civil litigation in regard to prior projects, bankruptcies, criminal convictions, or any other matter that would reflect poorly on the County).

§4.3.1-104 Protest Process—~~Real Estate RFP~~

- (1) In the event ~~a proposer~~any party believes that the County's solicitation is unfairly restrictive or ambiguous or contains conflicting provisions or the ~~party~~proposer believes that any resulting Real Estate Contract~~real estate contract~~ would be commercially impractical to perform, the ~~party~~proposer must file a written protest with the CEO Real Estate project contact.
- (2) Protest Procedure: All protests shall be typed under the protestor's letterhead and submitted in accordance with the provisions stated in the RFP. All protests shall include at a minimum the following information:
 - a. The name, address and telephone number of the protestor;
 - b. Signature of the protestor or the protestor's representative;
 - c. Solicitation or contract number;

- d. Detailed statement of the legal and/or factual grounds for the protest; and
- e. Form of relief requested.
- (3) Protest of RFP Specifications: All protests related to the RFP specifications must be submitted to the CEO Real Estate project contact no later than thirty (30) business days prior to the proposal due date. Protests received after the thirty (30) business day deadline will not be considered by the County.
 - a. In the event the protest of the RFP specifications is denied, and the protester wishes to continue in this solicitation process, they must still submit a proposal prior to the close of solicitation in accordance with proposal submittal procedures provided in this RFP.
- (4) Protest of Award of the Real Estate Contract~~Real Estate Contract~~: In protests related to the award of a Real Estate Contract~~real estate contract~~, the protest must be submitted no later than five (5) business days after the ~~Notice of proposed~~Intent to Award contract award is provided by the CEO Real Estate project contact. Protests relating to a ~~proposed~~ contract award, which are received after the five (5) business day deadline will not be considered by the County.
 - a. Protest Process.
 - i. In the event of a timely protest, the County will not proceed with the solicitation or award of the contract until the CREO renders a decision regarding the protest.
 - ii. Upon receipt of a timely protest, the CEO Real Estate project contact will within ten (10) business days of the receipt of the protest, issue a decision in writing which shall state the reasons for the actions taken.
 - iii. The County may, after providing written justification, make the determination that an immediate award of the contract is necessary to protect the substantial interests of the County. The award of a contract shall in no way compromise the protester's right to the protest procedures outlined herein.
 - iv. If the protester disagrees with the decision of the CREO, the protestor may submit a written notice to the Office of the County ~~Procurement Officer~~Purchasing OfficerAgent requesting an appeal to the Procurement Appeals Board, in accordance with the process stated below.
 - b. Appeal Process.
 - i. If the protester wishes to appeal the decision of the CREO, the protester must submit, within three (3) business days from receipt of the CREO's decision, a written appeal to the Office of the County ~~Procurement Officer~~Purchasing Agent pursuant to §1.3-107.
 - ii. Within fifteen (15) business days, the County ~~Procurement Officer~~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.
 - iii. The decision of the County ~~Purchasing Agent~~Procurement Officer on whether to allow the appeal to go forward will be final and there shall be no right to any administrative appeals of this decision.

§4.3.1-105 Evaluation Committee

- (1) The evaluation committee for real estate RFPs under this section shall be comprised of no less than five (5) members who have no conflict or apparent conflict of interest with the selection process or any potential ~~respondents~~proposers. In addition to the requirements set out in §4.3-108, above, members of evaluation committees shall be selected based on their qualifications and expertise related to the subject matter, and should generally be experienced in real estate, construction (if

applicable), finance, development or another area relevant to the RFP as reasonably determined by the CREO and CEO Real Estate.

- (2) The evaluation committee will conduct evaluations of the proposals. The committee will consider the information supplied or not supplied by ~~respondents~~proposers. If it finds a failure or deficiency in the proposals or any information provided in connection thereto, the evaluation committee may reject said proposal or information or reflect the failure or deficiency in the evaluation.
- (3) CEO Real Estate may request clarifications, or otherwise verify the contents of the proposal, including information about the ~~respondent~~proposer, development team members (if any), consultants, and sub-consultants. If CEO Real Estate considers clarification or interpretation of the RFP is necessary, a written addendum shall be issued. Any addenda issued will become part of the RFP. ~~Each respondent~~proposer must follow the directions in the addenda. CEO Real Estate reserves the right to seek publicly available information about the ~~respondents~~proposers and their development teams, if any.
- (4) Proposals will be evaluated on the basis of the responsiveness ~~to the questions of the and~~ requirements in this RFP. Proposals will be ~~competitively~~ evaluated on the basis of the following criteria ~~listed in a random sequence to their order of importance~~ (all or some of the following may be included by CEO Real Estate depending on the subject of the RFP):
 - a. Demonstrated understanding of RFP objectives;
 - b. Quality of the proposed plan, if any;
 - c. Feasibility of proposed plan, if any;
 - d. Composition of the proposed team, if any;
 - e. Relevant experience of team, if any;
 - f. Project schedule and phasing
 - g. Quality of the ~~respondents~~proposer's proposed financing capability and structure;
 - h. Financial offer;
 - i. Proposed option and/or ground lease amendments and exceptions;
 - j. Public benefit (if required);
 - k. Completeness of submittal; and
 - l. Interview, as needed
 - m. Other criteria as needed

§4.3.1-106 ~~Proposer~~ -Presentation/-Interviews

- (1) When a real estate RFP is issued, CEO Real Estate will conduct interviews with ~~respondents~~proposers, as needed. ~~Respondents~~Proposers shall be ready to attend the ~~oral~~ interview within ten (10) business days of notification. CEO Real Estate may also send written questions and ask for written responses within five (5) business days. The interviews will be evaluated based on the following criteria ~~listed in a random sequence to their order of importance~~ (all or some of the following may be included by CEO Real Estate depending on the subject of the RFP):

- a. Presentation / communication skills;
 - b. Project lead / key team members;
 - c. Respondent~~Proposer~~'s response to questions; and
 - d. Overall understanding of the project and articulation of project vision.
 - e. Other criteria as needed
- (2) Proposals will be scored based on established criteria, which have been weighted and will be assigned points that measure the responsiveness to each identified criterion.

§4.3.1-107 Evaluation Scores

- (1) In addition to the scoring process set out in §4.3-113, above, evaluators shall score proposals individually, and scoring will be divided into evaluation of the written proposal and the interview. The initial score sheets containing the evaluators' notes and comments shall remain in the possession of the individual evaluators, and at no time shall this information become part of the permanent procurement file or retained as a County record. Evaluators' individual scores will be discussed with the entire evaluation panel and combined and tallied after the interviews (if conducted). The total number of points earned for the written proposals and ~~oral~~ interviews will be combined for each ~~respondent~~~~proposer~~ resulting in a ranked slate of ~~respondents~~~~proposers~~.

§4.3.1-108 Award

- (1) In addition to the procedure outlined in §4.3-115, above, after the RFP evaluation process has produced a ranked slate of ~~respondents~~~~proposers~~, a primary ~~respondent~~~~proposer~~ and alternate (if the RFP results in multiple ~~respondents~~~~proposers~~) shall be identified and, in the reasonable discretion of the CREO may be presented to the Board of Supervisors, either in open or closed session, to ~~select~~~~identify~~ the ~~respondent~~~~proposer~~ with ~~who~~ to negotiate the applicable Real Estate Contract~~real estate contract~~ for Board approval. ~~The CREO shall also be given authority to negotiate with the alternate ~~respondent~~~~proposer~~ if negotiations with the primary ~~respondent~~~~proposer~~ do not result in a final ~~contract~~~~agreement~~ between the parties.~~
- (2) After negotiations have been completed with the ~~selected ~~respondent~~ ~~proposer~~~~respondent, the Board of Supervisors at a public meeting shall approve the final Real Estate Contract~~real estate contract~~(s).
- (3) In no event shall the County be bound by, or liable for, any obligation with respect to a proposed project by a potential ~~respondent~~~~proposer~~ until such time (if at all) a Real Estate Contract ~~real estate contract~~ between the County and the ~~respondent~~~~proposer~~, in form and substance acceptable and satisfactory to the sole discretion of County, has been approved by the Board of Supervisors.

SECTION 4.4

TWO-STEP ~~SEALED-BIDDING-PROCESS~~**§4.4-101 Definition**

- (1) ~~The Two-step sealed-biddingsolicitation process~~ is a method of soliciting ~~bids-services and commodities, except as otherwise applied to contracts procured pursuant to Section 3.4 and 3.5, which permitswhere a preliminary evaluation based on a proposal's technical merit andof the respondent's qualifications is conducted, of the bidder/proposer and a final evaluation for recommendation of award is made based on the IFB-or-RFP processbased on price.~~
- (2) Two-step sealed bidding may be used when it is determined that:
- a) Available specifications or purchase descriptions are not sufficiently complete to permit full competition without technical evaluations and discussions to ensure mutual understanding between each bidder and the County of Orange;
 - b) Definite criteria exist for evaluation of technical offers;
 - c) More than one technically qualified source is expected to be available; and
 - d) A fixed price contract will be used.

§4.4-102 Two-Step Solicitation Bidding Process

A prequalification process may be conducted prior to the issuance of the IFB/RFP, as the first step in a two-step solicitation process, to establish a list of qualified respondents.

- (1) ~~Phase-Step One –Statement of Qualification (SOQ) Request for Qualification (RFQ)~~
- a) ~~Two-step sealed bidding Step One~~ shall be initiated ~~by an RFQ for respondents to submit Statement of Qualifications (SOQ) 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. This step could also be included as part of a standard IFB/RFP in the form of minimum qualifications. Qualification criteria may include, but is not limited to: financial capacity/stability, company history, capacity to perform, relevant experience, professional licenses/certifications, and any other criteria relevant to services or items being sought. Prequalification requirements will constitute the minimum requirements necessary to fulfill the contract. The invitation-RFQ to submit offers shall be issued in a manner which provides adequate public notice allowing bidders-potential respondents sufficient time to prepare and submit responses. The invitation to submit technical offersRFQ shall may contain, but is not be limited to,~~ the following information:
 - i. Notice that the procurement process shall be conducted in two-phases steps;
 - ii. A description of the material or service desired using the best information available to the County;
 - iii. A statement that cost will not unprieced technical offers only shall be considered

- included in Phase Step One;
- iv. The qualification requirements ~~for the technical offers~~, such as drawings, and descriptive literature, proof of licenses/certification, etc.;
 - v. The criteria for evaluating ~~technical offers~~ the SOQs;
 - vi. The closing date and time for receipt of ~~technical offers~~ SOQs and the location where ~~offers they~~ should be delivered or mailed;
 - vii. A statement that discussions may be held; and,
 - viii. A statement that only bids SOQs from respondents who are prequalified during ~~based on technical offers determined to be acceptable in Phase Step~~ One shall be considered for award Step Two.
- b) The County Procurement Officer or the department Deputy Purchasing Agent may hold a conference with the potential ~~bidders respondents~~ before submission of the ~~technical offers~~ SOQs or at any time during the evaluation of unpriced technical offers.
- ~~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 respondents 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.~~
- c) ~~Unpriced technical offers~~ SOQs shall be due at the time and date specified. The contents of ~~unpriced technical offers~~ SOQs shall be disclosed only to County personnel having a legitimate interest in them or persons assisting in their evaluation.
- d) Except as prohibited for procurements conducted pursuant to Sections 3.4 and 3.5 herein, ~~late technical offers~~ SOQs may be accepted or rejected depending upon the best interest of the County. No ~~technical offer~~ SOQ will be accepted which is received later than 24 hours from the original due date. The County Procurement Officer or appropriate Deputy Purchasing Agent will have sole discretion in deciding which late ~~technical offers~~ SOQs will be accepted or rejected.
- ~~e) Unpriced technical offers SOQs shall be evaluated solely in accordance with the criteria set forth in the invitation to submit technical offers RFQ. Offers shall be determined to be either acceptable for further consideration or unacceptable. A determination that an unpriced technical proposal SOQ is unacceptable shall be stated in writing explaining the basis for the determination. A record of the rejection will be retained in the procurement file. Unsuccessful bidders shall be notified in writing by the County Procurement Officer or Deputy Purchasing Agent, and the bidder shall not be afforded the opportunity to amend its technical offer.~~
- ~~f) Discussions may be held with any bidder who submits an acceptable or potentially acceptable technical offer SOQ. During discussions, there shall be no disclosure of any information derived from one un-priced technical offer SOQ to another bidder. After discussions the County Procurement Officer or Deputy Purchasing Agent shall establish a closing date for receipt of final technical offers SOQs and shall notify in writing bidders submitting acceptable or potentially acceptable offers SOQs of the closing date. A record will be kept of discussions and made part of the procurement file.~~

~~g)e)~~ At any time during Phase-Step One, ~~offers-SOQs~~ may be withdrawn without penalty.

(2) Phase-Step Two

- a) ~~Except as otherwise required for procurements conducted pursuant to Sections 3.4 and 3.5 herein, u~~ Upon completion of Phase-Step One, the County Procurement Officer or Deputy Purchasing Agent shall ~~issue-conduct~~ an Request for Proposal Invitation for Bid (IFBRFP); ~~in accordance with Section 4.2 on Request for Proposal (RFP)-in accordance with Section 4.3-solicitations. These solicitations documents shall be issued o~~ Only to those determined to be most qualified bidders whose technical offers are determined to be acceptable in Phase-Step One will be invited to participate in Step Two.

~~Award will be made to the lowest responsive and responsible bidder for IFBs, and in the case of an RFP, award will be made to the responsible proposer who best meets the County's requirements.~~

- b) References:

~~Reference checks must be conducted prior to contract award.~~

- i. References will be obtained from outside the County of Orange whenever possible.
- ii. If a reference check is not part of the RFP evaluation criteria it must be conducted prior to contract award.
- iii. References shall not be provided or accepted by the same department conducting the solicitation.

~~§4.4-103~~ Requests for Information

- ~~(1) When required by the County and determined to be in its best interest, a general request for information sent to vendors may precede this process. The request for information will be a way of determining appropriate bidders and will be considered part of the two step procurement solicitatin process.~~

~~§4.4-104~~ Vendor Advisory Lobbying

- (1) All ~~invitations for bid-solicitations~~ will include as part of their language the following vendor advisory: "The County of Orange does not require and neither encourages nor discourages the use of lobbyists or other consultants for the purpose of securing business."

~~§4.4-105~~ Protest Process Two-Step Sealed Bidding

- (1) ~~Protest of two step sealed bidding:~~ Protests will only be accepted in Step Two and in accordance with Section 1.3 of this manual, except as otherwise provided in Sections 3.4, and 3.5 and 3.6 herein; ~~a~~ 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/solicitation. Protests received after the five (5) business day deadline will not be considered by the County.
- a) In the event the protest of specifications is denied and the ~~protest~~~~protestor~~ wishes to continue in the solicitation process, they must ~~still~~ submit a bid/proposal prior to the close

of the solicitation in accordance with the ~~bid submittal procedures provided in the~~ bidsolicitation instructions.

- (2) Protest of Award of Contract: Except as otherwise required in Sections 3.4, and 3.5, and 3.6, herein, in accordance with Section 1.3 of this manual, protests related to the award of a contract ~~based on the two step sealed bidding process, the protest~~ must be submitted no later than five (5) business days after the notice of ~~the proposed contract~~ intent to award is provided by the Deputy Purchasing Agent.
- (3) Protests ~~relating to a proposed contract award which are~~ received after the five (5) business day deadline will not be considered by the County.

~~§4.4-106~~ County of Orange Procurement Preference Policy

- ~~(1) Orange County Local Small Business (OCLSB) To qualify as an OCLSB, a business shall meet a), b), and c) requirements below:~~
 - ~~a) Local Business requirements:~~
 - ~~i. maintains their principal center of operations (i.e. headquarters) within Orange County, and;~~
 - ~~ii. has:~~
 - ~~1) a business address located in the County of Orange that is not a post office box, or~~
 - ~~2) a valid business license or certificate of occupancy issued by the County of Orange or by an Orange County city, or other documentation acceptable to the County of Orange.~~
 - ~~b) Small Business requirements:~~
 - ~~i. must be certified as a Small Business by the State of California DGS; and,~~
 - ~~c) OCLSB requirements must be valid at the time of bid/proposal submittal.~~
- ~~(2) Disabled Veteran Business Enterprise (DVBE) To qualify as a DVBE, the DVBE must meet the following requirements:~~
 - ~~a) must be certified as a DVBE by the State of California DGS~~
 - ~~b) DGS DVBE requirements must be valid at the time of bid/proposal submittal.~~
- ~~(3) When an Invitation for Bid (IFB) is the method of solicitation, refer to Section 4.2-113 of this manual.~~
- ~~(4) When a Request for Proposal (RFP) is the method of solicitation, refer to Section 4.3-117 of this manual.~~
- ~~(5) The County Procurement Officer may consider a departmental request to waive the County of Orange Procurement Preference Policy requirement under special circumstances and/or if it is determined to be in the best interest of the County. Prior to approving a Preference Policy waiver request, the County Procurement Office will notify the Board of Supervisors of the request.~~

- ~~(6) The Preference Policy waiver request must be approved by the County Procurement Officer and Chief Financial Officer, on the form(s) approved and provided by the CPO, and shall be made part of the procurement file.~~
- ~~(7) The County of Orange Procurement Preference Policy requirements shall not apply when prohibited by this policy, law or regulation including, but not limited to specific state or federal funded projects.~~

SECTION 4.5

SOLE SOURCE REQUESTS

§4.5-101 Policy

- (1) It is the policy of the County of Orange to solicit competitive bids and proposals for its procurement requirements. ~~-A Sole Source procurement may only be used when there is clear and convincing evidence that only one source exists to fulfill the County's requirements, subject to further limitations for procurements pursuant to Sections 3.4, 3.5 and 3.7 and 4.94.3.1 that are inconsistent/conflicting with the Sole Source requirements in this section.~~

§4.5-102 Sole Source Justification

- (1) Formal justification for Sole Source procurements is required when competitive ~~bid guidelines require pricing from competing firms~~solicitation is required. ~~-A Sole Source justification will be prepared and signed by the requesting user department, and approved by the department head or designee, and the Deputy Purchasing Agent.~~ -The County Procurement Officer or Deputy Purchasing Agent shall retain a copy of this justification as part of the procurement file. ~~-As part of the Sole Source justification, the requestor shall clearly explain:~~
- a) A detailed description of the type of contract to be established;
 - b) A detailed description of services/commodities to be provided by the vendor;
 - c) Why the recommended vendor is the only one capable of providing the required services/commodities and includes back-up information to support the justification;
 - d) Identify other sources that have been contacted and explain in detail why they cannot fulfill the County's requirements;
 - e) How the recommended vendor's prices or fees compare to the general market and attach quotes for comparable services and supplies, if available; and,
 - f) How the County would ~~accomplish~~achieve the desired requestthis 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 ~~issued awarded a subsequent a~~ contract for related work, provided that the Sole Source justification requirements outlined in this Section are satisfied. ~~-Such contractor may be designated as an exclusive contractor if the County would be adversely affected by bringing in another vendor who would be required to meet the expert contractor's level of expertise and existing knowledge and involvement in a specific project.~~

§4.5-103 Proprietary Source Requests

- (1) Proprietary means confidentially owned and controlled. The term may be used to refer to such items as property, computer software, or intellectual property. The ~~party-vendor~~ owning items that are proprietary is known as a sole proprietor and there is no other source available from which to purchase the commodities or services.
- (2) Determining if an item is proprietary rests with the Deputy Purchasing Agent and shall be justified in accordance with the policies and procedures outlined in this Section. In the event an item is justified as proprietary, the Deputy Purchasing Agent shall endeavor to negotiate a price that is most advantageous to the County.
- ~~(3) Proprietary Specifications:~~ A proprietary item or service is one that must meet particular restrictive specifications but may be available from a number of sources, e.g., “Brand ‘X’ computers - no substitutions”. ~~–A detailed description of the proprietary specification shall be attached to the requisition for approval. The requisition should contain a brief justification for requesting the proprietary specification.~~
- (3) A detailed description of the proprietary specification shall be attached to the requisition for approval. The requisition should contain a brief justification for requesting the proprietary specification.
- (4) Board Approval: Board approval is required for proprietary commodities and services in accordance with applicable policy as provided in this Section, as well as those that may apply in Sections 3.1, 3.2, and 3.3 of this manual.

~~§4.5-104~~ Commodities Sole Source Requests

- ~~(1) Approval by the Board of Supervisors is required prior to the execution of a Sole Source commodity contract costing more than \$250,000 annually.~~

~~§4.5-105~~ Capital Assets Sole Source Requests

- ~~(1) In addition to the Board approval requirements stated in Section 3.2 of this manual, approval by the Board of Supervisors is required prior to the purchase of a Sole Source Capital Asset item costing more than \$75,000\$100,000.~~

~~§4.5-106~~ Service Contracts Sole Source Requests

- ~~(1) Approval by the Board of Supervisors is required for the following:~~
 - ~~a) Sole Source service contracts that exceed total annual amount of \$75,000 \$100,000;~~
 - ~~b) Sole Source service contracts that exceed a two (2) five (5) year consecutive term, regardless of dollar amount. Contracts may not be split to avoid this policy; including proposed successor contracts that contain substantially the same scope of work; and,~~
 - ~~c) Renewal of Sole Source Service Contracts where the annual cost exceeds \$75,000\$100,000.~~

~~§4.5-107~~ 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 Section 3.4 of this manual that exceeds \$75,000 annually will require Board Approval.~~

~~§4.5-1048~~ Contract Renewals and Amendments

- (1) The initial Sole Source Request Form is required for each contract renewal period, unless the dollar amount and the scope of work is the same. A new Sole Source Request Form is required for any contract amendments that change the scope of work or increase the contract value above the established Board thresholds for the appropriate contract types as set forth in ~~this~~ Sections 3.1, 3.2, and 3.3.

~~§4.5-1059~~ Agenda Staff Report

- (1) Prior to the submittal of an Agenda Staff Report, all Sole Source Justifications requiring approval by the Board of Supervisors shall first be reviewed and approved by the Office of the County Procurement Officer.
- (2) Agenda Staff Reports shall clearly state that the procurement is a Sole Source procurement and also include the Sole Source Justification text in the “Background Section” of the Agenda Staff Report.
- ~~(3) A signed copy of the Sole Source Justification, as described in Section 4.5-102, shall also be attached to the Agenda Staff Report.~~

~~§4.5-109~~~~§4.5-110~~ Negotiation

~~With approvals as required, a contract shall be negotiated with the designated Sole Source vendor to achieve a contract that is advantageous to the County of Orange.~~

~~§4.5-110~~~~§4.5-111~~ Solicitation Exemption

- (1) The County Procurement Officer or designee may consider a departmental request to use a Sole Source contract and waive the solicitation requirements for purchases with special circumstances and/or when it is determined to be in the best interest of the County.
- (2) ~~The waiver request received will be considered by the County Procurement Officer.~~ The Board of Supervisors will be notified prior to County Procurement Officer or designee & Chief Financial Officer approvals. -The approved waiver exemption on the form(s) ~~approved and~~ provided by the County Procurement Office shall be made part of the procurement file.

~~§4.5-111~~~~§4.5-112~~ County of Orange Procurement Preference Policy Exemption

- (1) County of Orange Procurement Preference Policy requirement is not applicable to Sole Source procurements.

SECTION 4.6

~~SMALL DOLLAR~~ PETTY CASH PURCHASES§4.6-101 Definition

- (1) Petty Cash: ~~Small dollar purchases procurements are purchases made for items which fall below the dollar limits established for competitive solicitations bidding Funds set aside as a cash reserve in a revolving fund for single expenditures under \$1,000 each made within established policies and controls in accordance with Sections 3.1, 3.2, and 3.3 of this manual.~~

§4.6-102 Types of Small Dollar Purchases ~~4.6-101 Petty Cash:~~

- (1) ~~Petty Cash~~: Petty cash purchases are ~~purchases~~ made directly by ~~using~~ County departments using cash established within their revolving petty cash funds. Petty cash funds are to be used in the following manner and in accordance with Auditor-Controller's Accounting Manual:
- a) The limit on any individual petty cash transaction is \$1,000, including tax, handling charges, etc. Splitting ~~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) Purchases are to be paid for when received. ~~Purchases~~ where the invoice follows the commodities should be handled by ~~contract purchase order~~; and,
 - d) Petty Cash shall not be used to ~~procure purchase~~ services or commodities that are available on a County contract.
- ~~(2) Purchasing Card: Purchasing card purchases are made only by those employees authorized by their department head to make purchasing card purchases in accordance with established program policies as provided for in Section 1.7, as well as, those procedures established by the County Procurement Officer.~~
- ~~(3) Small Dollar Purchases: When using the small dollar purchase system, the insurance and indemnification requirements set forth in Section 2.3, 3.1, 3.2 and 3.3 must be followed.~~

SECTION 4.7

COOPERATIVE ~~PURCHASING~~ PROCUREMENT§4.7-101 Definition

- (1) Cooperative ~~Purchasing~~ Procurement is a strategy used by ~~local~~ governmental entities to ~~purchase~~ procure services and commodities from contracts awarded by other governmental entities or ~~cooperative~~ programs to take advantage of volume purchasing discounts and to reduce administrative expenses.

§4.7-102 Policy

- (1) Services ~~and~~, commodities and capital assets may be acquired through cooperative contracts that can involve one or more public entities, subject to any limitations for procurements pursuant to Sections 3.4 and 3.5 that are inconsistent with the cooperative purchasing requirements in this Section. Such cooperative ~~procurement~~ purchasing may include public procurement contracts, which are made available to or from other ~~local~~ public entities or ~~cooperative~~ programs.

§4.7-103 Collaborative Purchasing Procurement

- (1) In accordance with Section 1.1 of this manual, the County Procurement Officer or designee has the authority to identify and ~~make use of other governmental department~~ cooperative contracts that would be beneficial for County use.
- a) The County Procurement Office may pursue both competitive and negotiated cooperative contracts executed by the federal and/or state governments;
 - b) May pursue contracts with other governmental entities in order to obtain cost savings for the County; and,
 - c) Shall make available County cooperative contracts to other government entities and pursue opportunities for collaboration in purchasing procurement.
- (2) In the event a cooperative contract identified for use by the County Procurement Office was awarded by a method other than a competitive bid, the County Procurement Office is required to seek review from the Office of County Counsel and County Risk Manager where appropriate, prior to authorizing the use of the contract.

§4.7-104 Responsibility

- (1) The County Procurement Office is responsible for identifying and approving cooperative programs; ~~executing all cooperative contracts for use by County departments.~~ The County Procurement Office may authorize and make use of cooperative contracts and programs including the pricing, terms and conditions of the contract of another public entity provided that:
- a) Except as permitted pursuant to Section 4.7-104(3), the initial procurement the County is relying upon shall be consistent with County procurement rules and requirements, which shall include specific descriptions of the commodities, capital assets and/or services available under the cooperative contract; and,

- a) ~~The initial procurement the County is relying upon is consistent with County purchasing rules and requirements, which shall include specific descriptions of the commodities and services available under the cooperative contract; and,~~
 - b) The vendor holding the contract extends the same pricing, terms and conditions to the County.
- (2) Before deciding whether or not to use the contract of another public entity or program, Deputy Purchasing Agents will ~~conduct an analysis~~review 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. Deputy Purchasing Agents shall ensure that all terms and conditions associated with the cooperative agreement to which the subordinate contract will be subject, are reviewed and incorporated as appropriate as part of this review analysis and approval process. Should multiple vendors possess a cooperative contract for the same services/products, a pricing analysis will be conducted to ensure the most advantageous contract is utilized.
- (3) For ~~software commodity and capital asset purchases, as defined in Sections 3.1--101 and Section 3.2-101 respectively~~respectively, subordinate to cooperative contracts with a contract value of \$250,000 annually or less, the requirement for a “specific description” as stated in Section 4.7-104 (1) a) shall not apply as long as the ~~specific~~ item and name of the ~~software company commodity and/or capital asset is~~are listed within the cooperative contract. Such contracts shall be considered to have satisfied the written solicitation requirement in this manual.

~~(3)~~

§4.7-105 Board Approval

- (1) Individual departments utilizing cooperative contracts to purchase services and commodities are required to receive Board approval on individual purchases that exceed the established dollar thresholds for the appropriate contract types as set forth in Section 3 of this manual.

§4.7-106 Term

- (1) The duration of a contract executed as a subordinate to a cooperative contract will depend upon the County’s need, prevailing market conditions, contract start-up costs, and the County’s best economic interest.
- (2) ~~Term:~~ With respect to non-Board of Supervisors awarded contracts, in no case will a contract executed as a subordinate to a cooperative contract exceed five (5) years in duration, unless specifically approved by the Board of Supervisors.
- ~~(3) Board and Non-Board subordinate contract extensions may be issued by the Deputy Purchasing Agent for up to one (1) year, beyond the fifth year, with County Procurement Officer or designee approval, provided there are no monetary increases (i.e., within the contract’s existing contract amount). County cooperative contracts issued by department Deputy Purchasing Agents that are subordinate to non-County cooperative programs may not extend beyond five (5) years in duration, without approval by the Board of Supervisors.~~

§4.7-107 County of Orange Procurement Preference Policy Exemption

- (1) County of Orange Procurement Preference Policy requirement is not applicable to cooperative procurements.

SECTION 4.8

REGIONAL COOPERATIVE AGREEMENTS (RCAs)

§4.8-101 Definition

- (1) A Regional Cooperative Agreement (RCA) is a cooperative contract for commonly used services and commodities executed by the Office of the County Procurement Officer to take advantage of the County's economies of scale and reduce the duplication of efforts across the County.

§4.8-102 Policy

- (1) At the County Procurement Officer's discretion, the County Procurement Officer may delegate responsibility to other County departments to establish RCAs pursuant to requirements set forth by County Procurement Office.

§4.8-103 Responsibility

- (1) County departments are ~~responsible~~ required to use RCAs as stated in Section 1.1.1-102 (2) of this manual.
- (2) The County may ~~also allow local schools, cities, and~~ other public entities to take advantage of RCAs- which the County has competitively bid, although the County shall not be a signer on these contracts and shall have no legal liability to either the contracting entities or to third parties as a result of the contracts, including, but not limited to:
- a) Issuing their own contract ~~purchase~~ documents;
 - b) Providing for their own acceptance of the pricing, terms & conditions of the contract;
 - c) Obtaining required certificates of insurance, endorsements and bonds; and,
 - d) Making any payments due to the vendor.
 - e) Limitation of Liability – Orange County: The contracting entities shall hold harmless the County of Orange from all claims, demand actions, or causes of actions of every kind resulting directly or indirectly, arising out of, or in any way connected with the use of County issued cooperative contracts.
 - e)f) The Deputy ~~Purchasing~~ Purchasing Agent shall ensure the Contractor maintains a list of the County departments and public entities that have used the County's cooperative RCAs. This list shall report dollar volumes and shall be provided to the Deputy Purchasing Agent upon request.

§4.8-104 Contractor Requirements

- ~~(1) The contractor is required to maintain a list of the County departments and public entities that have used the County's cooperative RCAs. This list shall report dollar volumes and shall be provided to the Deputy Purchasing Agent upon request.~~

§4.8-105 No Usage Guarantee

- (1) The terms of the RCA shall include a provision indicating that the County of Orange makes no guarantee of usage. The County of Orange makes no guarantee of usage.

§4.8-106 Board Approval

- (1) Individual departments utilizing RCAs to ~~purchase~~ procure services are required to receive Board approval on individual ~~contracts~~ purchases that exceed the established dollar thresholds for the appropriate contract types as set forth in Section 3 of this manual; the County Procurement Officer or designee, at their discretion, may obtain Board approval on behalf of County departments.

§4.8-107 Term

- (1) The duration of a RCAs will depend upon the County's need, prevailing market conditions, contract start-up costs, and the County's best economic interest.
- (2) RCAs issued by the Office of the County Procurement Officer may extend beyond five (5) years in duration, without approval by the Board of Supervisors.
 - a) Any department subordinate contracts may be extended to the same duration as the RCAs that are issued by the Office of the County Procurement Officer.

SECTION 4.9

REQUEST FOR APPLICATION (RFA) ~~—HUMAN SERVICES~~§4.9-101 Definition

- (1) When it is not in the County's best interest to acquire ~~human~~-services and commodities through one or more of the other ~~competitive bidding~~solicitation processes specified in Section 4 of this manual, ~~a Human Services Contract~~ services and commodities may be solicited using the Request For Applications (RFA) process. Such a situation may arise for any number of reasons including, but not limited to:
- a) The County's need for services may exceed the available supply of ~~vendors~~applicants;
 - b) The County's need is to secure as many prospective qualified applicants~~vendors~~ as possible;
 - c) The County's need is for specialized service by licensed or certified applicants~~vendors~~; and/or
 - d) The solicitation may remain open for longer periods of time, or indefinitely to allow qualified applicants~~vendors~~ to obtain required certifications or meet the minimum requirements set forth in the solicitation.

§4.9-102 RFA Requirements

- (1) The RFA shall consist of the following:
- a) Adequate Public Notice: ~~—~~Adequate public notice shall be given to provide potential applicants sufficient time to prepare and submit applications by the due date specified in the RFA.
 - b) Requirements Statement: This will be a statement of the County's objectives in issuing the solicitation. It shall explain the County's need(s) as clearly as possible. It may include any special requirements which the County may have in regard to its overall objectives, such as requests for special reports, critical timelines, unique services to be provided, cost or pricing data required, duration of service, etc.
 - c) Qualification/Certification Statement: The County will include minimum qualification criteria in the RFA. The criteria will be utilized to ensure a certain level of expertise and/or certification.
 - d) Terms and Conditions: The terms and conditions which are intended to become part of the final contract shall be included in the RFA. Included in the terms and conditions are such items as indemnification, contract termination, payment terms, applicable laws, etc.
 - e) Instructions: These are items which relate directly to the procedures on how the application must be submitted. Included in the instructions are items related to number of submittals required, format, procedure for information clarification, etc.

- f) Indemnification: Where the County may have exposure to an appreciable risk of financial or property loss as the result of the performance ~~of the Human Services Contract~~ by vendor, the RFA must specify that the terms and conditions which are intended to become part of the final contract include a requirement that vendor indemnify, defend and hold harmless the County against and from such risk.
- g) Insurance: The RFA must specify that the County may require that prior to the award of a final contract, the selected applicant submit an insurance certificate that will be in an amount adequate to protect the County and will name the County as an additional insured. The RFA must clearly specify the County's insurance requirements as recommended by CEO/Risk Management.
- h) Application Review and Award Criteria: An administrative review of the applications submitted by interested vendors must be performed to ensure they meet the instructions and minimum requirements specified in the RFA. Those applications that meet the instructions and minimum requirements will be considered for contract award. The County department and/or agency issuing the RFA may make contract awards on a continuous basis and up until it has been determined that the needs of the department or agency have been met.

§4.9-103 Vendor Advisory Lobbying

- (1) All RFAs will include as part of their language the following vendor advisory: "The County of Orange does not require and neither encourages nor discourages the use of lobbyists or other consultants for the purpose of securing business."

§4.9-104 Pre-Application Conference

- (1) When it is in the County's best interest, a pre-application conference may be held. The purpose of the conference will be to further define or illustrate the County's needs and/or to answer any questions which may exist on the part of prospective applicants. Any changes, deletions, additions, or clarification to the RFA that may result from the pre-application conference shall be issued as an addendum and sent to all prospective applicants. Pre-application conferences shall not be mandatory for prospective applicants unless it is clearly in the County's best interest and specifically stated in the RFA.

§4.9-105 Receipt and Acceptance of Applications

- (1) Applications are to be received by the date and time specified in the RFA. Applications shall be unconditionally accepted without alteration or correction. All applications must be received by someone other than the person who conducted the solicitation and must be time and date stamped immediately upon receipt. All applications must be kept in a secure locked location for access by only authorized personnel.
- (2) Late applications may be accepted depending on the best interest of the County. No application will be accepted which is received by the County Procurement Officer or Deputy Purchasing Agent later than 24 hours from the due date and time specified in the RFA. The designated Deputy Purchasing Agent in the RFA, for purposes of administering the RFA, will have sole discretion in deciding to accept late applications. In the event the designated Deputy Purchasing Agency accepts

a late application, he or she must also accept all applications that are received within 24 hours of the specified date and time.

§4.9-106 Waivable Informalities

- (1) When considered in the best interest of the County, certain requirements specified in the RFA may be waived by the County Procurement Officer or the designated Deputy Purchasing Agent in the RFA. Examples of waivable informalities include such items as:
 - a) Failure by an applicant to submit information as a result of clerical error;
 - b) Failure by an applicant to sign or date the application; and/or,
 - c) Failure by an applicant to submit the requested number of application copies.
- (2) Waivable informalities will be considered on a case-by-case basis, and a waiver will be granted only when in the County's best interest.

§4.9-107 Confidentiality

- (1) The RFA must advise that prospective applicants are not to mark their applications as confidential or proprietary, and that applications submitted in response to a RFA may be subject to public disclosure in accordance with the California Public Records Act. The RFA must also advise that all applications and attached documents shall become the property of the County, and that the County reserves the right to make use of any information or ideas in the applications submitted unless such use is prohibited by law.
- (2) The RFA must advise that regardless of any identification otherwise, including marking some or all pages as "confidential" or "proprietary", information in applications shall become a part of County's record and subject to possible public disclosure without further notice to the applicant.
- (3) The RFA must advise that the County shall not in any way be liable or responsible for the disclosure of any such records.

§4.9-108 Protest Process—RFA

- (1) In accordance with Section 1.3 of this manual, any actual or prospective applicant or contractor who alleges a grievance by an error or impropriety in the solicitation or award of a contract may submit a grievance or protest to the appropriate department Deputy Purchasing Agent administering the RFA.

§4.9-109 Presentations/Interviews

- (1) Interviews may be conducted when deemed necessary to verify an applicant's qualifications/certifications and to verify requirements, as set forth in the RFA, have been met. Such interviews will be conducted by the appropriate County department staff for applicant(s) who have submitted a responsive application.
 - a) Applicants shall be given fair and equal treatment with respect to any opportunity for discussion and revision to their applications;

- b) Discussions with applicants will be recorded either in writing or digital media, and that record will become part of the procurement file; and
- c) In conducting interviews, there shall be no disclosure of any information derived from applications submitted by other applicants.

§4.9-110 Scope of Work Revisions

- (1) If discussions reveal the need to change the RFA's original scope of work, either an addendum detailing the revised scope will be sent to all those submitting applications, or, if appropriate, the County will issue a revised RFA and begin the solicitation process again. The County Procurement Officer or appropriate Deputy Purchasing Agent shall be the final authority as to which process will be used.

§4.9-111 Award

- (1) Award of contract(s) will be made by the Board of Supervisors to applicants whose applications meet the County's requirements. Awards may be made on a continuous basis until the needs of the County have been met. ~~Contract~~ awards shall be submitted for Board of Supervisors (Board) approval in accordance with Section ~~3.4-1083.3-102~~ of this manual.
- (2) All ~~Master Agreements~~ Contracts will be submitted to the Board in accordance with Section ~~3.4-1083.3-102~~ of this manual. When requesting Board of Supervisors' approval of a ~~Master Agreement~~ Contracts, the initial applicant(s) will also be brought to the Board for approval. The County department or agency may request, in the Agenda Staff Report (ASR), the delegated authority to add future applicant(s) to the ~~Master Agreement~~ Contract, without further Board approval, provided the original, Board approved, dollar amount on ~~Master Agreement~~ the Contract is not exceeded.

SECTION 5 – GLOSSARY

SECTION 5

GLOSSARY

1. Addendum: A written change, addition, alteration, correction or revision to a bid, proposal or contract document.
2. Agenda Staff Report (ASR): A document by which matters are submitted to the Board of Supervisors for consideration during its regular meetings.

~~Aggregate Amount: Total amount of contract between multiple contractors.~~

~~Aggregate Contract: Multiple contracts between more than one contractor and the County, for the same service or commodity.~~

~~Alternative Delivery Method: Procurement Method selecting a contracting team for design and construction using the design build, construction manager at risk, and job order contracting for the construction of a public works project pursuant to a competitive negotiation process to establish the best value.~~

3. Amendment: An agreed addition to, deletion from, correction or modification of a document or contract.
4. Appeal: A written notice of disagreement, signed by a person of authority, from a protestor to the County Procurement Officer in appealing a decision of department Deputy Purchasing Agent.
5. Arbitration: A process by which a dispute between two contending parties is presented to one or more disinterested parties for a decision; a process whereby a disagreement is resolved.

6. Architect-Engineer: ~~s~~Services include but are not limited to: architectural, landscape architectural, engineering, environmental, land surveying services, and construction project management as well as incidental services that members of these professions may logically or justifiably perform.

6.7. Award: The ~~execution presentation~~ of a ~~purchase~~ contract ~~or contract~~ to a ~~vendor~~ bidder ~~or proposer~~.

7.8. Best Interest: The discretionary rationale used by a ~~purchasing~~ procurement official in taking action most advantageous to the jurisdiction when it is impossible to adequately delineate a specific response by law or regulation.

8.9. Best Practice: A business process, activity or operation that is authorized by the County Procurement Officer.

9.10. Bid: The offer submitted by a bidder in response to an Invitation for Bid (IFB), a request for quotation, or a two-step ~~bidding solicitation process~~ procedure. A bid includes a cost for commodities or services to be provided per the specifications included in the bid solicitation issued by the County.

10.11. Bid Bond: An insurance instrument in which a third party agrees to be liable to pay a certain amount of money in the event that a specific bidder, if its bid is accepted, fails to accept the contract as bid.

~~11.~~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.

~~12.~~13. Bid Surety: A guarantee, in the form of a bond or deposit, that the bidder, if awarded a contract will accept the contract as bid, otherwise the bidder (in the case of a deposit) or the guarantor (in the case of a bond) will be liable for the amount of the deposit or bond, respectively.

~~13.~~14. Bidders List: A list maintained by the county's bidding system setting out the names and addresses of suppliers-vendors of various services and commodities from whom bids, proposals, and quotations can be solicited.

~~— Bonds: **Payment Bond**—a legal contract, a type of bond, that guarantees certain employees, subcontractors, and vendors are protected against non-payment; **Performance Bond**—a bond issued by a bank or other financial institution, guaranteeing the fulfillment of a particular contract.~~

~~14.~~15. Brand Name: A name which serves to identify a product of a particular manufacturer; a trade name.

16. Business Day: ~~Any day including~~ any day during which normal business operations are conducted.

~~15.~~17. Calendar Day: Every day shown on the calendar, including Saturdays, Sundays and holidays.

~~16.~~18. Capital Asset: A tangible property costing \$5,000 or more per unit, including tax, delivery and installation, with a useful life expectancy exceeding one (1) year.

19. California Environmental Quality Act (CEQA): A 1970 California state law which requires state and local government agencies to inform decision makers and the public about the potential environmental impacts of proposed projects or actions that are subject to a discretionary approval before they are approved, and to reduce the environmental impacts of proposed projects or actions to the extent feasible.~~A California statute passed in 1970 and signed in to law by then Governor Ronald Reagan, shortly after the United States federal government passed the National Environmental Policy Act, to institute a statewide policy of environmental protection.~~

20. Cash Alternatives: Gift cards, gift certificates, gift vouchers, etc. to purchase travel and food for non-employee County department clients receiving services from the County.

~~17.~~21. Change Order: See Modification.

~~18.~~22. Closing Date/Time: Refers to the date and time for a bid or proposal closing.

~~19.~~23. Cloud Computing: The delivery of software/applications/infrastructure and other resources providing remote or on-demand network access to remote servers, or applications hosted on the Internet to conduct business operations. This may include the storage, management, and processing of data (e.g., Platform as a Service (PaaS), allows for the development, management, and delivery of applications without infrastructure, Infrastructure as a Service (IaaS) provides virtualized computing resources over the Internet or Software as a Service (SaaS) functionally delivers software applications over the Internet).

- ~~20~~24. Collusion: A secret contract or cooperation between two or more persons to accomplish a fraudulent, deceitful or unlawful act.
- ~~21~~25. Commodities: All supplies and all equipment costing less than \$5,000 per item, including tax and freight, etc., or more than \$5,000 but with a useful life of less than one (1) year.
- ~~22~~26. Competitive Process: The process by which two or more vendors vie to secure the business of a purchaser by offering the most favorable terms as to price, quality, delivery, and/or service.
- ~~23~~27. Compliance Monitoring: A process whereby the County Procurement Officer, or designee, selects and ~~reviews audits~~ procurement transactions conducted by departments for the purpose of ensuring that the County purchasing-procurement process is fair, ~~and efficient~~, and compliant with legal requirements and County policies and procedures.
- ~~24~~. Confirming Order: A purchase order written and sent to a vendor to verify that an order which was transmitted orally is authorized.
- ~~25~~28. Conflict of Interest: A situation where the personal interests of a contractor, public official and/or designated employee are/is, or appear to be, at odds with the interests of the jurisdiction.
- ~~26~~29. Consent Agenda Items: Those agenda items, as identified by the CEO and the Board of Supervisors, which are placed in the section of the Board of Supervisors agenda for approval as a group of items. Items on the Consent Calendar may be pulled by the Board, County staff, or a member of the public for discussion and individual Board action.
30. Construction: Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility paid for using public funds; Painting or repainting of any publicly owned, leased, or operated facility.
31. Construction Manager at Risk (CMAR): an alternate project delivery method which entails a commitment by the Construction Manager (CM) to deliver the project within a Guaranteed Maximum Price (GMP).
- ~~27~~32. Consultant: A person or firm who provides professional or expert advice and/or recommendations.
- ~~28~~33. 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~~34. Contract: (1) A deliberate verbal or written legally enforceable agreement between two or more parties or more competent persons to perform do or not to perform a specific act or acts do a certain thing, which meets the requisite statutory elements of: (a) Parties capable of contracting, (b) Consent, (c) A lawful object and (d) A sufficient cause or consideration. Cal. Civ. Code §§ 1549-1550; 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.

- 30.35. Contract Administration: The management of various ~~facets-aspects~~ 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.
- 31.36. Contract Award: The ~~act of executing a final signed agreement contract on the terms and conditions of a contract~~ between ~~the County and a vendor, a buyer and seller.~~
- 32.37. Contract Extension: An action to extend a contract ~~termination date~~ upon written mutual agreement by both parties.
- 33.38. Contract Renewal: A renewal clause allows ~~an agreement contract~~ to continue for a defined ~~term~~period.
39. Contract Task Order: ~~a~~A contract for A-E services that includes, price, and scope for the performance of tasks during the period of the A-E On-Call contract.
- 34.40. Cooperative Procurement~~urchasing~~: ~~Cooperative Purchasing is A~~a strategy used by ~~local~~ governmental entities to ~~procure~~purchase services and commodities from contracts awarded by other governmental entities or programs to take advantage of volume purchasing discounts and reduce administrative expenses.
- 35.41. Contractor: A ~~vendor~~any person or firm having a contract with a governmental body.
- 36.42. County of Orange Procurement Preference Policy: An initiative approved by the Orange County Board of Supervisors to encourage local small businesses and disabled veteran businesses to compete in new solicitations released by the County of Orange.
43. Consumer Price Index (CPI): The Consumer Price Index measures the overall change in consumer prices based on a representative basket of goods and services over time.
- 37.44. Debarment: A shutting out or exclusion, through due process, for cause, e.g., a bidder from a list of qualified prospective bidders.
45. Department of Industrial Relations (DIR): A California state agency that monitors ~~the~~ state labor laws.
- 38.46. Deputy Purchasing Agent: An employee of the County of Orange appointed by a department head who is trained and certified/deputized under the direction of the County Procurement Officer to act in the capacity of the County Procurement Officer to procure commodities and/or services for the department.
47. Design--Bid--Build: ~~a~~A procurement method for construction projects resulting in a Fixed-Price Contract, a Fixed-Price Indefinite Quantity Contract, or a Cost Plus Fixed Fee Contract, and is required to utilize the prequalification process
48. Design Build: ~~a~~A qualification-based selection (QBS), in which both the design and construction services for a project are procured at the same time following the QBS.

~~39.~~49. Designated Employees: Those employees of the County of Orange who are required to file conflict of interest statements because those employees, in the course of their employment make or participate in the making of decisions which may potentially have a material effect on the financial interest of the employees.

50. Director: s~~Shall mean all such designated officials or departments.~~

~~40. Disabled Veteran Business Enterprise (DVBE)~~

~~1. To qualify as a DVBE, the DVBE must meet the following requirements:~~

~~a) Must be certified as a DVBE by the State of California Department of General Services (DGS)~~

~~b) DGS DVBE requirements must be valid at the time of bid/proposal submittal~~

~~41.~~51. Discount: An allowance or deduction from a normal or list price extended by a seller to a buyer to make the net price more competitive.

~~42. Discoveries: The identification of facts or documentations which are not in compliance with procurement policy or Best Practice~~

~~43.~~52. Discussion Agenda Items: Those agenda items, as identified by the CEO and the Board of Supervisors, which are placed in the section of the Board of Supervisors agenda for discussion and individual Board action. All items requiring the Board to select from a slate or a list of recommendation options, among others, are placed on the Discussion Calendar.

~~44.~~53. Dispute: A difference between a contractor and a jurisdiction over performance or other elements of a contract calling for appropriate administrative action with the intent of achieving a remedial result.

~~45.~~54. Electronic Waste (E-Waste): An electronic device powered by electricity or a battery that has a printed circuit board or video display attached that has reached the end of its useful life and is being discarded by the user. Examples include: televisions, computers, computer peripherals and components, hard drives, CD/DVD drives, printers, facsimile machines, copiers and wireless phones and devices.

~~46.~~55. Emergency: Those situations where the welfare of County residents is at stake and/or immediate purchasing-procurement action is required to prevent serious economic or other hardship to the County.

~~47.~~56. Equal or Equivalent: A phrase used to indicate the acceptability of products of similar or superior function.

~~48.~~57. Equipment: Personal property of a durable nature which retains its identity throughout its useful life.

~~49.~~58. 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.

50.59. Evaluation Criteria: Those criteria set forth in the ~~Request for Proposal (RFP)~~Solicitation and used by the evaluation committee to score and rank ~~proposers-respondents who respond to the procurement solicitation.~~

51.60. Express Warranty: Any affirmation of fact or promise made by a seller to a buyer which relates to the commodities and becomes part of the basis of the bargain.

61. Findings: The identification of facts or documentations which are not in compliance with procurement policy, procedures, or Best Practices.

62. Firms: ~~a~~A business ~~whothat~~ provides professional or technical advice or expertise which will supplement departmental expertise or advice or where an independent opinion or audit is required.

52.63. Firm Bid: A bid that binds the ~~vendor~~bidder until a ~~specified~~stipulated time of expiration of the bid.

53.64. Fixed Price Contract: A contract which provides for a firm price under which the contractor bears the full responsibility for profit or loss.

54.65. Force Account: Use of internal (County) labor.

55.66. Formal Advertising: The placement of a notice in a newspaper or other publication according to legal requirements to inform the public that the government is requesting proposal/bids on a specific ~~solicitation~~purchase it intends to make.

56.67. Formal Bidding-Process: ~~As to formal bids referenced in Sections 3.5, formal bids are those in excess of \$~~Bids in excess of the Board of Supervisors threshold, requiring a four-fifths (4/5) vote for the award the contract. The project plans and specifications shall be adopted by the Board of Supervisors, unless delegated. For all other procurements, formal bids are those that ~~The~~require a competitive bid solicitation process ~~required~~ for contracts/purchases exceeding the oral/written quote dollar thresholds. All formal solicitations will be advertised via the County's bidding system. This process may or may not requiring require a Public Bid Opening with the date, time and location set forth in the bid solicitation.

68. Government Code: The general ~~and permanent~~ laws of the State of ~~United States~~California as applied to the County of Orange and other governmental entities.

57.69. Gratuity: A payment, loan, subscription, advance deposit of monies, services or anything of more than nominal value presented or promised for consideration of a ~~purchasing~~procurement decision or recommendation.

58.70. Guarantee: To warrant, stand behind, or ensure performance or quality of services or commodities; ~~e.g., a supplier in relation to his product.~~

71. Horizontal: ~~is~~A road ~~mainenaneet~~maintenance project, such as paving, slurry seal, etc. in reference to construction or maintenance projects.

59.72. Human Services: Services which maintain or improve the social, economic, physical, or mental well-being of persons for whom the County bears such a responsibility.

~~60.~~73. Hybrid Contract: ~~Is a~~A contract which consists of multiple procurement typess-purchases.

~~61.~~74. Incremental Contracting: Contracting in small segments to avoid ~~competitive bids~~solicitation requirements or Board of Supervisors approval.

~~62.~~75. Indemnification: Protection against incurred loss, damage, or hurt, usually by monetary compensation.

~~63.~~76. Informal Bidding: ~~bids~~A process of procurement that does not exceed of the Board of Supervisors thresholds and do not require their approval to require Board approval. An unsealed competitive offer for contracts/purchases within the oral/written quoted dollar thresholds. May be conveyed by email, letter, telephone, telegram, or other means and under conditions different from those required for formal bidding solicitations.

~~64.~~77. Insurance: A contractual relationship where an insurance company agrees, for a premium paid, to reimburse the insured or other party for a loss to a specified subject caused by designated hazards or risks.

78. Interviews: FA process facilitated by the Deputy ~~Purchasing~~Purchasing Agent during a solicitation, between the evaluation committee and prospective contractor who responded to the solicitation.

~~65.~~79. Invitation for Bid (IFB): The solicitation ~~document~~process used for competitive sealed bidding for the purchase of equipment, materials, supplies, services, and construction, for which clear specifications can be written.

80. Job Order Contract (JOC): An annual contract for repair, remodeling, or other repetitive work based on unit prices, which is a firm fixed price, competitively bid, unit priced, indefinite quantity contract designed to accomplish applicable projects.

~~66. 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 commodities for shipment; the period of time needed to process purchase requisitions for bid/proposal solicitation and award of contract.~~

~~67.~~81. Liquidated Damages: Liquidated damages clauses are enforceable if: (1) damages are difficult to ascertain or estimate at the time the contract is formed; and (2) the amount is a reasonable forecast of compensatory damages in the case of breach. Specifically, if the liquidated damages amount significantly exceeds the amount of damages prospectively probable, the liquidated damages clause may not be enforceable. Thus, liquidated damage clauses may be included in service contracts when the County could suffer financial loss due to delays in performance.— Consistent with legal requirements, the amount of damages listed in the contract must be a “reasonable forecast” of the County’s actual damages.

~~68.~~82. Lobbyist: Any person who receives compensation of \$500.00 or more in any calendar month for engaging in lobbying activities or is employed by his or her employer and receives compensation of \$500.00 or more in any calendar month for engaging in lobbying activities, as defined in Article 5 Sec. 1-1-80 of the Orange County Codified Ordinances.

83. Maintenance Work: Routine, recurring, and usual work for the preservation or protection of any publicly owned or publicly operated facility for its intended purpose, including: minor repainting; resurfacing of streets and highways at less than one inch; landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems; work performed to keep, operate, and maintain publicly owned water, power, or waste disposal systems, including, but not limited to, dams, reservoirs, power plants, and electrical transmission lines of 230,000 volts and higher.
69. ~~Milestones: Designated steps of the planned acquisition which usually signify a completion of a requirement or delivery of materials.~~
- 70.84. Modification: A ~~written non-material~~non-material change that does not require order signed by the County Procurement Officer or Deputy Purchasing Agent, and by the Director of OC Public Works and OC Sheriff's Department for change orders to Public Works contracts, directing the contractor to make changes to the original contract. A change made to a document in the County System of Records. This type of change is distinguished from an amendment which requires signatures of contracting both parties.
71. ~~Multi-Department Contracts: Those contracts issued by the County Procurement Officer or department Deputy Purchasing Agents for the purchase of services and commodities, which may be used by more than one department of the County under the condition that the department is named on the contract as an authorized user.~~
- 72.85. Negotiation: The discussion or correspondence between the County and ~~the preferred a~~ contractor in order to develop a contract with terms and conditions that serve the best interest of the County.
73. ~~OC Local Small Business (OCLSB) shall meet (1) and (2) below:~~
- ~~(1) Local Business requirements:~~
- ~~a) maintains their principal center of operations (i.e. headquarters) within Orange County, and;~~
- ~~b) has:~~
- ~~i. a business address located in the County of Orange that is not a post office box, or~~
- ~~ii. a valid business license or certificate of occupancy issued by the County of Orange or by an Orange County city, or other documentation acceptable to the County of Orange.~~
- ~~(2) Small Business requirements:~~
- ~~a) must be certified as a Small Business by the State of California Department of General Services (DGS); and,~~
- ~~(3) OCLSB requirements must be valid at the time of bid/proposal submittal.~~
- 74.86. One-Time ~~PurchasesContract~~: ~~Procurementsurchases~~ for particular commodities or services which cover a particular need. These types of ~~procurements-purchases~~ are distinguished from annual or blanket contracts which cover a continuing need of an item or service.

- 75.87. Opportunity Buys: A situation where necessary commodities, capital assets, or services are for sale at significantly reduced rates from what is normally offered in the general market or where an alternative product to the one being bid represents significant savings.
76. ~~Original Contract Term: The period of time first specified in the contract at the time the contract was first completed initially established. , which includes any renewals. (e.g., The initial term of this Contract shall become effective upon execution of all signatures, and shall continue for one (1) year that date, unless otherwise terminated as provided herein. Contract may be renewed upon expiration for four (4) additional years, upon mutual agreement of both parties.)~~
88. Payment Bond: A legal contract, a type of bond, that guarantees certain employees, subcontractors, and vendors are protected against non-payment.
- 77.89. ~~Performance Surety Bond: See Bonds~~ Performance Bond: A bond issued by a bank or other financial institution, guaranteeing the fulfillment of a particular contract.
- 78.90. 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.
79. ~~Pre-Bid/Pre-Proposal Conference: A meeting set up between the County parties issuing a bid/proposal solicitation and the potential bidders/respondents~~ 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.
- 80.91. Prequalification: A process used prior to solicitation of bids to determine if potential vendors/bidders have the ability to fulfill the contract requirements for which the solicitation will be issued and/or to determine if the potential vendors' bidders' products will meet the cost and performance criteria required to meet the County's needs.
92. Prevailing Wage: The California Department of Industrial Relations determines that the general prevailing rate of per diem wages for a particular craft, classification, or type of worker is uniform throughout an area, the director issues a determination enumerated county by county, but covering the entire area.
- 81.93. Procurement Appeals Board: A body comprised of County department senior management and a member of the public chaired by the County Procurement Officer for the purpose of hearing vendor protests to a specific County procurement process.
- 82.94. Procurement Council: A committee of County employees appointed by department heads and chaired by the County Procurement Officer to discuss purchasing-procurement issues and make recommendations regarding County-wide purchasing-procurement policies and procedures.
- 83.95. Proposal: The ~~executed~~ document submitted by a respondent proposer in response to a Request for Proposal (RFP). A proposal includes a detailed description of the commodities or services to be provided to the County per the scope of work included in the Request for Proposal (RFP), including, but not limited to cost, time frame for completion of work or delivery of commodities, and method of accomplishment of services.

84. ~~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.~~
- 85.96. ~~Proprietary Product: An item or service that must meet particular restrictive specifications, but may be available from multiple sources. 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”.~~
- 86.97. ~~Protest: A written objection of grievance from an actual or prospective bidder who alleges an error or impropriety in the solicitation or award of a contract.~~
- 87.98. ~~Public Bid Opening: The process of opening and reading bids at the time and place specified in the solicitation and in presence of anyone who wishes to attend.~~
99. Public Contract Code: ~~applies~~ Statutory authority applicable in one respect or another to virtually all public entities in California in relation to certain procurements. Pursuant principally to the California Public Contract Code, with limited exceptions, public agencies have a duty to publicly bid certain contracts, particularly construction contracts.
100. Public Works Procurements: Contracts procured via Sections 3.4 or 3.5 of this CPM.
101. Public Works Project: Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility paid for using public funds; painting or repainting of any publicly owned, leased, or operated facility.
102. Qualified Vendor List (QVL): ~~a~~ A list of qualified A-E firms that have been deemed responsive through the Request for Qualification (RFQ) process.
- 88.103. ~~Real Property-Estate Contracts: Legal agreements instruments necessary to effectuate a real estate transaction such as a lease, license, easement, grant deed, or other similar document, but shall not include procurement contracts related to services provided for the transaction nor departmental issued permits, such as County construction permits or encroachment permits. This ~~includes~~ acquiring, leasing, licensing constructing, operation, and maintaining County-owned or County-occupied facilities and assets. Agreements-Contracts concerning the purchase or use of County owned or private sector parking spaces are considered real property-estate contracts.~~
- 89.104. ~~Regional Cooperative Agreement (RCA): An RCA is a~~ cooperative contract for commonly used services and commodities executed by the Office of the County Procurement Officer or designee to take advantage of the County’s economies of scale and reduce the duplication of efforts across the County.
105. Rejection of Bid(s): The non-acceptance of submitted bid(s).
- 90.106. ~~Request for Information (RFI): A request for information is used to obtain price, delivery, other market information, or capabilities for planning purposes. Responses to request for information notices are not offers and cannot be accepted by the County to form a binding contract unless otherwise specified in the solicitation.~~

91,107. Request for Proposal (RFP): The solicitation ~~method document which that~~ includes a scope of work and terms and conditions used to secure proposals for services or commodities not clearly defined by the County in terms of exact specifications or manner of delivery of services or where price is not the sole selection criteria.

92,108. Request for Qualifications (RFQ): A solicitation ~~method, which that~~ describes the project or services required and solicits qualifications from potential vendors or contractors for purposes of evaluating those qualifications for screening or for award of contract.

93,109. 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.

94,110. Responsive Bidder: A bidder whose bid conforms in all material respects to the terms and conditions, the specifications and other requirements of the solicitation.

95,111. Retroactive Contract: ~~When goods and services have been ordered, performed or delivered without a requisition and/or contract in place. An unauthorized purchase or commitment made to a supplier/vendor without an approved written contract in place prior to delivery of any commodities and/or services.~~

112. Requesting Department: A County agency, which requests goods and services procured by the Deputy Purchasing Agent.

96,113. Services: The furnishing of labor, time or effort by a contractor involving the delivery of a specific performance.

97,114. Sole Source: A ~~procurement of an award for~~ a commodity or service to the only known capable ~~supplier/vendor~~, occasioned by the unique nature of the requirement, the ~~supplier/vendor~~, or market conditions.

98,115. Sole Source Justification: A document submitted by department staff for approval to contract with a particular party without competitive bidding.

99,116. Solicitation: A good faith effort to obtain a bid or proposal for the provision of commodities or services.

100,117. ~~Specifications: A description of what is requested to be procured 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.~~

101. ~~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.~~

118. Statement of Qualifications (SOQ): a submitted response to a Request for Qualifications.

102. ~~Steering Committee: A committee which assists in contract administration usually in a management or consulting contract.~~

~~103. Subcontractor: A vendor who is performing work on behalf of the contractor. Any person undertaking part of the work under the terms of the contract, by virtue of a separate contract between the contractor and subcontractor.~~

~~104. Supplier: An actual or potential contractor; a vendor.~~

~~105.~~119. Surplus County Department Property: Tangible supplies, materials or equipment to which the County acquired title by means of purchase, donation, grant, or other lawful means, that a County department has determined is no longer needed by the department.

~~106.~~120. Surplus County Property: Surplus County Department Property that the County Procurement Officer or designee has determined is not needed for public use by any other County department.

121. Task Order: a contract for Job Order Contracts that includes, price, and scope for the performance of tasks during the period of the contract.

~~107.~~122. 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.

~~108.~~123. Terms of Payment: Methods and timelines by which the County must render payment under a-purchase contract.

124. Two Step Solicitation: A method of soliciting services and commodities where a preliminary evaluation of the respondent's qualifications is conducted, and a final evaluation for recommendation of award is made based on the RFP process.

125. Unilateral Procurement-Contract: A vehicle to pay for critical, ongoing services provided by exclusive entities within a County geographical area that is not subject to County's standard terms and conditions (i.e., utility services). The payment mechanism for unilateral procurements include, but are not limited to: Procurement card(s), County financial system documents, request for checks, etc.

~~A document utilized by the County as a vehicle to pay for critical, ongoing services provided by exclusive entities within a County geographical area that is not subject to County's standard terms and conditions (i.e. utility services).~~

~~109. Using Department: A unit of the County which utilizes good and services procured by the Deputy Purchasing Agent.~~

~~110.~~126. 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.

~~111. Vendors List: See Bidders List.~~

127. Vertical: eConstruction projects that include constructing a building or performing work to a building or structure.

~~112.~~128. _____ Waiver of Bid(s): A process authorized by law or rule whereby the County Procurement Officer or Deputy Purchasing Agents may procure items without competitive ~~bidding~~ solicitation procedures because of unique circumstances related to a particular need or procurement.

~~113.~~129. _____ 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~~ respondents.

~~114.~~130. _____ Warranty: A representation of utility, condition, and durability made by a bidder or proposer for a product offered.

RESOLUTION OF THE BOARD OF SUPERVISORS OF
ORANGE COUNTY, CALIFORNIA AND THE BOARD OF SUPERVISORS, ACTING AS
THE GOVERNING BOARD OF THE ORANGE COUNTY FLOOD CONTROL DISTRICT
OCTOBER 31, 2023

WHEREAS, pursuant to California Public Contract Code Section 20125, the Board of Supervisors of the County of Orange (“County”) shall cause advertisements for bids for the performance of public works to be published in the manner set forth in the Government Code; and

WHEREAS, pursuant to California Public Contract Code Section 21020.2, the Board of Supervisors of the Orange County Flood Control District (“District”) shall advertise contracts for any improvement or unit of work done on behalf of the District in the manner set forth in California Public Contract Code Section 21020.2; and

WHEREAS, the County has charged OC Public Works to serve the citizens of Orange County by providing a safe environment and enhanced quality of life through improvements to and maintenance of public infrastructure; and

WHEREAS, the County strives to deliver services to the citizens of Orange County in an efficient and cost-effective manner;

NOW, THEREFORE, BE IT RESOLVED that this Board acting on behalf of the County of Orange and the Orange County Flood Control District does hereby:

1. Authorize the Director of OC Public Works, Sheriff-Coroner, or those qualified County officials or department designees identified by the Director of OC Public Works or the Sheriff-Coroner, to advertise bids, which includes adopting plans, specifications, and working details, in the manner set forth in Public Contract Code Section 22037 for the performance of public projects described in Public Contract Code Section 22032(c) (“Public Works Projects”) on behalf of the County.
2. This authorization shall not extend to: (1) contracts for Public Works Projects subject to state or federal funding requirements that require action by the Board of Supervisors; (2) contracts for Public Works Projects performed on behalf of other public entities; or (3) contracts for Public Works Projects performed by or on behalf of the District.

Resolution No. _____, Item No. _____

Page 1 of 1



County Executive Office

Memorandum

October 30, 2023

To: Clerk of the Board of Supervisors
From: Frank Kim, County Executive Officer
Subject: Exception to Rule 21

Digitally signed by Frank Kim
DN: cn=Frank Kim, o=County of
Orange, ou=CEO,
email=frankkim@ocgov.com,
c=US
Date: 2023.10.31 09:07:39 -07'00'

RECEIVED
2023 OCT 31 PM 1:05
CLERK OF THE BOARD
COUNTY OF ORANGE
BOARD OF SUPERVISORS

512D

The County Executive Office is requesting a Supplemental Agenda Staff Report for the November 7, 2023, Board Hearing.

Agency: County Executive Office
Subject: Approve 2023-2026 Memorandum of Understanding with American Federation of State, County and Municipal Employees
Districts: All Districts

Reason Item is Supplemental: The parties are in the process of finalizing the language of the successor Memorandum of Understanding. A tentative agreement was reached by the parties on October 19, 2023, and the Agenda Staff Report and attachments were finalized after the filing deadline to the Clerk of the Board.

Justification: This item needs to be on the supplemental agenda on November 7, 2023, to avoid an unfair labor practice charge.

Concur:
Donald P. Wagner, Chairman of the Board of Supervisors


cc: Board of Supervisors
County Executive Office
County Counsel

Agenda Item
Clerk's Use Only

S12D



SUPPLEMENTAL AGENDA ITEM AGENDA STAFF REPORT

MEETING DATE: 11/07/2023
LEGAL ENTITY TAKING ACTION: Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S): All Districts
SUBMITTING AGENCY/DEPARTMENT: County Executive Office
DEPARTMENT HEAD REVIEW: 
DEPARTMENT CONTACT PERSON(S): Colette Farnes (714) 834-2836
 Jamie Newton (714) 834-2247

RECEIVED
 2023 OCT 31 PM 1:05
 CLERK OF THE BOARD
 COUNTY OF ORANGE
 BOARD OF SUPERVISORS

SUBJECT: Approve 2023-2026 Memorandum of Understanding with the American Federation of State, County and Municipal Employees

CEO CONCUR


Digitally signed by Frank Kim
 DN: cn=Frank Kim, o=County of
 Orange, ou=CEO,
 email=frank.kim@ocgov.com,
 c=US
 Date: 2023.10.31 09:06:49 -0700

CEO Signature

COUNTY COUNSEL REVIEW

Approve as to form

Action

DocuSigned by:
 Mehul Daftary

A1EEC10B5F224FE

County Counsel Signature

CLERK OF THE BOARD

Discussion

3 Votes Board Majority

Budgeted: N/A**Current Year Cost:** See Financial
Impact Section**Annual Cost:** See Financial
Impact Section**Staffing Impact:** No**# of Positions:** N/A**Sole Source:** N/A**Current Fiscal Year Revenue:** N/A**Funding Source:** See Financial Impact Section**County Audit in last 3 years** No**Levine Act Review Completed:** N/A**Prior Board Action:** N/A**RECOMMENDED ACTION(S)**

1. Approve and adopt the attached 2023-2026 Memorandum of Understanding between the County of Orange and the American Federation of State, County and Municipal Employees, Council 36, Local 2076, AFL-CIO for the period of June 30, 2023, through June 25, 2026.
2. Authorize the County Executive Officer or designee to execute the attached 2023-2026 Memorandum of Understanding between the County of Orange and the American Federation of State, County and Municipal Employees, Council 36, Local 2076, AFL-CIO for the period of June 30, 2023, through June 25, 2026.

SUMMARY:

Approval and adoption of the 2023-2026 Memorandum of Understanding between the County of Orange and the American Federation of State, County and Municipal Employees, Council 36, Local 2076, AFL-CIO for the Eligibility Workers Unit will ratify the terms and conditions of employment.

BACKGROUND INFORMATION:

The American Federation of State, County and Municipal Employees, Council 36, Local 2076, AFL-CIO represents approximately 1,524 positions employed in two classifications (i.e., Eligibility Technician and Employment and Eligibility Specialist) within two County departments (Social Services Agency and Health Care Agency).

The previous Memorandum of Understanding (MOU) for the terms and conditions of employment for the Eligibility Workers Unit was June 21, 2019, through June 29, 2023. On June 22, 2023, representatives from the County and AFSCME commenced the meet and confer process to negotiate a successor MOU.

Following months of good faith negotiations, the parties reached a tentative agreement on October 20, 2023, regarding the proposal under consideration by your Honorable Board of Supervisors (Board). It is anticipated the membership of AFSCME will ratify the proposed agreement by October 26, 2023. Human Resource Services requests your Honorable Board's approval and adoption of the 2023-2026 Memorandum of Understanding.

This agreement reflects the Board's desire to maintain a competitive standing among comparable Southern California counties and cities for recruitment and retention purposes.

A summary of the significant deal points in the 2023-2026 MOU include:

Term

Three-year term from June 30, 2023, through June 25, 2026.

Wages

- Effective the first day of the first full pay period following Board adoption, the salary schedules will be increased by 4.75 percent.
- Effective June 28, 2024, the salary schedules will be increased by 4.25 percent.
- Effective June 27, 2025, the salary schedules will be increased by 4.00 percent.

Health Reimbursement Arrangement

- Effective the first day of the first full pay period following Board of Supervisors adoption of MOU, a Health Reimbursement Arrangement (HRA) will be made available for current and future employees in this bargaining unit.
- Effective the first day of the first full pay period following Board of Supervisors adoption of MOU, the County will contribute to the HRA, \$60.00 per pay period for each regular, limited-term and/or probationary employee and \$30.00 for each part-time employee (scheduled to work at least 40 hours per pay period).
- County contribution to the HRA will be increased by 2.5% annually, each first full pay period beginning July 2024.

Insurance – AFSCME Insurance Trust Fund

County agrees to reopen negotiations during the term of this MOU, but no earlier than one (1) year from ratification, concerning County contribution amounts to the Union's Trust upon AFSCME's notice and submission of documentation that shows a marked decline in the trust fund balances or a marked increase in insurance premiums.

Premium Pay

Effective the first day of the first full pay period following Board of Supervisors adoption of MOU, employees who work an assigned shift at Central Jail/Intake/Release Center, Theo Lacy Facility, and James A. Musick Facility shall in addition to his/her regular salary, be paid a jail salary supplement of an additional seventy-five cents (\$0.75) per hour for each hour and partial hour actually worked at one of the listed jail facilities during an assigned shift.

Holidays

Observe Native American Day holiday in lieu of Columbus Day.

Release Time for Health and Welfare Trustees

- Provide up to 90 minutes of paid release time (limited to six (6) times annually) for three (3) employees who are trustees of the AFSCME Health and Welfare Trust to attend bi-monthly Board of Trustee meetings.
- Provide, annually, up to three (3) days of paid release time for three (3) employees to attend a trustee continuing education conference.

Miscellaneous

The proposed MOU includes all negotiated financial and language changes indicated as red-line changes. Other changes include an agreement to:

- Allow use of bereavement leave to be extended beyond six months from the date of the loss to 12 months, provided an employee obtained written approval from a supervisor within six months of the loss;
- Establish an Insurance working group to discuss a redesign of the Wellness Credit program;
- Establish a Leave Language working group to clarify language regarding leaves of absences and streamline language for understandability;
- Extend a probationary period when an employee is placed on administrative leave;
- Revise MOU language to reflect that probationary release grievances alleging discrimination are not referable to arbitration;
- Update objectives in the Performance Evaluation Working Group;
- Update the General Provisions of the Union-Management Council;
- Amend Distribution of Overtime process; and
- Incorporate side letters into the contract.

FINANCIAL IMPACT:

The estimated total cost incurred over the term of the MOU is \$30.5M, \$26.2M of which is Net County Cost (NCC). The estimated cost of \$4.2M (\$3.6M NCC) will occur in FY 2023-24; \$11.0M (\$9.4M NCC) will occur in FY 2024-25; \$15.3MM (\$13.1M NCC) will occur in FY 2025-26.

STAFFING IMPACT:

N/A

ATTACHMENT(S):

Attachment A – 2023-2026 AFSCME MOU

Attachment B – 2023-2026 AFSCME MOU (red line version)

Attachment C – October 20, 2023, Signed Deal Points (Tentative Agreement)

MEMORANDUM OF UNDERSTANDING ELIGIBILITY WORKER UNIT

2023-2026

COUNTY OF ORANGE

AND

AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES
COUNCIL 36, LOCAL 2076, AFL-CIO

MEMORANDUM OF UNDERSTANDING
2023– 2026
COUNTY OF ORANGE
AND
AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES
COUNCIL 36, LOCAL 2076, AFL-CIO
FOR THE
ELIGIBILITY WORKER UNIT

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PREAMBLE

Section 1. Recognition

Pursuant to the provisions of the Employee Relations Resolution of the County of Orange and applicable State Law, American Federation of State, County and Municipal Employees, Council 36, Local 2076, AFL-CIO, hereinafter referred to as the Union, was certified on June 23, 1977, as the Recognized Employee Organization for employees in the Eligibility Worker Representation Unit as listed in Appendix A. The County hereby recognizes the Union as the exclusive representative of employees in this unit; however, employees in the unit shall have the right to represent themselves individually in their employment relations with the County pursuant to Section 3502 of the Government Code (Meyers-Milias-Brown Act). If an employee does not wish to be represented by the Union and wishes to represent himself or herself in matters pertaining to grievances and/or disciplinary appeals, the employee shall be required to provide the Union and the County with a signed statement waiving the right to Union representation in such matters.

Section 2. Implementation and Term

This Memorandum of Understanding sets forth the terms of agreement reached between the County of Orange and the American Federation of State, County and Municipal Employees for the Eligibility Worker Unit for the period beginning June 30, 2023, through June 25, 2026. All provisions shall become effective November 7, 2023, unless otherwise provided herein.

Section 3. Renegotiation

In the event the Union desires to negotiate a successor agreement, the Union shall submit, no later than on the one hundred fiftieth (150th) calendar day before expiration of this Agreement, its written request for changes in fringe benefits and other terms and conditions of employment. If the Union desires to negotiate a change in wages, that request shall be submitted no later than the ninetieth (90th) calendar day before expiration of this Agreement. Negotiations shall conclude thirty (30) calendar days before expiration of this Agreement unless extended beyond that date by mutual agreement of both parties.

Section 4. In order to establish harmonious employment relations through a mutual process, to promote the quality and continuance of public service, to achieve full recognition for the value AFSCME Local 2076 bargaining unit members as employees and the vital and necessary work they perform, and to provide for the prompt and equitable resolution of disputes the parties agree as follows:

DEFINITIONS

The following terms as used in this Memorandum of Understanding shall, unless the context clearly indicates otherwise, have the respective meanings herein set forth:

AFSCME STAFF REPRESENTATIVE – is an employee of AFSCME District Council 36 and not a County employee. A staff representative provides assistance to unit members in such areas as contract negotiations, contract administration, representation and internal organizing. Notwithstanding the above, the Union may designate a County employee to serve temporarily as a staff representative. Upon notice to the County, the County will grant the employee an unpaid leave of absence, not to exceed one year.

BOARD shall mean Board of Supervisors of the County of Orange.

CHIEF HUMAN RESOURCES OFFICER shall mean the Human Resource Services Department Head or his or her designee.

CONTINUOUS SERVICE shall mean employment in a regular position which has not been interrupted by resignation, discharge or retirement. Leaves without pay shall not be considered a break in continuous service. Leaves without pay will not be credited toward continuous service except as required by law (e.g., FMLA/CFRA).

COUNTY shall mean the County of Orange.

DISABILITY RETIREMENT shall mean a service or non-service connected disability retirement pension under the Orange County Employees Retirement System.

EMERGENCY shall mean an unforeseen circumstance requiring immediate action, a sudden unexpected happening, an unforeseen occurrence or condition, a pressing necessity.

EMPLOYEE shall mean a person employed by the County and covered by terms of this Memorandum of Understanding, except where the natural construction of this Memorandum of Understanding indicates otherwise.

FLEX TIME shall mean a 4/10 or 9/80 schedule.

FULL-TIME EMPLOYEE shall mean an employee employed in one (1) or more regular or limited-term positions whose normally assigned work hours equal those of a full workweek or work period as described hereinafter.

LIMITED-TERM EMPLOYEE shall mean an employee employed in a limited-term position except where a regular position is converted to a limited-term position, the incumbent shall retain his or her former status. As an exception to this definition, a limited-term employee may also be used to fill a regular position when the incumbent employee is on Official Leave of Absence Without Pay.

LIMITED-TERM POSITION shall mean a position which the County has determined has no anticipated long-range funding or has uncertain future funding.

NEGOTIATE shall mean the process by which representatives of a recognized employee organization and the Chief Human Resources Officer or his or her representative meet a reasonable number of times and confer in good faith in an effort to agree upon joint recommendations for presentation to the Board regarding wages, hours and other terms and conditions of employment. When appropriate, proposals and counter proposals may be used to resolve differences in an effort to avoid an impasse. The negotiation process does not obligate either party to accept a proposal or make a compromise.

OFFICIAL PERSONNEL FILE shall mean those official individual personnel files maintained by the Human Resource Services Department's Personnel Records Section.

PART-TIME EMPLOYEE shall mean an employee employed in one (1) or more regular or limited-term positions whose normally assigned work hours do not equal those required of a full-time employee.

PERSONAL BUSINESS shall mean a foreseeable personal event or circumstance which necessitates the employee's absence from County duty. Personal Business leave must be requested in advance by the employee and be preapproved by supervision or management.

PERSONAL EMERGENCY shall mean an event or circumstance of a serious nature which is beyond an employee's control and which necessitates the employee's absence from County duty, including, but not limited to, those events and circumstances which require the employee's prompt attention to avoid possible financial loss to, or damage to the health of, either the employee or a member of his or her household.

PRACTICABLE shall mean feasible; reasonably able to accomplish.

PROBATIONARY EMPLOYEE shall mean an employee who is serving a

probation period and is employed in a regular or limited-term position.

PROMOTION shall mean the movement of a regular, limited-term or probationary employee from one (1) class to another class where the maximum step on the new salary range is at least one (1) full step higher than the maximum step of the old salary range.

REASSIGNMENT shall mean the movement of a regular, limited-term or probationary employee from one (1) class to another class on the same salary range or to a class where the maximum step on the new salary range is less than one (1) full step higher or lower than the maximum step of the old salary range.

RECRUITING STEP shall be the first step of the salary range allocated to a class unless otherwise authorized by the Board or the Chief Human Resources Officer.

REDUCTION shall mean the movement of a regular, limited-term or probationary employee from one (1) class to another class where the maximum step of the new salary range is at least one (1) full step lower than the maximum step of the old salary range.

REGULAR EMPLOYEE shall mean an employee who is not on probation and is employed in a regular or limited-term position.

REGULAR POSITION shall mean a position established on a permanent year-round basis requiring work on a regular schedule unless otherwise authorized by minute order of the Board.

SENIORITY shall mean total continuous full-time equivalent service as a regular employee.

UNION shall mean the American Federation of State, County and Municipal Employees, Council 36, Local 2076, AFL-CIO.

Y-RATE shall mean a pay rate outside of the assigned salary range of a class.

ARTICLE I WORKWEEK, OVERTIME AND PREMIUM PAY

Section 1. Workweek

- A. The official workweek or work period for employees in the bargaining unit shall be as follows:
 - 1. Except as otherwise provided below, the official workweek for full-time employees shall be forty (40) hours and shall begin on each Friday at 12:01 a.m. and end with the following Thursday at 12:00 midnight. Except in circumstances where this MOU specifically also requires the County to pay overtime, overtime shall be paid for hours actually worked in excess of forty (40) in a designated workweek.
 - 2. Part-time
 - a. Employees may request to be placed in twenty (20) hour part-time positions if their performance is rated standard or above at the time of the request.
 - b. The number and assignment of positions subject to part-time shall be determined by the County.
 - c. An employee placed in a twenty (20) hour position shall remain in that position until:
 - 1. the employee requests a return to an available full-time position as determined by the County;
 - 2. the County assigns the employee to a full-time position with a fourteen (14) calendar day advance notice whenever practicable. The County will not order an employee out of a part-time position until there is no one left on the AGENCY/DEPARTMENT REINSTATEMENT LIST as established per Article XI of this Agreement who is eligible and willing to accept the full-time position.
- B. The County agrees to give employees a fourteen (14) calendar day advance notice of a shift change whenever practicable.
- C. No employee shall be permitted to work more than sixteen (16) consecutive hours except in an emergency situation.
- D. The County shall discuss with the Union any proposed changes in existing scheduled hours of work before such changes are put into effect.

- E. Employees may request modified work hour schedules, such as a 4/10 or 9/80 flex schedule in accordance with established Agency procedures and subject to the grievance/appeal limitations described in said procedure. For employees permitted to work a 9/80 schedule, the start of their designated workweek shall be the mid-point of their eight (8) hour day.

SSA shall continue to use an annual schedule request procedure in which employees may submit requests for preferred work schedules. SSA will endeavor to provide work schedules of varying starting/ending times, flex days and days off, while recognizing that programmatic and business needs of the Agency are paramount. SSA will notify employees of an opportunity to submit schedule requests in May of each year. The notification to employees will include an overview of starting/ending times, flex days and days off at each region. If the Union has not yet received the most recent list required by Article XIV, Section 1.D.4, the County will send the list to the Union at the same time it sends out its schedule notification to employees. SSA employee schedule requests shall be submitted within three (3) weeks of the date the notification has been sent to employees.

If more than one employee requests the same schedule and assuming the requested schedule is available (e.g., based on program, function, language skills and client demand), the more senior employee (or the most senior employee, if more than two employees have requested the same schedule), will receive the requested schedule. For purposes of this schedule process seniority shall be determined by length of continuous service with the County. SSA will notify employees generally four (4) weeks prior to the implementation of the new work schedule. If an employee does not receive one of his/her preferred schedules, he/she will be notified of the reason(s) for the determination. The new 12-month schedule will take effect on the first day of the first full pay period in August of each year.

Whenever practicable, employees will receive at least two (2) consecutive days off from work.

- F. Except as otherwise provided, no employee may be employed in one (1) or more positions, full or part-time, more than the total number of hours for the employee's work period as defined in A., above, except on authorized overtime.
- G. If an employee is ordered by the County to attend a meeting, such time spent in the meeting shall be considered hours worked.
- H. In addition to any other position or positions that are held, an employee may also voluntarily work in a capacity authorized for the Registrar of Voters in the course of an election provided that such election work does

not unduly interfere with the employee's regular assignment.
Election work shall be compensated at the rate authorized for such work.

Section 2. Rest and Lunch Periods

A. Rest Periods

1. Employees shall be allowed rest periods of fifteen (15) minutes during each four (4) consecutive hours of work.
2. Such rest periods shall be scheduled in accordance with the requirements of the agency, but in no case shall rest periods be scheduled within one (1) hour of the beginning or the ending of a work shift or lunch period. When employees take rest periods at a County facility, the County may designate location(s) within the facility for the rest periods.
3. Rest periods shall be considered hours worked. An employee shall not be required to perform duties during a rest period unless the need is urgent.

B. Lunch Periods

Each employee shall be allowed a meal period of one (1) hour unless otherwise mutually agreed upon by the employee and agency management. Such meal period shall be generally scheduled in the middle of the work shift and shall not be considered hours worked.

Section 3. Overtime

A. Notification of Employees

If in the judgment of the agency, work beyond the normal workday, workweek or work period is required, the agency will notify any employee who may be asked to perform such overtime of the apparent need for such overtime as soon as practicable prior to when the overtime is expected to begin.

B. Distribution of Overtime

If overtime work is required, opportunities to work such overtime shall be made available as follows:

1. first, to the worker(s) to whom the affected cases are assigned, if practicable;
2. second, to other qualified workers at the same location who are assigned to the same program and function, in order of seniority;

3. third, an all-region solicitation shall be broadcast, if the Department believes it is administratively and operationally feasible, to make overtime available to workers assigned to the same program and function, in order of seniority.
4. fourth, if an insufficient number of workers volunteer to perform such overtime work under B.1. and B.2 above, the County may assign such overtime work as needed.

C. Payment for Overtime

1. Overtime, as defined in Article I, Section 1.A., shall be compensated at one and one-half (1 1/2) times the regular rate.
2. For all regular, limited-term and probationary employees, the employee may receive either payment or compensatory time off for overtime. The County shall have discretion whether to provide payment or compensatory time off; however, if practicable, the County shall duly consider an employee's preferred form of compensation.
3. Employees may not accumulate in excess of eighty (80) hours of compensatory time. Employees who have accumulated eighty (80) hours of compensatory time shall receive payment for overtime worked.
4. Compensatory time earned and accrued by an employee may be scheduled off for an employee by his or her agency; however, consideration shall be given to effectuating the wishes of those employees requesting specific compensatory time off periods.
5. Unless waived by the employee and management, in no case may an employee's work schedule be changed during the workweek or work period in progress when the purpose of such change is to avoid overtime compensation.
6. Time worked as overtime shall not be used to earn fringe benefits or to serve out probation or merit increase periods, provided that compensatory time off may be used as part of the established workweek to earn fringe benefits and to serve out probationary and merit increase periods.
7. An employee separating from the County service shall be paid for accumulated compensatory time in a lump sum payment. Money owed to the County as a result of County employment by the separating employee may be deducted from such lump sum payment.

Section 4. Premium Pay

A. Night Shift Differential

1. An employee who works an assigned night shift shall, in addition to his/her regular salary, be paid a night shift differential for each hour actually worked on the assigned night shift.
2. For purposes of this Section, night shift shall mean an assigned work shift of seven (7) consecutive hours or more which includes at least four (4) hours of work between the hours of 4 p.m. and 8 a.m. Overtime which is worked as an extension of an assigned day shift shall not qualify an employee for night shift differential.
3. The rate of night shift differential shall be fifty (50) cents per hour.

B. On-Call Pay

1. When an employee is assigned on-call duty by the County, the employee shall be informed in writing, in advance whenever practicable, of the dates and inclusive hours of such assignment; the employee shall be compensated at one-fourth (1/4) of his/her basic hourly rate for the entire period of such assignment.
2. On-call duty requires the employee so assigned to: (1) be reachable by telephone or other communications device; (2) be able to report to work in a reasonable time; and (3) to refrain from activities which might impair his or her ability to perform assigned duties.

C. Call-Back Pay

1. When an employee returns to work because of an agency request made after the employee has completed his or her normal work shift and left the work station, the employee shall be credited with four (4) hours work plus any hours of work in excess of four (4) hours in which the employee is continuously engaged in work for which he or she was called back.

Call-back pay shall apply only when an employee is required to physically return to work (e.g., leave home or another off-duty location) in order to perform required duties.

2. Call-back shall be paid at one and one-half (1 1/2) times the regular rate.
3. Notwithstanding the above, if an employee is called back to work

within four (4) hours of the beginning of the regular shift, the employee will only be paid at time and-one-half for the time the employee begins to work until the beginning of the employee's regular shift.

4. There shall not be any duplication or pyramiding of rates paid under this Section.
5. An employee shall be credited with not more than one (1) minimum four (4) hour guarantee for work performed during any four (4) consecutive hour period.
6. An employee credited with four (4) hours pursuant to this Section may be assigned other work until the guaranteed time has elapsed.

D. Bilingual Pay

1. Qualified employees who meet the criteria in 4.D.2., below, and who are assigned by Agency management to perform exceptional bilingual duties that are essential to the performance of their technical duties and responsibilities shall receive an additional one dollar and fifteen cents (\$1.15) per hour [approximately one hundred ninety-nine dollars (\$199) per month] for all hours actually paid.
2. To be eligible to receive bilingual pay, the following criteria must be met:
 - a. An employee must be assigned by agency management to speak or translate a language in addition to English. This may include such specialized communication skills as sign language.
 - b. An employee must regularly and frequently speak and/or translate a second language, i.e., once daily.
 - c. To become qualified, an employee must be certified as qualified by the Chief Human Resources Officer.
3. Bilingual pay shall not apply to workers' compensation supplement pay or other premium pays effective upon Board adoption.

E. Jail Salary Supplement

An employee who works an assigned shift at Central Jail/Intake/Release Center, Theo Lacy Facility, and James A. Musick Facility shall, in addition to his/her regular salary, be paid a jail salary supplement of an additional seventy-five cents (\$0.75) per hour for each hour and partial hour actually worked in one of the listed jail facilities during an assigned shift.

ARTICLE II PAY PRACTICES

Section 1. Compensation for Employees

Employees shall receive compensation at the biweekly or hourly rate for the range and step or flat rate assigned to the class in which they are employed.

Section 2. Pay for New Employees

- A. A new employee shall be paid at the recruiting step of the salary range in effect for the class in which the new employee is hired, except as provided in Sections 2.B. and C., below.
- B. Upon recommendation of the Chief Human Resources Officer, the Board may, by minute order, authorize that a particular position be filled at any step within the range. When the Board authorizes the filling of the position at a step which is higher than the recruiting step of the salary range, it may, by minute order, advance the salary of incumbents of positions in that class or related classes in order to retain equitable relationships.
- C. The Agency or Department Head may authorize the appointment of employees at any of the first seven (7) steps of the salary range. Such appointments shall be made only when the Agency or Department Head makes a determination that there is a direct and measurable benefit to the County from such appointments and makes a determination that the applicant's previous training and experience enables him or her to make a greater contribution than a less experienced employee.
- D. Upon recommendation of the Agency or Department Head, the County Executive Officer may authorize the appointment of employees beyond step seven (7) of the salary range when there is a direct and measurable benefit to the County for such appointment.

Section 3. Merit Increase Within Range

- A. Salary increases within a range shall not be automatic. They shall be based upon merit and granted only upon the affirmative recommendation of the Agency Head.
- B. A new or reemployed employee in a regular or limited-term position shall have a merit increase eligibility date which shall be the first day of the pay period following the completion of the first twenty-six (26) weeks of service within that class. The granting of an Official Leave of Absence, other than a Military Leave or the imposition of a suspension shall cause the merit increase eligibility date to be extended a number of calendar days equal to the Official Leave or suspension. The extended merit increase eligibility date will be effective the first day of the pay period after said date. Subsequent merit increase eligibility dates shall be the first day of the pay

period following the completion of fifty-two (52) week intervals subject to the same postponement for Official Leaves of Absence or suspensions.

- C. An employee in a part-time regular or limited-term position who has not completed one thousand forty (1040) paid hours exclusive of overtime by his or her first merit increase date shall have the merit increase eligibility date postponed until the first day of the pay period following completion of one thousand forty (1040) paid hours exclusive of overtime. Likewise, an employee in a part-time regular or limited-term position who has not completed two thousand eighty (2080) paid hours exclusive of overtime between subsequent merit increase eligibility dates shall have his or her merit increase eligibility date postponed until the first day of the pay period following completion of two thousand eighty (2080) paid hours exclusive of overtime. Where an employee's record consists of a combination of full-time and part-time service, both periods of service shall apply towards merit increase eligibility with the part-time service being applied proportionately to the appropriate full-time interval.
- D. Merit increases may be granted for one (1), two (2), three (3) or four (4) steps within the salary range based upon the employee's performance. Standard performance shall earn a two (2) step increase.
- E. If, in the agency's judgment, the employee's performance does not merit a salary increase on the merit increase eligibility date and a deferral of decision accompanied by an intensive effort at improved performance might be productive, the agency shall complete the structured merit rating and defer a decision regarding the merit increase any number of pay periods, but not to exceed thirteen (13) pay periods. A deferral of fewer than thirteen (13) pay periods may be further extended not to exceed thirteen (13) pay periods from the original merit eligibility date. The employee may be reevaluated at any time and may be granted a merit increase earlier than thirteen (13) pay periods, but in any event shall be reevaluated on the structured merit rating prior to the end of the thirteenth pay period. The employee's merit increase eligibility date shall not be changed by such deferral.

- F. Should an employee's merit increase eligibility date be overlooked through an error and upon discovery of the error the employee is granted a merit increase, the employee shall be compensated for the additional salary the employee would have received dating from the employee's merit increase eligibility date.

Section 4. Salary on Promotion

- A. Except as modified by B., below, a regular, limited-term or probationary employee who is promoted to a position in a class with a higher salary range shall receive the recruiting salary for the higher class or such higher amount as would be the closest to a two (2) step increase on the range over the salary received prior to the promotion not to exceed the top step of the range. A new merit increase eligibility date shall be established which shall be the first day of the pay period following completion of the first twenty-six (26) weeks of service in the new class.
- B. Any employee who is promoted to a class from which the employee was previously reduced without a salary decrease shall be placed at a salary step no higher than the step which the employee would have achieved if the employee had remained in the class to which he or she is promoted and had demonstrated at least standard performance. The employee's merit increase eligibility date shall be reestablished in order to credit the employee with any time formerly served in the higher class.

Section 5. Salary on Reassignment

- A. When a regular, limited-term or probationary employee is reassigned to a class with the same recruiting step, such employee's salary and merit increase eligibility date shall not change. Such employee shall have the same probation status which would have been achieved if the employee had been in the new class throughout the period of such service in the old class.
- B. When a regular, limited-term or probationary employee is reassigned to a class with a higher recruiting step, such employee's salary shall be advanced the number of steps difference between the classes' recruiting steps and the employee shall retain his or her former merit increase eligibility date, except as provided in E., below. Such employee shall have the same probation status which would have been achieved if the employee had been in the new class throughout the period of such service in the old class.
- C. When a regular or limited-term employee is reassigned to a class with a lower recruiting step, such employee's salary and merit increase eligibility date shall not change. Such employee shall have the same probation status which would have been achieved if the employee had been in the new class throughout the period of such service in the old class. When a probationary or probationary limited-term employee is reassigned to a class

with a lower recruiting step, such employee shall have the same salary, step status, probation status and merit increase eligibility date as would have been achieved if the employee had been in the new class throughout the period of such service in the old class.

- D. When a regular, limited-term or probationary employee is involved in a series of reassignments among classes with the same salary range but different recruiting steps or a series of reassignments among classes on different salary ranges, his or her salary and merit increase eligibility date shall be determined by the Chief Human Resources Officer.

Section 6. Salary on Reduction

- A. 1. When a probationary employee, an employee who has been on a temporary promotion or a regular employee who was promoted to a limited-term position at the direction of the employee's Agency Head is reduced to a class not previously occupied by the employee, the employee shall receive the recruiting step for the lower class and shall receive a new merit increase eligibility date as provided in Section 3.C., above, or the employee's salary and merit increase eligibility date may be determined by the Chief Human Resources Officer.
- 2. When a promotional probationary employee, an employee who has been on a temporary promotion or a regular employee who was promoted to a limited-term position at the direction of the employee's Agency Head is reduced to a class the employee occupied in good standing, the employee shall have the step status and merit increase eligibility date he or she would have achieved if the employee had remained in the lower class throughout the period of his or her service in the higher class.
- B. When a regular or limited-term regular employee is reduced to a position in a lower class by demotion for reasons of unsatisfactory performance, the employee's salary shall be reduced to a step on the salary range which would be the closest amount to a two (2) step reduction, or the employee shall receive the maximum step of the salary range of the new class, whichever is lower. The employee's merit increase eligibility date shall be the first day of the pay period following completion of fifty-two (52) weeks of service in the new class unless the employee thereby is placed at the recruiting step of the new salary range, in which case the employee's merit increase eligibility date shall be the first day of the pay period following the completion of twenty-six (26) weeks of service in the new class.
- C. When a regular or limited-term employee in good standing is reduced to a position in a lower class for reasons other than unsatisfactory performance, the employee shall receive the highest salary in the new salary range that does not exceed the employee's rate of pay immediately prior to reduction and shall retain his or her merit increase eligibility date.

D. When a regular, limited-term or probationary employee is reduced because the position the employee occupied is reclassified, the applicable salary shall be determined as follows:

1. If the salary of the employee is the same or less than the maximum of the new class, the salary and merit increase eligibility date of the employee shall not change.
2. If the salary of the employee is greater than the maximum of the new range, the salary of the employee shall be designated as a Y-Rate and shall not change during continuous regular service until the maximum of the new range exceeds the salary of the employee or until the period of calendar time indicated in the schedule below has elapsed, whichever is sooner. If, at the end of the calendar period indicated below, the salary of the employee still exceeds the maximum of the new salary range, the salary of the employee shall be reduced to the maximum salary for the new class.

Y-RATE SCHEDULE

<u>Years of Full-Time Continuous Service</u>	<u>Duration of Y-Rate</u>
Fewer than 5 years	Two years from the date of reclassification
5 years but fewer than 10 years	Three years from the date of reclassification
10 years but fewer than 15 years	Four years from the date of reclassification
15 years but fewer than 20 years	Five years from the date of reclassification
20 years but fewer than 25 years	Six years from the date of reclassification
25 years or more	Seven years from the date of reclassification

3. When an employee on Y-Rate accepts a voluntary reduction, his or her salary shall be reduced by the amount of the difference between

the maximum salary of the class from which the employee is being reduced and the maximum salary of the new class.

Section 7. Salary on Reclassification

The salary of a regular, limited-term or probationary employee whose position is reclassified shall be determined as follows:

- A. If the position is reclassified to a class with the same salary range, the salary and merit increase eligibility date of the employee shall be governed by Article II, Section 5.A., B., or C.
- B. If the position is reclassified to a class with a higher salary range, the salary of the employee shall be governed by Article II, Section 4.A. or B.
- C. If the position is reclassified to a class with a lower salary range, the salary of the employee shall be governed by Article II, Section 6.D.

Section 8. Salary on Reemployment

- A. A person who is reemployed in the Eligibility Worker Representation Unit may, upon approval of the Chief Human Resources Officer, be appointed at a step higher than the recruiting step, but no higher than the step the person received at the time of separation unless appointment is at an advanced step or rate pursuant to Article II, Section 2.C.
- B. A former County employee on paid County retirement may be reemployed for the maximum allowable time, pursuant to Government Code provisions, in any one (1) fiscal year in a position requiring special skills and knowledge and may be appointed to the position at any step on the salary range.

Section 9. Changes in Salary Allocation

If a class is reassigned to a different salary range on the same salary schedule, each employee in the class shall be compensated at the same step in the new salary range as the employee was receiving in the range to which the class was previously assigned. However, if a class is reassigned to a lower salary range on the same salary schedule, the salary of each employee shall be determined in accordance with Article II, Section 6.D., above.

Section 10. Pay Check Deposit

Employees hired after January 1, 1994, will be required to authorize automatic deposit of his or her pay check to a financial institution of the employee's choice.

ARTICLE III EDUCATIONAL AND PROFESSIONAL REIMBURSEMENT

Section 1. Objective

The Educational and Professional Reimbursement Program is designed to encourage employees to continue their professional development through a variety of opportunities. In order to qualify for the program, one or more of the following criteria must be met:

- Related to the work of the employee's position or occupation
- Prepares the employee to transition to an alternate County occupation
- Prepares the employee for advancement to positions of greater responsibility in the County

In addition, items eligible for reimbursement must have the reasonable potential for contributing to achieving County business objectives.

Section 2. Eligible Employees

All regular full-time, part-time, limited term, and probationary employees performing their jobs satisfactorily are eligible for reimbursement.

Section 3. Reimbursement Eligibility

A. The following are eligible for reimbursement

1. Courses related to obtaining a degree (AA, BA, BS, Masters, Ph.D.)
2. Accredited certificate programs
3. Vocational skills programs
4. Courses related to obtaining or maintaining a business-related certification, license, or accreditation
5. Courses related to preparing to take tests to obtain business –related certifications, licenses, or accreditation
6. Professional conferences, conventions, and seminars that are related to business objectives
7. Fees related to obtaining and/or renewing a license, including special drivers' licenses
8. Fees related to certifications or accreditations
9. Fees related to taking professional examinations
10. Professional association membership fees

B. In general, any courses taken through the program must be taken on employee time. However, at the discretion of the Agency Head, a course may be taken on County time when it specifically meets a business need, and is not available during the employee's non-work hours.

C. Courses are not eligible for reimbursement if they:

1. Are taken to bring unsatisfactory performance up to an acceptable level;
2. Are taken to acquire skills or knowledge which the employee was deemed to have when appointed;
3. Duplicate available in-service training; and/or
4. Duplicate training which the employee has already had.

Section 4. Nature of Reimbursement

- A. Reimbursement may be made for all required fees, registration, and other costs related directly to the approved educational or professional expense. This may include, but is not limited to books, class materials, lab fees, testing fees, parking, and processing fees.
- B. Expenses for travel, meals, and lodging are not reimbursable; however, the Agency Head may authorize payment for these items when it meets their business needs and is budgeted in their travel expense budget.
- C. For degree programs, reimbursement shall be made to the employee upon completion of the course with a minimum final grade of C or its equivalent in an undergraduate course, or B or its equivalent in a graduate level course.
- D. Reimbursement for non-graded courses shall be made upon completion of an approved course and proof of payment.
- E. Public Service Institute (PSI) courses are not eligible for reimbursement.
- F. If an employee is receiving reimbursement from another source that covers a portion of the costs, the County will only pay the remaining amount, after other reimbursements are exhausted.
- G. The maximum reimbursement that may be received by eligible employees in one fiscal year shall be \$10,000.

ARTICLE IV GENERAL PERSONNEL PROVISIONS

Section 1. Probation

A. New Probation

1. Full-Time Employee

A new or reemployed employee employed in a full-time regular or limited-term position shall be placed on new probation for fifty-two (52) weeks from the date of appointment ending with the first day of the pay period following completion of said period.

2. Part-Time Employee

A new or reemployed employee employed in a part-time regular or limited-term position shall be placed on new probation for two thousand eighty (2080) paid hours exclusive of overtime or for fifty-two (52) weeks, whichever is longer, from the date of appointment and ending with the first day of the pay period following completion of said period.

B. Promotional Probation

1. Any regular or limited-term employee who is promoted, excluding a temporary promotion, shall be placed on promotional probation except as provided in B.2., below.
 - a. A full-time employee shall serve a probation period equal to the time period of the initial probation ending with the first day of the pay period following completion of said period. However, an employee who promotes to a class in the same or closely related occupational series, shall serve a promotional probation period of twenty-six (26) weeks from the date of promotion ending with the first day of the pay period following completion of said period.
 - b. A part-time employee shall be placed on promotional probation for two thousand eighty (2080) paid hours exclusive of overtime, ending with the first day of the pay period following completion of said period except that for promotion to a class in the same or closely related occupational series, the promotional probation period shall be one thousand forty (1040) paid hours exclusive of overtime.

2. When a regular or regular limited-term employee is promoted as a result of the employee's position being reclassified to a higher class and the class from which the employee is promoted is subsequently deleted or abolished, the incumbent employee shall not serve a promotional probation period.
3. When an employee who has been on a temporary promotion or a regular employee who was promoted to a limited-term position at the direction of the employee's Agency Head is reduced to a class the employee formerly occupied, the employee shall serve the remainder of any uncompleted probationary period in that class.
4. Except as provided in B.2., above, when a regular, limited-term or probationary employee voluntarily reduces or reassigns to a class in this Unit in which he or she has never passed probation, such employee shall be placed on promotional probation for a period equal to the new probation periods set forth in Sections 1.A.1. and 1.A.2., above.

C. Failure of Probation

1. New Probation

- a. An employee on new probation may be released from employment at any time without right of appeal or hearing, except as provided in C.3., below.
- b. An employee who is released from new probation shall, upon request, be scheduled to meet with the District Manager or his or her designee to discuss the reason(s) for failure of new probation. If such a meeting is scheduled, the employee may choose to be represented by an authorized grievance/appeal representative.

2. Promotional Probation

- a. An employee on promotional probation may be failed at any time without right of appeal or hearing, except as provided in C.3., below.
- b. An employee who fails promotional probation shall, upon request, be scheduled to meet with the District Manager or his or her designee to discuss the reason(s) for failure of promotional probation. If such a meeting is scheduled, the employee may choose to be represented by an authorized grievance/appeal representative.

- c. When an employee fails his or her promotional probation, the employee shall have the right to return to his or her former class provided the employee was not in the previous class for the purpose of training for a promotion to the higher class.

When an employee is returned to his or her former class under the provisions of this Section, the employee shall serve the remainder of any uncompleted probationary period in the former class. A regular employee who accepts promotion to a limited-term position other than at the direction of the employee's Agency Head shall not have the right to return to his or her former class.

- d. If the employee's former class has been deleted or abolished, the employee shall have the right to return to a class in his or her former occupational series closest to, but no higher than, the salary range of the class which the employee occupied immediately prior to promotion and shall serve the remainder of any probationary period not completed in the former class.
3. An employee who alleges that his or her probationary release was based on discrimination by the County in violation of Article XV, NONDISCRIMINATION, may submit a grievance at Step 3 of the grievance procedure within ten (10) days after receipt of notice of failure of probation.

D. General Provisions

1. When an employee's record consists of a combination of full-time and part-time service in regular or limited-term positions, except as provided in Section 4.E., below, part-time service shall be applied proportionately by using total hours worked to appropriate full-time requirements.
2. When an Agency Head or his or her representative passes an employee on probation, that determination shall be based upon a written performance evaluation and shall be discussed with the employee. A probation period may not be extended, except as provided in Section 1.E. of this Article, below.

If upon conclusion of the probationary period the employee does not receive in writing a confirmation that he/she has passed probation, that employee may request, in writing, such written confirmation. If the agency does not, within thirty (30) days of such request, provide written notice confirming whether or not the employee passed probation, it shall be presumed that the employee passed his/her probation at the normal conclusion of the probation period.

3. An employee who is subject to more than one (1) type of probation at a given time shall have the probation periods combined into one (1) probation period which will extend to the latest completion date of any of the probation periods involved.
4. An employee who is on probation may not transfer from one (1) agency to another in the same class without the approval of the Chief Human Resources Officer.

E. Extension of Probation Periods

1. The granting of an Official or Military Leave of Absence shall cause the employee's probation period to be extended by the length of the Official Leave or by the length of the Military Leave in excess of fifteen (15) calendar days. The extended probation period resulting from the Official or Military Leave of Absence shall end with the first day of the pay period after said extended date. An employee who is suspended shall have his or her probation extended by the length of the suspension, with the extended probation period ending with the first day of the pay period after said extended date.
2. The Chief Human Resources Officer shall extend the new or promotional probationary periods of incumbents appointed as a result of a selection procedure which is appealed. Such probationary periods shall be extended no longer than sixty (60) calendar days from the date on which the County receives the Appeals Officer's findings and decision. In the event an employee's probationary period is extended by the provisions of this Section, and such an employee has served a probationary period which is longer than the probationary period normally prescribed for new or promotional probation, such an employee may fail probation during the extended period only upon recommendation of the Appeals Officer and final determination of the Board of Supervisors.
3. Upon the recommendation of the agency or the request of the employee with the concurrence of the agency, the probation period of an employee may be extended at the sole discretion of the Chief Human Resources Officer for a period not to exceed ninety (90) calendar days provided such action is approved by the Chief Human Resources Officer before the normal probation period is completed.

Denial of a request to extend a probation period shall not be subject to appeal or hearing.

4. A new or promotional probationary employee who is on paid Administrative Leave shall have his or her probation period extended by the length of the leave with the first day of the pay period after said extended date. The extended probationary period shall end on the final

day of whichever pay period the extended probationary period falls.

5. The Chief Human Resources Officer shall extend the probationary period of employees with an employment authorization document which has an expiration date which would occur after the end of the probation period. Such probation periods shall be extended to coincide with the expiration date of the employment authorization document. In the event an employee's probationary period is extended by the provisions of this Section, and such an employee serves a probationary period which is longer than the normal probation period, such an employee may fail probation during the extended period only for failure to obtain a new, valid employment authorization document by the expiration date of the expiring employment authorization document.
6. Employees subject to extended probationary periods under the provisions of E.2., E.4., and E.5. above, shall be considered regular employees during the extended probationary period for all purposes other than those described in E.2., E.4., and E.5. above.

Section 2. Performance Evaluation

- A. The County shall maintain a system of employee performance ratings designed to give a fair evaluation of the quantity and quality of work performed by an employee. Such ratings shall be prepared and recorded in the employee's personnel file for all regular and limited-term full and part-time employees at least once each year; and in addition, for employees on probationary status, at least once near the middle of the probation period.
- B. The County shall discuss with the employee the specific ratings prior to such ratings being made part of the employee's personnel file.
- C. When a performance evaluation is recorded in the personnel file of an employee, a copy of such evaluation, together with any attachment relating thereto, shall be given to the employee.

Section 3. Contents of Personnel File

- A. Adverse statements prepared by the County shall not be included in an employee's official personnel file unless a copy is provided to the employee.
- B. Except for those materials designated as confidential by law, an employee shall have the right to inspect and review, on County time, at reasonable intervals and at reasonable times, the contents of his or her official personnel files and may also review, on County time, at reasonable intervals and at reasonable times, the file maintained by his or her District

Manager and/or supervisors regarding his or her performance. With the written permission of the employee, authorized Union representatives may inspect, at reasonable intervals, the same files which the employee may inspect and review as provided herein. In addition, an employee shall have the right to inspect and review the contents of his or her official personnel file, on County time, in any case where the employee has a grievance related to performance, to a performance evaluation, or is contesting his or her suspension or discharge from County service.

- C. An employee shall have the right to respond in writing or personal interview to any information contained in his or her official personnel files, such reply to become a permanent part of such employee's personnel file.
- D. Pursuant to an agreement between the Chief Human Resources Officer and the employee concerned or by an order of an arbitrator, court or impartial hearing officer, any negative contents of an employee's official personnel file shall be removed within fourteen (14) calendar days. In addition, documents related to performance shall be removed from the unofficial file maintained by the employee's District Manager and/or supervisor within six (6) months of completion of the Final Review of Performance covering the period related to the document.
- E. Letters of Commendation shall be included in the employee's official personnel file at the employee's request.
- F. An employee's official personnel file shall only be open to inspection by authorized persons who have established a legitimate need to know or if such files are required to be disclosed by the court.

Section 4. Status of Limited-Term Employees

- A. All limited-term employees shall be subject to the same hiring standards and shall earn all benefits, except Article XI, LAYOFF PROCEDURE, which accrue to employees in regular positions.
- B. A regular employee who transfers, promotes or reduces to a limited-term position on a voluntary basis and not at the direction of the Agency Head shall become a limited-term regular employee.
- C. All limited-term employees who transfer to permanent funded positions shall serve a new probation period. Limited-term regular employees who transfer to permanent positions shall maintain their original hire date for purposes of vacation and Sick Leave accrual, retirement and layoff. Such limited-term regular employees who are serving a new probationary period in permanent positions when a layoff occurs shall be considered to have the same employment status as regular and promotional probationary employees for purposes of determining order of layoff.

- D. When funding ceases for a limited-term position or when the position is no longer necessary, the limited-term position shall be abolished and the incumbent shall be removed from the payroll except as provided in E., below.
- E. Regular employees who transfer, promote or reduce to limited-term positions at the direction of the Agency Head shall retain their former status and retain their layoff benefits in their former layoff unit. The Agency Head shall make such an order in writing prior to the date of transfer or promotion.

Section 5. Temporary Promotion

- A. A regular, probationary or limited-term employee who is assigned on a temporary basis to a higher level vacant regular or limited-term position shall be promoted on a temporary basis to that class when such employee has been assigned to the higher class for one hundred twenty (120) consecutive regularly scheduled hours of work and the employee has been performing all of the significant duties and responsibilities of the higher class, unless the employee requests to be reassigned to his or her former class. In such a case, the employee shall be reassigned within five (5) working days.
- B. An agency may, at its option, waive the one hundred twenty (120) hour requirement when it is necessary to utilize a regular, probationary or limited-term employee in a higher level vacant regular or limited-term position for a period that is expected to be at least one hundred twenty (120) regularly scheduled hours but fewer than eighteen (18) months.
- C. An employee on temporary promotion shall not be placed on promotional probation. Upon return from temporary promotion, an employee shall serve the remainder of any uncompleted probationary period in the employee's former class and shall have the step status and merit increase eligibility date he or she would have achieved if the employee had remained in the lower class throughout the period of his or her service in the higher class.
- D. At the end of the employee's assignment to the higher class, the employee shall have the right to return to his or her former class and agency. A temporary promotion shall not exceed a period of eighteen (18) months.

Section 6. Reemployment of Employees on Disability Retirement

- A. The County will advise employees retired for physical disability to contact the Orange County Employees Retirement System (OCERS) to determine the impact of reemployment on their disability retirement benefits prior to accepting reemployment.
- B. Employees retired for physical disability who have contacted OCERS for

advice and counsel under Section A above, within two (2) years from their date of retirement or date their disability retirement is discontinued, request and have been counseled as required above and qualify for positions in the County service shall be placed on the County Preferred Eligible List with respect to such positions. They will be placed on such list in chronological order of retirement but following the last person on layoff status. They will remain on such list for a period of two (2) years from date of retirement or date their disability retirement is discontinued, except that:

1. a person appointed to a regular position in the County service shall be removed from the list;
2. a person who, on two (2) separate occasions, rejects or fails to respond within three (3) calendar days to offers of employment in a class for which he or she is qualified shall be removed from the list;
3. a person who on three (3) separate occasions, declines referral for interviews in a class for which he or she is qualified shall be removed from the list.

Section 7. Reemployment of Regular Employee

A regular employee who leaves County employment and is reemployed within fifteen (15) calendar days shall be deemed to have been on Agency Leave for such period of time.

Section 8. Time Off for Selection Procedures

A regular, limited-term or probationary employee shall be entitled to necessary time off with pay to participate in tests of fitness, examinations and interviews required by the Chief Human Resources Officer during working hours for the purpose of determining eligibility for movement to another class in the County service or transfer from one (1) agency to another.

Section 9. Intra-agency Transfer

Intra-agency Transfer shall pertain only to Social Services Agency employees.

- A. Intra-agency transfer shall apply to movement to a different aid category or facility. The County will look into creating a posting process to enable employees to determine available transfer opportunities.
- B. Employees shall have the right to request intra-agency transfers. SSA will consider employee requests for intra-agency transfer in view of program needs. An employee's written transfer request will remain in effect unless/until the employee receives the requested transfer or the employee withdraws the request.

- C. SSA shall establish the procedure by which employees may submit such transfer requests for consideration. Transfer requests will be considered in the order they are received. If two requests are received on the same day, and with everything else being equal, County seniority will prevail.
- D. Probationary employees will generally be exempted from consideration for transfers.
- E. Nothing in this provision shall limit management's right to initiate the internal transfer of employees; however, consideration shall be given to effectuating the wishes of those employees requesting transfer.
- F. A grievance concerning the misapplication or misinterpretation of this provision may be appealed through the second step of the grievance procedure. The decision of the Agency Head or his or her representative shall be final and binding.
- G. Employees will be given a fourteen (14) calendar day advance notice of involuntary assignment changes whenever practicable.
- H. Management shall not, whenever practicable, reassign a Union steward who objects to reassignment provided:
 - 1. There is another employee in the same classification who meets the specific qualifications of the vacancy; and
 - 2. AFSCME has notified the District Manager of the employee's status as a steward prior to the Agency issuing written notice to individual employees of impending transfers from areas which include the employee's work assignment.

Section 10. Bilingual Transfer

An employee in a bilingual assignment may request assignment to a position which does not require bilingual certification. The request shall be made in writing to the Agency Head, who will consider it according to:

- A. agency need;
- B. availability of a qualified replacement; and
- C. availability of another suitable assignment for the requesting employee.

ARTICLE V LEAVE PROVISIONS

Section 1. Sick Leave

A. Accumulation of Sick Leave

1. During the first three (3) years of employment, an employee shall earn .0347 hours of sick leave with pay for each paid hour in a regularly scheduled workweek or period to a maximum of eighty (80) hours in a pay period.
2. After an employee has been paid for six thousand two hundred forty (6240) regularly scheduled hours, approximately three (3) years, the employee shall earn .0462 hours of sick leave with pay for each paid hour in a regularly scheduled work period to a maximum of eighty (80) hours in a pay period.
3. Sick leave earned shall be added to the employee's sick leave accumulation account upon the completion of the pay period, with no credit to be applied during the progress of the pay period or for a portion of the pay period during which the employee terminates County service.

B. Permitted Uses of Sick Leave

Sick leave may be applied to:

1. An absence necessitated by an employee's personal illness, injury or disability due to pregnancy or childbirth.
2. Medical and dental office appointments when absence during working hours for this purpose is authorized by the agency.
3. Absence due to exposure to a contagious disease when quarantine is imposed by health authorities or when it is determined by a physician designated by the County that the presence of the employee on duty would endanger the health of others.
4. Absence from duty because the employee's presence is needed to attend to the serious illness of a member of his or her immediate family. The amount of sick time used to attend to the illness of a family member shall be limited by applicable laws. For purposes of this Subsection, immediate family shall mean father, father-in-law, mother, mother-in-law, step-parent, brother, sister, wife, husband, registered domestic partner, child, grandparent, grandchild or legal guardian.
5. Absence from duty because: (1) the employee's presence is needed to

attend to the diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member; or (2) an employee is a victim of domestic violence, sexual assault, or stalking and the employee uses the leave time for the purposes described in Labor Code sections 230(c) and 230.1(a). Use of this leave is limited to the time period specified in Labor Code section 233. For purposes of this Subsection "family member" means child, parent, spouse, registered domestic partner, grandparent, grandchild, or sibling as those terms are defined by Labor Code section 245.5(c).

6. If an employee is a parent, legal guardian, or grandparent who has custody of a child enrolled in a California public or private school, kindergarten through grade twelve (12), or in a licensed child day care facility, the employee may use up to ten (10) hours per fiscal year, to attend school conferences and events. Any activity that is sponsored, supervised, or approved by the school, school board, or child care facility is acceptable. Examples include participating in parent-teacher conferences, Open House, or a child's school related disciplinary issue. Time off requests to attend such events are non-discretionary, but shall be requested in advance to the extent possible.
7. Illness while on paid vacation will be charged to sick leave rather than vacation only under the following conditions:
 - a. The illness or injury of the employee was of a nature that would preclude the effective use of vacation and would prevent the employee from performing his or her normal duties.
 - b. The employee must notify his or her supervisor within four (4) calendar days of the beginning of the illness or prior to the end of his or her vacation leave, whichever is sooner, to request that his or her illness on vacation be charged to sick leave.
 - c. The agency shall be under no obligation to extend the vacation beyond the original scheduled vacation ending date.
 - d. Upon the employee's return to work, the employee must furnish the agency with a certificate signed by a licensed physician or registered nurse stating the nature of the illness or injury and the period of disablement.
8. Absence from duty because of personal emergencies or personal business not to exceed forty (40) working hours during the fiscal year.
9. An absence due to an air pollution alert which prevents the employee from traveling to his or her work location.

10. An absence, not to exceed twenty-four (24) consecutive working hours in any one instance, to arrange for or attend a funeral for a member of the employee's household who is not a member of the employee's immediate family as described in Section 2. (Bereavement Leave), below.

C. Prohibited Uses of Sick Leave

Sick leave shall not be applied to:

1. Absence caused by illness or injury to a member of the employee's family except as provided in B.4., B.5 or B.7., above.
2. Absences which occur on a County holiday.

D. General Provisions

1. In any use of sick leave, an employee's account shall be charged to the nearest quarter hour.
2. An employee may be required to furnish a certificate issued by a licensed physician or registered nurse or other satisfactory evidence of illness, injury, medical condition or medical or dental office calls when the employee has been under the care of a physician or absent three (3) consecutive days due to illness, provided such notification is made no later than the day of the absence for which the certificate or evidence is required.
3. a. Upon paid retirement or death, an employee or the employee's estate shall be paid for a portion of the employee's unused sick leave in an amount computed as provided below:

<u>Years of Service</u>	<u>Percent of Unused Sick Leave Paid For</u>
Fewer than 5 years	None
5 but fewer than 10	25%
10 but fewer than 15	50%
15 but fewer than 20	75%
20 or more	100%

Years of service as used herein shall be the equivalent of full-time continuous service in a regular position. Employees who elect to take deferred retirement shall not be eligible for any benefits

provided by this paragraph.

- b. An employee hired prior to December 6, 1977 who, as of the date of request, is eligible for Tier I paid retirement and who has given irrevocable written notice of his or her intent to retire, may request that a payoff of his or her accumulated sick leave be made to his or her deferred compensation account with the County to the maximum amount permitted under the regulations that govern deferred compensation programs and to the extent permitted under the provisions of 3.a., above, provided that such request is made at least thirty (30) calendar days but no more than sixty (60) calendar days prior to the effective date of his or her retirement. Such payoff shall be made prior to the effective date of the employee's retirement.
4. Employees hired on or after December 6, 1977, shall not be eligible for any benefits provided by Paragraph D.3., above.
5. When a person is reemployed in a regular or limited-term position, the Chief Human Resources Officer may, upon the request of the agency, apply the period of previous County continuous service for the purpose of determining sick leave earning rates. Notwithstanding the above, if an employee separates from the County and is rehired within one year from the date of separation, previously accrued and unused paid sick days shall be reinstated to the extent required by law. The employee will also be entitled to use those previously accrued and unused paid sick days and to accrue additional paid sick days upon rehiring to the extent required by law.

Section 2. Bereavement Leave

Bereavement leave is paid leave which is available to an employee related to the death of a family member of the employee's immediate family as defined below.

- A. For purposes of this Section, immediately family shall mean father, father-in-law, mother, mother-in-law, step-parent, brother, sister, spouse, registered domestic partner, child, step-child, grandparent, grandchild or person with whom the employee has/had a legal guardian relationship.
- B. Upon request, regular, limited-term and probationary employees who are in full-time paid status shall receive time off with pay, not to exceed five (5) regularly scheduled shifts for each death, and employees who are in part-time status shall receive time off with pay, not to exceed the number of hours scheduled in a part-time employee's normal workweek for each death.
- C. Generally, time off shall be taken in whole day increments and may be taken nonconsecutively. If requested, partial day absences may be approved if operationally feasible. Use of this leave must be completed within six (6) months

of the loss. In the event there are circumstances necessitating use of bereavement leave beyond six (6) months, but no more than twelve (12) months, prior written approval must be received from the supervisor within six (6) months of the loss.

- D. An employee may request additional time off for bereavement. Additional time off shall be charged to the employee's accrued balances and must meet eligibility requirements and conditions set forth in Article V, Section 1 or Article VI.

Section 3. Authorized Leave Without Pay

A. Agency Leave

Upon request, a regular, limited-term or probationary employee may be granted an Agency Leave Without Pay for a period of time not to exceed fifteen (15) calendar days. The granting of such Leave shall be at the discretion of the agency, except in cases where Official Leave has been authorized pursuant to B.4., B.5. and Section 11.A., below. The Agency Head may require that all accumulated compensatory time be used prior to granting of Agency Leave. The use of earned vacation prior to the obtaining of Agency Leave shall be at the option of the employee. If the leave qualifies as Family Leave pursuant to applicable law, the Agency Head may require that all sick leave, compensatory and vacation time be used prior to granting an Agency Leave except that the use of sick leave shall be subject to the provisions of Article IV, Section 1.B. and C., above.

B. Official Leave

1. Upon request, a regular, limited-term or probationary employee may be granted an Official Leave of Absence Without Pay. Such Leave, if granted, shall not exceed one (1) year except as provided in subsections 2. and 3., below. Such Leave may be authorized only after an employee's completion of an Agency Leave and after all compensatory time and vacation accruals have been applied toward payment of the absence.
2. An Official Leave of Absence may be extended for up to an additional year at the discretion of the Agency except that requests for Official Leave which qualify as Family Leave pursuant to applicable law shall be granted to the extent required by such law. If the Agency denies the extension of such Leave, the provisions of subsections 5. and 6., below, shall not apply.
3. Upon request, an employee who has requested and identified a valid need for Family Leave pursuant to Section 14 and applicable law, shall be granted Official Leave to the extent required by such law.

Such Leave shall be authorized only after an employee's completion of an Agency Leave and after all accumulated compensatory time and vacation accruals have been applied toward payment of the absence. In addition, where appropriate under the provisions of Article V, Section 1.B., above, the employee may be required to apply all sick leave accruals toward payment of the absence before an Official Leave will be authorized.

4. An employee shall give notice two (2) weeks prior to the date he or she wants to return to work, except that an employee returning from Family Leave shall give the lesser of two (2) weeks' notice or the maximum notice allowable under applicable law. If the employee does not give the required notice prior to the date he or she wants to return to work, the Agency shall not be required to return the employee to work until the employee gives such notice; however, the Agency may waive the notice or reduce the notice period at its discretion.
5. The agency shall indicate on the request its recommendations as to whether the request should be granted, modified or denied and shall promptly transmit the request to the Chief Human Resources Officer. If the Chief Human Resources Officer approves the request, he or she shall deliver a copy to the Auditor-Controller and the employee.
6. If the agency modifies or does not approve a request for Official Leave, the employee may, within fourteen (14) calendar days of said action, file a request for review with the Chief Human Resources Officer. The decision of the Chief Human Resources Officer on such appeals shall be final.
7. An Official Leave shall not be credited toward continuous service.

C. General Provisions

1. A request for a Leave of Absence shall be made upon forms prescribed by the Chief Human Resources Officer and shall state specifically the reason for the request, the date when it is desired to begin the Leave of Absence and the probable date of return.
2. A request for Leave of Absence Without Pay shall normally be initiated by the employee, but may be initiated by the employee's agency only where the employee is unable to initiate such action, except in cases where the provisions of Section 11.A. apply.
3. An employee who has completed an absence without pay due to a Leave granted pursuant to Sections 3, 4, 10 and/or 14 of this Article shall be considered to have automatically resigned his or her employment with the County under the provisions of Section 9., below,

unless he or she returns to work at the end of the approved Leave or receives approval for an extension of his or her Leave.

Section 4. Official Leave for Nonoccupational Disability

- A. A regular, limited-term or probationary employee shall be granted upon request an Official Leave of Absence Without Pay for up to six (6) months for a nonoccupational disability, including disabilities related to pregnancy and childbirth, provided that the employee meets the following conditions:
1. The County may require certification from the health care provider which states: (1) the date on which the condition commenced; (2) the probable duration of the condition; (3) an estimate of time that the employee needs to be off; (4) that the employee cannot perform his/her duties because of the condition.
 2. Such Leave shall begin after all accrued sick leave, compensatory time and vacation time have been applied toward the absence, in accordance with law.
 3. Unless otherwise required by law, the employee has been paid for six thousand two hundred forty (6240) regularly scheduled hours or more. (This provision does not apply to pregnancy disability leave.)
 4. For employees who are disabled because of pregnancy, as defined by state law, the County will maintain and pay for an eligible employee's coverage under the County's group health plan for the duration of the leave, not to exceed four (4) months over the course of a 12-month period, at the level and under the conditions that coverage would have been provided if the employee had continued in employment continuously for the duration of the leave.
- B. If additional Leave is desired, the employee shall request additional Leave in accordance with Official Leave, Section 3.B., above.
- C. Unless otherwise required by law, an employee shall not be entitled to more than one (1) such Leave per twelve (12) month period.

Section 5. Jury Duty Leave

A regular, limited-term or probationary employee who is called for jury duty or for examination for jury duty shall be compensated at the employee's regular rate of pay for those hours of absence due to the jury duty which occur during the employee's regularly scheduled working hours provided the employee deposits the employee's fees for such hours of jury duty, exclusive of mileage, with the County Treasurer. Fees for jury duty performed during hours other than regularly scheduled working hours may be retained by the employee. Any hours worked

beyond the regularly scheduled workday shall be subject to the workweek and overtime provisions (Article I). An employee may request a change in regularly scheduled working hours to a Monday through Friday day shift for the duration of such jury duty. Such requests shall be granted if practicable.

Section 6. Witness Leave

A regular, limited-term or probationary employee who is called to answer a subpoena as a witness for court appearances during the employee's work hours, except where the employee is a litigant, shall be compensated at his or her regular rate of pay for all hours of absence from work due to answering the subpoena provided the employee shows proof of such subpoena and deposits witness fees received for such hours, exclusive of mileage, with the County Treasurer. Fees for answering a subpoena as a witness during hours other than regularly scheduled working hours may be retained by the employee.

Section 7. Leave for Union Business

The County shall allow a regular, limited-term or probationary employee up to six (6) working days absence without pay during each payroll year for the term of this Agreement to perform official Union business, provided that:

1. The Union shall make a request to the employee's Agency Head at least ten (10) days in advance.
2. The Union shall not request that such Leave be effective for more than three (3) employees on any workday.
3. The services of such an employee are not immediately required by the County, and other competent employees are available to do the employee's usual work.

Section 8. Absence Without Authorization

- A. Absence without authorization, whether voluntary or involuntary, for three (3) consecutive working days shall be considered an automatic resignation from County employment as of the last date on which the employee worked or the last date the employee was to return to work from an authorized absence.
- B. If an employee does not have prior authorization to be absent from work, such employee may request specific authorization from the Agency Head prior to the expiration of the time limit specified in A., above.
- C. When an employee has been absent without authorization and the County plans to invoke the provisions of 8.A., above, at least ten (10) calendar days prior to accepting and entering an automatic resignation, the County shall send written notice to the employee's last known address by certified

mail with return receipt requested, and shall deposit such notice in the United States mail with postage fully prepaid. Notice is complete upon mailing. Such written notice shall contain:

1. a statement of the County's intention to implement the employee's automatic resignation and its effective date;
 2. a statement of the reasons for considering the employee to have automatically resigned;
 3. a statement of the employee's right to respond, either orally or in writing, prior to the date the County plans to accept and enter the resignation.
 4. a statement of the employee's right to representation;
 5. a copy of the automatic resignation provisions which apply to the employee;
 6. a statement that if the employee fails to respond to the written notice before the effective date of the automatic resignation, the employee has waived any right to appeal the automatic resignation.
- D. An automatic resignation shall not be accepted and entered if the employee 1) responds to the notice before the effective date, 2) provides an explanation satisfactory to the Agency as to the cause of the unauthorized absence, and the reason for failing to obtain an authorized leave, and submits any pertinent documentation to substantiate such reasons, and 3) is found by the Agency to be ready, able and willing to resume the full duties of his or her position.
- E. An employee who is permitted to continue his or her employment pursuant to C. and/or D., above, shall not be paid for the period of his or her unauthorized absence and shall be treated as if on a Leave of Absence for purposes of continuity of employment and other appropriate benefits, unless the Agency determines it is appropriate to use sick leave, compensatory time, vacation or other paid leave to cover the absence.
- F. Notwithstanding any other provision of this Section, the County may rescind an automatic resignation.
- G. Automatic resignations shall not be considered a discharge under the provisions of Article IX, DISCIPLINARY ACTION.

Section 9. Parenthood Leave

- A. A regular, limited-term or probationary employee shall be granted, upon request, a Parenthood Leave Without Pay of up to six (6) months in

connection with the birth or placement for legal adoption of a child provided the employee meets the following conditions:

1. The requested Leave is commenced within six (6) months before or after the expected date of birth or placement for legal adoption of the child.
 2. Sufficient documentation of such birth or placement for legal adoption is submitted with the request for Leave.
 3. Such employee has completed new probation.
 4. All accrued vacation and compensatory time has been applied toward the absence.
- B. Unless otherwise required by law, employees shall not be eligible for more than one (1) such Leave within any twelve (12) month period.
- C. Sick leave must be applied toward any portion of the absence which qualifies under Section 1.B.1. of this Article provided the employee has furnished the agency with a certificate signed by a licensed physician stating the nature of the medical condition and period of disability.
- D. Pregnant employees may also apply for a Nonoccupational Disability Leave for the term of disability as provided in Section 4. of this Article.
- E. Parenthood Leave shall not be credited toward continuous service.
- F. For employees on Parenthood Leave, merit increase dates, probation periods and performance evaluation dates shall be treated as if the employee were on Official Leave.

Section 10. Workers' Compensation Leave

- A. When an injury is determined to be job-related in accordance with Article XII, a regular, limited-term or probationary employee shall be placed on Workers' Compensation Leave. If such determination cannot readily be made or there is a subsequent disagreement regarding the termination of Workers' Compensation Leave and all sick leave has been applied to the absence, the employee shall be placed on Official Leave until a final determination is made, notwithstanding the provisions of Section 3.B., above.
- B. Workers' Compensation Leave shall continue until any of the following occur:
1. the employee is determined to be physically able to return to work by a County-designated physician; or

2. the employee is determined to be physically able to return to work with medical restrictions which the agency can accept; or
3. the employee accepts employment outside the County; or
4. the employee accepts employment in another County position; or
5. the employee is permanently disabled; or
6. the employee elects retirement as provided by law.

An employee who does not return to work within two (2) weeks of the end of his or her Workers' Compensation Leave pursuant to this provision shall be considered to have automatically resigned his or her employment with the County under the provisions of Section 8., above.

- C. If practicable, an employee on Workers' Compensation Leave will give notice two (2) weeks prior to the date he or she wants to return to work. If an employee does not give two (2) weeks' notice prior to the date he or she wants to return to work, the agency shall not be required to return the employee to work until such notice is given; however, the agency may waive the notice or reduce the notice period at its discretion.
- D. If an employee's Workers' Compensation Leave expires and the employee is absent without authorization, the provisions of Section 8. of this Article shall apply.
- E. For employees on Workers' Compensation Leave, merit increase dates, probation periods and performance evaluation dates shall be treated as if the employee were on Official Leave.

Section 11. AFSCME Union Officer Leave

- A. The County agrees to grant, if requested, Union Officer Leave with pay and without loss of any benefits provided by this Memorandum of Understanding except as provided below to one or more (upon mutual agreement) specified Union Officers designated by AFSCME for the term of this Memorandum of Understanding provided that:
 1. The Union Officer Leave shall be for a minimum of eight (8) hours.
 2. The Union Officer Leave is requested ten (10) calendar days in advance. Said notice may be waived by mutual consent.
 3. AFSCME promptly reimburses the County for all the Union Officer salary and benefit expenses* incurred during the Union Officer Leave.

*Expenses include only those which the County would have to pay out-of-pocket for payroll-related wages and benefits and do not include administrative overhead expenses.

4. The employee shall continue to conform to department rules, regulations and standards that are not inconsistent with Union Officer Leave.
 5. The employee is a standard or better performer.
 6. The County will not reassign or transfer the individual to any position in his or her class at the discretion of the agency unless significant business or operational concerns occur.
- B. Vacation and Sick Leave accrual rates will apply to the employee as though he or she were on duty status.
 - C. Vacation and Sick Leave accrued during Union Officer Leave and unused at the conclusion of the Leave must either be paid off by AFSCME or lost.
 - D. The merit increase eligibility date, if applicable, shall be extended a number of calendar days equal to the Union Officer Leave. This extended merit increase eligibility date will be effective the first day of the pay period after said date.
 - E. The probation period, if applicable, shall be extended by the length of the Union Officer Leave. The extended probation period shall end on the first day of the pay period following said extended date.
 - F. The employee's eligibility for promotional examinations shall not be affected by Union Officer Leave.
 - G. Layoff points shall not be affected by Union Officer Leave.
 - H. In the event emergency recall of the employee becomes necessary, Union Officer Leave may be suspended or cancelled during the course of the emergency. AFSCME shall not be obligated for reimbursement costs listed in A.1. and 2. for the period that Union Officer Leave is suspended or cancelled. Provisions of A.1. and 2., above, shall be suspended during said emergency recall.
 - I. Not more than one (1) employee in the Eligibility Worker Unit shall be eligible for Union Officer Leave at any one (1) time.

Section 12. Catastrophic Leave

The County will administer a catastrophic leave procedure designed to permit limited donations of vacation and/or compensatory time to an employee who is

required to be on an extended unpaid leave due to a catastrophic medical condition or other serious circumstances.

Section 13. Family Leave

A. General Provisions

1. Family Leave shall be granted to the extent required by law. The following provisions set forth certain of the rights and obligations with respect to this leave. Rights and obligations which are not specifically set forth below are set forth in the U.S. Department of Labor regulations implementing the federal Family and Medical Leave Act of 1993 (FMLA), and the regulations of the Department of Fair Employment and Housing implementing the California Family Rights Act (CFRA). Unless otherwise provided by this Section "family leave" under this agreement shall mean leave pursuant to the FMLA and CFRA.
2. Family Leave may be used in the following situations:
 - a. An employee's serious health condition which makes the employee unable to perform the functions of his/her job;
 - b. The birth of a child, and in order to care for the newborn child within one year of birth;
 - c. Placement of a child for adoption or foster care within one year of the placement;
 - d. Employee's presence is needed to attend to a serious health condition of the employee's child, spouse, parent or a child of an employee standing in "Loco Parentis" who is either under eighteen (18) years old or adult dependent child incapable of self-care because of mental or physical disability;
 - e. Leave for a qualifying exigency arising out of the fact that the employee's spouse, registered domestic partner, child or parent is on covered active duty or called to active duty status in the Armed Forces;
 - f. Leave to care for a spouse, registered domestic partner, child, parent, or "next of kin" who is a covered servicemember of the Armed Forces who has a serious injury or illness incurred in the line of duty while on active military duty or that existed before beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces.
3. Employees must request and identify their need for Family Leave.

Requests for Family Leave may also fall under the provisions of Sections 3, 4, and 9, above.

4. The County shall determine if a request for Family Leave is valid within the parameters of applicable law.
5. Family leave shall not exceed twelve (12) work weeks for situations covered by subsection A(2)(a) – (d) above or twenty-six weeks to care for a covered service member (subsection A(2)(e) and (f) above) during any calendar year. Where Family Leave qualifies as both military caregiver leave and care for a family member with a serious health condition, the leave will be designated as military caregiver leave first.
6. The twelve (12) month period for calculating leave entitlement will be based on the calendar year (January 1 to December 31).
7. When a request for Family Leave is approved, the agency shall determine if sick leave, compensatory, and/or vacation time is to be applied and shall determine the order in which such time is applied. The use of sick leave shall be restricted to those circumstances which qualify under the provisions of Article V., Section 1.B.

B. Notification Requirements

1. If the Family Leave is foreseeable, the employee must provide the agency with thirty (30) calendar days' notice of his or her intent to take Family Leave.
2. If the event necessitating the Family Leave becomes known to the employee fewer than thirty (30) calendar days prior to the employee's need for Family Leave, the employee must provide as much notice as possible. In no case shall the employee provide notice later than five (5) calendar days after he or she learns of the need for Family Leave.
3. When the Family Leave is for the purpose of the scheduled medical treatment or planned medical care of a child, parent, spouse or registered domestic partner, the employee shall, to the extent practicable, schedule treatment and/or care in a way that minimizes disruption to agency operations.

C. Verification

1. The County may require certification from the health care provider which states: (1) the date on which the condition commenced; (2) the probable duration of the condition; (3) an estimate of time that the employee needs to be off; (4) that the employee cannot perform his/her duties because of condition (if leave is for own serious health condition) or that care is needed (if leave is for child, spouse or parent).

2. Employees who request leave to care for a covered service member who is a child, spouse, registered domestic partner, parent or "next of kin" of the employee must provide written certification from a health care provider regarding the injured service member's injury or illness.
3. The first time an employee requests leave because of a qualifying exigency, the employee is required to provide the County with a copy of the covered military member's active duty orders or other documentation issued by the military which indicates that the covered military member is on active or called to active duty in a foreign country with the dates of active duty service. New active duty orders or similar documentation shall be provided to the County if the need for qualifying exigency leave arises out of a different active or call to active duty status of the same or a different covered military member.
4. Failure to provide satisfactory verification of the necessity for Family Leave is grounds for denial of the Family Leave.

Section 14. Employees with Annual Leave Balances

- A. If an employee transfers, promotes, reduces, or otherwise joins the Eligibility Worker unit with an Annual Leave balance, the employee shall exhaust all Annual Leave balances prior to utilizing any accrued Vacation or Sick Leave hours.
- B. Annual Leave shall be used in accordance with the Vacation and Sick Leave Articles of this MOU, with the exception of any payoff provisions.
- C. During each fiscal year, an employee with Annual Leave balances may request to be paid for accrued Annual Leave in either two (2) separate increments of up to twenty (20) hours each or one (1) increment of up to forty (40) hours. Such payment shall be made upon request unless the agency/department determines it is not economically or operationally feasible. In such a case, payment shall be made as soon as feasible.
- D. Except as outlined in D.1, D.2 and D.3 below, an employee with Annual Leave balances may not cash-out Vacation hours until all Annual Leave balances have been exhausted. An employee with Annual Leave balances may cash-out Vacation hours under the following limited circumstances:
 1. The employee's accrued Vacation bank is such that she/he will reach the applicable cap (as set forth in Article VI, Section 1.D) sometime during the fiscal year.
 2. (If subsection "1" is satisfied) when the employee reaches the applicable Vacation accrual cap set forth in Article VI, Section 1.D, the employee may cash out a maximum of sixty (60) hours of Vacation time

once per fiscal year.

3. Notwithstanding subsection D.2 above, an employee with less than sixty (60) hours of accrued Annual Leave may cash-out their remaining Annual Leave balance and accrued Vacation time necessary to reach the combined annual cash-out cap of sixty (60) hours, irrespective of an employee reaching their maximum Vacation accrual cap during the same fiscal year.
- E. An employee may not cash-out Annual Leave and Vacation in the same fiscal year except as noted in D.3 above.
- F. An employee separating from County service, whether by way of retirement, discharge, or voluntary resignation, shall be paid in a lump sum payment for any unused Annual Leave balance as provided below:

<u>Years of Service</u>	<u>Maximum Payoff</u>
Less than 3 years	160 hours maximum paid at 100%
3 years but less than 10	240 hours maximum paid at 100%
10 or more years	A maximum of 1600 hours of accrued Annual Leave balance has cash value. 320 hours are paid at 100%; remaining balance obtains cash value of 2% for each year of service, to a maximum of 50% i.e., 10 years of service equals 20% cash value for remaining balance; 25 or more years of service equals 50% of the remaining balance after deducted from 1600 hours maximum.

- G. An employee who is separating from County service by way of paid County retirement may elect either to take Annual Leave as time off, or be paid for his or her Annual Leave in a lump sum payment under the following conditions:

1. The amount of Annual Leave which can be taken as time off shall be limited to the amount of hours the employee is eligible to receive at 100% (i.e., 160 hours for employees with less than three (3) years of service, 240 hours for employees with at least three (3) years of service but less than ten (10) years of service, 320 hours for employees with at least ten (10) years of service). If the employee does not take time off or the amount of leave taken as time off does not exceed the amount of hours the employee is eligible to be paid at 100%, the remaining balance, to a maximum of 1600 hours (less maximum number of the

hours paid at 100%), shall be paid in accordance with payoff provisions set forth in Section F of this Article.

- H. Notwithstanding the above, any Annual Leave taken as time off during the final two (2) pay periods of employment with the County will be deducted from the Annual Leave payoff provisions set forth above. This provision shall not apply to the use of family leave, workers' compensation leave, or other statutorily protected leave during the final two (2) pay periods of employment.
- I. Notwithstanding the above, no employee may receive payoff paid at 100% that exceeds 320 hours for combined accrued Vacation and Annual Leave. If the payout of accrued Vacation reaches or exceeds the applicable 100% Annual Leave payoff rate as indicated in Section F of this Article, any Annual Leave balance shall be paid out in accordance with Section F of this Article. If the payoff of accrued Vacation does not reach the applicable 100% Annual Leave payoff rate as indicated in Section F of this Article, any remaining Annual Leave balance will be paid at 100% up to the applicable Annual Leave payoff rate. Once the combined Vacation and Annual Leave payoff reaches the applicable 100% Annual Leave payoff rate, the employee shall be paid the remaining Annual Leave balances at the percentages referenced in Section F of this Article.

Section 15. Leave Language Working Group

Upon adoption of the MOU, the County and AFSCME agree to establish a working group to clarify language regarding Leaves of Absences, including streamlining language for understandability.

ARTICLE VI VACATION

Section 1. Accumulation of Vacation

- A. During the first three (3) years of employment, a full-time employee in a regular or limited-term position shall earn .0385 hours of vacation for each hour of pay during his or her regularly scheduled workweek (approximately two [2] weeks per year). Part-time employees will earn .0385 hours of vacation for each hour of pay during his or her regularly scheduled workweek.
- B. After an employee in a regular or limited-term position has been paid for six thousand two hundred forty (6240) regularly scheduled hours, the employee shall earn .0577 hours of vacation for each hour of pay during his or her regularly scheduled workweek, but not to exceed credit for more than eighty (80) regularly scheduled hours in any pay period. Such credit shall be applied to the employee's vacation accumulation account only upon completion of each pay period. No credit shall be applied during the progress of any pay period or for any portion of a pay period during which the employee terminates County service.
- C. Commencing with the pay period following that in which the employee completed ten (10) years of continuous full-time County service, an employee in a regular or limited-term position shall earn .077 hours of vacation for each hour of pay during his or her regularly scheduled workweek, under the same terms and conditions as under B., above.
- D. The maximum allowable vacation credit at any one (1) time for a full-time employee with fewer than ten (10) years of full-time continuous service shall be two hundred forty (240) hours or a prorated amount equal to six (5) weeks of vacation for part-time employees. The maximum allowable vacation credit at any one (1) time for a full-time employee with ten (10) or more years of full-time continuous service shall be three hundred twenty (320) hours and a prorated amount equal to eight (8) weeks of vacation for part-time employees.

Section 2. General Provisions

- A. Not more than eighty (80) hours of paid time may be credited toward accumulation of vacation credit in any pay period.
- B. An Official Leave of Absence shall cause the aforementioned ten (10) years (Article VI, Section 1.C. and E.) of full-time County service to be postponed a number of calendar days equal to the Official Leave.
- C. When an employee's County service consists of part-time regular service or a combination of full-time regular and part-time regular service, both periods of service shall apply towards the required ten (10) years (Article

VI, Section 1.C. and E.) of County service, with the part-time service being applied proportionately to the appropriate full-time interval.

- D. Additional vacation earned during the period of vacation may be taken consecutively.
- E. In any use of vacation, an employee's account shall be charged to the nearest quarter hour.
- F. Vacations shall be scheduled for employees by their agency; however, consideration shall be given to effectuating the wishes of those employees requesting specific vacation periods.
- G. No scheduled vacation will be cancelled, except in cases of emergency.
- H. Illness while on paid vacation will be charged to Sick Leave rather than vacation only under the conditions specified in Article V, Section 1.B.5.
- I. No employee shall be permitted to work for compensation for the County in any capacity during the time of his or her paid vacation from the County service except as a Fire Suppression Volunteer, Deputy Sheriff - Emergency Service, Election Board Officer or Election Night Help.
- J. An employee separating from County service for reasons other than paid County retirement shall be paid for all accrued vacation in a lump sum payment. An employee who is separating from County service by way of paid County retirement may elect either to take time off for his or her vacation or to be paid for his or her vacation in a lump sum payment.
- K. Not more than once in each fiscal year, an employee may request to be paid for up to forty (40) hours of accrued vacation. Such requests will be granted whenever practicable.
- L. Employees shall be permitted to use accrued vacation balances when off work in accordance with Article V, Section 1.B (Permitted uses of Sick Leave) if sick leave balances are exhausted.
- M. When a person is reemployed in a regular or limited-term position, the Chief Human Resources Officer may, upon the request of the agency, apply the period of previous County continuous service for the purpose of determining vacation earning rates.

ARTICLE VII HOLIDAYS

Section 1.

A. County employees shall observe the following holidays:

- 2023 Independence Day, July 4
 Labor Day, September 4
 Native American Day, September 22
 Veteran's Day, November 11
 Thanksgiving Day, November 23
 Day After Thanksgiving, November 24
 Christmas Day, December 25

- 2024 New Year's Day, January 1
 Martin Luther King, Jr.'s Birthday, January 15
 Lincoln's Birthday, February 12
 Washington's Birthday, February 19
 Memorial Day, May 27
 Independence Day, July 4
 Labor Day, September 2
 Native American Day, September 27
 Veteran's Day, November 11
 Thanksgiving Day, November 28
 Day After Thanksgiving, November 29
 Christmas Day, December 25

- 2025 New Year's Day, January 1
 Martin Luther King, Jr.'s Birthday, January 20
 Lincoln's Birthday, February 12
 Washington's Birthday, February 17
 Memorial Day, May 26
 Independence Day, July 4
 Labor Day, September 1
 Native American Day, September 26
 Veteran's Day, November 11
 Thanksgiving Day, November 27
 Day After Thanksgiving, November 28
 Christmas Day, December 25

- 2026 New Year's Day, January 1
 Martin Luther King, Jr.'s Birthday, January 19
 Lincoln's Birthday, February 12
 Washington's Birthday, February 16
 Memorial Day, May 25

B. When a holiday falls on a Sunday, the next day shall be observed as the holiday.

- C. When a holiday falls on a Saturday, the Friday immediately preceding each day shall be observed as the holiday.

Section 2. Eligibility for Holiday Pay

- A. An employee must be paid for all or a portion of both the regularly scheduled working assignment immediately prior to a holiday and the regularly scheduled working assignment immediately after that holiday in order to receive holiday pay. With County approval, compensatory time earned for working on a holiday or for a holiday falling on a regularly scheduled day off may be taken on the first scheduled working day after the holiday.
- B. A new employee whose first working day is the day after a holiday shall not be paid for that holiday.
- C. An employee who elects paid County retirement on a holiday shall be paid for the holiday.
- D. An employee who is terminating employment for reasons other than paid County retirement and whose last day as a paid employee is the day before a holiday shall not be paid for that holiday.
- E. Only regular, limited-term and probationary employees shall be eligible for holiday pay.

Section 3. Holiday Pay

- A. On each of the holidays designated above, each full-time employee scheduled to work but permitted to take the day off shall receive pay computed at the employee's basic hourly rate for the number of hours the employee was regularly scheduled to work.
- B. On each of the holidays designated above, each part-time employee scheduled to work but permitted to take the day off shall receive pay computed at the employee's basic hourly rate for the number of hours the employee was regularly scheduled to work.
- C. Compensation for Holidays Falling on Scheduled Days Off
 - 1. When a holiday falls on a full-time employee's regularly scheduled day off, the employee shall receive eight (8) hours of compensatory time. Employees may request an alternate flex day within the same workweek in lieu of compensatory time off. Such alternate flex day will be equal to the employees' regular work hours.

2. A part-time employee shall receive compensatory time at the rate of one (1) hour for each five (5) hours of regularly scheduled work in the workweek to a maximum of eight (8) hours of compensatory time.

D. Compensation for Work on Holidays

1. An employee who is required to work on Native American Day, Veteran's Day, Day after Thanksgiving, Martin Luther King, Jr.'s Birthday, Lincoln's Birthday and/or Washington's Birthday and who meets the eligibility requirements contained herein shall receive his or her regular pay for each hour worked. Work performed on a holiday which is overtime as defined in Article I, Section 1., shall be compensated as provided in Article I, Section 3.
2. An employee who is required to work on Christmas Day, New Year's Day, Memorial Day, Independence Day, Labor Day or Thanksgiving Day shall receive pay computed at one and one-half (1 1/2) times the employee's basic hourly rate for the number of hours actually worked.
3. An employee who is required to work on a holiday and who meets the eligibility requirements contained herein shall receive, in addition to pay as provided in D.1. or 2. of this Section, compensatory time for each hour worked to a maximum of eight (8) hours.

There shall not be any duplication or pyramiding of rates paid under this Section. The total amount of holiday pay received under Section 3.A above and holiday compensatory time received under Section 3.C above, shall not exceed the total number of hours that the employee is regularly scheduled to work on a shift.

- E. Holidays which fall during an employee's vacation period shall not be charged against the employee's vacation balance.
- F. Full-time employees who are on a pay status during the pay period which includes March 1 each fiscal year during the term of this Agreement shall be credited with two (2) hours of compensatory time at the end of the pay period which includes that date. Part-time employees whose regularly assigned work schedule is at least twenty (20) hours per week shall, in like manner, earn and be credited with one (1) hour of compensatory time.
- G. Compensatory time earned under the provisions of this Section may be granted as compensatory time off or paid for at the discretion of the County, as provided in Article I, Section 3.C.2. of this Agreement.

ARTICLE VIII REIMBURSEMENT PROGRAMS

Section 1. Mileage Reimbursement

- A. Subject to the current Vehicle Rules and Regulations established by the Board, an employee who is authorized to use a private automobile in the performance of duties shall be paid for each mile driven in the performance of his or her duties during each monthly period, as provided below:
1. Effective June 29, 2001, the reimbursement rate shall be the Internal Revenue Service Standard Mileage Rate for the Business Use of a Car.
- B. An employee who is required by the County to furnish a privately owned vehicle for the performance of his or her duties shall receive a minimum of ten (10) dollars in any month in which the actual mileage reimbursement would otherwise be fewer than ten (10) dollars. The minimum shall not apply in any month:
1. in which the employee has not actually worked eighty (80) hours;
 2. unless the employee claims the ten (10) dollar minimum and the agency certifies that the employee was required to furnish a privately owned vehicle for County business.

Section 2. Personal Property Reimbursement

Employees shall, in proper cases, be reimbursed for the repair or replacement of personal property damaged in the line of duty without fault of the employee. The amount of reimbursement for articles of clothing shall be the depreciated value based on the age and condition of the article. Reimbursement for a watch shall be limited to the functional value of the watch.

ARTICLE IX DISCIPLINARY ACTION

Section 1. Reprimand and Substandard Performance Evaluation

- A. No regular, limited-term or probationary employee shall receive a written reprimand or a substandard performance evaluation except for reasonable cause.
- B. A written reprimand or substandard performance evaluation given to a regular, limited-term or probationary employee may be appealed through the grievance/appeal procedure. Such appeal shall be initiated at Step 1 of the grievance/appeal procedure.

Section 2. Disciplinary Hearing for Suspension, Reduction or Discharge

- A. In suspending a regular, limited-term regular or promotional probationary employee for more than five (5) days, or in reducing a regular or limited-term regular employee for reasons of unsatisfactory performance or in discharging a regular or limited-term regular employee, a written notice of such proposed disciplinary action shall be served on the employee personally, or by certified mail, at least (10) calendar days prior to the effective date of the proposed action. Such written notice shall contain:
 - 1. a description of the proposed action and its effective date(s);
 - 2. a statement of the reasons for such proposed action, including the acts or omissions on which the proposed action is based;
 - 3. copies of material on which the proposed action is based;
 - 4. a statement of the employee's right to respond, either orally or in writing, prior to the effective date of such proposed action;
 - 5. a statement of the employee's right to representation;
 - 6. a statement of the employee's right to appeal should such proposed action become final.
- B. In suspending a regular, limited-term regular or promotional probationary employee for five (5) days or fewer, the above notice requirements shall be complied with not more than ten (10) days after the effective date of the suspension. However, if an employee is notified of a suspension which will be effective before the above notice is given, the employee shall:
 - 1. whenever practicable, be given an opportunity to respond to the proposed suspension to a designated agency representative with the

authority to make an effective recommendation on the proposed suspension prior to the suspension becoming effective;

2. be informed of the employee's right to representation in the response;
 3. be informed of the employee's right to appeal should the proposed suspension become final.
- C. Prior to the effective date of such suspension of more than five (5) days, or reduction or discharge, an employee will be given an opportunity to respond either orally or in writing, at the employee's option, to a designated agency representative with the authority to make an effective recommendation on the proposed disciplinary action.
- D. An employee shall be given reasonable time off without loss of pay to attend a disciplinary hearing.
- E. An employee may represent himself or herself or may be represented in the disciplinary hearing by AFSCME.
- F. An employee shall receive written notice either sustaining, modifying or cancelling the proposed disciplinary action prior to the effective date of such action except that such written notice may be given after the response period in C., above, for suspension of five (5) days or fewer.
- G. Should a proposed reduction or suspension become final, an employee shall have the right to appeal such action pursuant to Sections 3. and 4. of this Article.
- H. Should a proposed discharge become final, an employee shall have the right to appeal such action pursuant to Section 5. of this Article.

Section 3. Suspension

- A. No regular, limited-term regular or promotional probationary employee shall be suspended except for reasonable cause. A suspension shall not exceed a period of two hundred forty (240) working hours.
- B. A written notice of such suspension stating specifically the cause of the suspension shall be given to the employee.
- C. In accordance with the provisions of Article X, an appeal of suspension shall be initiated at Step 3 of the grievance/appeal procedure, except for suspensions imposed by the County Executive Officer, which may be referred directly to arbitration.

Section 4. Reduction

- A. No regular employee or limited-term regular employee shall be reduced to a position in a lower class for reasons of unsatisfactory performance except for reasonable cause.
- B. A written notice of such reduction stating specifically the cause of the reduction shall be given to the employee.
- C. In accordance with the provisions of Article X, an appeal of reduction for reasons of unsatisfactory performance shall be initiated at Step 3 of the grievance/appeal procedure; except for reductions imposed by the County Executive Officer which may be referred directly to arbitration.

Section 5. Discharge and Right of Appeal

- A. No regular or limited-term regular employee shall be discharged except for reasonable cause. No proposed discharge shall be effected unless approved by the Chief Human Resources Officer except for discharges imposed by the County Executive Officer.
- B. A written notice of such discharge stating specifically the cause of the discharge shall be given to the employee.
- C. In accordance with the provisions of Article X, a discharge may be appealed directly to arbitration.

Section 6. Polygraph Examination

No employee shall be compelled to submit to a polygraph examination. No disciplinary action shall be taken against an employee refusing to submit to a polygraph examination; nor shall any comment be recorded indicating that an employee offered to take, took or refused to take a polygraph examination unless otherwise agreed to in writing by the parties; nor shall any testimony or evidence of any kind regarding an employee's offer to take, refusal to take, or the results of a polygraph examination be admissible in any proceeding pursuant to this Agreement, unless otherwise agreed to in writing by the parties.

Section 7. Investigatory Meetings

- A. When the County requires an employee to attend an investigatory meeting which could lead to discipline for him or her, prior to the investigatory meeting the employee shall be advised of:
 - 1. the date, time and place of the meeting,

2. the reason for the meeting and, the fact that the meeting could lead to discipline for the employee.
- B. An employee required to attend an investigatory meeting pursuant to A., above, has the right to be represented by a Union Steward or an AFSCME staff representative at the investigatory meeting.
 - C. The County shall notify the employee within four (4) weeks from the date of the investigatory meeting, the results or the status of the investigation.

ARTICLE X GRIEVANCE PROCEDURE AND DISCIPLINARY APPEALS

Section 1. Scope of Grievances

- A. A grievance may be filed if a management interpretation or application of the provisions of this Memorandum of Understanding adversely affects an employee's wages, hours or conditions of employment.
- B. Specifically excluded from the scope of grievances are:
 - 1. subjects involving the amendment or change of Board of Supervisors resolutions, ordinances or minute orders, which do not incorporate the provisions of this Memorandum of Understanding;
 - 2. matters which have other means of appeal including, but not limited to matters which may be appealed through the Orange County Merit System Recruitment Rules and Appeals Procedure or the Worker's Compensation Appeals Board;
 - 3. position classification;
 - 4. standard or better performance evaluations.

Section 2. Basic Rules

- A. If an employee does not present a grievance/appeal or does not appeal the decision rendered regarding his or her grievance/appeal within the time limits, the grievance/appeal shall be considered resolved.
- B. If a County representative does not render a decision to the employee within the time limits, the employee may within seven (7) calendar days thereafter appeal to the next step in the procedure.
- C. If it is the judgment of any management representative that he or she does not have the authority to resolve the grievance/appeal, the employee shall be informed in writing and the employee may file the grievance at the next step in the procedure. By mutual agreement of the County and AFSCME, Steps 1 and 2 of the grievance procedure may be waived.
- D. The Chief Human Resources Officer may temporarily suspend grievance/appeal processing on a section-wide, unit-wide, division-wide, agency-wide or County-wide basis in an emergency situation. AFSCME may appeal this decision to the Board of Supervisors.
- E. Upon written consent of the parties, (i.e., the representatives of the County and the employee or his or her representative) the time limits at any step in the procedure may be extended.

- F. Every reasonable effort shall be made by the employee and the County to resolve a grievance/appeal at the lowest possible step in the grievance/appeal procedure.
- G. No claim shall be granted for retroactive adjustment of any grievance prior to sixty (60) calendar days from the date of filing the written grievance at Step 1.
- H. The County and AFSCME agree that their respective grievance files shall be confidential.
- I. A grievance alleging discrimination shall first be referred to the County Equal Employment Opportunity (EEO) Office for intake, review, and if applicable, investigation. The grievant/appellant and, if applicable, the AFSCME COUNCIL 36, LOCAL 2076 representative shall be notified in writing of the grievance being referred to the EEO Office. The timelines for a grievance alleging discrimination shall automatically be held in abeyance until the EEO Office has completed its intake, review, and if applicable, investigation. Once the EEO Office has completed the intake, review, and if applicable, investigation, the grievant/appellant and, if applicable, the AFSCME COUNCIL 36, LOCAL 2076 representative shall be notified in writing the time limits for processing the grievance shall resume.

Section 3. Submission of Grievances

- A. Any employee, group of employees, or the Union shall have the right to present a grievance. No employee or group of employees shall be hindered from or disciplined for exercising this right. Grievances shall identify any employee(s) impacted by the alleged violation of this MOU. However, in situations in which the grievance involves common issues and there are so many affected employees that naming them all would be impractical, the grievance need only identify one employee as the representative of the group of employees affected by the alleged violation of the MOU.
- B. If any two (2) or more employees have essentially the same grievance, they may, and if requested by the County must, collectively present and pursue their grievance if they report to the same immediate supervisor. If the employees report to different supervisors, such grievances may be initiated at Step 2.
- C. If the grievant is a group of more than three (3) employees, the group shall, at the request of the County, appoint one (1) or two (2) employees to speak for the collective group. To be considered a grievant in a group grievance, employees must affirmatively identify themselves as grievants when the grievance is initially filed.

Section 4. Employee Representation

- A. An employee may represent himself or herself or may be represented by AFSCME in the formal grievance/appeal procedure, or alternatively, by an attorney in appealing a discharge.
- B. Authorized grievance/appeal representatives shall be regular employees in the same agency or Representation Unit as the grievant/appellant who are members of and are designated by AFSCME to represent employees for purposes of the grievance/appeal procedure. AFSCME shall notify Agency Heads of the names and titles of such representatives and send a copy of such notice to the Personnel Department quarterly.
- C. Representation at Step one (1) of the grievance procedure shall be limited to authorized employee grievance representatives employed in the agency in which the grievance is filed. AFSCME staff representatives may represent the employee at Steps two (2) and three (3) of the internal grievance/appeal procedure and in arbitration. The Union may request that AFSCME staff be present at step one (1) under mutually agreed conditions.
- D. If an employee chooses not to be represented by the Union, the Union may have a Union staff representative present at the applicable final step of the grievance procedure and, if necessary, shall have the right to present the Union's interpretation of provisions of this Agreement at issue. Such presentation shall not include comments regarding the merits of the grievance.

Section 5. Time Off for Processing Grievances/Appeals

- A. Reasonable time off without loss of pay shall be given to:
 - 1. an employee who has a grievance/appeal in order to attend a meeting with his or her supervisor or other person with authority to resolve the matter, as prescribed herein, or to meet with his or her grievance/appeal representative;
 - 2. an authorized grievance/appeal representative, in order to attend a meeting with the represented grievant's/appellant's supervisor or other person with authority to resolve the grievance/appeal, as prescribed herein, or to investigate the action grieved/appealed through discussion with the grievant/appellant or other employees, or through review of appropriate County records relating to the grievance/appeal.
- B. The following restrictions shall apply in all cases to activity authorized in Section 5.A., above:
 - 1. Before performing grievance/appeal work, the grievant/appellant or grievance/appeal representative shall obtain permission of his or her supervisor and shall report back to the supervisor when the

grievance/appeal work is completed.

2. Neither the grievant/appellant nor the grievance/ appeal representative shall interrupt or leave his or her job to perform grievance/appeal work unless his or her supervisor determines that such interruption or absence will not unduly interfere with the work of the unit in which the grievant/appellant or representative is employed. However, an effort will be made to grant such time off as soon as it is feasible to do so.
3. When an authorized grievance/appeal representative must go into another section or unit to investigate a grievance/appeal, the representative shall be permitted to do so provided that:
 - a. the representative checks in and checks out with the supervisor of the unit; and
 - b. such investigation does not unduly interfere with the work of the unit.

Section 6. Informal Discussion

If an employee has a problem relating to a work situation, the employee is encouraged to request a meeting with his or her immediate supervisor to discuss the problem in an effort to clarify the issue and to work cooperatively towards settlement.

Section 7. Internal Grievance/Appeal Steps

The grievance/appeal procedure shall consist of the following steps, each of which must be completed prior to any request for further consideration of the matter unless waived by mutual consent or as otherwise provided herein.

For grievances alleging discrimination, the timelines set forth below shall be tolled as provided in Section 2.I.

Step 1: Immediate Supervisor

If an employee has a problem relating to an interpretation or application of this Memorandum of Understanding, the employee may formally submit a grievance to the immediate supervisor within fourteen (14) calendar days from the occurrence which gives rise to the problem. Such submission shall be in writing and shall state the nature of the grievance and the suggested solution. Within fourteen (14) calendar days after receipt of the written grievance, the immediate supervisor shall meet with the grievant. Within fourteen (14) calendar days thereafter, a written decision shall be given to the grievant.

Step 2: Agency Head

If the grievance is not settled under Step 1, it may be presented to the Agency Head. The grievance shall be submitted within fourteen (14) calendar days after the receipt of the written decision from Step 1. Within fourteen (14) calendar days after the receipt of the written grievance, the Agency Head or his or her representative shall meet with the grievant. Within fourteen (14) calendar days thereafter, a written decision shall be given to the grievant.

Step 3: Chief Human Resources Officer

If the grievance/appeal is not settled under Step 2 and it concerns:

- A. an interpretation or an application of this Memorandum of Understanding;
- B. a substandard performance evaluation;
- C. a deferment or denial of a merit increase, or a disputed merit increase;
- D. a written reprimand; or
- E. a probationary release alleging discrimination, it may be appealed in writing to the Chief Human Resources Officer within fourteen (14) calendar days after receipt of the written decision from Step 2. Within fourteen (14) calendar days after receipt of the written grievance/appeal, the Chief Human Resources Officer or his or her representative shall meet with the grievant/appellant. Within fourteen (14) calendar days thereafter, a written decision shall be given to the grievant/appellant. The decision of the Chief Human Resources Officer in B., C., D., and E. above, shall be final and binding and shall not be referable to arbitration.

Appeal of a suspension and/or a reduction ordered by an Agency Head or his or her designated representative may be submitted in writing at Step 3 within fourteen (14) calendar days after receipt of the notice of suspension and/or reduction. Within fourteen (14) calendar days after receipt of the written grievance/appeal, the Chief Human Resources Officer or his or her representative shall meet with the grievant/appellant. Within fourteen (14) calendar days thereafter, a written decision shall be given to the grievant/appellant.

Section 8. Referrals to Arbitration

A. Grievances

1. If a grievance is not resolved under Step 3, an arbitration appeal may

be presented in writing to the Chief Human Resources Officer within twenty-one (21) calendar days from the date a decision was rendered at Step 3. As soon as practicable thereafter, or as otherwise agreed to by the parties, an arbitrator shall hear the grievance.

2. The parties shall either sign a joint issue submission statement or else execute and sign separate alternative issue statements after discussing the issue(s). In either case, the parties shall send copies of their joint or separate submission statement(s) to the agreed upon arbitrator and to each other within fourteen (14) calendar days before the first scheduled date of the arbitration hearing.

B. Disciplinary Appeals

1. Submission Procedure

- a. If an appeal from suspension or reduction is not settled at Step 3, it may be presented to the Chief Human Resources Officer within seven (7) calendar days from the date the decision was rendered.
- b. An appeal from any discharge or from a suspension or reduction imposed by the County Executive Officer may be presented to the Chief Human Resources Officer within ten (10) calendar days from the date the action becomes final.
- c. All disciplinary appeals shall be signed by the employee and by a representative of the Union if represented by the Union and shall be submitted in writing as follows:

Was (employee's name) suspended/reduced/discharged for reasonable cause? If not, to what remedy is the appellant entitled under the provisions of Article X, Section 8. of this Memorandum.

- d. As soon as practicable after a suspension, reduction or discharge appeal is presented to the Chief Human Resources Officer, an arbitrator shall hear the appeal.

2. Findings of Facts and Remedies

An arbitrator may sustain, modify or rescind an appealed disciplinary action as follows and subject to the following restrictions:

a. Discharges/Suspensions/Reductions

If the arbitrator finds that the action was taken for reasonable cause, he or she shall sustain the action.

b. Suspensions/Reductions

If the action is modified or rescinded, the appellant shall be entitled restoration of pay and/or fringe benefits in a manner consistent with the arbitrator's decision.

c. Discharges

1. If the arbitrator finds that the order of discharge should be modified, the appellant shall be restored to a position in his or her former class subject to forfeiture of pay and fringe benefits for all or a portion of the period of time the appellant was removed from duty as determined by the arbitrator.
2. If the arbitrator finds that the order of discharge should be rescinded, the appellant shall be reinstated in a position in his or her former class and shall receive pay and fringe benefits for all of the period of time he or she was removed from duty.

d. Restriction on Remedies

1. The County shall not be liable for restoring pay and fringe benefits for any period(s) of time the appellant was reduced or removed from duty, which results from the appealing party's request for written briefs and/or a transcript of the arbitration proceedings.
2. Restoration of pay and benefits shall be subject to deduction of all unemployment insurance (if not deducted by Employment Development Department) and outside earnings which the appellant received after the date of discharge.

C. General Provisions

1. If the grievance/appeal is decided by an arbitrator, the grievant/appellant and AFSCME relinquish any current or future claim to seek or obtain remedy through any other County appeal procedure.
2. The cost of an arbitrator shall be shared equally in all cases by the County and the appealing party except when the appealing party solely alleges discrimination under Article XV, in which case the County shall bear the full cost. When the grievance involves both discrimination and other arbitrable issues, the proper division of costs shall be determined by the arbitrator.
3. Grievance/Appeal hearings by an arbitrator shall be private.
4. Arbitration appeal hearings of suspensions of fewer than forty (40)

hours shall be limited to two (2) days unless both parties agree that a longer hearing is necessary. Both parties shall be allotted equal time during arbitration hearings involving such suspensions. The arbitrator shall be advised of the two (2) day limitation at the beginning of the hearing. The two (2) day limitation for arbitration appeal hearings shall not apply to suspensions imposed by the County Executive Officer.

5. The arbitrator shall be selected by the mutual agreement of the parties. If the parties cannot agree upon an arbitrator, a list of seven (7) arbitrators shall be obtained from the California State Conciliation Service, the American Arbitration Association or some other agreed upon source and each party shall alternately strike one (1) name from the list until only one (1) name remains.
6. Upon written request by the opposing party in a pending hearing given at least twenty (20) calendar days prior to the scheduled hearing date, the party requested shall supply to the party submitting the request copies of all documentary evidence to be used by that party at the hearing. Such evidence shall be provided no later than ten (10) calendar days prior to the scheduled hearing date. Any evidence not so provided may not be admitted or offered as evidence at the subsequent hearing except that any such documentary evidence discovered by a party after such a request for copies but not soon enough to comply with the above time limits may be admitted providing it could not have been discovered sooner by reasonable means and provided further that a copy or copies of such evidence be afforded the requesting party as soon as practicable after such discovery. Nothing contained herein shall operate to prevent either party from presenting additional documents by way of rebuttal.
7. An employee shall not suffer loss of pay for time spent as a witness at an arbitration hearing held pursuant to this procedure. The number of witnesses requested to attend and their scheduling shall be reasonable.
8. At the hearing, both the appealing employee and the County shall have the right to be heard and to present evidence. The following rules shall apply:
 - a. Oral evidence shall be taken only on oath or affirmation.
 - b. Each party shall have these rights: to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called the witness to testify and to rebut the evidence against the witness. If the employee does not testify in his or her own behalf, the employee may be

called and examined as if under cross-examination.

9. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might have made improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions and irrelevant and unduly repetitious evidence shall be excluded.
10. The County and the Union shall be allowed to have one (1) employee, who may be called upon to testify as a witness, present at the arbitration hearing at all times. By the mutual agreement of the parties, the County and the Union shall be allowed to have more than one (1) employee, who may be called upon to testify as a witness, present at the arbitration hearing at all times.
11. The parties agree to forego the use of briefs whenever practicable.
12. If a court reporter is requested, the requesting party shall pay the cost of the reporter and the cost of any transcripts provided for itself and the arbitrator. If the other party wishes to purchase a copy of the transcript and is unable to reach agreement with the requesting party for such a purchase, purchase arrangements may be made directly with the court reporter.
13. The decision of the arbitrator shall be final and binding on all parties.

ARTICLE XI LAYOFF PROCEDURE

Section 1. General Provisions

- A. This procedure shall not apply to a temporary layoff of fewer than four (4) consecutive weeks.
- B. This procedure shall not apply to employees who have special or unique knowledge or skills which are of special value in the operation of the County business.
- C. When two (2) or more agencies are consolidated or when one (1) or more functions of one agency are transferred to another agency, employees in all involved agencies shall be subject to layoff if one is necessary.
- D. Section 7., Reemployment Lists, and Section 8., Status on Reemployment, of this Article, shall not apply if the County has a written agreement with an employer, public or private, which guarantees the County employee an offer of reasonably comparable employment with the new employer who is taking over a function formerly performed by County employees and the new employer does make such an offer in writing to the employee.

Section 2. Order of Layoff

- A. When a reduction in the work force is implemented, employees in regular positions and those occupying limited-term positions at the direction of their Agency Head shall be laid off in an order based on consideration of:
 - 1. employment status;
 - 2. past performance;
 - 3. length of continuous employment with the County.
- B. Layoffs shall be made by class within an agency except that:
 - 1. Where a class has a dual or multiple concept, the Chief Human Resources Officer may authorize a layoff by specialty within the class.
 - 2. Where appropriate, the Chief Human Resources Officer may authorize a layoff by division or smaller unit of an agency.

- C. Within a class, employees shall be subject to layoff in the following order:

<u>Employment Status</u>	<u>Layoff Order</u>
First - Temporary Promotion	Determined by Agency
Second - New Probationary	Determined by Agency
Third - Regular/Promotional	Layoff Points Probationary

After all new probationary employees and employees on temporary promotion have been removed from a class within a layoff unit, the employee with the lowest number of layoff points shall be subject to layoff first. When two (2) or more employees have the same number of layoff points, the agency shall determine the order of layoff for these employees.

- D. If a layoff is going to be made in a class from which an employee has left through a temporary promotion, the employee on temporary promotion shall be returned to his or her former class and shall be subject to layoff in accordance with this procedure.

Section 3. Computation of Layoff Points

Seniority Points:

The equivalent of each year of full-time continuous service with the County shall earn two hundred sixty (260) seniority points.

The equivalent of each regularly scheduled full day of continuous service of a partial year shall earn one (1) seniority point.

Demerit Points:

For a rating of "does not meet performance objectives" on the last "Performance Evaluation Report", for the class currently held by the employee, the employee shall earn one-hundred thirty (130) demerit points. Demerit points shall only be used in the currently held class of an employee. Demerit points shall not be applied to an employee seeking to enter a lower class through voluntary reduction in lieu of layoff.

The County will provide to AFSCME:

- verification of proper application of demerit points provided the employee authorizes the release of their most current performance evaluation to AFSCME
- one copy of the layoff list and
- one copy of the seniority list

Layoff Points:

Layoff points shall be computed by subtracting demerit points, if any, from seniority points.

Section 4. Notification of Employees

- A. Written notice of layoff shall be given to an employee or sent by mail to the last known mailing address at least fourteen (14) calendar days prior to the effective date of the layoff. Notices of layoff shall be served on employees personally at work whenever practicable.
- B. It is the intent of the parties that the number of layoff notices initially issued shall be limited to the number of positions by which the work force is intended to be reduced. Additional notices shall be issued as other employees become subject to layoff as a result of employees exercising reduction rights under Section 5.
- C. The notice of layoff shall include the reason for the layoff, the proposed effective date of the layoff, the employee's hire date, the employee's layoff points, a list of classes in the employee's occupational series within the layoff unit, the employee's rights under Sections 5. and 6. and the right of the employee to advise the County of any objection to the content of the layoff notice prior to the proposed effective date of the layoff.

Section 5. Voluntary Reduction in Lieu of Layoff

- A. A promotional probationary or regular employee who is subject to layoff may request a reduction to a lower class within the same occupational series in the layoff unit provided the employee possesses the minimum qualifications for the class and passes any required performance tests. The reduction shall be made if there is a vacant position in the layoff unit or an incumbent in the lower class in the layoff unit has fewer layoff points than the employee requesting the reduction. In the latter case, the incumbent in the lower class with the fewest number of layoff points shall be subject to layoff.
- B.
 - 1. Employees who receive notice of layoff by personal service at work shall have until the end of their third regularly scheduled day of work following actual receipt of the notice to notify their agency in writing of their intent to exercise rights under this Section. Employees whose third regularly scheduled day of work is more than three (3) calendar days after receipt of the notice shall have three (3) calendar days, excluding weekends and holidays, to notify their agency of their intent to exercise rights under this Section; and where such notification is

not in writing, the employee shall confirm the notification in writing as soon as practicable.

2. Employees who receive notice other than by personal service at work shall have five (5) calendar days, excluding weekends and holidays, following the date the person is personally served, or if service is made by mail, five (5) calendar days, excluding weekends and holidays, following the date of proof of service by mail to notify their agency of their intent to exercise rights under this Section. Where such notification is not in writing, the employee shall confirm the notification in writing as soon as practicable.
3. Failure by an employee to respond to his or her agency pursuant to this Section shall result in a rebuttable presumption that the employee does not intend to exercise any right of reduction to a lower class and that the employee's hire date stated in the layoff notice was correct.
4. No employee action or inaction referred to in this Section shall be considered a waiver of an employee's right to file grievances concerning any matter within the scope of the grievance procedure.

Section 6. Voluntary Reduction from Classes Designated as Vulnerable to Layoff

An employee in a class designated by the County as vulnerable to layoff may request a voluntary reduction to any class provided the employee possesses the minimum qualifications and has passed any required performance tests for the class to which reduction is requested. Such employees shall be eligible for consideration for available positions in the class to which reduction is requested. If appointed, such an employee shall be placed on AGENCY/DEPARTMENTAL REINSTATEMENT LISTS pursuant to Section 7.A.3., below.

Section 7. Reemployment Lists

- A. The following persons shall be placed on AGENCY REINSTATEMENT LISTS as provided in 1., 2. and 3., below, in the order of their respective layoff points with the person having the largest number of layoff points listed first:

1. Persons Laid Off

The names of persons laid off shall be placed on an AGENCY REINSTATEMENT LIST for each class in the occupational series at or below the level of the class from which laid off.

2. Persons Who Exercise Their Rights Under Section 5.

The names of persons who exercise their rights under Section 5. shall be placed on an AGENCY REINSTATEMENT LIST for each class in the occupational series at or below the level of the class from which reduced, excluding any classes at or below the level of the class currently held.

3. Persons Who Voluntarily Reduced Under the Provisions of Section 6.

The names of persons who were voluntarily reduced under the provisions of Section 6. shall be placed on an AGENCY REINSTATEMENT LIST for the class from which reduced and for each class in the occupational series below the level of the class from which they voluntarily reduced, provided they request to be placed on such lists.

Positions to be filled shall be offered first to persons on the AGENCY REINSTATEMENT LIST for that class, starting at the top of the list. If reinstatement is offered to a class other than that from which the person was laid off or reduced, such person must first meet the minimum qualifications and pass any required performance tests for that class.

- B. The names of persons laid off shall be placed on the COUNTY PREFERRED ELIGIBLE LIST for the class from which they were laid off and for any class from which they previously voluntarily reduced pursuant to Section 5., in the order of their layoff scores, going from highest to lowest. When one (1) vacant position in an agency, other than the agency from which the employee was laid off, is to be filled in that class, ten (10) names shall be certified from the COUNTY PREFERRED ELIGIBLE LIST, starting at the top. When more than one (1) vacant position in an agency, other than the agency from which the employee was laid off, is to be filled in that class, the number of names certified, starting at the top of the COUNTY PREFERRED ELIGIBLE LIST, shall be equal to twice the number of vacancies plus seven (7). If there is a tie among layoff points at the last name to be certified, all tied eligibles shall be certified. Eligible employees certified from COUNTY PREFERRED ELIGIBLE LISTS shall be considered prior to eligible employees certified from lower-ranking eligible lists. Appointments shall be made only from eligible employee lists certified pursuant to Section 7.B. Appointments need not be made in the order of layoff points; any eligible certified in accordance with this provision may be appointed to a vacant position.
- C. Names of persons placed on the AGENCY REINSTATEMENT LIST and the COUNTY PREFERRED ELIGIBLE LIST shall remain on the lists for two (2) years, except that:

1. A person who on two (2) separate occasions rejects or fails to respond within five (5) calendar days to offers of employment in a particular class shall be removed from the lists for that class.
 2. A person who on three (3) separate occasions declines referral for interviews in a particular class shall be removed from the lists for that class.
 3. An employee who upon retirement signs a statement electing not to be eligible for reemployment under this provision shall have his or her name excluded from the aforementioned lists.
- D. In the event two (2) or more agencies are consolidated while AGENCY REINSTATEMENT LISTS are in effect, such lists shall be combined and treated as one (1) list in accordance with the preceding provisions of this Section. When a transfer of one (1) or more functions of one (1) agency to another agency occurs, employees previously laid off from such function(s) who are on an AGENCY REINSTATEMENT LIST for the agency losing such function(s), shall be removed from such list and shall be placed on a reinstatement list for the agency acquiring such function(s) and treated in accordance with the preceding provisions of this Section.
- E. Reemployment lists shall be available to AFSCME and affected employees upon reasonable request.

Section 8. Status on Reemployment

- A. An employee who has been laid off under the provisions of this Article and subsequently reemployed in a regular or limited term position within a two (2) year period from the date of his or her layoff shall receive the following considerations and benefits:
1. All Sick Leave credited to the employee's account when laid off shall be restored.
 2. All seniority points held upon layoff shall be restored.
 3. All prior service shall be credited for the purpose of determining Sick Leave and vacation earning rates and service awards.
 4. The employee shall be placed in the salary range as if the employee had been on a Leave of Absence Without Pay.
 5. The probationary status of the employee shall be as if the employee had been on a Leave of Absence Without Pay except that a probation period shall be established as determined by Article IV B. if reemployment is in a higher class or occupational series different from that employed in at the time of layoff.

- B. An employee who has voluntarily reduced under the provisions of this Article and subsequently is reemployed in a regular or limited term position in a class from which the employee reduced within a two (2) year period from the date of reduction shall receive the following considerations:

The employee shall be placed in the salary range either as if the employee had been on a Leave of Absence Without Pay or at the step on the salary range closest to but which does not exceed the employee's salary in the lower class, whichever is higher. The merit increase eligibility date shall be reestablished as determined by the Chief Human Resources Officer. The probationary status of the employee shall be as if the employee had been on a leave of absence.

- C. When an employee is reduced under the provisions of this Article and is subsequently reemployed in a class higher than the one from which the employee was reduced, the employee shall first be returned to the class from which the employee had been reduced as provided above. The employee will then be promoted from that class under the provisions of Article II, Section 4., and the employee shall serve a promotional probation period appropriate for the new class as determined by Article IV, Section 1.B.

Section 9. Seniority for Union Stewards and Officers

- A. The Union may designate stewards and officers to receive super-seniority solely for purposes of layoffs. The number of stewards and officers receiving super-seniority shall not exceed two (2) percent of the number of employees in the Eligibility Worker Representation Unit.
- B. Employees so designated shall receive two hundred sixty (260) layoff points in addition to layoff points computed in Section 3.

Section 10. Job Sharing

When Eligibility Worker Unit employees have been designated as vulnerable to layoff, employees in Eligibility Worker Unit classifications may volunteer to be placed in a twenty (20) hour job sharing position. Employees who are placed in twenty (20) hour job sharing positions shall, upon request, be added to the AGENCY REINSTATEMENT LIST and be eligible for reinstatement to full-time status. An employee placed in a twenty (20) hour job sharing position may not return to full-time position until the employee requests reinstatement to a vacant forty (40) hour position and is eligible according to his/her layoff score on the AGENCY REINSTATEMENT LIST; or the County assigns the employee to a vacant full-time Eligibility Worker Unit position, following thirty (30) days written notice unless the employee is enrolled as a student in which case the employee will be allowed to complete the semester or quarter in which he or she is currently enrolled. The County will not order an employee out of a job sharing position until there is no one remaining on the reinstatement list who will accept a full-time

position. The number and assignment of positions subject to job sharing shall be determined by the County. The County will make every reasonable effort to lessen the impact of layoffs by permitting employees to take part-time work in accordance with these provisions. Employees occupying part-time positions prior to the effective date of a layoff shall be excluded from the provisions of this section.

ARTICLE XII ON-THE-JOB INJURY, WORKERS' COMPENSATION
SUPPLEMENT PAY

Section 1. On-the-Job Injury

A. Treatment of Industrial Injuries

Whenever an employee sustains an injury or disability arising out of and in the course of County employment and requires medical care, the employee shall obtain treatment according to the provisions of the California Labor Code Section 4600 et seq.

B. Workers' Compensation Supplement Pay

1. Whenever an employee is compelled to be absent from duty by reason of injury or disease arising out of and in the course of County employment, the employee shall receive workers' compensation supplement pay which, when added to the workers' compensation temporary disability benefit, shall equal eighty (80) percent of the employee's base salary for a period not to exceed one (1) year including holidays.
2. Workers' compensation supplement pay shall begin the same day as the workers' compensation temporary disability benefits. Prior to qualifying for workers' compensation temporary disability benefits, an injured employee may, at his or her option, use any accrued sick leave, compensatory time and/or vacation, in that order.
3. While an employee receives workers' compensation supplement pay, no deductions nor payments shall be made from any sick leave, compensatory time or vacation time previously accumulated by the employee. The employee shall not accrue sick leave or vacation credit during the period in which the employee receives workers' compensation temporary disability benefits.
4. When an injury is determined to be job-related by the County or by the Workers' Compensation Appeals Board, eighty (80) percent of all sick leave, compensatory time and/or vacation expended since the fourth day of disability shall be restored to the employee's account(s), except that if the injury required the employee's hospitalization or caused disability of more than fourteen (14) days, eighty (80) percent of all sick leave, compensatory time and/or vacation expended since the first day of disability shall be restored to the employee's account(s).
5. The merit increase eligibility date and probation period of any employee who receives workers' compensation benefits shall be extended by the length of time the employee receives such

benefits, except that the first fifteen (15) consecutive calendar days from the date of the injury shall be considered County service for merit increase eligibility and completion of the probation period.

6. When an employee is no longer entitled to receive workers' compensation supplement pay, the employee may, at his or her option, use sick leave, compensatory time, and vacation, in that order, if the employee is compelled to be absent from duty as set forth in Paragraph B.1., above.
7. Time during which an employee receives workers' compensation temporary disability benefits shall be counted toward the computation of County seniority and determination of sick leave and vacation earning rates.

C. Exposure to Contagious Diseases

Whenever an employee is compelled by direction of a County-designated physician to be absent from duty due to an on-the-job exposure to a contagious disease, the employee shall receive full compensation for a period not to exceed eighty (80) working hours for a full-time employee or fourteen (14) calendar days for a part-time employee. If the absence extends beyond the applicable period, sick leave, compensatory time and vacation may be used, at the employee's option, in that order.

ARTICLE XIII SAFETY

Section 1. General Provisions

Recognizing that a safe work environment is of substantial benefit to both the County and employees, the County and the Union mutually agree to the following safety program:

- A. No employee shall be required to work under conditions dangerous to the employee's health or safety.
- B. The County shall make reasonable efforts to provide and maintain a safe place of employment. AFSCME shall urge all employees to perform their work in a safe manner. Employees shall be alert to unsafe practices, equipment or conditions and report any such unsafe practices, equipment or conditions to their immediate supervisors. Employees shall follow safe practices.
- C. Any employee who either does not receive an answer to a safety-related question from his or her supervisor within three (3) days or receives an answer which the employee deems unsatisfactory may directly contact the County Safety Officer.
- D. Any employee who is directed to perform a task which the employee feels is unsafe may request an immediate investigation from the Safety Officer. During the period that the Safety Officer is conducting an investigation, the employee will be assigned to other work at no loss of earnings. If the Safety Officer concludes the task complained of is safe, the employee shall perform the work as instructed.
- E. The County shall furnish all equipment which is necessary for employees to perform their job in a safe manner.
- F. The County shall provide the necessary first aid kits at all work locations. First aid kits shall be checked periodically and replenished when needed. Emergency telephone numbers shall be posted near telephones in reception areas. Names and telephone numbers of employees qualified to give first aid cardio-pulmonary resuscitation (CPR) also shall be posted.
- G. Wherever practicable, the County shall provide first aid training and CPR training to at least two (2) employees at each work location.
- H. Emergency evacuation drills shall be held at each work location at least once every six (6) months.
- I. The County shall maintain at each work site a "Log and Summary of Occupational Injuries and Illnesses". The log shall be made available to the Health and Safety Steward.

Section 2. Safety Inspection

During inspection of County facilities conducted by the State Division of Industrial Safety for the purpose of determining compliance with the California OSHA requirements, a Union designated employee shall be allowed to accompany the inspector while the inspector is in the employee's agency. The employee so designated shall suffer no loss of pay when this function is performed during the employee's regularly scheduled work hours.

Section 3. Safety Meetings

One Union steward from each district office may be assigned by the Union to meet once per month with the District Manager or his or her designee, at the request of either party, to discuss matters affecting employee health and safety. The District Manager shall respond within ten (10) working days unless the time limit is extended by mutual agreement. Either party may request additional meetings in response to emergency situations.

If the matter is not satisfactorily resolved, the Union steward may, at his or her request, meet with the Department Safety Officer. The Department Safety Officer shall respond within ten (10) working days.

If the matter is not satisfactorily resolved, the Union steward may, at his or her request, meet with the Director of Social Services.

ARTICLE XIV UNION AND EMPLOYEE RIGHTS

Section 1. Employee Rights

The County shall not hinder or discipline an employee for exercising any rights or benefits provided in this Memorandum of Understanding.

Section 2. Payroll Deduction

Membership dues of AFSCME members in this Representation Unit and insurance premiums for such AFSCME sponsored insurance programs as may be approved by the Board of Supervisors shall be deducted by the County from the pay warrants of such members. The County shall promptly transmit the dues and insurance premiums so deducted to AFSCME.

AFSCME shall notify the County, in writing, as to the amount of dues uniformly required of all members of AFSCME and also the amount of insurance premiums required of employees who choose to participate in such programs.

Section 3. Employee Information Listing

Upon request, to a maximum of four (4) times per fiscal year during the term of this Agreement, the County shall provide AFSCME with a complete and current listing of all employees in this Unit. Such listings shall include employee name, job classification, agency, timekeeping location, salary range and step. AFSCME agrees to pay one dollar and fifty cents (\$1.50) per page to offset the cost of providing such listings.

Section 4. Use of Bulletin Boards

Space shall be made available to the Union on agency bulletin boards within the Representation Unit provided such use does not interfere with the needs of the agency and material posted is not so opprobrious, flagrant, insulting, defamatory, insubordinate or fraught with malice as to cause disruption of, or material interference with, the operations of the County, County employees or other employee organizations as PERB and the Courts interpret this standard and the rights of union speech. Notice shall be dated and signed by the authorized representative of the Union responsible for its issuance.

Section 5. Use of County Facilities

The Union may, with the approval of the Chief Human Resources Officer, hold meetings of their members on County property during nonworking hours provided request is made to the Chief Human Resources Officer as to the specific location and dates of the meeting prior to such meeting.

Section 6. Notification of New Employees

The County agrees to inform new employees in writing of the Union's status as the exclusive representative of employees in the Bargaining Unit.

Section 7. Release Time for Union Officers

The following designated Union officers will be given the following amount of release time per week in order to perform lawful Union business:

- 1) The Chief Shop Steward of AFSCME will be 16 hours per week of release time;
- 2) President – 16 hours per week of release time;
- 3) Vice-President – 8 hours per week of release time;
- 4) Secretary – 8 hours every other week of release time;
- 5) Treasurer – 8 hours every other week of release time.

Workloads will be reduced in a corresponding manner.

The County and AFSCME will meet each June to determine an appropriate work schedule that will allow these designated Union officers to engage in their Union activities. Work schedules will take effect the first full pay period of August, provided however, that for the time period between the adoption of this MOU and August 2017, the parties will meet within 30 days of the adoption of the MOU to determine an appropriate work schedule for each of these Union officers. If no agreement can be reached between the parties, the Divisional Deputy Director or designee will make the final determination.

Section 8. Steward Training

A maximum of fourteen (14) AFSCME stewards will be allowed to attend two (2) eight-hour training classes conducted by Council 36 during each year of this contract without loss of pay. AFSCME representatives will provide the County with a ten (10) working day advanced notice of the date of the training and a list of those who will be attending the classes, as well as a sign-in sheet of those who did attend.

Section 9. Health and Welfare Trustees

Up to six (6) times annually, no more than three (3) employees who are trustees of the AFSCME Health & Welfare Trust shall be released with pay for up to ninety (90) minutes for travel to and from the AFSCME office and attendance at the bi-monthly Board of Trustees meeting. In addition, no more than three (3) employees who are trustees of the AFSCME Health & Welfare trust shall be released with pay for up to three (3) days annually to attend a trustee continuing education conference.

ARTICLE XV NONDISCRIMINATION

Section 1. County and AFSCME Responsibilities

The County and AFSCME agree that the provisions of this Memorandum of Understanding shall be applied to employees without discrimination as required by state and federal law.

Section 2. AFSCME Responsibilities

The Union shall not discriminate in membership or representation on any basis cited in Section 1. of this Article.

ARTICLE XVI INSURANCE

Section 1. Health Plans and Premium Contributions

A. Full Time Employees

1. Except as modified in Section 1.B., C., D., E., and F., below, the County will offer health plans to all full-time regular, limited term and probationary employees and their eligible dependents.
2. The County will pay the following percentage of the premium for employees electing any health insurance plan other than the Sharewell Choice PPO plan:
 - a. Employee Only Coverage – eighty-five (85) percent of the employee's premium or ninety (90) percent of the employee's premium if the employee completes the Wellness Incentive program;
 - b. Employee and Dependent Coverage - seventy (70) percent of the total health plan premium for each employee and such employee's eligible dependents or seventy-five (75) percent of the employee's premium if the employee completes the Wellness Incentive program.
 - c. Employees will pay the remaining portion of the total plan premium and consent to have their portion deducted from their County regular or supplemental payroll checks.
3. Employees who elect the Sharewell Choice PPO plan will not only have their insurance premium fully paid by the County but will also receive a payroll credit per plan guidelines. In addition, those employees who elect the Sharewell Choice PPO plan are not required to participate in the Wellness Incentive program.
4. The health plans and their premiums are adopted by, and may be modified by, the Board of Supervisors. Plan descriptions are contained in the plan documents available through HRS/Employee Benefits.

B. Part-time Employees

1. Except as modified in Section 1.C., D., E., and F., below, the County will offer health plans to all part-time regular, limited term, and probationary employees. Enrollment of part-time employees shall be restricted to employees whose normal workweek consists of at least twenty (20) hours.

2. The County will pay the following percentage of the premium for employees electing any health insurance plan other than the Sharewell Choice PPO plan:
 - a. Employee Only Coverage – forty-five (45) percent of the employee's premium or fifty (50) percent of the employee's premium if the employee completes the Wellness Incentive program;
 - b. Employee and Dependent Coverage – thirty-two and one-half (32.5) percent of the total health plan premium for each employee and such employee's eligible dependents or thirty-seven and one-half (37.5) percent of the total health plan premium for each employee and such employee's eligible dependents if the employee completes the Wellness Incentive program.
 - c. Employees will pay the remaining portion of the total plan premium and consent to have their portion deducted from their County regular or supplemental payroll checks.
3. The County will pay the following percentage of the premium for employees electing the Sharewell Choice PPO plan:
 - a. Employee Only Coverage – one hundred (100) percent of the premium;
 - b. Employee and Dependent Coverage – per subsection B.2.b above

In addition, those employees who elect the Sharewell Choice PPO plan are not required to participate in the Wellness Incentive program.

4. Coverage shall be terminated for any employee whose normal assigned hours are reduced to less than twenty (20) hours in a full workweek.
 5. The health plans and their premium are adopted by, and may be modified by, the Board of Supervisors. Plan descriptions are contained in the plan documents available through HRS/Employee Benefits.
- C. Two married full-time employees who are enrolled in the same health plan must be enrolled as Employee Married to Employee (EME). While enrolled as EME, the County will pay the full cost of employee and dependent coverage for each EME. Employees must report any subsequent changes in marital status such as legal separation or divorce, within 30 days of the event. Failure to report legal separation or divorce from a covered spouse shall require repayment of all premiums paid by the County under this program during the period in which the employees were ineligible due to legal separation or divorce.

- D. Dual Coverage: If two married employees are enrolled in separate health plans neither employee may be covered as a dependent on their employee spouse's health plan. Eligible employees may choose to enroll in different health plans and choose to cover eligible dependent children on one or both health plans, subject to employee contributions for coverage.
- E. For employees who are on approved Family Leave pursuant to Article V, Section 14. and applicable law, the County shall continue to pay health insurance premiums as provided in A., B. and C., above, to the extent required by applicable law.
- F. For employees who are on approved leave which meets the requirements of Pregnancy Disability Leave pursuant to Government Code section 12945, the County shall continue to pay health insurance premiums as provided in A. and B., above, to the extent required by applicable law.
- G. Effective January 1, 2007, active employees are pooled separately from retirees for purposes of setting premiums for participation in County offered health plans. Effective January 1, 2024, County health insurance plans will be restructured to include both active County employees and eligible County retirees, with the requirement that the retiree health insurance premiums for non-Medicare retirees exceed the active employee health insurance premiums by 20 percent. Active employee premiums (contributions/payroll deductions) shall not increase beyond the actuarially determined increases related to active employee claims experience.
- H. Employees may opt out of participation in the County's health insurance programs at any Open Enrollment or within 30 days of a qualifying life event beginning with Plan Year 2021 provided they sign a waiver of the offer of health coverage that complies with the Affordable Care Act ("ACA") and/or any other relevant Federal or California State requirements and upon request provide the County proof they will maintain continuous health insurance coverage that complies with the ACA and any other relevant Federal or California State requirements.

Section 2. Health Plan Enrollment

- A. New eligible employees will be enrolled in the health plans of their selection effective the first day of the month following the first thirty (30) days of employment. Eligible full-time employees failing to elect a plan or failing to properly opt out of enrolling in a County health plan, as described in Section 1, will be enrolled in the Wellwise Choice PPO Health Plan, employee only. Eligible part-time employees failing to elect a plan or failing to properly opt out of enrolling in a County health plan, as described in Section 1, will be enrolled in the Sharewell Choice PPO Health Plan, employee only. Employees who go out on leave of absence prior to satisfying the waiting period for coverage shall not be eligible for coverage until returning to work

unless required by state /federal law. Upon return to work, coverage will become effective the first day of the month following thirty (30) days from the date of return unless otherwise required by state/federal law.

- B. Terminated employees will be continued with coverage in all health plans until the last day of the calendar month in which they terminate employment. Terminated employees may be eligible for continuation of health insurance as required by the Consolidated Omnibus Budget Reconciliation Act (COBRA) and/or by other state/federal law.
- C. Employees who are enrolled in a County health plan at the time of retirement will be given the opportunity to elect and enroll in a Retiree health plan. Employees who have opted out of a County health plan as described in Section 1 will be given an opportunity to elect and enroll in a Retiree health plan.
- D. The County shall provide for an open enrollment period once each calendar year for employees, employees' eligible dependents, and retirees to change their enrollment in a County health plan. Employees who wish to opt out of a County Health Plan will be required to sign a waiver of the offer of health coverage that complies with the Affordable Care Act ("ACA") and/or any other relevant Federal or California State requirements and upon request provide the County proof they will maintain continuous health insurance coverage that complies with the ACA and any other relevant Federal or California State requirements of coverage at each Open Enrollment.

Section 3. Premium Only Plan

The County shall administer a Premium Only Plan that will allow an employee to pay for health insurance premiums as permitted by state and federal law, regulations and guidelines. Under the plan, an employee's gross taxable salary will be reduced by an amount of his or her share of the premium costs of County- provided health plan coverage as permitted by state and federal law, regulations and guidelines.

Section 4. Other Insurance Coverage

- A. AFSCME shall maintain a trust fund, approved by the State of California, for the sole purpose of providing group insurance benefits such as, but not limited to, disability, vision, dental, and life insurance for employees in the Eligibility Worker Unit.
- B. The County shall, on a biweekly basis, forward \$23.70 per pay period for all regular hours paid for all regular, limited-term and probationary employees in the Eligibility Worker Unit for all employees who have any paid hours in the pay period for deposit in said State approved trust fund.
- C. Insurance coverages provided through the trust fund with monies contributed by the County shall be made available to all employees in the Eligibility Worker Unit on an equal basis regardless of membership status.

- D. AFSCME shall indemnify and hold the County harmless from any claims or legal actions brought under this Section.
- E. AFSCME shall provide the County with a copy of the annual report to the Insurance Commission and shall provide a full accounting of the status of the fund upon request of the County.
- F. The parties agree to reopen negotiations on this section at any time, during the duration of the MOU, but no earlier than one year from ratification. To reopen, parties will provide documentation justifying such a reopener such as audited statements showing a marked decline in the trust fund balance or a marked increase in insurance premiums.

Section 5. Employee Contribution Subsidy Program

- A. Effective with the pay period beginning September 30, 2005, the one percent (1%) employee subsidy contribution for current health insurance for all regular, limited-term and probationary employees was terminated.
- B. Current employees who separate from County service effective on or after the pay period beginning September 30, 2005 are not eligible to receive a lump sum payment. Such employees are not members of an Eligible Classification under the Plan.
- C. Current employees who retire or take deferred retirement on or after September 30, 2005 are not eligible for the retiree medical grant, including survivor benefits. Such employees are not members of an Eligible Classification under the Plan.
- D. Current employees who are granted a disability retirement by Orange County Employees Retirement System based on an application submitted to OCERS before September 30, 2005 will be eligible to receive a grant under the terms and conditions of the Plan.

Section 6. Retiree Medical Participation

- A. Current employees who retire from County Service effective on or after the pay period beginning September 30, 2005 are eligible to participate in County sponsored health plans at their own cost if enrolled at the time of their retirement.

Section 7. Working Group and Reopener

- A. Working Group

Upon adoption of the MOU, the County and AFSCME will establish an Insurance Working Group to discuss the redesign of the Wellness Credit program, how

employees earn their 5% credit, and reducing the cost of health insurance.

B. Reopener as a Result of ACA

The County may reopen negotiations on this Article and other provisions of the MOU (e.g., Flexible Spending Accounts), for purposes of addressing issues resulting from the implementation of the Patient Protection and Affordable Care Act (ACA), including but not limited to, the potential impact of the Excise Tax (commonly known as the “Cadillac Tax”) on high cost employer-sponsored health coverage. Federal administrative agencies have not yet issued definitive guidance regarding the Excise Tax which is expected to begin in 2022. The parties acknowledge that some of the benefits provided in the MOU may be included in the coverage to which the Excise Tax liability may apply. As a result, the issues that likely need to be addressed are: which health group plan coverages must be taken into consideration for the purposes of this tax, how to calculate this tax, and what steps, if any, can be taken to avoid payment of the Excise Tax (e.g., modification of benefits).

The County will not be responsible for the payment of any Excise Tax on health coverage from unit members’ enrollment in County-sponsored health plans.

Section 8. Health Reimbursement Arrangement

- A. Effective the first full pay period after Board of Supervisors adoption of this MOU, a Health Reimbursement Arrangement (HRA) will be made available for current and future employees in this bargaining unit. The County and the HRA administrator, with the oversight of the HRA Advisory Committee, shall administer the program subject to the requirements set forth in the County Health Reimbursement Arrangement Plan Document.
- B. Effective the first full pay period after Board of Supervisors adoption of this MOU, County will contribute \$60.00 per pay period for each regular, limited-term and/or probationary employee and \$30.00 for each part-time employee (scheduled to work at least 40 hours per pay period) and the County contribution will be increased by 2.5% annually each first full pay period beginning July 2024.

ARTICLE XVII POSITION CLASSIFICATION

Section 1. New Job Classes

If the County creates a new job class within the Bargaining Unit, the County shall notify the Union prior to adoption. If the Union wishes to negotiate with the County regarding the impact of the new classification on employees' wages, hours and other terms and conditions of employment, the Union shall notify the County within ten (10) working days from receipt of such notice.

Section 2. Procedure for Requesting Reclassification of a Position

- Step 1: An employee may submit a written request to his or her supervisor that a classification study be conducted. Requests shall state the reasons the employee believes the present class is not appropriate and which class the employee believes is appropriate based on the employee's present duties. The Agency will promptly provide the Union with a copy of the employee's request.
- Step 2: Appropriate Agency response to an employee's request for reclassification shall include, but not be limited to, (a) denial of the request, or (b) forwarding of the request to the Human Resource Services Department with a recommendation that a classification study be conducted. If the request is denied, the employee shall be given a written statement of the reasons for the denial. If management denies the request or fails to respond within thirty (30) calendar days, the employee may submit the request to the Union for consideration.
- Step 3: Within thirty (30) calendar days thereafter, the Union may request in writing that the Human Resource Services Department conduct a classification study of the position.
- Step 4: Within fifteen (15) calendar days of the receipt of a written request from the Union to study the classification of a position, the Human Resource Services Department will provide the employee with a Position Description Form. The employee shall complete the form and submit a copy to the employee's supervisor and a copy to the Human Resource Services Department.
- Step 5: Within one hundred twenty (120) calendar days after the Human Resource Services Department receives the completed Position Description Form, the Human Resource Services Department shall notify the Union of the appropriate classification of the position.

Section 3. Limitations on Concurrent Studies

The County shall not be required to respond within one hundred twenty (120) calendar days if the total number of pending requests by the Union for reclassification studies (at Step 4 of this procedure) exceeds ten (10) positions.

Section 4. Maintenance Classification Reviews

Maintenance Classification Reviews of occupational series shall not be covered by this procedure.

Section 5. Review of Disputed Position Classification Decisions

- A. If the Union does not agree with a position classification decision of the County, after the steps in Section 2. have been followed, the issue may be presented to a classification consultant for advisory review.
- B. The consultant's review shall be documented on forms supplied by the County and used by the County for documenting its classification decisions.
- C. The consultant shall have access to the organizational and classification files of the Human Resource Services Department and shall have the right to conduct the classification study in the manner the consultant deems most appropriate.
- D. Any salary change for any employee resulting from a consultant's advisory recommendation shall be effective no sooner than the beginning of the pay period following the decision of the County at Step 5 of the procedure described in Section 2., above.
- E. A consultant shall be chosen who has experience in conducting position classification analyses for local governmental agencies. The consultant will be chosen by a committee with an equal number of County and Union members. The cost of the consultant shall be shared equally by the County and the Union.

ARTICLE XVIII DEFINED CONTRIBUTION

An employee in a regular position may, at his or her request, participate in the County's 457(b) Defined Contribution Plan.

ARTICLE XIX WORKLOAD

Section 1. General Provisions

- A. The right to determine workload levels and the method of organizing and assigning work shall be retained by the County.
- B. Whenever practicable prior to implementation, the County shall notify and discuss with the Union the establishment of a workload level for a particular type of assignment or significant decreases or increases in the existing workload levels of employees. If it is not practicable to notify the Union before such workload decisions are implemented, the County shall notify and discuss such workload levels with the Union as soon as practicable thereafter.
- C. When practicable, the County shall consider projected turnover and anticipated workload levels when staffing for each program and function, but shall not be required to fill positions in excess of any of the fiscal constraints as described in Section 2., below.
- D. Workload statistics shall be furnished to the Union on a monthly basis.

Section 2. Fiscal Constraints

The County shall not be required by the provisions of this Article to take any action which may reasonably be expected to result in incurring costs in excess of any of the fiscal constraints set forth below:

- A. Incurring salary and/or benefit costs which could exceed the applicable State or Federal reimbursement level for any aid category, as set forth in State Cost Control Plans.
- B. Requiring positions to be filled in excess of those authorized to be filled by the Board of Supervisors.
- C. Requiring overtime expenditures in excess of overtime funding budgeted and authorized for expenditure by the County Executive Office and the Board of Supervisors and approved by the Agency for employees in this Unit.

Section 3. Workload Distribution

- A. To the extent practicable, the County will make reasonable efforts to equitably distribute workload among employees with the same assignment. However, nothing in this Article shall limit the County's ability to establish specialized assignments when the County determines it is appropriate to do so.

Section 4. Performance Ratings

- A. Each case-carrying employee's caseload size and error rate shall be considered when the employee's Performance Review is prepared. An employee's overall performance rating shall be based on ratings received in all performance factors in the Performance Review.
- B. When an employee carries a caseload five (5) percent above the County assigned workload level for that assignment, it shall be considered and noted in the employee's Performance Review.
- C. When an employee maintains an error rate which is below the error rate for that program, it shall be considered and noted in the employee's Performance Review.
- D. In any month(s), when an employee's caseload/applications exceed the County assigned workload level for that assignment by five (5) percent or more to a maximum of ten (10) cases, errors which are a direct result of the higher caseload/application levels shall not be a basis for a negative reference in the Performance Review.
- E. When it is the judgment of the supervisor that an error is a direct result of an employee's inability to communicate with a client in a common language, that error shall not be a basis for a negative reference in the Performance Review.

Section 5. Uncovered Caseload Assignments

- A. Except as provided below, any caseload assignment that is uncovered for two (2) weeks or more shall be distributed among existing workers within the function, within the District in a manner consistent with the provisions of this Article.
- B. If a caseload assignment is uncovered for two (2) weeks and it reasonably appears that a worker will be available to cover the caseload within the third week, the supervisor may continue to keep the caseload temporarily distributed among the workers of that function within the District.
- C. If a caseload assignment is to be uncovered for two (2) weeks or more due to sick leave or vacation, the employees in the unit/section may request through the Union steward that the caseload be distributed on a temporary basis within the unit or function within the District.
- D. When a worker whose caseload has been distributed among remaining workers returns from Sick Leave or vacation, upon the request of the employee, the County shall return that worker to his/her prior assignment (unit/caseload) whenever practicable.

ARTICLE XX WORKLOAD MANAGEMENT FORUMS

Section 1. Intent

The County and AFSCME encourage responsible workload levels for employees, effective flow of information within the Agency and efficient use of available staff. An intended objective of the management forum shall be that, when possible, cases be equitably distributed within the various programs.

Section 2. Workload Management Forums

A. SSA shall implement a Workload Management Forum as follows:

1. A forum shall be implemented in the Social Services Agency consisting of up to seven (7) employee representatives and up to an equal number of management representatives.
2. Based on the item for discussion at any particular Workload Management Forum, additional employee or management staff may attend at the mutual agreement of the Agency and AFSCME.
3. A forum shall be implemented in the Health Care Agency and shall consist of up to two (2) employee representatives and an equal number of management representatives.

B. Employee representatives shall be selected by AFSCME. Management representatives shall be selected by the Agency Head or designee.

Section 3. Objectives

- A. Each Workload Management Forum shall meet once each month for the purpose of reviewing current workload management practices, identifying problem areas and exploring potential improvements.
- B. Pursuant to this Article, each Workload Management Forum will develop specific recommendations including, but not limited to, the following:
1. improved management information systems;
 2. relationships between workload and performance expectations;
 3. manageable workload levels within budgetary limitations;
 4. methods for achieving equitable distribution of work when possible.

Agency management shall review the recommendations of each Workload Management Forum and where practicable, adopt procedures addressing the area(s) of concern.

Section 4. Operating Procedures

A. Each Workload Management Forum shall establish its own operating procedures.

B. Employee representatives shall be allowed reasonable time off without loss of pay to attend meetings.

ARTICLE XXI TRANSFER OF FUNCTIONS

In the event the County plans to enter into any agreement with another public employer or private entity which involves the transfer of functions now being performed by employees in this Representation Unit, or the law or governmental regulations provides for the transfer or substantial modification of functions now being performed by employees in this Unit to another public or private agency, the County will advise such public or private entity of the existence and terms of this Memorandum of Understanding and will immediately advise the Union of such plans or law or regulation.

The County will consult with the Union in a timely manner to review possibilities for the absorption of affected employees in the Representation Unit into other jobs in the County service or the new agency.

In the event of any such transfer of functions, it is the intention of the County to make every reasonable effort to absorb affected County employees in the Representation Unit who desire to remain employed by the County into comparable employment in the County service. In addition, the County intends to consult with any agency which is absorbing a County function in order to provide for suitable placements within that agency for County employees whose function is being transferred.

ARTICLE XXII SEPARABILITY

In the event that any provision of this Memorandum of Understanding is declared invalid by any court of competent jurisdiction, such decision shall not invalidate the entire Memorandum, it being the express understanding of the parties hereto that all other provisions not declared invalid shall remain in full force and effect.

ARTICLE XXIII

MANAGEMENT RIGHTS

Any of the rights, powers or authority the County had prior to the adoption of this Memorandum of Understanding are retained by the County, except those specifically abridged, delegated or modified by this Memorandum of Understanding provided that such management rights do not restrict employees from filing grievances.

ARTICLE XXIV

MODIFICATION AND WAIVER

This Memorandum sets forth the full and entire understanding of the County and Union regarding the matters set forth herein. Except as specifically provided herein, it is agreed and understood that the parties hereto reserve the right, only upon mutual agreement, to meet and confer in good faith with respect to any subject or matters covered herein or with respect to any other matter within the scope of representation during the term of this Memorandum of Understanding.

ARTICLE XXV UNION - MANAGEMENT COUNCIL

Section 1. Participants

The Union - Management Council shall be composed of eight (8) employee representatives chosen by the Union, an AFSCME staff representative, the Director of Financial Assistance and seven (7) additional management representatives.

Section 2. Purpose

The purpose of the Council shall be to discuss issues as identified by the Union or management. The Council shall share information regarding issues of concern that may impact SSA and the bargaining unit and shall seek means of resolving problems.

Current problems can include, but not be limited to, working conditions, discussions and suggestions on work simplification, elimination of non-mandated tasks or discussion of impending changes.

Section 3. General Provisions

- A. The Council shall meet once each quarter, unless additional meetings are scheduled by mutual agreement.
- B. The Council shall establish such operating procedures as it deems necessary.
- C. Council members will be given time off without loss of pay or benefits to attend Council meetings.
- D. Impacted site stewards will be given time off without loss of pay or benefits to attend Council meetings; they will return to their work sites when work on their agenda item is completed.
- E. Prior to submitting any issue/concern for discussion at a Union-Management Council Meeting, AFSCME representatives will discuss the matter with district level management in an effort to resolve the issue/concern at the lowest possible level.
- F. Nothing shall be agreed upon in these meetings which would have the effect of altering or amending this Memorandum of Understanding.
- G. At least five (5) business days prior to each scheduled meeting, parties shall provide an agenda listing the specific items to be discussed at each meeting. If no items are exchanged between the parties by this date, the meeting shall be deemed canceled.

- H. No issues brought up at the Workload Management Forum described in Article XX shall be discussed at the Union-Management Council Meeting unless both the County and the Union agree that the issues have not been resolved at the Workload Management Forum.

ARTICLE XXVI RETIREMENT CONTRIBUTION RATES AND BENEFIT LEVELS

Section 1. Retirement Benefit Levels

- A. For employees hired on or before September 20, 1979:
1. Such employees are provided a one-fiftieth (1/50) retirement benefit formula per Section 31676.12 of the Government Code for general members. (This retirement formula is commonly known as the "2% at 57" benefit formula.)
 2. The retirement allowance will be computed on the highest one (1) year of final compensation per Government Code Section 31462.1.
- B. For Employees Hired on or after September 21, 1979 and Before January 1, 2013, or If Hired on or After January 1, 2013, are Not Considered "New Members" within the Meaning of the Public Employees Pension Reform Act of 2013 (PEPRA).
1. Employees will be provided a one-sixtieth (1/60) retirement benefit allowance as provided in Section 31676.1 of the Government Code. (This retirement formula is commonly known as the "1.67 at 57.5" formula.¹)
 2. The retirement allowance of employees will be computed upon the employee's highest three (3) years of compensation per Government Code Section 31462.
- C. For Employees Hired on or After January 1, 2013 who are Considered "New Members" within the Meaning of PEPRA.
1. Employees will be provided with the retirement benefit allowance set forth in Section 7522.20 of the Government Code. (This retirement formula is commonly known as the "2% at 62" formula.)
 2. The retirement allowance of employees will be computed upon the employee's highest three (3) years of compensation per Government Code Section 7522.32.

¹The 1.67@57.5 benefit formula provides the following percentages at these ages: 1.92% at age 60; 2.09% at age 62, and 2.43% at age 65.

Section 2. Retirement Contributions

- A. Members' normal contribution rates shall be as provide by Government Code sections 31621.5, 31621 or 7522.30, as applicable, for general members.
- B. The County will adopt employee contribution rates equal to County contributions for full reserve funding of cost-of-living increases to retirees for all active members of the retirement system as recommended by the OCERS actuary. Effective September 19, 2014, employees will pay the full member contribution for each of the benefit plans provided by the County.

Section 3. Adjustment of Rates

- A. Members' normal and cost-of-living contribution rates shall be adjusted subsequent to and in conformance with actuarial recommendations adopted by the Retirement Board and the Board of Supervisors.

ARTICLE XXVII JOB ACTIONS

During the life of this Agreement, no job actions shall be caused or sanctioned by AFSCME.

ARTICLE XXVIII FLEXIBLE SPENDING ACCOUNTS

Section 1. Dependent Care Reimbursement Account (DCRA)

The County will administer a Dependent Care Reimbursement Account (DCRA) that will allow eligible employees the opportunity to allocate a specified amount of biweekly pre-tax salary into the employee's dependent care reimbursement account to pay for dependent care expenses as permitted by state and federal law, regulations and guidelines and as permitted by the County's Section 125 Plan document.

Section 2. Health Care Reimbursement Account (HCRA)

The County will administer a Health Care Reimbursement Account that will allow employees the opportunity to allocate a specified amount of bi-weekly pre-tax salary into the employee's health care reimbursement account to pay for health care expenses as permitted by state and federal law, regulations, and guidelines and as permitted by the County's Section 125 document.

ARTICLE XXIX COMPENSATION

Section 1.

Effective October 1, 2005, the PIP program/award ceased. The annual evaluation-only component of the program remains. All evaluations that were completed through December 31, 2005, received the time off award. PIP time that was on the books at that time must have been used by June 26, 2008.

Section 2.

Effective the first day of the first full pay period after adoption of this MOU by the Board of Supervisors, the salary schedule will be increased by 4.75%.

Section 3.

Effective June 28, 2024, the salary schedule will be increased by 4.25%.

Section 4.

Effective June 27, 2025, the salary schedule will be increased by 4.0%.

ARTICLE XXX PERFORMANCE EVALUATION WORKGROUP

Section 1. Intent

The County and AFSCME agree that employees are to be evaluated through a fair evaluation system. The County and AFSCME agree to work collaboratively to review the current evaluation process to determine areas of recommended improvement in the documents, forms and implementation of the evaluation system.

Section 2. Establishment of the Performance Evaluation Workgroup

- A. A Working Group has been established consisting of up to five (5) AFSCME representatives and up to an equal number of County representatives.
- B. Based on the topic of discussion at any particular Working Group, additional AFSCME or County representatives may attend at the mutual agreement of AFSCME and the County.
- C. The length of each meeting will be mutually agreed upon by the County and AFSCME.
- D. The group will conclude within six (6) months of its first meeting after adoption of the 2023-2026 MOU.

Section 3. Objectives

- A. The Working Group shall meet once a month, or more than once a month by mutual agreement, for the purpose of reviewing the forms and documents of the current evaluation process, as well as the methods in which the evaluation process is implemented. The Working Group will develop specific recommendations limited to:
 - 1. Definitions of “Does Not Meet Performance Expectations,” “Meets Performance Expectations,” and “Exceeds Performance Expectations.”
 - 2. Creating a supervisor reference sheet identifying each competency being rated and the demonstrable behaviors associated with each rating above.
 - 3. How Article XIX, Section 4 Performance Ratings impacts evaluation ratings based on specific eligibility staff assignments.

- B. The County may provide information regarding new evaluation systems and/or processes that may be considered to replace the current evaluation process.
- C. County management shall review the recommendations of the Working Group and where practicable, adopt documents, forms, and/or procedures proposed by the Working Group.

Section 4. Operating Procedures

- A. The Working Group shall establish its own operating procedures.
- B. The Working Group will endeavor to meet on dates in which AFSCME Union Officers are provided release time in accordance with Article XIV, Section 7. Release Time for Union Officers. For other County employees who serve as AFSCME representatives in the Working Group during paid work time, AFSCME will reimburse the County for all compensation costs in accordance with Senate Bill 1085.

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APPENDIX A

Classes included in the Eligibility Worker Unit:

7005	Eligibility Technician
7009	Employment and Eligibility Specialist

MEMORANDUM OF UNDERSTANDING ELIGIBILITY WORKER UNIT

~~2019~~2023-~~2023~~2026

COUNTY OF ORANGE

AND

AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES
COUNCIL 36, LOCAL 2076, AFL-CIO

MEMORANDUM OF UNDERSTANDING

~~2019-2023~~ – ~~2023~~2026

COUNTY OF ORANGE

AND

AMERICAN FEDERATION OF STATE, COUNTY

AND MUNICIPAL EMPLOYEES

COUNCIL 36, LOCAL 2076, AFL-CIO

FOR THE

ELIGIBILITY WORKER UNIT

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PREAMBLE

Section 1. Recognition

Pursuant to the provisions of the Employee Relations Resolution of the County of Orange and applicable State Law, American Federation of State, County and Municipal Employees, Council 36, Local 2076, AFL-CIO, hereinafter referred to as the Union, was certified on June 23, 1977, as the Recognized Employee Organization for employees in the Eligibility Worker Representation Unit as listed in Appendix A. The County hereby recognizes the Union as the exclusive representative of employees in this unit; however, employees in the unit shall have the right to represent themselves individually in their employment relations with the County pursuant to Section 3502 of the Government Code (Meyers-Milias-Brown Act). If an employee does not wish to be represented by the Union and wishes to represent himself or herself in matters pertaining to grievances and/or disciplinary appeals, the employee shall be required to provide the Union and the County with a signed statement waiving the right to Union representation in such matters.

Section 2. Implementation and Term

This Memorandum of Understanding sets forth the terms of agreement reached between the County of Orange and the American Federation of State, County and Municipal Employees for the Eligibility Worker Unit for the period beginning ~~June 2, 2019~~ June 30, 2023, through ~~June 29, 2023~~ June 25, 2026. All provisions shall become effective November ~~19, 2019~~ 17, 2023, unless otherwise provided herein.

Section 3. Renegotiation

In the event the Union desires to negotiate a successor agreement, the Union shall submit, no later than on the one hundred fiftieth (150th) calendar day before expiration of this Agreement, its written request for changes in fringe benefits and other terms and conditions of employment. If the Union desires to negotiate a change in wages, that request shall be submitted no later than the ninetieth (90th) calendar day before expiration of this Agreement. Negotiations shall conclude thirty (30) calendar days before expiration of this Agreement unless extended beyond that date by mutual agreement of both parties.

Section 4. In order to establish harmonious employment relations through a mutual process, to promote the quality and continuance of public service, to achieve full recognition for the value AFSCME Local 2076 bargaining unit members as employees and the vital and necessary work they perform, and to provide for the prompt and equitable resolution of disputes the parties agree as follows:

DEFINITIONS

The following terms as used in this Memorandum of Understanding shall, unless the context clearly indicates otherwise, have the respective meanings herein set forth:

AFSCME STAFF REPRESENTATIVE – is an employee of AFSCME District Council 36 and not a County employee. A staff representative provides assistance to unit members in such areas as contract negotiations, contract administration, representation and internal organizing. Notwithstanding the above, the Union may designate a County employee to serve temporarily as a staff representative. Upon notice to the County, the County will grant the employee an unpaid leave of absence, not to exceed one year.

BOARD shall mean Board of Supervisors of the County of Orange.

CHIEF HUMAN RESOURCES OFFICER shall mean the Human Resource Services Department Head or his or her designee.

CONTINUOUS SERVICE shall mean employment in a regular position which has not been interrupted by resignation, discharge or retirement. Leaves without pay shall not be considered a break in continuous service. Leaves without pay will not be credited toward continuous service except as required by law (e.g., FMLA/CFRA).

COUNTY shall mean the County of Orange.

DISABILITY RETIREMENT shall mean a service or non-service connected disability retirement pension under the Orange County Employees Retirement System.

EMERGENCY shall mean an unforeseen circumstance requiring immediate action, a sudden unexpected happening, an unforeseen occurrence or condition, a pressing necessity.

EMPLOYEE shall mean a person employed by the County and covered by terms of this Memorandum of Understanding, except where the natural construction of this Memorandum of Understanding indicates otherwise.

~~EXTRA HELP EMPLOYEE shall mean an employee employed in an extra help position. An extra help employee may be removed from an extra help position at any time without notice, cause or right of appeal.~~

~~EXTRA HELP POSITION shall mean a position which is intended to be occupied on less than a year-round basis including, but not limited to, the following: to cover seasonal peak workloads; emergency extra workloads of limited duration; necessary vacation relief, paid Sick Leave and other situations involving a fluctuating staff. Ordinarily, a full-time extra help position will not be authorized~~

~~for a period exceeding six (6) months. In unusual circumstances, and at the discretion of the Agency Head and the Chief Human Resources Officer a full-time extra help position may be authorized for a period longer than six (6) months, provided such period shall not exceed one (1) year.~~

FLEX TIME shall mean a 4/10 or 9/80 schedule.

FULL-TIME EMPLOYEE shall mean an employee employed in one (1) or more regular or limited-term positions whose normally assigned work hours equal those of a full workweek or work period as described hereinafter.

LIMITED-TERM EMPLOYEE shall mean an employee employed in a limited-term position except where a regular position is converted to a limited-term position, the incumbent shall retain his or her former status. As an exception to this definition, a limited-term employee may also be used to fill a regular position when the incumbent employee is on Official Leave of Absence Without Pay.

LIMITED-TERM POSITION shall mean a position which the County has determined has no anticipated long-range funding or has uncertain future funding.

NEGOTIATE shall mean the process by which representatives of a recognized employee organization and the Chief Human Resources Officer or his or her representative meet a reasonable number of times and confer in good faith in an effort to agree upon joint recommendations for presentation to the Board regarding wages, hours and other terms and conditions of employment. When appropriate, proposals and counter proposals may be used to resolve differences in an effort to avoid an impasse. The negotiation process does not obligate either party to accept a proposal or make a compromise.

OFFICIAL PERSONNEL FILE shall mean those official individual personnel files maintained by the Human Resource Services Department's Personnel Records Section.

PART-TIME EMPLOYEE shall mean an employee employed in one (1) or more regular or limited-term positions whose normally assigned work hours do not equal those required of a full-time employee.

PERSONAL BUSINESS shall mean a foreseeable personal event or circumstance which necessitates the employee's absence from County duty. Personal Business leave must be requested in advance by the employee and be preapproved by supervision or management.

PERSONAL EMERGENCY shall mean an event or circumstance of a serious nature which is beyond an employee's control and which necessitates the employee's absence from County duty, including, but not limited to, those events and circumstances which require the employee's prompt attention to avoid possible financial loss to, or damage to the health of, either the employee or a

member of his or her household.

PRACTICABLE shall mean feasible; reasonably able to accomplish.

PROBATIONARY EMPLOYEE shall mean an employee who is serving a probation period and is employed in a regular or limited-term position.

PROMOTION shall mean the movement of a regular, limited-term or probationary employee from one (1) class to another class where the maximum step on the new salary range is at least one (1) full step higher than the maximum step of the old salary range.

REASSIGNMENT shall mean the movement of a regular, limited-term or probationary employee from one (1) class to another class on the same salary range or to a class where the maximum step on the new salary range is less than one (1) full step higher or lower than the maximum step of the old salary range.

RECRUITING STEP shall be the first step of the salary range allocated to a class unless otherwise authorized by the Board or the Chief Human Resources Officer.

REDUCTION shall mean the movement of a regular, limited-term or probationary employee from one (1) class to another class where the maximum step of the new salary range is at least one (1) full step lower than the maximum step of the old salary range.

REGULAR EMPLOYEE shall mean an employee who is not on probation and is employed in a regular or limited-term position.

REGULAR POSITION shall mean a position established on a permanent year-round basis requiring work on a regular schedule unless otherwise authorized by minute order of the Board.

SENIORITY shall mean total continuous full-time equivalent service as a regular employee.

UNION shall mean the American Federation of State, County and Municipal Employees, Council 36, Local 2076, AFL-CIO.

Y-RATE shall mean a pay rate outside of the assigned salary range of a class.

ARTICLE I WORKWEEK, OVERTIME AND PREMIUM PAY

Section 1. Workweek

- A. The official workweek or work period for employees in the bargaining unit shall be as follows:
1. Except as otherwise provided below, the official workweek for full-time employees shall be forty (40) hours and shall begin on each Friday at 12:01 a.m. and end with the following Thursday at 12:00 midnight. Except in circumstances where this MOU specifically also requires the County to pay overtime, overtime shall be paid for hours actually worked in excess of forty (40) in a designated workweek.
 2. Part-time
 - a. Employees may request to be placed in twenty (20) hour part-time positions if their performance is rated standard or above at the time of the request.
 - b. The number and assignment of positions subject to part-time shall be determined by the County.
 - c. An employee placed in a twenty (20) hour position shall remain in that position until:
 1. the employee requests a return to an available full-time position as determined by the County;
 2. the County assigns the employee to a full-time position with a fourteen (14) calendar day advance notice whenever practicable. The County will not order an employee out of a part-time position until there is no one left on the AGENCY/DEPARTMENT REINSTATEMENT LIST as established per Article XI of this Agreement who is eligible and willing to accept the full-time position.
- | B. The- County agrees to give employees a fourteen (14) calendar day advance notice of a shift change whenever practicable.
- | C. No- employee shall be permitted to work more than sixteen (16) consecutive hours except in an emergency situation.
- | D. The- County shall discuss with the Union any proposed changes in existing scheduled hours of work before such changes are put into effect.

- E. Employees may request modified work hour schedules, such as a 4/10 or 9/80 flex schedule in accordance with established Agency procedures and subject to the grievance/appeal limitations described in said procedure. For employees permitted to work a 9/80 schedule, the start of their designated workweek shall be the mid-point of their eight (8) hour day.

SSA shall continue to use an annual schedule request procedure in which employees may submit requests for preferred work schedules. SSA will endeavor to provide work schedules of varying starting/ending times, flex days and days off, while recognizing that programmatic and business needs of the Agency are paramount. SSA will notify employees of an opportunity to submit schedule requests in May of each year. The notification to employees will include an overview of starting/ending times, flex days and days off at each region. If the Union has not yet received the most recent list required by Article XIV, Section 1.D.4, the County will send the list to the Union at the same time it sends out its schedule notification to employees. SSA employee schedule requests shall be submitted within three (3) weeks of the date the notification has been sent to employees.

If more than one employee requests the same schedule and assuming the requested schedule is available (e.g., based on program, function, language skills and client demand), the more senior employee (or the most senior employee, if more than two employees have requested the same schedule), will receive the requested schedule. For purposes of this schedule process seniority shall be determined by length of continuous service with the County. SSA will notify employees generally four (4) weeks prior to the implementation of the new work schedule. If an employee does not receive one of his/her preferred schedules, he/she will be notified of the reason(s) for the determination. The new 12-month schedule will take effect on the first day of the first full pay period in August of each year.

Whenever practicable, employees will receive at least two (2) consecutive days off from work.

- F. Except as otherwise provided, no employee may be employed in one (1) or more positions, full or part-time, more than the total number of hours for the employee's work period as defined in A., above, except on authorized overtime.
- G. If an employee is ordered by the County to attend a meeting, such time spent in the meeting shall be considered hours worked.
- H. In addition to any other position or positions that are held, an employee may also voluntarily work in a capacity authorized for the Registrar of Voters in the course of an election provided that such election work does

not unduly interfere with the employee's regular assignment.
Election work shall be compensated at the rate authorized for such work.

Section 2. Rest and Lunch Periods

A. Rest Periods

1. Employees shall be allowed rest periods of fifteen (15) minutes during each four (4) consecutive hours of work.
2. Such rest periods shall be scheduled in accordance with the requirements of the agency, but in no case shall rest periods be scheduled within one (1) hour of the beginning or the ending of a work shift or lunch period. When employees take rest periods at a County facility, the County may designate location(s) within the facility for the rest periods.
3. Rest periods shall be considered hours worked. An employee shall not be required to perform duties during a rest period unless the need is urgent.

B. Lunch Periods

Each employee shall be allowed a meal period of one (1) hour unless otherwise mutually agreed upon by the employee and agency management. Such meal period shall be generally scheduled in the middle of the work shift and shall not be considered hours worked.

Section 3. Overtime

A. Notification of Employees

If in the judgment of the agency, work beyond the normal workday, workweek or work period is required, the agency will notify any employee who may be asked to perform such overtime of the apparent need for such overtime as soon as practicable prior to when the overtime is expected to begin.

B. Distribution of Overtime

If overtime work is required, opportunities to work such overtime shall be made available as follows:

1. first, to the worker(s) to whom the affected cases are assigned, if practicable;
2. second, to other qualified workers at the same location who are assigned to the same program and function, in order of seniority;

3. ~~third, if an insufficient number of workers volunteer to perform such overtime work under B.1. and B.2., above, the County may assign such overtime work as needed.~~ an all-region solicitation shall be broadcast, if the Department believes it is administratively and operationally feasible, to make overtime available to workers assigned to the same program and function, in order of seniority.
- 2.4. ~~fourth, if an insufficient number of workers volunteer to perform such overtime work under B.1. and B.2. above, the County may assign such overtime work as needed.~~

C. Payment for Overtime

1. Overtime, as defined in Article I, Section 1.A., shall be compensated at one and one-half (1 1/2) times the regular rate.
2. For all regular, limited-term and probationary employees, the employee may receive either payment or compensatory time off for overtime. The County shall have discretion whether to provide payment or compensatory time off; however, if practicable, the County shall duly consider an employee's preferred form of compensation.
3. Employees may not accumulate in excess of eighty (80) hours of compensatory time. Employees who have accumulated eighty (80) hours of compensatory time shall receive payment for overtime worked.
4. ~~Overtime hours worked by extra help employees shall be paid.~~
- 5.4. Compensatory time earned and accrued by an employee may be scheduled off for an employee by his or her agency; however, consideration shall be given to effectuating the wishes of those employees requesting specific compensatory time off periods.
- 6.5. Unless waived by the employee and management, in no case may an employee's work schedule be changed during the workweek or work period in progress when the purpose of such change is to avoid overtime compensation.
- 7.6. Time worked as overtime shall not be used to earn fringe benefits or to serve out probation or merit increase periods, provided that compensatory time off may be used as part of the established workweek to earn fringe benefits and to serve out probationary and merit increase periods.
- 8.7. An employee separating from the County service shall be paid for

accumulated compensatory time in a lump sum payment. Money owed to the County as a result of County employment by the separating employee may be deducted from such lump sum payment.

Section 4. Premium Pay

A. Night Shift Differential

1. An employee who works an assigned night shift shall, in addition to his/her regular salary, be paid a night shift differential for each hour actually worked on the assigned night shift.
2. For purposes of this Section, night shift shall mean an assigned work shift of seven (7) consecutive hours or more which includes at least four (4) hours of work between the hours of 4 p.m. and 8 a.m. Overtime which is worked as an extension of an assigned day shift shall not qualify an employee for night shift differential.
3. The rate of night shift differential shall be fifty (50) cents per hour.

B. On-Call Pay

1. When an employee is assigned on-call duty by the County, the employee shall be informed in writing, in advance whenever practicable, of the dates and inclusive hours of such assignment; the employee shall be compensated at one-fourth (1/4) of his/her basic hourly rate for the entire period of such assignment.
2. On-call duty requires the employee so assigned to: (1) be reachable by telephone or other communications device; (2) be able to report to work in a reasonable time; and (3) to refrain from activities which might impair his or her ability to perform assigned duties.

C. Call-Back Pay

1. When an employee returns to work because of an agency request made after the employee has completed his or her normal work shift and left the work station, the employee shall be credited with four (4) hours work plus any hours of work in excess of four (4) hours in which the employee is continuously engaged in work for which he or she was called back.

Call-back pay shall apply only when an employee is required to physically return to work (e.g., leave home or another off-duty location) in order to perform required duties.

2. Call-back shall be paid at one and one-half (1 1/2) times the regular rate.
3. Notwithstanding the above, if an employee is called back to work within four (4) hours of the beginning of the regular shift, the employee will only be paid at time and-one-half for the time the employee begins to work until the beginning of the employee's regular shift.
4. There shall not be any duplication or pyramiding of rates paid under this Section.
5. An employee shall be credited with not more than one (1) minimum four (4) hour guarantee for work performed during any four (4) consecutive hour period.
6. An employee credited with four (4) hours pursuant to this Section may be assigned other work until the guaranteed time has elapsed.

D. Bilingual Pay

1. Qualified employees who meet the criteria in 4.D.2., below, and who are assigned by Agency management to perform exceptional bilingual duties that are essential to the performance of their technical duties and responsibilities shall receive an additional one dollar and fifteen cents (\$1.15) per hour [approximately one hundred ninety-nine dollars (\$199) per month] for all hours actually paid.
2. To be eligible to receive bilingual pay, the following criteria must be met:
 - a. An employee must be assigned by agency management to speak or translate a language in addition to English. This may include such specialized communication skills as sign language.
 - b. An employee must regularly and frequently speak and/or translate a second language, i.e., once daily.
 - c. To become qualified, an employee must be certified as qualified by the Chief Human Resources Officer.
3. Bilingual pay shall not apply to workers' compensation supplement pay or other premium pays effective upon Board adoption.

E. Jail Salary Supplement

An employee who works an assigned shift at Central Jail/Intake/Release

Center, Theo Lacy Facility, and James A. Musick Facility shall, in addition to his/her regular salary, be paid a jail salary supplement of an additional seventy-five cents (\$0.75) per hour for each hour and partial hour actually worked in one of the listed jail facilities during an assigned shift.

ARTICLE II PAY PRACTICES

Section 1. Compensation for Employees

Employees shall receive compensation at the biweekly or hourly rate for the range and step or flat rate assigned to the class in which they are employed.

Section 2. Pay for New Employees

- A. A new employee shall be paid at the recruiting step of the salary range in effect for the class in which the new employee is hired, except as provided in Sections 2.B. and C., below.
- B. Upon recommendation of the Chief Human Resources Officer, the Board may, by minute order, authorize that a particular position be filled at any step within the range. When the Board authorizes the filling of the position at a step which is higher than the recruiting step of the salary range, it may, by minute order, advance the salary of incumbents of positions in that class or related classes in order to retain equitable relationships.
- C. The Agency or Department Head may authorize the appointment of employees at any of the first seven (7) steps of the salary range. Such appointments shall be made only when the Agency or Department Head makes a determination that there is a direct and measurable benefit to the County from such appointments and makes a determination that the applicant's previous training and experience enables him or her to make a greater contribution than a less experienced employee.
- D. Upon recommendation of the Agency or Department Head, the County Executive Officer may authorize the appointment of employees beyond step seven (7) of the salary range when there is a direct and measurable benefit to the County for such appointment.

Section 3. Merit Increase Within Range

~~A. Extra Help employees shall not be eligible for merit increases within range.~~

~~B.A.~~ Salary increases within a range shall not be automatic. They shall be based upon merit and granted only upon the affirmative recommendation of the Agency Head.

~~C.B.~~ A new or reemployed employee in a regular or limited-term position shall have a merit increase eligibility date which shall be the first day of the pay period following the completion of the first twenty-six (26) weeks of service within that class. The granting of an Official Leave of Absence, other than a Military Leave or the imposition of a suspension shall cause the merit increase eligibility date to be extended a number of calendar days equal to the Official Leave or suspension. The extended merit increase eligibility

date will be effective the first day of the pay period after said date. Subsequent merit increase eligibility dates shall be the first day of the pay period following the completion of fifty-two (52) week intervals subject to the same postponement for Official Leaves of Absence or suspensions.

~~D.C.~~ An employee in a part-time regular or limited-term position who has not completed one thousand forty (1040) paid hours exclusive of overtime by his or her first merit increase date shall have the merit increase eligibility date postponed until the first day of the pay period following completion of one thousand forty (1040) paid hours exclusive of overtime. Likewise, an employee in a part-time regular or limited-term position who has not completed two thousand eighty (2080) paid hours exclusive of overtime between subsequent merit increase eligibility dates shall have his or her merit increase eligibility date postponed until the first day of the pay period following completion of two thousand eighty (2080) paid hours exclusive of overtime. Where an employee's record consists of a combination of full-time and part-time service, both periods of service shall apply towards merit increase eligibility with the part-time service being applied proportionately to the appropriate full-time interval.

~~E.D. 1.~~ Merit increases may be granted for one (1), two (2), three (3) or four (4) steps within the salary range based upon the employee's performance. Standard performance shall earn a two (2) step increase.

~~2. For any employee hired on or after December 6, 1977, the determination as to whether or not to grant merit increases beyond Step 10 and, if granted, in what amounts, shall be solely within the discretion of the Agency Head and shall be based on merit. This provision shall be grievable in accordance with Article X, Grievance Procedure, of this Agreement.~~

~~F.E.~~ If, in the agency's judgment, the employee's performance does not merit a salary increase on the merit increase eligibility date and a deferral of decision accompanied by an intensive effort at improved performance might be productive, the agency shall complete the structured merit rating and defer a decision regarding the merit increase any number of pay periods, but not to exceed thirteen (13) pay periods. A deferral of fewer than thirteen (13) pay periods may be further extended not to exceed thirteen (13) pay periods from the original merit eligibility date. The employee may be reevaluated at any time and may be granted a merit increase earlier than thirteen (13) pay periods, but in any event shall be reevaluated on the structured merit rating prior to the end of the thirteenth pay period. The employee's merit increase eligibility date shall not be changed by such deferral.

G-F. Should an employee's merit increase eligibility date be overlooked through an error and upon discovery of the error the employee is granted a merit increase, the employee shall be compensated for the additional salary the employee would have received dating from the employee's merit increase eligibility date.

Section 4. Salary on Promotion

- A. Except as modified by B., below, a regular, limited-term or probationary employee who is promoted to a position in a class with a higher salary range shall receive the recruiting salary for the higher class or such higher amount as would be the closest to a two (2) step increase on the range over the salary received prior to the promotion not to exceed the top step of the range. A new merit increase eligibility date shall be established which shall be the first day of the pay period following completion of the first twenty-six (26) weeks of service in the new class.
- B. Any employee who is promoted to a class from which the employee was previously reduced without a salary decrease shall be placed at a salary step no higher than the step which the employee would have achieved if the employee had remained in the class to which he or she is promoted and had demonstrated at least standard performance. The employee's merit increase eligibility date shall be reestablished in order to credit the employee with any time formerly served in the higher class.

Section 5. Salary on Reassignment

- A. When a regular, limited-term or probationary employee is reassigned to a class with the same recruiting step, such employee's salary and merit increase eligibility date shall not change. Such employee shall have the same probation status which would have been achieved if the employee had been in the new class throughout the period of such service in the old class.
- B. When a regular, limited-term or probationary employee is reassigned to a class with a higher recruiting step, such employee's salary shall be advanced the number of steps difference between the classes' recruiting steps and the employee shall retain his or her former merit increase eligibility date, except as provided in E., below. Such employee shall have the same probation status which would have been achieved if the employee had been in the new class throughout the period of such service in the old class.
- C. When a regular or limited-term employee is reassigned to a class with a lower recruiting step, such employee's salary and merit increase eligibility date shall not change. Such employee shall have the same probation status which would have been achieved if the employee had been in the new class throughout the period of such service in the old class. When a probationary or probationary limited-term employee is reassigned to a class

with a lower recruiting step, such employee shall have the same salary, step status, probation status and merit increase eligibility date as would have been achieved if the employee had been in the new class throughout the period of such service in the old class.

- D. When a regular, limited-term or probationary employee is involved in a series of reassignments among classes with the same salary range but different recruiting steps or a series of reassignments among classes on different salary ranges, his or her salary and merit increase eligibility date shall be determined by the Chief Human Resources Officer.

Section 6. Salary on Reduction

- A. 1. When a probationary employee, an employee who has been on a temporary promotion or a regular employee who was promoted to a limited-term position at the direction of the employee's Agency Head is reduced to a class not previously occupied by the employee, the employee shall receive the recruiting step for the lower class and shall receive a new merit increase eligibility date as provided in Section 3.C., above, or the employee's salary and merit increase eligibility date may be determined by the Chief Human Resources Officer.
- 2. When a promotional probationary employee, an employee who has been on a temporary promotion or a regular employee who was promoted to a limited-term position at the direction of the employee's Agency Head is reduced to a class the employee occupied in good standing, the employee shall have the step status and merit increase eligibility date he or she would have achieved if the employee had remained in the lower class throughout the period of his or her service in the higher class.
- B. When a regular or limited-term regular employee is reduced to a position in a lower class by demotion for reasons of unsatisfactory performance, the employee's salary shall be reduced to a step on the salary range which would be the closest amount to a two (2) step reduction, or the employee shall receive the maximum step of the salary range of the new class, whichever is lower. The employee's merit increase eligibility date shall be the first day of the pay period following completion of fifty-two (52) weeks of service in the new class unless the employee thereby is placed at the recruiting step of the new salary range, in which case the employee's merit increase eligibility date shall be the first day of the pay period following the completion of twenty-six (26) weeks of service in the new class.
- C. When a regular or limited-term employee in good standing is reduced to a position in a lower class for reasons other than unsatisfactory performance, the employee shall receive the highest salary in the new salary range that does not exceed the employee's rate of pay immediately prior to reduction and shall retain his or her merit increase eligibility date.

D. When a regular, limited-term or probationary employee is reduced because the position the employee occupied is reclassified, the applicable salary shall be determined as follows:

1. If the salary of the employee is the same or less than the maximum of the new class, the salary and merit increase eligibility date of the employee shall not change.
2. If the salary of the employee is greater than the maximum of the new range, the salary of the employee shall be designated as a Y-Rate and shall not change during continuous regular service until the maximum of the new range exceeds the salary of the employee or until the period of calendar time indicated in the schedule below has elapsed, whichever is sooner. If, at the end of the calendar period indicated below, the salary of the employee still exceeds the maximum of the new salary range, the salary of the employee shall be reduced to the maximum salary for the new class.

Y-RATE SCHEDULE

<u>Years of Full-Time Continuous Service</u>	<u>Duration of Y-Rate</u>
Fewer than 5 years	Two years from the date of reclassification
5 years but fewer than 10 years	Three years from the date of reclassification
10 years but fewer than 15 years	Four years from the date of reclassification
15 years but fewer than 20 years	Five years from the date of reclassification
20 years but fewer than 25 years	Six years from the date of reclassification
25 years or more	Seven years from the date of reclassification

3. When an employee on Y-Rate accepts a voluntary reduction, his or her salary shall be reduced by the amount of the difference between

the maximum salary of the class from which the employee is being reduced and the maximum salary of the new class.

Section 7. Salary on Reclassification

The salary of a regular, limited-term or probationary employee whose position is reclassified shall be determined as follows:

- A. If the position is reclassified to a class with the same salary range, the salary and merit increase eligibility date of the employee shall be governed by Article II, Section 5.A., B., or C.
- B. If the position is reclassified to a class with a higher salary range, the salary of the employee shall be governed by Article II, Section 4.A. or B.
- C. If the position is reclassified to a class with a lower salary range, the salary of the employee shall be governed by Article II, Section 6.D.

Section 8. Salary on Reemployment

- A. A person who is reemployed in the Eligibility Worker Representation Unit may, upon approval of the Chief Human Resources Officer, be appointed at a step higher than the recruiting step, but no higher than the step the person received at the time of separation unless appointment is at an advanced step or rate pursuant to Article II, Section 2.C.
- B. A former County employee on paid County retirement may be reemployed for the maximum allowable time, pursuant to Government Code provisions, in any one (1) fiscal year in a position requiring special skills and knowledge and may be appointed to the position at any step on the salary range.

Section 9. Changes in Salary Allocation

If a class is reassigned to a different salary range on the same salary schedule, each employee in the class shall be compensated at the same step in the new salary range as the employee was receiving in the range to which the class was previously assigned. However, if a class is reassigned to a lower salary range on the same salary schedule, the salary of each employee shall be determined in accordance with Article II, Section 6.D., above.

Section 10. Pay Check Deposit

Employees hired after January 1, 1994, will be required to authorize automatic deposit of his or her pay check to a financial institution of the employee's choice.

ARTICLE III EDUCATIONAL AND PROFESSIONAL REIMBURSEMENT

Section 1. Objective

The Educational and Professional Reimbursement Program is designed to encourage employees to continue their professional development through a variety of opportunities. In order to qualify for the program, one or more of the following criteria must be met:

- Related to the work of the employee's position or occupation
- Prepares the employee to transition to an alternate County occupation
- Prepares the employee for advancement to positions of greater responsibility in the County

In addition, items eligible for reimbursement must have the reasonable potential for contributing to achieving County business objectives.

Section 2. Eligible Employees

All regular full-time, part-time, limited term, and probationary employees performing their jobs satisfactorily are eligible for reimbursement.

Section 3. Reimbursement Eligibility

A. The following are eligible for reimbursement

1. Courses related to obtaining a degree (AA, BA, BS, Masters, Ph.D.)
2. Accredited certificate programs
3. Vocational skills programs
4. Courses related to obtaining or maintaining a business-related certification, license, or accreditation
5. Courses related to preparing to take tests to obtain business –related certifications, licenses, or accreditation
6. Professional conferences, conventions, and seminars that are related to business objectives
7. Fees related to obtaining and/or renewing a license, including special drivers' licenses
8. Fees related to certifications or accreditations
9. Fees related to taking professional examinations
10. Professional association membership fees

B. In general, any courses taken through the program must be taken on employee time. However, at the discretion of the Agency Head, a course may be taken on County time when it specifically meets a business need, and is not available during the employee's non-work hours.

C. Courses are not eligible for reimbursement if they:

1. Are taken to bring unsatisfactory performance up to an acceptable level;
2. Are taken to acquire skills or knowledge which the employee was deemed to have when appointed;
3. Duplicate available in-service training; and/or
4. Duplicate training which the employee has already had.

Section 4. Nature of Reimbursement

- A. Reimbursement may be made for all required fees, registration, and other costs related directly to the approved educational or professional expense. This may include, but is not limited to books, class materials, lab fees, testing fees, parking, and processing fees.
- B. Expenses for travel, meals, and lodging are not reimbursable; however, the Agency Head may authorize payment for these items when it meets their business needs and is budgeted in their travel expense budget.
- C. For degree programs, reimbursement shall be made to the employee upon completion of the course with a minimum final grade of C or its equivalent in an undergraduate course, or B or its equivalent in a graduate level course.
- D. Reimbursement for non-graded courses shall be made upon completion of an approved course and proof of payment.
- E. Public Service Institute (PSI) courses are not eligible for reimbursement.
- F. If an employee is receiving reimbursement from another source that covers a portion of the costs, the County will only pay the remaining amount, after other reimbursements are exhausted.
- G. The maximum reimbursement that may be received by eligible employees in one fiscal year shall be \$10,000.

ARTICLE IV GENERAL PERSONNEL PROVISIONS

Section 1. Probation

A. New Probation

1. Full-Time Employee

A new or reemployed employee employed in a full-time regular or limited-term position shall be placed on new probation for fifty-two (52) weeks from the date of appointment ending with the first day of the pay period following completion of said period.

2. Part-Time Employee

A new or reemployed employee employed in a part-time regular or limited-term position shall be placed on new probation for two thousand eighty (2080) paid hours exclusive of overtime or for fifty-two (52) weeks, whichever is longer, from the date of appointment and ending with the first day of the pay period following completion of said period.

B. Promotional Probation

1. Any regular or limited-term employee who is promoted, excluding a temporary promotion, shall be placed on promotional probation except as provided in B.2., below.
 - a. A full-time employee shall serve a probation period equal to the time period of the initial probation ending with the first day of the pay period following completion of said period. However, an employee who promotes to a class in the same or closely related occupational series, shall serve a promotional probation period of twenty-six (26) weeks from the date of promotion ending with the first day of the pay period following completion of said period.
 - b. A part-time employee shall be placed on promotional probation for two thousand eighty (2080) paid hours exclusive of overtime, ending with the first day of the pay period following completion of said period except that for promotion to a class in the same or closely related occupational series, the promotional probation period shall be one thousand forty (1040) paid hours exclusive of overtime.

2. When a regular or regular limited-term employee is promoted as a result of the employee's position being reclassified to a higher class and the class from which the employee is promoted is subsequently deleted or abolished, the incumbent employee shall not serve a promotional probation period.
3. When an employee who has been on a temporary promotion or a regular employee who was promoted to a limited-term position at the direction of the employee's Agency Head is reduced to a class the employee formerly occupied, the employee shall serve the remainder of any uncompleted probationary period in that class.
4. Except as provided in B.2., above, when a regular, limited-term or probationary employee voluntarily reduces or reassigns to a class in this Unit in which he or she has never passed probation, such employee shall be placed on promotional probation for a period equal to the new probation periods set forth in Sections 1.A.1. and 1.A.2., above.

C. Failure of Probation

1. New Probation

- a. An employee on new probation may be released from employment at any time without right of appeal or hearing, except as provided in C.3., below.
- b. An employee who is released from new probation shall, upon request, be scheduled to meet with the District Manager or his or her designee to discuss the reason(s) for failure of new probation. If such a meeting is scheduled, the employee may choose to be represented by an authorized grievance/appeal representative.

2. Promotional Probation

- a. An employee on promotional probation may be failed at any time without right of appeal or hearing, except as provided in C.3., below.
- b. An employee who fails promotional probation shall, upon request, be scheduled to meet with the District Manager or his or her designee to discuss the reason(s) for failure of promotional probation. If such a meeting is scheduled, the employee may choose to be represented by an authorized grievance/appeal representative.

- c. When an employee fails his or her promotional probation, the employee shall have the right to return to his or her former class provided the employee was not in the previous class for the purpose of training for a promotion to the higher class.

When an employee is returned to his or her former class under the provisions of this Section, the employee shall serve the remainder of any uncompleted probationary period in the former class. A regular employee who accepts promotion to a limited-term position other than at the direction of the employee's Agency Head shall not have the right to return to his or her former class.

- d. If the employee's former class has been deleted or abolished, the employee shall have the right to return to a class in his or her former occupational series closest to, but no higher than, the salary range of the class which the employee occupied immediately prior to promotion and shall serve the remainder of any probationary period not completed in the former class.
3. An employee who alleges that his or her probationary release was based on discrimination by the County in violation of Article XV, NONDISCRIMINATION, may submit a grievance at Step 3 of the grievance procedure within ten (10) days after receipt of notice of failure of ~~new~~ probation.

D. General Provisions

1. When an employee's record consists of a combination of full-time and part-time service in regular or limited-term positions, except as provided in Section 4.E., below, part-time service shall be applied proportionately by using total hours worked to appropriate full-time requirements.
2. When an Agency Head or his or her representative passes an employee on probation, that determination shall be based upon a written performance evaluation and shall be discussed with the employee. A probation period may not be extended, except as provided in Section 1.E. of this Article, below.

If upon conclusion of the probationary period the employee does not receive in writing a confirmation that he/she has passed probation, that employee may request, in writing, such written confirmation. If the agency does not, within thirty (30) days of such request, - provide written notice confirming whether or not the employee passed probation, it shall be presumed that the employee passed his/her probation at the normal conclusion of the probation period.

3. An employee who is subject to more than one (1) type of probation at a given time shall have the probation periods combined into one (1) probation period which will extend to the latest completion date of any of the probation periods involved.
4. An employee who is on probation may not transfer from one (1) agency to another in the same class without the approval of the Chief Human Resources Officer.

E. Extension of Probation Periods

1. The granting of an Official or Military Leave of Absence shall cause the employee's probation period to be extended by the length of the Official Leave or by the length of the Military Leave in excess of fifteen (15) calendar days. The extended probation period resulting from the Official or Military Leave of Absence shall end with the first day of the pay period after said extended date. An employee who is suspended shall have his or her probation extended by the length of the suspension, with the extended probation period ending with the first day of the pay period after said extended date.
2. The Chief Human Resources Officer shall extend the new or promotional probationary periods of incumbents appointed as a result of a selection procedure which is appealed. Such probationary periods shall be extended no longer than sixty (60) calendar days from the date on which the County receives the Appeals Officer's findings and decision. In the event an employee's probationary period is extended by the provisions of this Section, and such an employee has served a probationary period which is longer than the probationary period normally prescribed for new or promotional probation, such an employee may fail probation during the extended period only upon recommendation of the Appeals Officer and final determination of the Board of Supervisors.
3. Upon the recommendation of the agency or the request of the employee with the concurrence of the agency, the probation period of an employee may be extended at the sole discretion of the Chief Human Resources Officer for a period not to exceed ninety (90) calendar days provided such action is approved by the Chief Human Resources Officer before the normal probation period is completed.

Denial of a request to extend a probation period shall not be subject to appeal or hearing.

4. A new or promotional probationary employee who is on paid Administrative Leave shall have his or her probation period extended by the length of the leave with the first day of the pay period after said extended date. The extended probationary period shall end on the final

day of whichever pay period the extended probationary period falls.

~~4.5.~~ The Chief Human Resources Officer shall extend the probationary period of employees with an employment authorization document which has an expiration date which would occur after the end of the probation period. Such probation ~~periods~~ shall be extended to coincide with the expiration date of the employment authorization document. In the event an employee's probationary period is extended by the provisions of this Section, and such an employee serves a probationary period which is longer than the normal probation period, such an employee may fail probation during the extended period only for failure to obtain a new, valid employment authorization document by the expiration date of the expiring employment authorization document.

~~5.6.~~ Employees subject to extended probationary periods under the provisions of E.2., ~~and~~ E.4., and E.5. above, shall be considered regular employees during the extended probationary period for all purposes other than those described in E.2., ~~and~~ E.4., and E.5. above.

Section 2. Performance Evaluation

- A. The County shall maintain a system of employee performance ratings designed to give a fair evaluation of the quantity and quality of work performed by an employee. Such ratings shall be prepared and recorded in the employee's personnel file for all regular and limited-term full and part-time employees at least once each year; and in addition, for employees on probationary status, at least once near the middle of the probation period.
- B. The County shall discuss with the employee the specific ratings prior to such ratings being made part of the employee's personnel file.
- C. When a performance evaluation is recorded in the personnel file of an employee, a copy of such evaluation, together with any attachment relating thereto, shall be given to the employee.

Section 3. Contents of Personnel File

- A. Adverse statements prepared by the County shall not be included in an employee's official personnel file unless a copy is provided to the employee.
- B. Except for those materials designated as confidential by law, an employee shall have the right to inspect and review, on County time, at reasonable intervals and at reasonable times, the contents of his or her official personnel files and may also review, on County time, at reasonable intervals and at reasonable times, the file maintained by his or her District

Manager and/or supervisors regarding his or her performance. With the written permission of the employee, authorized Union representatives may inspect, at reasonable intervals, the same files which the employee may inspect and review as provided herein. In addition, an employee shall have the right to inspect and review the contents of his or her official personnel file, on County time, in any case where the employee has a grievance related to performance, to a performance evaluation, or is contesting his or her suspension or discharge from County service.

- C. An employee shall have the right to respond in writing or personal interview to any information contained in his or her official personnel files, such reply to become a permanent part of such employee's personnel file.
- D. Pursuant to an agreement between the Chief Human Resources Officer and the employee concerned or by an order of an arbitrator, court or impartial hearing officer, any negative contents of an employee's official personnel file shall be removed within fourteen (14) calendar days. In addition, documents related to performance shall be removed from the unofficial file maintained by the employee's District Manager and/or supervisor within six (6) months of completion of the Final Review of Performance covering the period related to the document.
- E. Letters of Commendation shall be included in the employee's official personnel file at the employee's request.
- F. An employee's official personnel file shall only be open to inspection by authorized persons who have established a legitimate need to know or if such files are required to be disclosed by the court.

Section 4. Status of Limited-Term Employees

- A. All limited-term employees shall be subject to the same hiring standards and shall earn all benefits, except Article XI, LAYOFF-PROCEDURE, which accrue to employees in regular positions.
- B. A regular employee who transfers, promotes or reduces to a limited-term position on a voluntary basis and not at the direction of the Agency Head shall become a limited-term regular employee.
- C. All limited-term employees who transfer to permanent funded positions shall serve a new probation period. Limited-term regular employees who transfer to permanent positions shall maintain their original hire date for purposes of vacation and Sick Leave accrual, retirement and layoff. Such limited-term regular employees who are serving a new probationary period in permanent positions when a layoff occurs shall be considered to have the same employment status as regular and promotional probationary employees for purposes of determining order of layoff.

- D. When funding ceases for a limited-term position or when the position is no longer necessary, the limited-term position shall be abolished and the incumbent shall be removed from the payroll except as provided in E., below.
- E. Regular employees who transfer, promote or reduce to limited-term positions at the direction of the Agency Head shall retain their former status and retain their layoff benefits in their former layoff unit. The Agency Head shall make such an order in writing prior to the date of transfer or promotion.

Section 5. Temporary Promotion

- A. A regular, probationary or limited-term employee who is assigned on a temporary basis to a higher level vacant regular or limited-term position shall be promoted on a temporary basis to that class when such employee has been assigned to the higher class for one hundred twenty (120) consecutive regularly scheduled hours of work and the employee has been performing all of the significant duties and responsibilities of the higher class, unless the employee requests to be reassigned to his or her former class. In such a case, the employee shall be reassigned within five (5) working days.
- B. An agency may, at its option, waive the one hundred twenty (120) hour requirement when it is necessary to utilize a regular, probationary or limited-term employee in a higher level vacant regular or limited-term position for a period that is expected to be at least one hundred twenty (120) regularly scheduled hours but fewer than eighteen (18) months.
- C. An employee on temporary promotion shall not be placed on promotional probation. Upon return from temporary promotion, an employee shall serve the remainder of any uncompleted probationary period in the employee's former class and shall have the step status and merit increase eligibility date he or she would have achieved if the employee had remained in the lower class throughout the period of his or her service in the higher class.
- D. At the end of the employee's assignment to the higher class, the employee shall have the right to return to his or her former class and agency. A temporary promotion shall not exceed a period of eighteen (18) months.

Section 6. Reemployment of Employees on Disability Retirement

- A. The County will advise employees retired for physical disability to contact the Orange County Employees Retirement System (OCERS) to determine the impact of reemployment on their disability retirement benefits prior to accepting reemployment.
- B. Employees retired for physical disability who have contacted OCERS for

advice and counsel under Section A above, within two (2) years from their date of retirement or date their disability retirement is discontinued, request and have been counseled as required above and qualify for positions in the County service shall be placed on the County Preferred Eligible List with respect to such positions. They will be placed on such list in chronological order of retirement but following the last person on layoff status. They will remain on such list for a period of two (2) years from date of retirement or date their disability retirement is discontinued, except that:

1. a person appointed to a regular position in the County service shall be removed from the list;
2. a person who, on two (2) separate occasions, rejects or fails to respond within three (3) calendar days to offers of employment in a class for which he or she is qualified shall be removed from the list;
3. a person who on three (3) separate occasions, declines referral for interviews in a class for which he or she is qualified shall be removed from the list.

Section 7. Reemployment of Regular Employee

A regular employee who leaves County employment and is reemployed within fifteen (15) calendar days shall be deemed to have been on Agency Leave for such period of time.

Section 8. Time Off for Selection Procedures

A regular, limited-term or probationary employee shall be entitled to necessary time off with pay to participate in tests of fitness, examinations and interviews required by the Chief Human Resources Officer during working hours for the purpose of determining eligibility for movement to another class in the County service or transfer from one (1) agency to another.

Section 9. Intra-agency Transfer

Intra-agency Transfer shall pertain only to Social Services Agency employees.

- A. Intra-agency transfer shall apply to movement to a different aid category or facility. The County will look into creating a posting process to enable employees to determine available transfer opportunities.
- B. Employees shall have the right to request intra-agency transfers. SSA will consider employee requests for intra-agency transfer in view of program needs. An employee's written transfer request will remain in effect unless/until the employee receives the requested transfer or the employee withdraws the request.

- C. SSA shall establish the procedure by which employees may submit such transfer requests for consideration. Transfer requests will be considered in the order they are received. If two requests are received on the same day, and with everything else being equal, County seniority will prevail.
- D. Probationary employees will generally be exempted from consideration for transfers.
- E. Nothing in this provision shall limit management's right to initiate the internal transfer of employees; however, consideration shall be given to effectuating the wishes of those employees requesting transfer.
- F. A grievance concerning the misapplication or misinterpretation of this provision may be appealed through the second step of the grievance procedure. The decision of the Agency Head or his or her representative shall be final and binding.
- G. Employees will be given a fourteen (14) calendar day advance notice of involuntary assignment changes whenever practicable.
- H. Management shall not, whenever practicable, reassign a Union steward who objects to reassignment provided:
 - 1. There is another employee in the same classification who meets the specific qualifications of the vacancy; and
 - 2. AFSCME has notified the District Manager of the employee's status as a steward prior to the Agency issuing written notice to individual employees of impending transfers from areas which include the employee's work assignment.

Section 10. Bilingual Transfer

An employee in a bilingual assignment may request assignment to a position which does not require bilingual certification. The request shall be made in writing to the Agency Head, who will consider it according to:

- A. agency need;
- B. availability of a qualified replacement; and
- C. availability of another suitable assignment for the requesting employee.

ARTICLE V LEAVE PROVISIONS

Section 1. Sick Leave

A. Accumulation of Sick Leave

1. During the first three (3) years of employment, an employee shall earn .0347 hours of sick leave with pay for each paid hour in a regularly scheduled workweek or period to a maximum of eighty (80) hours in a pay period.
2. After an employee has been paid for six thousand two hundred forty (6240) regularly scheduled hours, approximately three (3) years, the employee shall earn .0462 hours of sick leave with pay for each paid hour in a regularly scheduled work period to a maximum of eighty (80) hours in a pay period.
3. Sick leave earned shall be added to the employee's sick leave accumulation account upon the completion of the pay period, with no credit to be applied during the progress of the pay period or for a portion of the pay period during which the employee terminates County service.
4. ~~Except as required by law, Extra Help employees shall not earn sick leave.~~

B. Permitted Uses of Sick Leave

Sick leave may be applied to:

1. An absence necessitated by an employee's personal illness, injury or disability due to pregnancy or childbirth.
2. Medical and dental office appointments when absence during working hours for this purpose is authorized by the agency.
3. Absence due to exposure to a contagious disease when quarantine is imposed by health authorities or when it is determined by a physician designated by the County that the presence of the employee on duty would endanger the health of others.
4. Absence from duty because the employee's presence is needed to attend to the serious illness of a member of his or her immediate family. The amount of sick time used to attend to the illness of a family member shall be limited by applicable laws. For purposes of this Subsection, immediate family shall mean father, father-in-law, mother, mother-in-law, step-parent, brother, sister, wife, husband, registered domestic partner, child, grandparent, grandchild or legal

guardian.

5. Absence from duty because: (1) the employee's presence is needed to attend to the diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member; or (2) an employee is a victim of domestic violence, sexual assault, or stalking and the employee uses the leave time for the purposes described in Labor Code sections 230(c) and 230.1(a). Use of this leave is limited to the time period specified in Labor Code section 233. For purposes of this Subsection "family member" means child, parent, spouse, registered domestic partner, grandparent, grandchild, or sibling as those terms are defined by Labor Code section 245.5(c).
6. If an employee is a parent, legal guardian, or grandparent who has custody of a child enrolled in a California public or private school, kindergarten through grade twelve (12), or in a licensed child day care facility, the employee may use up to ten (10) hours per fiscal year, to attend school conferences and events. Any activity that is sponsored, supervised, or approved by the school, school board, or child care facility is acceptable. Examples include participating in parent-teacher conferences, Open House, or a child's school related disciplinary issue. Time off requests to attend such events are non-discretionary, but shall be requested in advance to the extent possible.
7. Illness while on paid vacation will be charged to sick leave rather than vacation only under the following conditions:
 - a. The illness or injury of the employee was of a nature that would preclude the effective use of vacation and would prevent the employee from performing his or her normal duties.
 - b. The employee must notify his or her supervisor within four (4) calendar days of the beginning of the illness or prior to the end of his or her vacation leave, whichever is sooner, to request that his or her illness on vacation be charged to sick leave.
 - c. The agency shall be under no obligation to extend the vacation beyond the original scheduled vacation ending date.
 - d. Upon the employee's return to work, the employee must furnish the agency with a certificate signed by a licensed physician or registered nurse stating the nature of the illness or injury and the period of disablement.
8. Absence from duty because of personal emergencies or personal business not to exceed forty (40) working hours during the fiscal year.

9. An absence due to an air pollution alert which prevents the employee from traveling to his or her work location.
10. An absence, not to exceed twenty-four (24) consecutive working hours in any one instance, to arrange for or attend a funeral for a member of the employee's household who is not a member of the employee's immediate family as described in Section 2. (Bereavement Leave), below.

C. Prohibited Uses of Sick Leave

Sick leave shall not be applied to:

1. Absence caused by illness or injury to a member of the employee's family except as provided in B.4., B.5 or B.7., above.
2. Absences which occur on a County holiday.

D. General Provisions

1. In any use of sick leave, an employee's account shall be charged to the nearest quarter hour.
2. An employee may be required to furnish a certificate issued by a licensed physician or registered nurse or other satisfactory evidence of illness, injury, medical condition or medical or dental office calls when the employee has been under the care of a physician or absent three (3) consecutive days due to illness, provided such notification is made no later than the day of the absence for which the certificate or evidence is required.
3. a. Upon paid retirement or death, an employee or the employee's estate shall be paid for a portion of the employee's unused sick leave in an amount computed as provided below:

<u>Years of Service</u>	<u>Percent of Unused Sick Leave Paid For</u>
Fewer than 5 years	None
5 but fewer than 10	25%
10 but fewer than 15	50%
15 but fewer than 20	75%
20 or more	100%

Years of service as used herein shall be the equivalent of full-time continuous service in a regular position. Employees who elect to take deferred retirement shall not be eligible for any benefits provided by this paragraph.

- b. An employee hired prior to December 6, 1977 who, as of the date of request, is eligible for Tier I paid retirement and who has given irrevocable written notice of his or her intent to retire, may request that a payoff of his or her accumulated sick leave be made to his or her deferred compensation account with the County to the maximum amount permitted under the regulations that govern deferred compensation programs and to the extent permitted under the provisions of 3.a., above, provided that such request is made at least thirty (30) calendar days but no more than sixty (60) calendar days prior to the effective date of his or her retirement. Such payoff shall be made prior to the effective date of the employee's retirement.
- 4. Employees hired on or after December 6, 1977, shall not be eligible for any benefits provided by Paragraph D.3., above.
- 5. When a person is reemployed in a regular or limited-term position, the Chief Human Resources Officer may, upon the request of the agency, apply the period of previous County continuous service for the purpose of determining sick leave earning rates. Notwithstanding the above, if an employee separates from the County and is rehired within one year from the date of separation, previously accrued and unused paid sick days shall be reinstated to the extent required by law. The employee will also be entitled to use those previously accrued and unused paid sick days and to accrue additional paid sick days upon rehiring to the extent required by law.

Section 2. Bereavement Leave

Bereavement leave is paid leave which is available to an employee related to the death of a family member of the employee's immediate family as defined below.

- A. For purposes of this Section, immediately family shall mean father, father-in-law, mother, mother-in-law, step-parent, brother, sister, spouse, registered domestic partner, child, step-child, grandparent, grandchild or person with whom the employee has/had a legal guardian relationship.
- B. Upon request, regular, limited-term and probationary employees who are in full-time paid status shall receive time off with pay, not to exceed five (5) regularly scheduled shifts for each death, and employees who are in part-time status shall receive time off with pay, not to exceed the number of hours scheduled in a part-time employee's normal workweek for each death.

- C. Generally, time off shall be taken in whole day increments and may be taken nonconsecutively. If requested, partial day absences may be approved if operationally feasible. Use of this leave must be completed within six (6) months of the loss. In the event there are circumstances necessitating use of bereavement leave beyond six (6) months, but no more than twelve (12) months, prior written approval must be received from the supervisor within six (6) months of the loss.
- D. An employee may request additional time off for bereavement. Additional time off shall be charged to the employee's accrued balances and must meet eligibility requirements and conditions set forth in Article V, Section 1 or Article VI.

Section 3. Authorized Leave Without Pay

A. Agency Leave

Upon request, a regular, limited-term or probationary employee may be granted an Agency Leave Without Pay for a period of time not to exceed fifteen (15) calendar days. The granting of such Leave shall be at the discretion of the agency, except in cases where Official Leave has been authorized pursuant to B.4., B.5. and Section 11.A., below. The Agency Head may require that all accumulated compensatory time be used prior to granting of Agency Leave. The use of earned vacation prior to the obtaining of Agency Leave shall be at the option of the employee. If the leave qualifies as Family Leave pursuant to applicable law, the Agency Head may require that all sick leave, compensatory and vacation time be used prior to granting an Agency Leave except that the use of sick leave shall be subject to the provisions of Article IV, Section 1.B. and C., above.

B. Official Leave

1. Upon request, a regular, limited-term or probationary employee may be granted an Official Leave of Absence Without Pay. Such Leave, if granted, shall not exceed one (1) year except as provided in subsections 2. and 3., below. Such Leave may be authorized only after an employee's completion of an Agency Leave and after all compensatory time and vacation accruals have been applied toward payment of the absence.
2. An Official Leave of Absence may be extended for up to an additional year at the discretion of the Agency except that requests for Official Leave which qualify as Family Leave pursuant to applicable law shall be granted to the extent required by such law. If the Agency denies the extension of such Leave, the provisions of subsections 5. and 6., below, shall not apply.

3. Upon request, an employee who has requested and identified a valid need for Family Leave pursuant to Section 14 and applicable law, shall be granted Official Leave to the extent required by such law. Such Leave shall be authorized only after an employee's completion of an Agency Leave and after all accumulated compensatory time and vacation accruals have been applied toward payment of the absence. In addition, where appropriate under the provisions of Article V, Section 1.B., above, the employee may be required to apply all sick leave accruals toward payment of the absence before an Official Leave will be authorized.
4. An employee shall give notice two (2) weeks prior to the date he or she wants to return to work, except that an employee returning from Family Leave shall give the lesser of two (2) weeks' notice or the maximum notice allowable under applicable law. If the employee does not give the required notice prior to the date he or she wants to return to work, the Agency shall not be required to return the employee to work until the employee gives such notice; however, the Agency may waive the notice or reduce the notice period at its discretion.
5. The agency shall indicate on the request its recommendations as to whether the request should be granted, modified or denied and shall promptly transmit the request to the Chief Human Resources Officer. If the Chief Human Resources Officer approves the request, he or she shall deliver a copy to the Auditor-Controller and the employee.
6. If the agency modifies or does not approve a request for Official Leave, the employee may, within fourteen (14) calendar days of said action, file a request for review with the Chief Human Resources Officer. The decision of the Chief Human Resources Officer on such appeals shall be final.
7. An Official Leave shall not be credited toward continuous service.

C. General Provisions

1. A request for a Leave of Absence shall be made upon forms prescribed by the Chief Human Resources Officer and shall state specifically the reason for the request, the date when it is desired to begin the Leave of Absence and the probable date of return.
2. A request for Leave of Absence Without Pay shall normally be initiated by the employee, but may be initiated by the employee's agency only where the employee is unable to initiate such action, except in cases where the provisions of Section 11.A. apply.
3. An employee who has completed an absence without pay due to a

Leave granted pursuant to Sections 3, 4, 10 and/or 14 of this Article shall be considered to have automatically resigned his or her employment with the County under the provisions of Section 9., below, unless he or she returns to work at the end of the approved Leave or receives approval for an extension of his or her Leave.

Section 4. Official Leave for Nonoccupational Disability

- A. A regular, limited-term or probationary employee shall be granted upon request an Official Leave of Absence Without Pay for up to six (6) months for a nonoccupational disability, including disabilities related to pregnancy and childbirth, provided that the employee meets the following conditions:
1. The County may require certification from the health care provider which states: (1) the date on which the condition commenced; (2) the probable duration of the condition; (3) an estimate of time that the employee needs to be off; (4) that the employee cannot perform his/her duties because of the condition.
 2. Such Leave shall begin after all accrued sick leave, compensatory time and vacation time have been applied toward the absence, in accordance with law.
 3. Unless otherwise required by law, the employee has been paid for six thousand two hundred forty (6240) regularly scheduled hours or more. (This provision does not apply to pregnancy disability leave.)
 4. For employees who are disabled because of pregnancy, as defined by state law, the County will maintain and pay for an eligible employee's coverage under the County's group health plan for the duration of the leave, not to exceed four (4) months over the course of a 12-month period, at the level and under the conditions that coverage would have been provided if the employee had continued in employment continuously for the duration of the leave.
- B. If additional Leave is desired, the employee shall request additional Leave in accordance with Official Leave, Section 3.B., above.
- C. Unless otherwise required by law, an employee shall not be entitled to more than one (1) such Leave per twelve (12) month period.

~~Section 5. Absences Caused by Medical Conditions~~

~~An employee who is absent from work for a period of more than fourteen (14) consecutive calendar days due to a medical condition shall not be permitted to resume work until and unless the employee obtains a medical clearance from a physician designated by the County.~~

Section 65. Jury Duty Leave

A regular, limited-term or probationary employee who is called for jury duty or for examination for jury duty shall be compensated at the employee's regular rate of pay for those hours of absence due to the jury duty which occur during the employee's regularly scheduled working hours provided the employee deposits the employee's fees for such hours of jury duty, exclusive of mileage, with the County Treasurer. Fees for jury duty performed during hours other than regularly scheduled working hours may be retained by the employee. Any hours worked beyond the regularly scheduled workday shall be subject to the workweek and overtime provisions (Article I). An employee may request a change in regularly scheduled working hours to a Monday through Friday day shift for the duration of such jury duty. Such requests shall be granted if practicable.

Section 76. Witness Leave

A regular, limited-term or probationary employee who is called to answer a subpoena as a witness for court appearances during the employee's work hours, except where the employee is a litigant, shall be compensated at his or her regular rate of pay for all hours of absence from work due to answering the subpoena provided the employee shows proof of such subpoena and deposits witness fees received for such hours, exclusive of mileage, with the County Treasurer. Fees for answering a subpoena as a witness during hours other than regularly scheduled working hours may be retained by the employee.

Section 87. Leave for Union Business

The County shall allow a regular, limited-term or probationary employee up to six (6) working days absence without pay during each payroll year for the term of this Agreement to perform official Union business, provided that:

1. The Union shall make a request to the employee's Agency Head at least ten (10) days in advance.
2. The Union shall not request that such Leave be effective for more than three (3) employees on any workday.
3. The services of such an employee are not immediately required by the County, and other competent employees are available to do the employee's usual work.

Section 98. Absence Without Authorization

- A. Absence without authorization, whether voluntary or involuntary, for three (3) consecutive working days shall be considered an automatic resignation from County employment as of the last date on which the employee worked or the last date the employee was to return to work from an authorized absence.

- B. If an employee does not have prior authorization to be absent from work, such employee may request specific authorization from the Agency Head prior to the expiration of the time limit specified in A., above.
- C. When an employee has been absent without authorization and the County plans to invoke the provisions of 98.A., above, at least ten (10) calendar days prior to accepting and entering an automatic resignation, the County shall send written notice to the employee's last known address by certified mail with return receipt requested, and shall deposit such notice in the United States mail with postage fully prepaid. Notice is complete upon mailing. Such written notice shall contain:
1. a statement of the County's intention to implement the employee's automatic resignation and its effective date;
 2. a statement of the reasons for considering the employee to have automatically resigned;
 3. a statement of the employee's right to respond, either orally or in writing, prior to the date the County plans to accept and enter the resignation.
 4. a statement of the employee's right to representation;
 5. a copy of the automatic resignation provisions which apply to the employee;
 6. a statement that if the employee fails to respond to the written notice before the effective date of the automatic resignation, the employee has waived any right to appeal the automatic resignation.
- D. An automatic resignation shall not be accepted and entered if the employee 1) responds to the notice before the effective date, 2) provides an explanation satisfactory to the Agency as to the cause of the unauthorized absence, and the reason for failing to obtain an authorized leave, and submits any pertinent documentation to substantiate such reasons, and 3) is found by the Agency to be ready, able and willing to resume the full duties of his or her position.
- E. An employee who is permitted to continue his or her employment pursuant to C. and/or D., above, shall not be paid for the period of his or her unauthorized absence and shall be treated as if on a Leave of Absence for purposes of continuity of employment and other appropriate benefits, unless the Agency determines it is appropriate to use sick leave, compensatory time, vacation or other paid leave to cover the absence.

- F. Notwithstanding any other provision of this Section, the County may rescind an automatic resignation.
- G. Automatic resignations shall not be considered a discharge under the provisions of Article IX, DISCIPLINARY ACTION.

Section ~~409~~. Parenthood Leave

- A. A regular, limited-term or probationary employee shall be granted, upon request, a Parenthood Leave Without Pay of up to six (6) months in connection with the birth or placement for legal adoption of a child provided the employee meets the following conditions:
 - 1. The requested Leave is commenced within six (6) months before or after the expected date of birth or placement for legal adoption of the child.
 - 2. Sufficient documentation of such birth or placement for legal adoption is submitted with the request for Leave.
 - 3. Such employee has completed new probation.
 - 4. All accrued vacation and compensatory time has been applied toward the absence.
- B. Unless otherwise required by law, employees shall not be eligible for more than one (1) such Leave within any twelve (12) month period.
- C. Sick leave must be applied toward any portion of the absence which qualifies under Section 1.B.1. of this Article provided the employee has furnished the agency with a certificate signed by a licensed physician stating the nature of the medical condition and period of disability.
- D. Pregnant employees may also apply for a Nonoccupational Disability Leave for the term of disability as provided in Section 4. of this Article.
- E. Parenthood Leave shall not be credited toward continuous service.
- F. For employees on Parenthood Leave, merit increase dates, probation periods and performance evaluation dates shall be treated as if the employee were on Official Leave.

Section ~~44~~10. Workers' Compensation Leave

- A. When an injury is determined to be job-related in accordance with Article XII, a regular, limited-term or probationary employee shall be placed on Workers' Compensation Leave. If such determination cannot readily be made or there is a subsequent disagreement regarding the termination of

Workers' Compensation Leave and all sick leave has been applied to the absence, the employee shall be placed on Official Leave until a final determination is made, notwithstanding the provisions of Section 3.B., above.

- B. Workers' Compensation Leave shall continue until any of the following occur:
1. the employee is determined to be physically able to return to work by a County-designated physician; or
 2. the employee is determined to be physically able to return to work with medical restrictions which the agency can accept; or
 3. the employee accepts employment outside the County; or
 4. the employee accepts employment in another County position; or
 5. the employee is permanently disabled; or
 6. the employee elects retirement as provided by law.

An employee who does not return to work within two (2) weeks of the end of his or her Workers' Compensation Leave pursuant to this provision shall be considered to have automatically resigned his or her employment with the County under the provisions of Section 98., above.

- C. If practicable, an employee on Workers' Compensation Leave will give notice two (2) weeks prior to the date he or she wants to return to work. If an employee does not give two (2) weeks' notice prior to the date he or she wants to return to work, the agency shall not be required to return the employee to work until such notice is given; however, the agency may waive the notice or reduce the notice period at its discretion.
- D. If an employee's Workers' Compensation Leave expires and the employee is absent without authorization, the provisions of Section 98. of this Article shall apply.
- E. For employees on Workers' Compensation Leave, merit increase dates, probation periods and performance evaluation dates shall be treated as if the employee were on Official Leave.

Section 4211. AFSCME Union Officer Leave

- A. The County agrees to grant, if requested, Union Officer Leave with pay and without loss of any benefits provided by this Memorandum of Understanding except as provided below to one or more (upon mutual agreement) specified Union Officers designated by AFSCME for the term

of this Memorandum of Understanding provided that:

1. The Union Officer Leave shall be for a minimum of eight (8) hours.
 2. The Union Officer Leave is requested ten (10) calendar days in advance. Said notice may be waived by mutual consent.
 3. AFSCME promptly reimburses the County for all the Union Officer salary and benefit expenses* incurred during the Union Officer Leave.

*Expenses include only those which the County would have to pay out-of-pocket for payroll-related wages and benefits and do not include administrative overhead expenses.
 4. The employee shall continue to conform to department rules, regulations and standards that are not inconsistent with Union Officer Leave.
 5. The employee is a standard or better performer.
 6. The County will not reassign or transfer the individual to any position in his or her class at the discretion of the agency unless significant business or operational concerns occur.
- B. Vacation and Sick Leave accrual rates will apply to the employee as though he or she were on duty status.
 - C. Vacation and Sick Leave accrued during Union Officer Leave and unused at the conclusion of the Leave must either be paid off by AFSCME or lost.
 - D. The merit increase eligibility date, if applicable, shall be extended a number of calendar days equal to the Union Officer Leave. This extended merit increase eligibility date will be effective the first day of the pay period after said date.
 - E. The probation period, if applicable, shall be extended by the length of the Union Officer Leave. The extended probation period shall end on the first day of the pay period following said extended date.
 - F. The employee's eligibility for promotional examinations shall not be affected by Union Officer Leave.
 - G. Layoff points shall not be affected by Union Officer Leave.
 - H. In the event emergency recall of the employee becomes necessary, Union Officer Leave may be suspended or cancelled during the course of the emergency. AFSCME shall not be obligated for reimbursement costs listed in A.1. and 2. for the period that Union Officer Leave is suspended or

cancelled. Provisions of A.1. and 2., above, shall be suspended during said emergency recall.

- I. Not more than one (1) employee in the Eligibility Worker Unit shall be eligible for Union Officer Leave at any one (1) time.

Section ~~43~~12. Catastrophic Leave

The County will administer a catastrophic leave procedure designed to permit limited donations of vacation and/or compensatory time to an employee who is required to be on an extended unpaid leave due to a catastrophic medical condition or other serious circumstances.

Section ~~44~~13. Family Leave

A. General Provisions

1. Family Leave shall be granted to the extent required by law. The following provisions set forth certain of the rights and obligations with respect to this leave. Rights and obligations which are not specifically set forth below are set forth in the U.S. Department of Labor regulations implementing the federal Family and Medical Leave Act of 1993 (FMLA), and the regulations of the Department of Fair Employment and Housing implementing the California Family Rights Act (CFRA). Unless otherwise provided by this Section "family leave" under this agreement shall mean leave pursuant to the FMLA and CFRA.
2. Family Leave may be used in the following situations:
 - a. An employee's serious health condition which makes the employee unable to perform the functions of his/her job;
 - b. The birth of a child, and in order to care for the newborn child within one year of birth;
 - c. Placement of a child for adoption or foster care within one year of the placement;
 - d. Employee's presence is needed to attend to a serious health condition of the employee's child, spouse, parent or a child of an employee standing in "Loco Parentis" who is either under eighteen (18) years old or adult dependent child incapable of self-care because of mental or physical disability;
 - e. Leave for a qualifying exigency arising out of the fact that the employee's spouse, registered domestic partner, child or parent

is on covered active duty or called to active duty status in the Armed Forces;

- f. Leave to care for a spouse, registered domestic partner, child, parent, or "next of kin" who is a covered servicemember of the Armed Forces who has a serious injury or illness incurred in the line of duty while on active military duty or that existed before beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces.
3. Employees must request and identify their need for Family Leave. Requests for Family Leave may also fall under the provisions of Sections 3, 4, and [409](#), above.
 4. The County shall determine if a request for Family Leave is valid within the parameters of applicable law.
 5. Family leave shall not exceed twelve (12) work weeks for situations covered by subsection A(2)(a) – (d) above or twenty-six weeks to care for a covered service member (subsection A(2)(e) and (f) above) during any calendar year. Where Family Leave qualifies as both military caregiver leave and care for a family member with a serious health condition, the leave will be designated as military caregiver leave first.
 6. The twelve (12) month period for calculating leave entitlement will be based on the calendar year (January 1 to December 31).
 7. When a request for Family Leave is approved, the agency shall determine if sick leave, compensatory, and/or vacation time is to be applied and shall determine the order in which such time is applied. The use of sick leave shall be restricted to those circumstances which qualify under the provisions of Article V., Section 1.B.

B. Notification Requirements

1. If the Family Leave is foreseeable, the employee must provide the agency with thirty (30) calendar days' notice of his or her intent to take Family Leave.
2. If the event necessitating the Family Leave becomes known to the employee fewer than thirty (30) calendar days prior to the employee's need for Family Leave, the employee must provide as much notice as possible. In no case shall the employee provide notice later than five (5) calendar days after he or she learns of the need for Family Leave.
3. When the Family Leave is for the purpose of the scheduled medical treatment or planned medical care of a child, parent, spouse or registered domestic partner, the employee shall, to the extent practicable,

schedule treatment and/or care in a way that minimizes disruption to agency operations.

C. Verification

1. The County may require certification from the health care provider which states: (1) the date on which the condition commenced; (2) the probable duration of the condition; (3) an estimate of time that the employee needs to be off; (4) that the employee cannot perform his/her duties because of condition (if leave is for own serious health condition) or that care is needed (if leave is for child, spouse or parent).
2. Employees who request leave to care for a covered service member who is a child, spouse, registered domestic partner, parent or "next of kin" of the employee must provide written certification from a health care provider regarding the injured service member's injury or illness.
3. The first time an employee requests leave because of a qualifying exigency, the employee is required to provide the County with a copy of the covered military member's active duty orders or other documentation issued by the military which indicates that the covered military member is on active or called to active duty in a foreign country with the dates of active duty service. New active duty orders or similar documentation shall be provided to the County if the need for qualifying exigency leave arises out of a different active or call to active duty status of the same or a different covered military member.
4. Failure to provide satisfactory verification of the necessity for Family Leave is grounds for denial of the Family Leave.

Section ~~45~~14. Employees with Annual Leave Balances

- A. If an employee transfers, promotes, reduces, or otherwise joins the Eligibility Worker unit with an Annual Leave balance, the employee shall exhaust all Annual Leave balances prior to utilizing any accrued Vacation or Sick Leave hours.
- B. Annual Leave shall be used in accordance with the Vacation and Sick Leave Articles of this MOU, with the exception of any payoff provisions.
- C. During each fiscal year, an employee with Annual Leave balances may request to be paid for accrued Annual Leave in either two (2) separate increments of up to twenty (20) hours each or one (1) increment of up to forty (40) hours. Such payment shall be made upon request unless the agency/department determines it is not economically or operationally feasible. In such a case, payment shall be made as soon as feasible.

- D. Except as outlined in D.1, D.2 and D.3 below, an employee with Annual Leave balances may not cash-out Vacation hours until all Annual Leave balances have been exhausted. An employee with Annual Leave balances may cash-out Vacation hours under the following limited circumstances:
1. The employee's accrued Vacation bank is such that she/he will reach the applicable cap (as set forth in Article VI, Section 1.D) sometime during the fiscal year.
 2. (If subsection "1" is satisfied) when the employee reaches the applicable Vacation accrual cap set forth in Article VI, Section 1.D, the employee may cash out a maximum of sixty (60) hours of Vacation time once per fiscal year.
 3. Notwithstanding subsection D.2 above, an employee with less than sixty (60) hours of accrued Annual Leave may cash-out their remaining Annual Leave balance and accrued Vacation time necessary to reach the combined annual cash-out cap of sixty (60) hours, irrespective of an employee reaching their maximum Vacation accrual cap during the same fiscal year.
- E. An employee may not cash-out Annual Leave and Vacation in the same fiscal year except as noted in D.3 above.
- F. An employee separating from County service, whether by way of retirement, discharge, or voluntary resignation, shall be paid in a lump sum payment for any unused Annual Leave balance as provided below:

<u>Years of Service</u>	<u>Maximum Payoff</u>
Less than 3 years	160 hours maximum paid at 100%
3 years but less than 10	240 hours maximum paid at 100%
10 or more years	A maximum of 1600 hours of accrued Annual Leave balance has cash value. 320 hours are paid at 100%; remaining balance obtains cash value of 2% for each year of service, to a maximum of 50% i.e., 10 years of service equals 20% cash value for remaining balance; 25 or more years of service equals 50% of the remaining balance after deducted from 1600 hours maximum.

- G. An employee who is separating from County service by way of paid County retirement may elect either to take Annual Leave as time off, or be paid for

his or her Annual Leave in a lump sum payment under the following conditions:

1. The amount of Annual Leave which can be taken as time off shall be limited to the amount of hours the employee is eligible to receive at 100% (i.e., 160 hours for employees with less than three (3) years of service, 240 hours for employees with at least three (3) years of service but less than ten (10) years of service, 320 hours for employees with at least ten (10) years of service). If the employee does not take time off or the amount of leave taken as time off does not exceed the amount of hours the employee is eligible to be paid at 100%, the remaining balance, to a maximum of 1600 hours (less maximum number of the hours paid at 100%), shall be paid in accordance with payoff provisions set forth in Section F of this Article.
- H. Notwithstanding the above, any Annual Leave taken as time off during the final two (2) pay periods of employment with the County will be deducted from the Annual Leave payoff provisions set forth above. This provision shall not apply to the use of family leave, workers' compensation leave, or other statutorily protected leave during the final two (2) pay periods of employment.
- I. Notwithstanding the above, no employee may receive payoff paid at 100% that exceeds 320 hours for combined accrued Vacation and Annual Leave. If the payout of accrued Vacation reaches or exceeds the applicable 100% Annual Leave payoff rate as indicated in Section F of this Article, any Annual Leave balance shall be paid out in accordance with Section F of this Article. If the payoff of accrued Vacation does not reach the applicable 100% Annual Leave payoff rate as indicated in Section F of this Article, any remaining Annual Leave balance will be paid at 100% up to the applicable Annual Leave payoff rate. Once the combined Vacation and Annual Leave payoff reaches the applicable 100% Annual Leave payoff rate, the employee shall be paid the remaining Annual Leave balances at the percentages referenced in Section F of this Article.

Section 15. Leave Language Working Group

Upon adoption of the MOU, the County and AFSCME agree to establish a working group to clarify language regarding Leaves of Absences, including streamlining language for understandability.

ARTICLE VI VACATION

Section 1. Accumulation of Vacation

- A. During the first three (3) years of employment, a full-time employee in a regular or limited-term position shall earn .0385 hours of vacation for each hour of pay during his or her regularly scheduled workweek (approximately two [2] weeks per year). Part-time employees will earn .0385 hours of vacation for each hour of pay during his or her regularly scheduled workweek.
- B. After an employee in a regular or limited-term position has been paid for six thousand two hundred forty (6240) regularly scheduled hours, the employee shall earn .0577 hours of vacation for each hour of pay during his or her regularly scheduled workweek, but not to exceed credit for more than eighty (80) regularly scheduled hours in any pay period. Such credit shall be applied to the employee's vacation accumulation account only upon completion of each pay period. No credit shall be applied during the progress of any pay period or for any portion of a pay period during which the employee terminates County service.
- C. Commencing with the pay period following that in which the employee completed ten (10) years of continuous full-time County service, an employee in a regular or limited-term position shall earn .077 hours of vacation for each hour of pay during his or her regularly scheduled workweek, under the same terms and conditions as under B., above.
- D. The maximum allowable vacation credit at any one (1) time for a full-time employee with fewer than ten (10) years of full-time continuous service shall be two hundred forty (240) hours or a prorated amount equal to six (5) weeks of vacation for part-time employees. The maximum allowable vacation credit at any one (1) time for a full-time employee with ten (10) or more years of full-time continuous service shall be three hundred twenty (320) hours and a prorated amount equal to eight (8) weeks of vacation for part-time employees.

Section 2. General Provisions

- A. Not more than eighty (80) hours of paid time may be credited toward accumulation of vacation credit in any pay period.
- B. An Official Leave of Absence shall cause the aforementioned ten (10) years (Article VI, Section 1.C. and E.) of full-time County service to be postponed a number of calendar days equal to the Official Leave.
- C. When an employee's County service consists of part-time regular service or a combination of full-time regular and part-time regular service, both periods of service shall apply towards the required ten (10) years (Article

VI, Section 1.C. and E.) of County service, with the part-time service being applied proportionately to the appropriate full-time interval.

- D. Additional vacation earned during the period of vacation may be taken consecutively.
- E. In any use of vacation, an employee's account shall be charged to the nearest quarter hour.
- F. Vacations shall be scheduled for employees by their agency; however, consideration shall be given to effectuating the wishes of those employees requesting specific vacation periods.
- G. No scheduled vacation will be cancelled, except in cases of emergency.
- H. Illness while on paid vacation will be charged to Sick Leave rather than vacation only under the conditions specified in Article V, Section 1.B.5.
- I. No employee shall be permitted to work for compensation for the County in any capacity during the time of his or her paid vacation from the County service except as a Fire Suppression Volunteer, Deputy Sheriff - Emergency Service, Election Board Officer or Election Night Help.
- J. An employee separating from County service for reasons other than paid County retirement shall be paid for all accrued vacation in a lump sum payment. An employee who is separating from County service by way of paid County retirement may elect either to take time off for his or her vacation or to be paid for his or her vacation in a lump sum payment.
- K. Not more than once in each fiscal year, an employee may request to be paid for up to forty (40) hours of accrued vacation. Such requests will be granted whenever practicable.
- L. Employees shall be permitted to use accrued vacation balances when off work in accordance with Article V, Section 1.B (Permitted uses of Sick Leave) if sick leave balances are exhausted.
- M. When a person is reemployed in a regular or limited-term position, the Chief Human Resources Officer may, upon the request of the agency, apply the period of previous County continuous service for the purpose of determining vacation earning rates.

ARTICLE VII HOLIDAYS

Section 1. Holidays Observed

A. County employees shall observe the following holidays:

~~2019–2023~~ Independence Day, July 4
Labor Day, September 4
Native American Day, September 22
Veteran's Day, November 11
Thanksgiving Day, November 2823
Day After Thanksgiving, November 2924
Christmas Day, December 25

~~2020~~2024 New Year's Day, January 1
Martin Luther King, Jr.'s Birthday, January 2015
Lincoln's Birthday, February 12
Washington's Birthday, February 1719
Memorial Day, May 2527
Independence Day, July 4
Labor Day, September 72
Columbus-Native American Day, October 12September 27
Veteran's Day, November 11
Thanksgiving Day, November 2628
Day After Thanksgiving, November 2729
Christmas Day, December 25

~~2021~~2025 New Year's Day, January 1
Martin Luther King, Jr.'s Birthday, January 1820
Lincoln's Birthday, February 12
Washington's Birthday, February 1517
Memorial Day, May 3126
Independence Day, July 4
Labor Day, September 61
Columbus-Native American Day, October 11September 26
Veteran's Day, November 11
Thanksgiving Day, November 2527
Day After Thanksgiving, November 2628
Christmas Day, December 2425~~(Observed)~~
New Year's Day (Observed)

~~2022~~2026 New Year's Day, January 1—
Martin Luther King, Jr.'s Birthday, January 1719
Lincoln's Birthday, February 12
Washington's Birthday, February 2116
Memorial Day, May 3025
Independence Day, July 4
Labor Day, September 5

~~— Columbus Day, October 10~~
~~— Veteran's Day, November 11~~
~~— Thanksgiving Day, November 24~~
~~— Day After Thanksgiving, November 25~~
~~— Christmas Day, December 26 (Observed)~~

~~2023 — New Year's Day, January 2 (Observed)~~
~~— Martin Luther King, Jr.'s Birthday, January 16~~
~~— Lincoln's Birthday, February 12~~
~~— Washington's Birthday, February 20~~
~~— Memorial Day, May 29~~

- B. When a holiday falls on a Sunday, the next day shall be observed as the holiday.
- C. When a holiday falls on a Saturday, the Friday immediately preceding each day shall be observed as the holiday.

Section 2. Eligibility for Holiday Pay

- A. An employee must be paid for all or a portion of both the regularly scheduled working assignment immediately prior to a holiday and the regularly scheduled working assignment immediately after that holiday in order to receive holiday pay. With County approval, compensatory time earned for working on a holiday or for a holiday falling on a regularly scheduled day off may be taken on the first scheduled working day after the holiday.
- B. A new employee whose first working day is the day after a holiday shall not be paid for that holiday.
- C. An employee who elects paid County retirement on a holiday shall be paid for the holiday.
- D. An employee who is terminating employment for reasons other than paid County retirement and whose last day as a paid employee is the day before a holiday shall not be paid for that holiday.
- E. Only regular, limited-term and probationary employees shall be eligible for holiday pay.

Section 3. Holiday Pay

- A. On each of the holidays designated above, each full-time employee scheduled to work but permitted to take the day off shall receive pay computed at the employee's basic hourly rate for the number of hours the employee was regularly scheduled to work.

B. On each of the holidays designated above, each part-time employee scheduled to work but permitted to take the day off shall receive pay computed at the employee's basic hourly rate for the number of hours the employee was regularly scheduled to work.

C. Compensation for Holidays Falling on Scheduled Days Off

1. When a holiday falls on a full-time employee's regularly scheduled day off, the employee shall receive eight (8) hours of compensatory time. Employees may request an alternate flex day within the same workweek in lieu of compensatory time off. Such alternate flex day will be equal to the employees' regular work hours.
2. A part-time employee shall receive compensatory time at the rate of one (1) hour for each five (5) hours of regularly scheduled work in the workweek to a maximum of eight (8) hours of compensatory time.

D. Compensation for Work on Holidays

1. An employee who is required to work on Columbus-Native American Day, Veteran's Day, Day after Thanksgiving, Martin Luther King, Jr.'s Birthday, Lincoln's Birthday and/or Washington's Birthday and who meets the eligibility requirements contained herein shall receive his or her regular pay for each hour worked. Work performed on a holiday which is overtime as defined in Article I, Section 1., shall be compensated as provided in Article I, Section 3.
2. An employee who is required to work on Christmas Day, New Year's Day, Memorial Day, Independence Day, Labor Day or Thanksgiving Day shall receive pay computed at one and one-half (1 1/2) times the employee's basic hourly rate for the number of hours actually worked.
3. An employee who is required to work on a holiday and who meets the eligibility requirements contained herein shall receive, in addition to pay as provided in D.1. or 2. of this Section, compensatory time for each hour worked to a maximum of eight (8) hours.

There shall not be any duplication or pyramiding of rates paid under this Section. The total amount of holiday pay received under Section 3.A above and holiday compensatory time received under Section 3.C above, shall not exceed the total number of hours that the employee is regularly scheduled to work on a shift.

E. Holidays which fall during an employee's vacation period shall not be charged against the employee's vacation balance.

F. Full-time employees who are on a pay status during the pay period which includes March 1 each fiscal year during the term of this Agreement shall

be credited with two (2) hours of compensatory time at the end of the pay period which includes that date. Part-time employees whose regularly assigned work schedule is at least twenty (20) hours per week shall, in like manner, earn and be credited with one (1) hour of compensatory time.

- G. Compensatory time earned under the provisions of this Section may be granted as compensatory time off or paid for at the discretion of the County, as provided in Article I, Section 3.C.2. of this Agreement.

ARTICLE VIII REIMBURSEMENT PROGRAMS

Section 1. Mileage Reimbursement

- A. Subject to the current Vehicle Rules and Regulations established by the Board, an employee who is authorized to use a private automobile in the performance of duties shall be paid for each mile driven in the performance of his or her duties during each monthly period, as provided below:
 - 1. Effective June 29, 2001, the reimbursement rate shall be the Internal Revenue Service Standard Mileage Rate for the Business Use of a Car.
- B. An employee who is required by the County to furnish a privately owned vehicle for the performance of his or her duties shall receive a minimum of ten (10) dollars in any month in which the actual mileage reimbursement would otherwise be fewer than ten (10) dollars. The minimum shall not apply in any month:
 - 1. in which the employee has not actually worked eighty (80) hours;
 - 2. unless the employee claims the ten (10) dollar minimum and the agency certifies that the employee was required to furnish a privately owned vehicle for County business.

Section 2. Personal Property Reimbursement

Employees shall, in proper cases, be reimbursed for the repair or replacement of personal property damaged in the line of duty without fault of the employee. The amount of reimbursement for articles of clothing shall be the depreciated value based on the age and condition of the article. Reimbursement for a watch shall be limited to the functional value of the watch.

ARTICLE IX DISCIPLINARY ACTION

Section 1. Reprimand and Substandard Performance Evaluation

- A. No regular, limited-term or probationary employee shall receive a written reprimand or a substandard performance evaluation except for reasonable cause.
- B. A written reprimand or substandard performance evaluation given to a regular, limited-term or probationary employee may be appealed through the grievance/appeal procedure. Such appeal shall be initiated at Step 1 of the grievance/appeal procedure.

Section 2. Disciplinary Hearing for Suspension, Reduction or Discharge

- A. In suspending a regular, limited-term regular or promotional probationary employee for more than five (5) days, or in reducing a regular or limited-term regular employee for reasons of unsatisfactory performance or in discharging a regular or limited-term regular employee, a written notice of such proposed disciplinary action shall be served on the employee personally, or by certified mail, at least (10) calendar days prior to the effective date of the proposed action. Such written notice shall contain:
 - 1. a description of the proposed action and its effective date(s);
 - 2. a statement of the reasons for such proposed action, including the acts or omissions on which the proposed action is based;
 - 3. copies of material on which the proposed action is based;
 - 4. a statement of the employee's right to respond, either orally or in writing, prior to the effective date of such proposed action;
 - 5. a statement of the employee's right to representation;
 - 6. a statement of the employee's right to appeal should such proposed action become final.
- B. In suspending a regular, limited-term regular or promotional probationary employee for five (5) days or fewer, the above notice requirements shall be complied with not more than ten (10) days after the effective date of the suspension. However, if an employee is notified of a suspension which will be effective before the above notice is given, the employee shall:
 - 1. whenever practicable, be given an opportunity to respond to the proposed suspension to a designated agency representative with the

authority to make an effective recommendation on the proposed suspension prior to the suspension becoming effective;

2. be informed of the employee's right to representation in the response;
 3. be informed of the employee's right to appeal should the proposed suspension become final.
- C. Prior to the effective date of such suspension of more than five (5) days, or reduction or discharge, an employee will be given an opportunity to respond either orally or in writing, at the employee's option, to a designated agency representative with the authority to make an effective recommendation on the proposed disciplinary action.
- D. An employee shall be given reasonable time off without loss of pay to attend a disciplinary hearing.
- E. An employee may represent himself or herself or may be represented in the disciplinary hearing by AFSCME.
- F. An employee shall receive written notice either sustaining, modifying or cancelling the proposed disciplinary action prior to the effective date of such action except that such written notice may be given after the response period in C., above, for suspension of five (5) days or fewer.
- G. Should a proposed reduction or suspension become final, an employee shall have the right to appeal such action pursuant to Sections 3. and 4. of this Article.
- H. Should a proposed discharge become final, an employee shall have the right to appeal such action pursuant to Section 5. of this Article.

Section 3. Suspension

- A. No regular, limited-term regular or promotional probationary employee shall be suspended except for reasonable cause. A suspension shall not exceed a period of two hundred forty (240) working hours.
- B. A written notice of such suspension stating specifically the cause of the suspension shall be given to the employee.
- C. In accordance with the provisions of Article X, an appeal of suspension shall be initiated at Step 3 of the grievance/appeal procedure, except for suspensions imposed by the County Executive Officer, which may be referred directly to arbitration.

Section 4. Reduction

- A. No regular employee or limited-term regular employee shall be reduced to a position in a lower class for reasons of unsatisfactory performance except for reasonable cause.
- B. A written notice of such reduction stating specifically the cause of the reduction shall be given to the employee.
- C. In accordance with the provisions of Article X, an appeal of reduction for reasons of unsatisfactory performance shall be initiated at Step 3 of the grievance/appeal procedure; except for reductions imposed by the County Executive Officer which may be referred directly to arbitration.

Section 5. Discharge and Right of Appeal

- A. No regular or limited-term regular employee shall be discharged except for reasonable cause. No proposed discharge shall be effected unless approved by the Chief Human Resources Officer except for discharges imposed by the County Executive Officer.
- B. A written notice of such discharge stating specifically the cause of the discharge shall be given to the employee.
- C. In accordance with the provisions of Article X, a discharge may be appealed directly to arbitration.

Section 6. Polygraph Examination

No employee shall be compelled to submit to a polygraph examination. No disciplinary action shall be taken against an employee refusing to submit to a polygraph examination; nor shall any comment be recorded indicating that an employee offered to take, took or refused to take a polygraph examination unless otherwise agreed to in writing by the parties; nor shall any testimony or evidence of any kind regarding an employee's offer to take, refusal to take, or the results of a polygraph examination be admissible in any proceeding pursuant to this Agreement, unless otherwise agreed to in writing by the parties.

Section 7. Investigatory Meetings

- A. When the County requires an employee to attend an investigatory meeting which could lead to discipline for him or her, prior to the investigatory meeting the employee shall be advised of:
 - 1. the date, time and place of the meeting,

2. the reason for the meeting and, the fact that the meeting could lead to discipline for the employee.
- B. An employee required to attend an investigatory meeting pursuant to A., above, has the right to be represented by a Union Steward or an AFSCME staff representative at the investigatory meeting.
 - C. The County shall notify the employee within four (4) weeks from the date of the investigatory meeting, the results or the status of the investigation.

ARTICLE X GRIEVANCE PROCEDURE AND DISCIPLINARY APPEALS

Section 1. Scope of Grievances

- A. A grievance may be filed if a management interpretation or application of the provisions of this Memorandum of Understanding adversely affects an employee's wages, hours or conditions of employment.
- B. Specifically excluded from the scope of grievances are:
 - 1. subjects involving the amendment or change of Board of Supervisors resolutions, ordinances or minute orders, which do not incorporate the provisions of this Memorandum of Understanding;
 - 2. matters which have other means of appeal including, but not limited to matters which may be appealed through the Orange County Merit System Recruitment Rules and Appeals Procedure or the Worker's Compensation Appeals Board;
 - 3. position classification;
 - 4. standard or better performance evaluations.

Section 2. Basic Rules

- A. If an employee does not present a grievance/appeal or does not appeal the decision rendered regarding his or her grievance/appeal within the time limits, the grievance/appeal shall be considered resolved.
- B. If a County representative does not render a decision to the employee within the time limits, the employee may within seven (7) calendar days thereafter appeal to the next step in the procedure.
- C. If it is the judgment of any management representative that he or she does not have the authority to resolve the grievance/appeal, the employee shall be informed in writing and the employee may file the grievance at the next step in the procedure. By mutual agreement of the County and AFSCME, Steps 1 and 2 of the grievance procedure may be waived.
- D. The Chief Human Resources Officer may temporarily suspend grievance/appeal processing on a section-wide, unit-wide, division-wide, agency-wide or County-wide basis in an emergency situation. AFSCME may appeal this decision to the Board of Supervisors.
- E. Upon written consent of the parties, (i.e., the representatives of the County and the employee or his or her representative) the time limits at any step in the procedure may be extended.

- F. Every reasonable effort shall be made by the employee and the County to resolve a grievance/appeal at the lowest possible step in the grievance/appeal procedure.
- G. No claim shall be granted for retroactive adjustment of any grievance prior to sixty (60) calendar days from the date of filing the written grievance at Step 1.
- H. The County and AFSCME agree that their respective grievance files shall be confidential.
- I. A grievance alleging discrimination shall first be referred to the County Equal Employment Opportunity (EEO) Office for intake, review, and if applicable, investigation. The grievant/appellant and, if applicable, the AFSCME [COUNCIL 36, LOCAL 2076](#) representative shall be notified in writing of the grievance being referred to the EEO Office. The timelines for a grievance alleging discrimination shall automatically be held in abeyance until the EEO Office has completed its intake, review, and if applicable, investigation. Once the EEO Office has completed the intake, review, and if applicable, investigation, the grievant/appellant and, if applicable, the AFSCME [COUNCIL 36, LOCAL 2076](#) representative shall be notified in writing the time limits for processing the grievance shall resume.

Section 3. Submission of Grievances

- A. Any employee, group of employees, or the Union shall have the right to present a grievance. No employee or group of employees shall be hindered from or disciplined for exercising this right. Grievances shall identify any employee(s) impacted by the alleged violation of this MOU. However, in situations in which the grievance involves common issues and there are so many affected employees that naming them all would be impractical, the grievance need only identify one employee as the representative of the group of employees affected by the alleged violation of the MOU.
- B. If any two (2) or more employees have essentially the same grievance, they may, and if requested by the County must, collectively present and pursue their grievance if they report to the same immediate supervisor. If the employees report to different supervisors, such grievances may be initiated at Step 2.
- C. If the grievant is a group of more than three (3) employees, the group shall, at the request of the County, appoint one (1) or two (2) employees to speak for the collective group. To be considered a grievant in a group grievance, employees must affirmatively identify themselves as grievants when the grievance is initially filed.

Section 4. Employee Representation

- A. An employee may represent himself or herself or may be represented by AFSCME in the formal grievance/appeal procedure, or alternatively, by an attorney in appealing a discharge.
- B. Authorized grievance/appeal representatives shall be regular employees in the same agency or Representation Unit as the grievant/appellant who are members of and are designated by AFSCME to represent employees for purposes of the grievance/appeal procedure. AFSCME shall notify Agency Heads of the names and titles of such representatives and send a copy of such notice to the Personnel Department quarterly.
- C. Representation at Step one (1) of the grievance procedure shall be limited to authorized employee grievance representatives employed in the agency in which the grievance is filed. AFSCME staff representatives may represent the employee at Steps two (2) and three (3) of the internal grievance/appeal procedure and in arbitration. The Union may request that AFSCME staff be present at step one (1) under mutually agreed conditions.
- D. If an employee chooses not to be represented by the Union, the Union may have a Union staff representative present at the applicable final step of the grievance procedure and, if necessary, shall have the right to present the Union's interpretation of provisions of this Agreement at issue. Such presentation shall not include comments regarding the merits of the grievance.

Section 5. Time Off for Processing Grievances/Appeals

- A. Reasonable time off without loss of pay shall be given to:
 - 1. an employee who has a grievance/appeal in order to attend a meeting with his or her supervisor or other person with authority to resolve the matter, as prescribed herein, or to meet with his or her grievance/appeal representative;
 - 2. an authorized grievance/appeal representative, in order to attend a meeting with the represented grievant's/appellant's supervisor or other person with authority to resolve the grievance/appeal, as prescribed herein, or to investigate the action grieved/appealed through discussion with the grievant/appellant or other employees, or through review of appropriate County records relating to the grievance/appeal.
- B. The following restrictions shall apply in all cases to activity authorized in Section 5.A., above:
 - 1. Before performing grievance/appeal work, the grievant/appellant or grievance/appeal representative shall obtain permission of his or her supervisor and shall report back to the supervisor when the

grievance/appeal work is completed.

2. Neither the grievant/appellant nor the grievance/ appeal representative shall interrupt or leave his or her job to perform grievance/appeal work unless his or her supervisor determines that such interruption or absence will not unduly interfere with the work of the unit in which the grievant/appellant or representative is employed. However, an effort will be made to grant such time off as soon as it is feasible to do so.
3. When an authorized grievance/appeal representative must go into another section or unit to investigate a grievance/appeal, the representative shall be permitted to do so provided that:
 - a. the representative checks in and checks out with the supervisor of the unit; and
 - b. such investigation does not unduly interfere with the work of the unit.

Section 6. Informal Discussion

If an employee has a problem relating to a work situation, the employee is encouraged to request a meeting with his or her immediate supervisor to discuss the problem in an effort to clarify the issue and to work cooperatively towards settlement.

Section 7. Internal Grievance/Appeal Steps

The grievance/appeal procedure shall consist of the following steps, each of which must be completed prior to any request for further consideration of the matter unless waived by mutual consent or as otherwise provided herein.

For grievances alleging discrimination, the timelines set forth below shall be tolled as provided in Section 2.I.

Step 1: Immediate Supervisor

If an employee has a problem relating to an interpretation or application of this Memorandum of Understanding, the employee may formally submit a grievance to the immediate supervisor within fourteen (14) calendar days from the occurrence which gives rise to the problem. Such submission shall be in writing and shall state the nature of the grievance and the suggested solution. Within fourteen (14) calendar days after receipt of the written grievance, the immediate supervisor shall meet with the grievant. Within fourteen (14) calendar days thereafter, a written decision shall be given to the grievant.

Step 2: Agency Head

If the grievance is not settled under Step 1, it may be presented to the Agency Head. The grievance shall be submitted within fourteen (14) calendar days after the receipt of the written decision from Step 1. Within fourteen (14) calendar days after the receipt of the written grievance, the Agency Head or his or her representative shall meet with the grievant. Within fourteen (14) calendar days thereafter, a written decision shall be given to the grievant.

Step 3: Chief Human Resources Officer

If the grievance/appeal is not settled under Step 2 and it concerns:

- A. ~~an interpretation or an application of this Memorandum of Understanding;~~
- B. a substandard performance evaluation;
- C. a deferment or denial of a merit increase, or a disputed merit increase;
- D. a written reprimand; or
- E. a probationary release alleging discrimination, it may be appealed in writing to the Chief Human Resources Officer within fourteen (14) calendar days after receipt of the written decision from Step 2. Within fourteen (14) calendar days after receipt of the written grievance/appeal, the Chief Human Resources Officer or his or her representative shall meet with the grievant/appellant. Within fourteen (14) calendar days thereafter, a written decision shall be given to the grievant/appellant. The decision of the Chief Human Resources Officer in B., C., ~~and D.~~, and E. above, shall be final and binding and shall not be referable to arbitration.

Appeal of a suspension and/or a reduction ordered by an Agency Head or his or her designated representative may be submitted in writing at Step 3 within fourteen (14) calendar days after receipt of the notice of suspension and/or reduction. Within fourteen (14) calendar days after receipt of the written grievance/appeal, the Chief Human Resources Officer or his or her representative shall meet with the grievant/appellant. Within fourteen (14) calendar days thereafter, a written decision shall be given to the grievant/appellant.

Section 8. Referrals to Arbitration

A. Grievances

1. If a grievance is not resolved under Step 3, an arbitration appeal may

be presented in writing to the Chief Human Resources Officer within twenty-one (21) calendar days from the date a decision was rendered at Step 3. As soon as practicable thereafter, or as otherwise agreed to by the parties, an arbitrator shall hear the grievance.

2. The parties shall either sign a joint issue submission statement or else execute and sign separate alternative issue statements after discussing the issue(s). In either case, the parties shall send copies of their joint or separate submission statement(s) to the agreed upon arbitrator and to each other within fourteen (14) calendar days before the first scheduled date of the arbitration hearing.

B. Disciplinary Appeals

1. Submission Procedure

- a. If an appeal from suspension or reduction is not settled at Step 3, it may be presented to the Chief Human Resources Officer within seven (7) calendar days from the date the decision was rendered.
- b. An appeal from any discharge or from a suspension or reduction imposed by the County Executive Officer may be presented to the Chief Human Resources Officer within ten (10) calendar days from the date the action becomes final.
- c. All disciplinary appeals shall be signed by the employee and by a representative of the Union if represented by the Union and shall be submitted in writing as follows:

Was (employee's name) suspended/reduced/discharged for reasonable cause? If not, to what remedy is the appellant entitled under the provisions of Article X, Section 8. of this Memorandum.

- d. As soon as practicable after a suspension, reduction or discharge appeal is presented to the Chief Human Resources Officer, an arbitrator shall hear the appeal.

2. Findings of Facts and Remedies

An arbitrator may sustain, modify or rescind an appealed disciplinary action as follows and subject to the following restrictions:

a. Discharges/Suspensions/Reductions

If the arbitrator finds that the action was taken for reasonable cause, he or she shall sustain the action.

b. Suspensions/Reductions

If the action is modified or rescinded, the appellant shall be entitled restoration of pay and/or fringe benefits in a manner consistent with the arbitrator's decision.

c. Discharges

1. If the arbitrator finds that the order of discharge should be modified, the appellant shall be restored to a position in his or her former class subject to forfeiture of pay and fringe benefits for all or a portion of the period of time the appellant was removed from duty as determined by the arbitrator.
2. If the arbitrator finds that the order of discharge should be rescinded, the appellant shall be reinstated in a position in his or her former class and shall receive pay and fringe benefits for all of the period of time he or she was removed from duty.

d. Restriction on Remedies

1. The County shall not be liable for restoring pay and fringe benefits for any period(s) of time the appellant was reduced or removed from duty, which results from the appealing party's request for written briefs and/or a transcript of the arbitration proceedings.
2. Restoration of pay and benefits shall be subject to deduction of all unemployment insurance (if not deducted by Employment Development Department) and outside earnings which the appellant received after the date of discharge.

~~C. Probationary Releases Alleging Discrimination~~

- ~~1. The issues to be submitted to the arbitrator in grievances filed pursuant to Article IV, Section 1.C.3. shall be as follows and shall be submitted consistent with Section 8.A., above.~~
 - ~~a. Was the probationary release of (employee's name) in whole or in part the result of discrimination in violation of Article XV, NONDISCRIMINATION, of the Memorandum of Understanding between the County and AFSCME?~~
 - ~~b. If so, what shall the remedy be under the provisions of Article X, Section 8.C.2., Findings of Facts and Remedies, of the Memorandum of Understanding between the County and AFSCME?~~

2. Findings of Facts and Remedies

- a. ~~In the event the arbitrator finds no violation of Article XV, NONDISCRIMINATION, the grievance shall be denied and the issue of remedy becomes moot.~~
- b. ~~In the event the arbitrator finds a violation of Article XV, NONDISCRIMINATION, but also finds such violation was not a substantial cause of the employee's probationary release, the grievance shall be denied and the issue of remedy becomes moot.~~
- c. ~~In the event the arbitrator finds a violation of Article XV, NONDISCRIMINATION, and also finds that the violation was a substantial cause of the probationary release of the employee, the arbitrator's award shall depend upon the significance of the violation and shall be in keeping with the following alternatives:~~
 1. ~~The probationary release may be sustained.~~
 2. ~~The employee may be reinstated in a position in his or her former class subject to forfeiture of pay and fringe benefits for all or a portion of the period of time the employee was removed from duty. The employee may be required to serve the remainder of any outstanding probation period.~~
 3. ~~The employee may be reinstated in a position in his or her former class with full back pay and benefits for all of the period of time the employee was removed from duty. The employee may be required to serve the remainder of any outstanding probation period.~~

D.C. General Provisions

1. If the grievance/appeal is decided by an arbitrator, the grievant/appellant and AFSCME relinquish any current or future claim to seek or obtain remedy through any other County appeal procedure.
2. The cost of an arbitrator shall be shared equally in all cases by the County and the appealing party except when the appealing party solely alleges discrimination under Article XV, in which case the County shall bear the full cost. When the grievance involves both discrimination and other arbitrable issues, the proper division of costs shall be determined by the arbitrator.
3. Grievance/Appeal hearings by an arbitrator shall be private.

4. Arbitration appeal hearings of suspensions of fewer than forty (40) hours shall be limited to two (2) days unless both parties agree that a longer hearing is necessary. Both parties shall be allotted equal time during arbitration hearings involving such suspensions. The arbitrator shall be advised of the two (2) day limitation at the beginning of the hearing. The two (2) day limitation for arbitration appeal hearings shall not apply to suspensions imposed by the County Executive Officer.
5. The arbitrator shall be selected by the mutual agreement of the parties. If the parties cannot agree upon an arbitrator, a list of seven (7) arbitrators shall be obtained from the California State Conciliation Service, the American Arbitration Association or some other agreed upon source and each party shall alternately strike one (1) name from the list until only one (1) name remains.
6. Upon written request by the opposing party in a pending hearing given at least twenty (20) calendar days prior to the scheduled hearing date, the party requested shall supply to the party submitting the request copies of all documentary evidence to be used by that party at the hearing. Such evidence shall be provided no later than ten (10) calendar days prior to the scheduled hearing date. Any evidence not so provided may not be admitted or offered as evidence at the subsequent hearing except that any such documentary evidence discovered by a party after such a request for copies but not soon enough to comply with the above time limits may be admitted providing it could not have been discovered sooner by reasonable means and provided further that a copy or copies of such evidence be afforded the requesting party as soon as practicable after such discovery. Nothing contained herein shall operate to prevent either party from presenting additional documents by way of rebuttal.
7. An employee shall not suffer loss of pay for time spent as a witness at an arbitration hearing held pursuant to this procedure. The number of witnesses requested to attend and their scheduling shall be reasonable.
8. At the hearing, both the appealing employee and the County shall have the right to be heard and to present evidence. The following rules shall apply:
 - a. Oral evidence shall be taken only on oath or affirmation.
 - b. Each party shall have these rights: to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called the witness to testify and to rebut the evidence against the witness. If the employee

does not testify in his or her own behalf, the employee may be called and examined as if under cross-examination.

9. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might have made improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions and irrelevant and unduly repetitious evidence shall be excluded.
10. The County and the Union shall be allowed to have one (1) employee, who may be called upon to testify as a witness, present at the arbitration hearing at all times. By the mutual agreement of the parties, the County and the Union shall be allowed to have more than one (1) employee, who may be called upon to testify as a witness, present at the arbitration hearing at all times.
11. The parties agree to forego the use of briefs whenever practicable.
12. If a court reporter is requested, the requesting party shall pay the cost of the reporter and the cost of any transcripts provided for itself and the arbitrator. If the other party wishes to purchase a copy of the transcript and is unable to reach agreement with the requesting party for such a purchase, purchase arrangements may be made directly with the court reporter.
13. The decision of the arbitrator shall be final and binding on all parties.

ARTICLE XI LAYOFF PROCEDURE

Section 1. General Provisions

- A. This procedure shall not apply to a temporary layoff of fewer than four (4) consecutive weeks.
- B. This procedure shall not apply to employees who have special or unique knowledge or skills which are of special value in the operation of the County business.
- C. When two (2) or more agencies are consolidated or when one (1) or more functions of one agency are transferred to another agency, employees in all involved agencies shall be subject to layoff if one is necessary.
- D. Section 7., Reemployment Lists, and Section 8., Status on Reemployment, of this Article, shall not apply if the County has a written agreement with an employer, public or private, which guarantees the County employee an offer of reasonably comparable employment with the new employer who is taking over a function formerly performed by County employees and the new employer does make such an offer in writing to the employee.

Section 2. Order of Layoff

- A. When a reduction in the work force is implemented, employees in regular positions and those occupying limited-term positions at the direction of their Agency Head shall be laid off in an order based on consideration of:
 - 1. employment status;
 - 2. past performance;
 - 3. length of continuous employment with the County.
- B. Layoffs shall be made by class within an agency except that:
 - 1. Where a class has a dual or multiple concept, the Chief Human Resources Officer may authorize a layoff by specialty within the class.
 - 2. Where appropriate, the Chief Human Resources Officer may authorize a layoff by division or smaller unit of an agency.

- C. Within a class, employees shall be subject to layoff in the following order:

<u>Employment Status</u>	<u>Layoff Order</u>
First - Temporary Promotion	Determined by Agency
Second - New Probationary	Determined by Agency
Third - Regular/Promotional	Layoff Points Probationary

After all new probationary employees and employees on temporary promotion have been removed from a class within a layoff unit, the employee with the lowest number of layoff points shall be subject to layoff first. When two (2) or more employees have the same number of layoff points, the agency shall determine the order of layoff for these employees.

- D. If a layoff is going to be made in a class from which an employee has left through a temporary promotion, the employee on temporary promotion shall be returned to his or her former class and shall be subject to layoff in accordance with this procedure.

Section 3. Computation of Layoff Points

Seniority Points:

The equivalent of each year of full-time continuous service with the County shall earn two hundred sixty (260) seniority points.

The equivalent of each regularly scheduled full day of continuous service of a partial year shall earn one (1) seniority point.

Demerit Points:

For a rating of "does not meet performance objectives" on the last "Performance Evaluation Report", for the class currently held by the employee, the employee shall earn one-hundred thirty (130) demerit points. Demerit points shall only be used in the currently held class of an employee. Demerit points shall not be applied to an employee seeking to enter a lower class through voluntary reduction in lieu of layoff.

The County will provide to AFSCME:

- verification of proper application of demerit points provided the employee authorizes the release of their most current performance evaluation to AFSCME
- one copy of the layoff list and
- one copy of the seniority list

Layoff Points:

Layoff points shall be computed by subtracting demerit points, if any, from seniority points.

Section 4. Notification of Employees

- A. Written notice of layoff shall be given to an employee or sent by mail to the last known mailing address at least fourteen (14) calendar days prior to the effective date of the layoff. Notices of layoff shall be served on employees personally at work whenever practicable.
- B. It is the intent of the parties that the number of layoff notices initially issued shall be limited to the number of positions by which the work force is intended to be reduced. Additional notices shall be issued as other employees become subject to layoff as a result of employees exercising reduction rights under Section 5.
- C. The notice of layoff shall include the reason for the layoff, the proposed effective date of the layoff, the employee's hire date, the employee's layoff points, a list of classes in the employee's occupational series within the layoff unit, the employee's rights under Sections 5. and 6. and the right of the employee to advise the County of any objection to the content of the layoff notice prior to the proposed effective date of the layoff.

Section 5. Voluntary Reduction in Lieu of Layoff

- A. A promotional probationary or regular employee who is subject to layoff may request a reduction to a lower class within the same occupational series in the layoff unit provided the employee possesses the minimum qualifications for the class and passes any required performance tests. The reduction shall be made if there is a vacant position in the layoff unit or an incumbent in the lower class in the layoff unit has fewer layoff points than the employee requesting the reduction. In the latter case, the incumbent in the lower class with the fewest number of layoff points shall be subject to layoff.
- B.
 - 1. Employees who receive notice of layoff by personal service at work shall have until the end of their third regularly scheduled day of work following actual receipt of the notice to notify their agency in writing of their intent to exercise rights under this Section. Employees whose third regularly scheduled day of work is more than three (3) calendar days after receipt of the notice shall have three (3) calendar days, excluding weekends and holidays, to notify their agency of their intent to exercise rights under this Section; and where such notification is

not in writing, the employee shall confirm the notification in writing as soon as practicable.

2. Employees who receive notice other than by personal service at work shall have five (5) calendar days, excluding weekends and holidays, following the date the person is personally served, or if service is made by mail, five (5) calendar days, excluding weekends and holidays, following the date of proof of service by mail to notify their agency of their intent to exercise rights under this Section. Where such notification is not in writing, the employee shall confirm the notification in writing as soon as practicable.
3. Failure by an employee to respond to his or her agency pursuant to this Section shall result in a rebuttable presumption that the employee does not intend to exercise any right of reduction to a lower class and that the employee's hire date stated in the layoff notice was correct.
4. No employee action or inaction referred to in this Section shall be considered a waiver of an employee's right to file grievances concerning any matter within the scope of the grievance procedure.

Section 6. Voluntary Reduction from Classes Designated as Vulnerable to Layoff

An employee in a class designated by the County as vulnerable to layoff may request a voluntary reduction to any class provided the employee possesses the minimum qualifications and has passed any required performance tests for the class to which reduction is requested. Such employees shall be eligible for consideration for available positions in the class to which reduction is requested. If appointed, such an employee shall be placed on AGENCY/DEPARTMENTAL REINSTATEMENT LISTS pursuant to Section 7.A.3., below.

Section 7. Reemployment Lists

- A. The following persons shall be placed on AGENCY REINSTATEMENT LISTS as provided in 1., 2. and 3., below, in the order of their respective layoff points with the person having the largest number of layoff points listed first:

1. Persons Laid Off

The names of persons laid off shall be placed on an AGENCY REINSTATEMENT LIST for each class in the occupational series at or below the level of the class from which laid off.

2. Persons Who Exercise Their Rights Under Section 5.

The names of persons who exercise their rights under Section 5. shall be placed on an AGENCY REINSTATEMENT LIST for each class in the occupational series at or below the level of the class from which reduced, excluding any classes at or below the level of the class currently held.

3. Persons Who Voluntarily Reduced Under the Provisions of Section 6.

The names of persons who were voluntarily reduced under the provisions of Section 6. shall be placed on an AGENCY REINSTATEMENT LIST for the class from which reduced and for each class in the occupational series below the level of the class from which they voluntarily reduced, provided they request to be placed on such lists.

Positions to be filled shall be offered first to persons on the AGENCY REINSTATEMENT LIST for that class, starting at the top of the list. If reinstatement is offered to a class other than that from which the person was laid off or reduced, such person must first meet the minimum qualifications and pass any required performance tests for that class.

- B. The names of persons laid off shall be placed on the COUNTY PREFERRED ELIGIBLE LIST for the class from which they were laid off and for any class from which they previously voluntarily reduced pursuant to Section 5., in the order of their layoff scores, going from highest to lowest. When one (1) vacant position in an agency, other than the agency from which the employee was laid off, is to be filled in that class, ten (10) names shall be certified from the COUNTY PREFERRED ELIGIBLE LIST, starting at the top. When more than one (1) vacant position in an agency, other than the agency from which the employee was laid off, is to be filled in that class, the number of names certified, starting at the top of the COUNTY PREFERRED ELIGIBLE LIST, shall be equal to twice the number of vacancies plus seven (7). If there is a tie among layoff points at the last name to be certified, all tied eligibles shall be certified. Eligible employees certified from COUNTY PREFERRED ELIGIBLE LISTS shall be considered prior to eligible employees certified from lower-ranking eligible lists. Appointments shall be made only from eligible employee lists certified pursuant to Section 7.B. Appointments need not be made in the order of layoff points; any eligible certified in accordance with this provision may be appointed to a vacant position.
- C. Names of persons placed on the AGENCY REINSTATEMENT LIST and the COUNTY PREFERRED ELIGIBLE LIST shall remain on the lists for two (2) years, except that:

1. A person who on two (2) separate occasions rejects or fails to respond within five (5) calendar days to offers of employment in a particular class shall be removed from the lists for that class.
 2. A person who on three (3) separate occasions declines referral for interviews in a particular class shall be removed from the lists for that class.
 3. An employee who upon retirement signs a statement electing not to be eligible for reemployment under this provision shall have his or her name excluded from the aforementioned lists.
- D. In the event two (2) or more agencies are consolidated while AGENCY REINSTATEMENT LISTS are in effect, such lists shall be combined and treated as one (1) list in accordance with the preceding provisions of this Section. When a transfer of one (1) or more functions of one (1) agency to another agency occurs, employees previously laid off from such function(s) who are on an AGENCY REINSTATEMENT LIST for the agency losing such function(s), shall be removed from such list and shall be placed on a reinstatement list for the agency acquiring such function(s) and treated in accordance with the preceding provisions of this Section.
- E. Reemployment lists shall be available to AFSCME and affected employees upon reasonable request.

Section 8. Status on Reemployment

- A. An employee who has been laid off under the provisions of this Article and subsequently reemployed in a regular or limited term position within a two (2) year period from the date of his or her layoff shall receive the following considerations and benefits:
1. All Sick Leave credited to the employee's account when laid off shall be restored.
 2. All seniority points held upon layoff shall be restored.
 3. All prior service shall be credited for the purpose of determining Sick Leave and vacation earning rates and service awards.
 4. The employee shall be placed in the salary range as if the employee had been on a Leave of Absence Without Pay.
 5. The probationary status of the employee shall be as if the employee had been on a Leave of Absence Without Pay except that a probation period shall be established as determined by Article IV B. if reemployment is in a higher class or occupational series different from that employed in at the time of layoff.

- B. An employee who has voluntarily reduced under the provisions of this Article and subsequently is reemployed in a regular or limited term position in a class from which the employee reduced within a two (2) year period from the date of reduction shall receive the following considerations:

The employee shall be placed in the salary range either as if the employee had been on a Leave of Absence Without Pay or at the step on the salary range closest to but which does not exceed the employee's salary in the lower class, whichever is higher. The merit increase eligibility date shall be reestablished as determined by the Chief Human Resources Officer. The probationary status of the employee shall be as if the employee had been on a leave of absence.

- C. When an employee is reduced under the provisions of this Article and is subsequently reemployed in a class higher than the one from which the employee was reduced, the employee shall first be returned to the class from which the employee had been reduced as provided above. The employee will then be promoted from that class under the provisions of Article II, Section 4., and the employee shall serve a promotional probation period appropriate for the new class as determined by Article IV, Section 1.B.

Section 9. Seniority for Union Stewards and Officers

- A. The Union may designate stewards and officers to receive super-seniority solely for purposes of layoffs. The number of stewards and officers receiving super-seniority shall not exceed two (2) percent of the number of employees in the Eligibility Worker Representation Unit.
- B. Employees so designated shall receive two hundred sixty (260) layoff points in addition to layoff points computed in Section 3.

Section 10. Job Sharing

When Eligibility Worker Unit employees have been designated as vulnerable to layoff, employees in Eligibility Worker Unit classifications may volunteer to be placed in a twenty (20) hour job sharing position. Employees who are placed in twenty (20) hour job sharing positions shall, upon request, be added to the AGENCY REINSTATEMENT LIST and be eligible for reinstatement to full-time status. An employee placed in a twenty (20) hour job sharing position may not return to full-time position until the employee requests reinstatement to a vacant forty (40) hour position and is eligible according to his/her layoff score on the AGENCY REINSTATEMENT LIST; or the County assigns the employee to a vacant full-time Eligibility Worker Unit position, following thirty (30) days written notice unless the employee is enrolled as a student in which case the employee will be allowed to complete the semester or quarter in which he or she is currently enrolled. The County will not order an employee out of a job sharing position until there is no one remaining on the reinstatement list who will accept a full-time

position. The number and assignment of positions subject to job sharing shall be determined by the County. The County will make every reasonable effort to lessen the impact of layoffs by permitting employees to take part-time work in accordance with these provisions. Employees occupying part-time positions prior to the effective date of a layoff shall be excluded from the provisions of this section.

ARTICLE XII ON-THE-JOB INJURY, WORKERS' COMPENSATION
SUPPLEMENT PAY

Section 1. On-the-Job Injury

A. Treatment of Industrial Injuries

Whenever an employee sustains an injury or disability arising out of and in the course of County employment and requires medical care, the employee shall obtain treatment according to the provisions of the California Labor Code Section 4600 et seq.

B. Workers' Compensation Supplement Pay

1. Whenever an employee is compelled to be absent from duty by reason of injury or disease arising out of and in the course of County employment, the employee shall receive workers' compensation supplement pay which, when added to the workers' compensation temporary disability benefit, shall equal eighty (80) percent of the employee's base salary for a period not to exceed one (1) year including holidays.
2. Workers' compensation supplement pay shall begin the same day as the workers' compensation temporary disability benefits. Prior to qualifying for workers' compensation temporary disability benefits, an injured employee may, at his or her option, use any accrued sick leave, compensatory time and/or vacation, in that order.
3. While an employee receives workers' compensation supplement pay, no deductions nor payments shall be made from any sick leave, compensatory time or vacation time previously accumulated by the employee. The employee shall not accrue sick leave or vacation credit during the period in which the employee receives workers' compensation temporary disability benefits.
4. When an injury is determined to be job-related by the County or by the Workers' Compensation Appeals Board, eighty (80) percent of all sick leave, compensatory time and/or vacation expended since the fourth day of disability shall be restored to the employee's account(s), except that if the injury required the employee's hospitalization or caused disability of more than fourteen (14) days, eighty (80) percent of all sick leave, compensatory time and/or vacation expended since the first day of disability shall be restored to the employee's account(s).
5. The merit increase eligibility date and probation period of any employee who receives workers' compensation benefits shall be extended by the length of time the employee receives such

benefits, except that the first fifteen (15) consecutive calendar days from the date of the injury shall be considered County service for merit increase eligibility and completion of the probation period.

6. When an employee is no longer entitled to receive workers' compensation supplement pay, the employee may, at his or her option, use sick leave, compensatory time, and vacation, in that order, if the employee is compelled to be absent from duty as set forth in Paragraph B.1., above.
7. Time during which an employee receives workers' compensation temporary disability benefits shall be counted toward the computation of County seniority and determination of sick leave and vacation earning rates.

C. Exposure to Contagious Diseases

Whenever an employee is compelled by direction of a County-designated physician to be absent from duty due to an on-the-job exposure to a contagious disease, the employee shall receive full compensation for a period not to exceed eighty (80) working hours for a full-time employee or fourteen (14) calendar days for a part-time employee. If the absence extends beyond the applicable period, sick leave, compensatory time and vacation may be used, at the employee's option, in that order.

ARTICLE XIII SAFETY

Section 1. General Provisions

Recognizing that a safe work environment is of substantial benefit to both the County and employees, the County and the Union mutually agree to the following safety program:

- A. No employee shall be required to work under conditions dangerous to the employee's health or safety.
- B. The County shall make reasonable efforts to provide and maintain a safe place of employment. AFSCME shall urge all employees to perform their work in a safe manner. Employees shall be alert to unsafe practices, equipment or conditions and report any such unsafe practices, equipment or conditions to their immediate supervisors. Employees shall follow safe practices.
- C. Any employee who either does not receive an answer to a safety-related question from his or her supervisor within three (3) days or receives an answer which the employee deems unsatisfactory may directly contact the County Safety Officer.
- D. Any employee who is directed to perform a task which the employee feels is unsafe may request an immediate investigation from the Safety Officer. During the period that the Safety Officer is conducting an investigation, the employee will be assigned to other work at no loss of earnings. If the Safety Officer concludes the task complained of is safe, the employee shall perform the work as instructed.
- E. The County shall furnish all equipment which is necessary for employees to perform their job in a safe manner.
- F. The County shall provide the necessary first aid kits at all work locations. First aid kits shall be checked periodically and replenished when needed. Emergency telephone numbers shall be posted near telephones in reception areas. Names and telephone numbers of employees qualified to give first aid cardio-pulmonary resuscitation (CPR) also shall be posted.
- G. Wherever practicable, the County shall provide first aid training and CPR training to at least two (2) employees at each work location.
- H. Emergency evacuation drills shall be held at each work location at least once every six (6) months.
- I. The County shall maintain at each work site a "Log and Summary of Occupational Injuries and Illnesses". The log shall be made available to the Health and Safety Steward.

Section 2. Safety Inspection

During inspection of County facilities conducted by the State Division of Industrial Safety for the purpose of determining compliance with the California OSHA requirements, a Union designated employee shall be allowed to accompany the inspector while the inspector is in the employee's agency. The employee so designated shall suffer no loss of pay when this function is performed during the employee's regularly scheduled work hours.

Section 3. Safety Meetings

One Union steward from each district office may be assigned by the Union to meet once per month with the District Manager or his or her designee, at the request of either party, to discuss matters affecting employee health and safety. The District Manager shall respond within ten (10) working days unless the time limit is extended by mutual agreement. Either party may request additional meetings in response to emergency situations.

If the matter is not satisfactorily resolved, the Union steward may, at his or her request, meet with the Department Safety Officer. The Department Safety Officer shall respond within ten (10) working days.

If the matter is not satisfactorily resolved, the Union steward may, at his or her request, meet with the Director of Social Services.

ARTICLE XIV UNION AND EMPLOYEE RIGHTS

Section 1. Employee Rights

The County shall not hinder or discipline an employee for exercising any rights or benefits provided in this Memorandum of Understanding.

Section 2. Payroll Deduction

Membership dues of AFSCME members in this Representation Unit and insurance premiums for such AFSCME sponsored insurance programs as may be approved by the Board of Supervisors shall be deducted by the County from the pay warrants of such members. The County shall promptly transmit the dues and insurance premiums so deducted to AFSCME.

AFSCME shall notify the County, in writing, as to the amount of dues uniformly required of all members of AFSCME and also the amount of insurance premiums required of employees who choose to participate in such programs.

Section 3. Employee Information Listing

Upon request, to a maximum of four (4) times per fiscal year during the term of this Agreement, the County shall provide AFSCME with a complete and current listing of all employees in this Unit. Such listings shall include employee name, job classification, agency, timekeeping location, salary range and step. AFSCME agrees to pay one dollar and fifty cents (\$1.50) per page to offset the cost of providing such listings.

Section 4. Use of Bulletin Boards

Space shall be made available to the Union on agency bulletin boards within the Representation Unit provided such use does not interfere with the needs of the agency and material posted is not so opprobrious, flagrant, insulting, defamatory, insubordinate or fraught with malice as to cause disruption of, or material interference with, the operations of the County, County employees or other employee organizations as PERB and the Courts interpret this standard and the rights of union speech. Notice shall be dated and signed by the authorized representative of the Union responsible for its issuance.

Section 5. Use of County Facilities

The Union may, with the approval of the Chief Human Resources Officer, hold meetings of their members on County property during nonworking hours provided request is made to the Chief Human Resources Officer as to the specific location and dates of the meeting prior to such meeting.

Section 6. Notification of New Employees

The County agrees to inform new employees in writing of the Union's status as the exclusive representative of employees in the Bargaining Unit.

Section 7. Release Time for Union Officers

The following designated Union officers will be given the following amount of release time per week in order to perform lawful Union business:

- 1) The Chief Shop Steward of AFSCME will be 16 hours per week of release time;
- 2) President – 16 hours per week of release time;
- 3) Vice-President – 8 hours per week of release time;
- 4) Secretary – 8 hours every other week of release time;
- 5) Treasurer – 8 hours every other week of release time.

Workloads will be reduced in a corresponding manner.

The County and AFSCME will meet each June to determine an appropriate work schedule that will allow these designated Union officers to engage in their Union activities. Work schedules will take effect the first full pay period of August, provided however, that for the time period between the adoption of this MOU and August 2017, the parties will meet within 30 days of the adoption of the MOU to determine an appropriate work schedule for each of these Union officers. If no agreement can be reached between the parties, the Divisional Deputy Director or designee will make the final determination.

Section 8. Steward Training

A maximum of fourteen (14) AFSCME stewards will be allowed to attend two (2) eight-hour training classes conducted by Council 36 during each year of this contract without loss of pay. AFSCME representatives will provide the County with a ten (10) working day advanced notice of the date of the training and a list of those who will be attending the classes, as well as a sign-in sheet of those who did attend.

Section 9. Health and Welfare Trustees

Up to six (6) times annually, nor more than three (3) employees who are trustees of the AFSCME Health & Welfare Trust shall be released with pay for up to ninety (90) minutes for travel to and from the AFSCME office and attendance at the bi-monthly Board of Trustees meeting. In addition, no more than three (3) employees who are

trustees of the AFSCME Health & Welfare trust shall be released with pay for up to three (3) days annually to attend a trustee continuing education conference.

| ARTICLE XV NONDISCRIMINATION

Section 1. County and AFSCME Responsibilities

The County and AFSCME agree that the provisions of this Memorandum of Understanding shall be applied to employees without discrimination as required by state and federal law.

Section 2. AFSCME Responsibilities

The Union shall not discriminate in membership or representation on any basis cited in Section 1. of this Article.

ARTICLE XVI INSURANCE

Section 1. Health Plans and Premium Contributions

A. Full Time Employees

1. Except as modified in Section 1.B., C., D., E., and F., below, the County will offer health plans to all full-time regular, limited term and probationary employees and their eligible dependents.
2. The County will pay the following percentage of the premium for employees electing any health insurance plan other than the Sharewell Choice PPO plan:
 - a. Employee Only Coverage – eighty-five (85) percent of the employee's premium or ninety (90) percent of the employee's premium if the employee completes the ~~Healthy Steps (wellness incentive)~~ Wellness Incentive program;
 - b. Employee and Dependent Coverage - seventy (70) percent of the total health plan premium for each employee and such employee's eligible dependents or seventy-five (75) percent of the employee's premium if the employee completes the Wellness Incentive ~~Healthy Steps (wellness incentive)~~ program.
 - c. Employees will pay the remaining portion of the total plan premium and consent to have their portion deducted from their County regular or supplemental payroll checks.
3. Employees who elect the Sharewell Choice PPO plan will not only have their insurance premium fully paid by the County but will also receive a payroll credit per plan guidelines. In addition, those employees who elect the Sharewell Choice PPO plan are not required to participate in the Wellness Incentive ~~Healthy Steps~~ program.
4. The health plans and their premiums are adopted by, and may be modified by, the Board of Supervisors. Plan descriptions are contained in the plan documents available through HRS/Employee Benefits.

B. Part-time Employees

1. Except as modified in Section 1.C., D., E., and F., below, the County will offer health plans to all part-time regular, limited term, and probationary employees. Enrollment of part-time employees shall be restricted to employees whose normal workweek consists of at least twenty (20) hours.

2. The County will pay the following percentage of the premium for employees electing any health insurance plan other than the Sharewell Choice PPO plan:
 - a. Employee Only Coverage – forty-five (45) percent of the employee's premium or fifty (50) percent of the employee's premium if the employee completes the Wellness Incentive Healthy Steps ~~(wellness incentive)~~ program;
 - b. Employee and Dependent Coverage – thirty-two and one-half (32.5) percent of the total health plan premium for each employee and such employee's eligible dependents or thirty-seven and one-half (37.5) percent of the total health plan premium for each employee and such employee's eligible dependents if the employee completes the Wellness Incentive Healthy Steps ~~(wellness incentive)~~ program}.
 - c. Employees will pay the remaining portion of the total plan premium and consent to have their portion deducted from their County regular or supplemental payroll checks.
3. The County will pay the following percentage of the premium for employees electing the Sharewell Choice PPO plan:
 - a. Employee Only Coverage – one hundred (100) percent of the premium;
 - b. Employee and Dependent Coverage – per subsection B.2.b above

In addition, those employees who elect the Sharewell Choice PPO plan are not required to participate in the Wellness Incentive Healthy Steps ~~program~~.

4. Coverage shall be terminated for any employee whose normal assigned hours are reduced to less than twenty (20) hours in a full workweek.
 5. The health plans and their premium are adopted by, and may be modified by, the Board of Supervisors. Plan descriptions are contained in the plan documents available through HRS/Employee Benefits.
- C. Two married full-time employees who are enrolled in the same health plan must be enrolled as Employee Married to Employee (EME). While enrolled as EME, the County will pay the full cost of employee and dependent coverage for each EME. Employees must report any subsequent changes in marital status such as legal separation or divorce, within 30 days of the event. Failure to report legal separation or divorce from a covered spouse shall require repayment of all premiums paid by the County under this program

during the period in which the employees were ineligible due to legal separation or divorce.

- D. Dual Coverage: If two married employees are enrolled in separate health plans neither employee may be covered as a dependent on their employee spouse's health plan. Eligible employees may choose to enroll in different health plans and choose to cover eligible dependent children on one or both health plans, subject to employee contributions for coverage.
- E. For employees who are on approved Family Leave pursuant to Article V, Section 14. and applicable law, the County shall continue to pay health insurance premiums as provided in A., B. and C., above, to the extent required by applicable law.
- F. For employees who are on approved leave which meets the requirements of Pregnancy Disability Leave pursuant to Government Code section 12945, the County shall continue to pay health insurance premiums as provided in A. and B., above, to the extent required by applicable law.
- G. Effective January 1, 2007, active employees are pooled separately from retirees for purposes of setting premiums for participation in County offered health plans. [Effective January 1, 2024, County health insurance plans will be restructured to include both active County employees and eligible County retirees, with the requirement that the retiree health insurance premiums for non-Medicare retirees exceed the active employee health insurance premiums by 20 percent. Active employee premiums \(contributions/payroll deductions\) shall not increase beyond the actuarially determined increases related to active employee claims experience.](#)
- G-H. Employees may opt out of participation in the County's health insurance programs at any Open Enrollment or within 30 days of a qualifying life event beginning with Plan Year 2021 provided they sign a waiver of the offer of health coverage that complies with the Affordable Care Act ("ACA") and/or any other relevant Federal or California State requirements and upon request provide the County proof they will maintain continuous health insurance coverage that complies with the ACA and any other relevant Federal or California State requirements.

Section 2. Health Plan Enrollment

- A. New eligible employees will be enrolled in the health plans of their selection effective the first day of the month following the first thirty (30) days of employment. Eligible full-time employees failing to elect a plan or failing to properly opt out of enrolling in a County health plan, as described in Section 1, will be enrolled in the Wellwise Choice PPO Health Plan, employee only. Eligible part-time employees failing to elect a plan or failing to properly opt out of enrolling in a County health plan, as described in Section 1, will be enrolled in the Sharewell Choice PPO Health Plan, employee only.

Employees who go out on leave of absence prior to satisfying the waiting period for coverage shall not be eligible for coverage until returning to work unless required by state /federal law. Upon return to work, coverage will become effective the first day of the month following thirty (30) days from the date of return unless otherwise required by state/federal law.

- B. Terminated employees will be continued with coverage in all health plans until the last day of the calendar month in which they terminate employment. Terminated employees may be eligible for continuation of health insurance as required by the Consolidated Omnibus Budget Reconciliation Act (COBRA) and/or by other state/federal law.
- C. Employees who are enrolled in a County health plan at the time of retirement will be given the opportunity to elect and enroll in a Retiree health plan. Employees who have opted out of a County health plan as described in Section 1 will be given an opportunity to elect and enroll in a Retiree health plan.
- D. The County shall provide for an open enrollment period once each calendar year for employees, employees' eligible dependents, and retirees to change their enrollment in a County health plan. Employees who wish to opt out of a County Health Plan will be required to sign a waiver of the offer of health coverage that complies with the Affordable Care Act ("ACA") and/or any other relevant Federal or California State requirements and upon request provide the County proof they will maintain continuous health insurance coverage that complies with the ACA and any other relevant Federal or California State requirements of coverage at each Open Enrollment.

Section 3. Premium Only Plan

The County shall administer a Premium Only Plan that will allow an employee to pay for health insurance premiums as permitted by state and federal law, regulations and guidelines. Under the plan, an employee's gross taxable salary will be reduced by an amount of his or her share of the premium costs of County- provided health plan coverage as permitted by state and federal law, regulations and guidelines.

Section 4. Other Insurance Coverage

- A. AFSCME shall maintain a trust fund, approved by the State of California, for the sole purpose of providing group insurance benefits such as, but not limited to, disability, vision, dental, and life insurance for employees in the Eligibility Worker Unit.
- B. The County shall, on a biweekly basis, forward \$23.70 per pay period for all regular hours paid for all regular, limited-term and probationary employees in the Eligibility Worker Unit for all employees who have any paid hours in the pay period for deposit in said State approved trust fund.

- C. Insurance coverages provided through the trust fund with monies contributed by the County shall be made available to all employees in the Eligibility Worker Unit on an equal basis regardless of membership status.
- D. AFSCME shall indemnify and hold the County harmless from any claims or legal actions brought under this Section.
- E. AFSCME shall provide the County with a copy of the annual report to the Insurance Commission and shall provide a full accounting of the status of the fund upon request of the County.
- ~~E.F.~~ The parties agree to reopen negotiations on this section at any time, during the duration of the MOU, but no earlier than one year from ratification. To reopen, parties will provide documentation justifying such a reopener such as audited statements showing a marked decline in the trust fund balance or a marked increase in insurance premiums.

Section 5. Employee Contribution Subsidy Program

- A. Effective with the pay period beginning September 30, 2005, the one percent (1%) employee subsidy contribution for current health insurance for all regular, limited-term and probationary employees was terminated.
- B. Current employees who separate from County service effective on or after the pay period beginning September 30, 2005 are not eligible to receive a lump sum payment. Such employees are not members of an Eligible Classification under the Plan.
- C. Current employees who retire or take deferred retirement on or after September 30, 2005 are not eligible for the retiree medical grant, including survivor benefits. Such employees are not members of an Eligible Classification under the Plan.
- D. Current employees who are granted a disability retirement by Orange County Employees Retirement System based on an application submitted to OCERS before September 30, 2005 will be eligible to receive a grant under the terms and conditions of the Plan.

Section 6. Retiree Medical Participation

- A. Current employees who retire from County Service effective on or after the pay period beginning September 30, 2005 are eligible to participate in County sponsored health plans at their own cost if enrolled at the time of their retirement.

Section 7. Working Group and Reopener

- A. Working Group

Upon adoption of the MOU, the County and AFSCME will establish an Insurance Working Group to discuss the redesign of the Wellness Credit program, how employees earn their 5% credit, and reducing the cost of health insurance.
~~The parties agree to establish a Working Group to review insurance issues. The Union may have up to five (5) members as representatives on the working group. Other bargaining groups and stakeholders (eg., OCEA, Teamsters, IUOE, OGMA, unrepresented employees) will be invited to participate in the working group. Among the issues to be examined by the working group are the following:~~

- ~~• Plan design (eg., benefits, wellness and other incentive programs);~~
- ~~• Cost containment ideas;~~
- ~~• Impact of the ACA on County insurance plans/programs;~~
- ~~• Establishment of wellness and/or fitness centers;~~
- ~~• Gym memberships;~~
- ~~• Continued use of Healthy Steps as a component of the County's wellness program; and~~
- ~~• Other issues the parties agree to discuss.~~

~~The Working Group will strive to complete its work, including making recommendations to the parties, no later than December 31, 2017. The Working Group may continue to work on insurance issues after December 31, 2017 upon agreement of the parties.~~

B. Reopener as a Result of ACA

The County may reopen negotiations on this Article and other provisions of the MOU (e.g., Flexible Spending Accounts), for purposes of addressing issues resulting from the implementation of the Patient Protection and Affordable Care Act (ACA), including but not limited to, the potential impact of the Excise Tax (commonly known as the "Cadillac Tax") on high cost employer-sponsored health coverage. Federal administrative agencies have not yet issued definitive guidance regarding the Excise Tax which is expected to begin in 2022. The parties acknowledge that some of the benefits provided in the MOU may be included in the coverage to which the Excise Tax liability may apply. As a result, the issues that likely need to be addressed are: which health group plan coverages must be taken into consideration for the purposes of this tax, how to calculate this tax, and what steps, if any, can be taken to avoid payment of the Excise Tax (e.g., modification of benefits).

The County will not be responsible for the payment of any Excise Tax on health coverage from unit members' enrollment in County-sponsored health plans.

Section 8. Health Reimbursement Arrangement

A. Effective the first full pay period after Board of Supervisors adoption of this MOU, a Health Reimbursement Arrangement (HRA) will be made available for current and future employees in this bargaining unit. The County and the HRA administrator, with the oversight of the HRA Advisory Committee, shall administer the program subject

to the requirements set forth in the County Health Reimbursement Arrangement Plan Document.

- B. Effective the first full pay period after Board of Supervisors adoption of this MOU, County will contribute \$60.00 per pay period for each regular, limited-term and/or probationary employee and \$30.00 for each part-time employee (scheduled to work at least 40 hours per pay period) and the County contribution will be increased by 2.5% annually each first full pay period beginning July 2024.

ARTICLE XVII POSITION CLASSIFICATION

Section 1. New Job Classes

If the County creates a new job class within the Bargaining Unit, the County shall notify the Union prior to adoption. If the Union wishes to negotiate with the County regarding the impact of the new classification on employees' wages, hours and other terms and conditions of employment, the Union shall notify the County within ten (10) working days from receipt of such notice.

Section 2. Procedure for Requesting Reclassification of a Position

- Step 1: An employee may submit a written request to his or her supervisor that a classification study be conducted. Requests shall state the reasons the employee believes the present class is not appropriate and which class the employee believes is appropriate based on the employee's present duties. The Agency will promptly provide the Union with a copy of the employee's request.
- Step 2: Appropriate Agency response to an employee's request for reclassification shall include, but not be limited to, (a) denial of the request, or (b) forwarding of the request to the Human Resource Services Department with a recommendation that a classification study be conducted. If the request is denied, the employee shall be given a written statement of the reasons for the denial. If management denies the request or fails to respond within thirty (30) calendar days, the employee may submit the request to the Union for consideration.
- Step 3: Within thirty (30) calendar days thereafter, the Union may request in writing that the Human Resource Services Department conduct a classification study of the position.
- Step 4: Within fifteen (15) calendar days of the receipt of a written request from the Union to study the classification of a position, the Human Resource Services Department will provide the employee with a Position Description Form. The employee shall complete the form and submit a copy to the employee's supervisor and a copy to the Human Resource Services Department.
- Step 5: Within one hundred twenty (120) calendar days after the Human Resource Services Department receives the completed Position Description Form, the Human Resource Services Department shall notify the Union of the appropriate classification of the position.

Section 3. Limitations on Concurrent Studies

The County shall not be required to respond within one hundred twenty (120) calendar days if the total number of pending requests by the Union for reclassification studies (at Step 4 of this procedure) exceeds ten (10) positions.

Section 4. Maintenance Classification Reviews

Maintenance Classification Reviews of occupational series shall not be covered by this procedure.

Section 5. Review of Disputed Position Classification Decisions

- A. If the Union does not agree with a position classification decision of the County, after the steps in Section 2. have been followed, the issue may be presented to a classification consultant for advisory review.
- B. The consultant's review shall be documented on forms supplied by the County and used by the County for documenting its classification decisions.
- C. The consultant shall have access to the organizational and classification files of the Human Resource Services Department and shall have the right to conduct the classification study in the manner the consultant deems most appropriate.
- D. Any salary change for any employee resulting from a consultant's advisory recommendation shall be effective no sooner than the beginning of the pay period following the decision of the County at Step 5 of the procedure described in Section 2., above.
- E. A consultant shall be chosen who has experience in conducting position classification analyses for local governmental agencies. The consultant will be chosen by a committee with an equal number of County and Union members. The cost of the consultant shall be shared equally by the County and the Union.

ARTICLE XVIII DEFINED CONTRIBUTION

An employee in a regular position may, at his or her request, participate in the County's 457(b) Defined Contribution Plan.

ARTICLE XIX WORKLOAD

Section 1. General Provisions

- A. The right to determine workload levels and the method of organizing and assigning work shall be retained by the County.
- B. Whenever practicable prior to implementation, the County shall notify and discuss with the Union the establishment of a workload level for a particular type of assignment or significant decreases or increases in the existing workload levels of employees. If it is not practicable to notify the Union before such workload decisions are implemented, the County shall notify and discuss such workload levels with the Union as soon as practicable thereafter.
- C. When practicable, the County shall consider projected turnover and anticipated workload levels when staffing for each program and function, but shall not be required to fill positions in excess of any of the fiscal constraints as described in Section 2., below.
- D. Workload statistics shall be furnished to the Union on a monthly basis.

Section 2. Fiscal Constraints

The County shall not be required by the provisions of this Article to take any action which may reasonably be expected to result in incurring costs in excess of any of the fiscal constraints set forth below:

- A. Incurring salary and/or benefit costs which could exceed the applicable State or Federal reimbursement level for any aid category, as set forth in State Cost Control Plans.
- B. Requiring positions to be filled in excess of those authorized to be filled by the Board of Supervisors.
- C. Requiring overtime expenditures in excess of overtime funding budgeted and authorized for expenditure by the County Executive Office and the Board of Supervisors and approved by the Agency for employees in this Unit.

Section 3. Workload Distribution

- A. To the extent practicable, the County will make reasonable efforts to equitably distribute workload among employees with the same assignment. However, nothing in this Article shall limit the County's ability to establish specialized assignments when the County determines it is appropriate to do so.

Section 4. Performance Ratings

- A. Each case-carrying employee's caseload size and error rate shall be considered when the employee's Performance Review is prepared. An employee's overall performance rating shall be based on ratings received in all performance factors in the Performance Review.
- B. When an employee carries a caseload five (5) percent above the County assigned workload level for that assignment, it shall be considered and noted in the employee's Performance Review.
- C. When an employee maintains an error rate which is below the error rate for that program, it shall be considered and noted in the employee's Performance Review.
- D. In any month(s), when an employee's caseload/applications exceed the County assigned workload level for that assignment by five (5) percent or more to a maximum of ten (10) cases, errors which are a direct result of the higher caseload/application levels shall not be a basis for a negative reference in the Performance Review.
- E. When it is the judgment of the supervisor that an error is a direct result of an employee's inability to communicate with a client in a common language, that error shall not be a basis for a negative reference in the Performance Review.

Section 5. Uncovered Caseload Assignments

- A. Except as provided below, any caseload assignment that is uncovered for two (2) weeks or more shall be distributed among existing workers within the function, within the District in a manner consistent with the provisions of this Article.
- B. If a caseload assignment is uncovered for two (2) weeks and it reasonably appears that a worker will be available to cover the caseload within the third week, the supervisor may continue to keep the caseload temporarily distributed among the workers of that function within the District.
- C. If a caseload assignment is to be uncovered for two (2) weeks or more due to sick leave or vacation, the employees in the unit/section may request through the Union steward that the caseload be distributed on a temporary basis within the unit or function within the District.
- D. When a worker whose caseload has been distributed among remaining workers returns from Sick Leave or vacation, upon the request of the employee, the County shall return that worker to his/her prior assignment (unit/caseload) whenever practicable.

ARTICLE XX WORKLOAD MANAGEMENT FORUMS

Section 1. Intent

The County and AFSCME encourage responsible workload levels for employees, effective flow of information within the Agency and efficient use of available staff. An intended objective of the management forum shall be that, when possible, cases be equitably distributed within the various programs.

Section 2. Workload Management Forums

A. SSA shall implement a Workload Management Forum as follows:

1. A forum shall be implemented in the Social Services Agency consisting of up to seven (7) employee representatives and up to an equal number of management representatives.
2. Based on the item for discussion at any particular Workload Management Forum, additional employee or management staff may attend at the mutual agreement of the Agency and AFSCME.
3. A forum shall be implemented in the Health Care Agency and shall consist of up to two (2) employee representatives and an equal number of management representatives.

B. Employee representatives shall be selected by AFSCME. Management representatives shall be selected by the Agency Head or designee.

Section 3. Objectives

- A. Each Workload Management Forum shall meet once each month for the purpose of reviewing current workload management practices, identifying problem areas and exploring potential improvements.
- B. Pursuant to this Article, each Workload Management Forum will develop specific recommendations including, but not limited to, the following:
 1. improved management information systems;
 2. relationships between workload and performance expectations;
 3. manageable workload levels within budgetary limitations;
 4. methods for achieving equitable distribution of work when possible.

Agency management shall review the recommendations of each Workload Management Forum and where practicable, adopt procedures addressing the area(s) of concern.

Section 4. Operating Procedures

A. Each Workload Management Forum shall establish its own operating procedures.

B. Employee representatives shall be allowed reasonable time off without loss of pay to attend meetings.

ARTICLE XXI TRANSFER OF FUNCTIONS

In the event the County plans to enter into any agreement with another public employer or private entity which involves the transfer of functions now being performed by employees in this Representation Unit, or the law or governmental regulations provides for the transfer or substantial modification of functions now being performed by employees in this Unit to another public or private agency, the County will advise such public or private entity of the existence and terms of this Memorandum of Understanding and will immediately advise the Union of such plans or law or regulation.

The County will consult with the Union in a timely manner to review possibilities for the absorption of affected employees in the Representation Unit into other jobs in the County service or the new agency.

In the event of any such transfer of functions, it is the intention of the County to make every reasonable effort to absorb affected County employees in the Representation Unit who desire to remain employed by the County into comparable employment in the County service. In addition, the County intends to consult with any agency which is absorbing a County function in order to provide for suitable placements within that agency for County employees whose function is being transferred.

ARTICLE XXII SEPARABILITY

In the event that any provision of this Memorandum of Understanding is declared invalid by any court of competent jurisdiction, such decision shall not invalidate the entire Memorandum, it being the express understanding of the parties hereto that all other provisions not declared invalid shall remain in full force and effect.

ARTICLE XXIII

MANAGEMENT RIGHTS

Any of the rights, powers or authority the County had prior to the adoption of this Memorandum of Understanding are retained by the County, except those specifically abridged, delegated or modified by this Memorandum of Understanding provided that such management rights do not restrict employees from filing grievances.

ARTICLE XXIV

MODIFICATION AND WAIVER

This Memorandum sets forth the full and entire understanding of the County and Union regarding the matters set forth herein. Except as specifically provided herein, it is agreed and understood that the parties hereto reserve the right, only upon mutual agreement, to meet and confer in good faith with respect to any subject or matters covered herein or with respect to any other matter within the scope of representation during the term of this Memorandum of Understanding.

ARTICLE XXV UNION - MANAGEMENT COUNCIL

Section 1. Participants

The Union - Management Council shall be composed of eight (8) employee representatives chosen by the Union, an AFSCME staff representative, the Director of Financial Assistance and seven (7) additional management representatives.

Section 2. Purpose

The purpose of the Council shall be to discuss issues as identified by the Union or management. The Council shall share information regarding issues of concern that may impact SSA and the bargaining unit and shall seek means of resolving problems.

Current problems can include, but not be limited to, working conditions, discussions and suggestions on work simplification, elimination of non-mandated tasks or discussion of impending changes.

Section 3. General Provisions

- A. The Council shall meet once each quarter, unless additional meetings are scheduled by mutual agreement.
- B. The Council shall establish such operating procedures as it deems necessary.
- C. Council members will be given time off without loss of pay or benefits to attend Council meetings.
- D. Impacted site stewards will be given time off without loss of pay or benefits to attend Council meetings; they will return to their work sites when work on their agenda item is completed.
- E. Prior to submitting any issue/concern for discussion at a Union-Management Council Meeting, AFSCME representatives will discuss the matter with district level management in an effort to resolve the issue/concern at the lowest possible level.
- F. Nothing shall be agreed upon in these meetings which would have the effect of altering or amending this Memorandum of Understanding.
- G. At least five (5) business days prior to each scheduled meeting, parties shall provide an agenda listing the specific items to be discussed at each meeting. If no items are exchanged between the parties by this date, the meeting shall be deemed canceled.

F.H. No issues brought up at the Workload Management Forum described in Article XX shall be discussed at the Union-Management Council Meeting unless both the County and the Union agree that the issues have not been resolved at the Workload Management Forum.

ARTICLE XXVI RETIREMENT CONTRIBUTION RATES AND BENEFIT LEVELS

Section 1. Retirement Benefit Levels

- A. For employees hired on or before September 20, 1979:
1. Such employees are provided a one-fiftieth (1/50) retirement benefit formula per Section 31676.12 of the Government Code for general members. (This retirement formula is commonly known as the "2% at 57" benefit formula.)
 2. The retirement allowance will be computed on the highest one (1) year of final compensation per Government Code Section 31462.1.
- B. For Employees Hired on or after September 21, 1979 and Before January 1, 2013, or If Hired on or After January 1, 2013, are Not Considered "New Members" within the Meaning of the Public Employees Pension Reform Act of 2013 (PEPRA).
1. Employees will be provided a one-sixtieth (1/60) retirement benefit allowance as provided in Section 31676.1 of the Government Code. (This retirement formula is commonly known as the "1.67 at 57.5" formula.¹)
 2. The retirement allowance of employees will be computed upon the employee's highest three (3) years of compensation per Government Code Section 31462.
- C. For Employees Hired on or After January 1, 2013 who are Considered "New Members" within the Meaning of PEPRA.
1. Employees will be provided with the retirement benefit allowance set forth in Section 7522.20 of the Government Code. (This retirement formula is commonly known as the "2% at 62" formula.)
 2. The retirement allowance of employees will be computed upon the employee's highest three (3) years of compensation per Government Code Section 7522.32.

¹The [1.67@57.5](#) benefit formula provides the following percentages at these ages: 1.92% at age 60; 2.09% at age 62, and 2.43% at age 65.

Section 2. Retirement Contributions

- A. Members' normal contribution rates shall be as provide by Government Code sections 31621.5, 31621 or 7522.30, as applicable, for general members.
- B. The County will adopt employee contribution rates equal to County contributions for full reserve funding of cost-of-living increases to retirees for all active members of the retirement system as recommended by the OCERS actuary. Effective September 19, 2014, employees will pay the full member contribution for each of the benefit plans provided by the County.

Section 3. Adjustment of Rates

- A. Members' normal and cost-of-living contribution rates shall be adjusted subsequent to and in conformance with actuarial recommendations adopted by the Retirement Board and the Board of Supervisors.

ARTICLE XXVII JOB ACTIONS

During the life of this Agreement, no job actions shall be caused or sanctioned by AFSCME.

ARTICLE XXVIII FLEXIBLE SPENDING ACCOUNTS

Section 1. Dependent Care Reimbursement Account (DCRA)

The County will administer a Dependent Care Reimbursement Account (DCRA) that will allow eligible employees the opportunity to allocate a specified amount of biweekly pre-tax salary into the employee's dependent care reimbursement account to pay for dependent care expenses as permitted by state and federal law, regulations and guidelines and as permitted by the County's Section 125 Plan document.

Section 2. Health Care Reimbursement Account (HCRA)

The County will administer a Health Care Reimbursement Account that will allow employees the opportunity to allocate a specified amount of bi-weekly pre-tax salary into the employee's health care reimbursement account to pay for health care expenses as permitted by state and federal law, regulations, and guidelines and as permitted by the County's Section 125 document.

ARTICLE XXIX COMPENSATION

Section 1.

Effective October 1, 2005, the PIP program/award ceased. The annual evaluation-only component of the program remains. All evaluations that were completed through December 31, 2005, received the time off award. PIP time that was on the books at that time must have been used by June 26, 2008.

Section 2.

Effective the first day of the first full pay period ~~payroll period~~ after adoption of this MOU by the Board of Supervisors, the salary schedule will be increased by 3.54.75% ~~across the board~~.

Section 3.

Effective July 3, 2020 June 28, 2024, the salary schedule will be increased by 3.44.25% ~~across the board~~.

Section 4.

Effective July 2, 2021 June 27, 2025, the salary schedule will be increased by 3.44.0% ~~across the board~~.

~~Section 5.~~

~~Effective July 1, 2022 the salary schedule will be increased by 3.4% across the board.~~

ARTICLE XXX PERFORMANCE EVALUATION WORKGROUP

Section 1. Intent

The County and AFSCME agree that employees are to be evaluated through a fair evaluation system. The County and AFSCME agree to work collaboratively to review the current evaluation process to determine areas of recommended improvement in the documents, forms and implementation of the evaluation system.

Section 2. Establishment of the Performance Evaluation Workgroup

~~A. Within ninety (90) days of the adoption of this Memorandum, the County shall establish a Performance Evaluation Workgroup as follows:~~

- A. A Working Group ~~will be~~has been established consisting of up to five (5) AFSCME representatives and up to an equal number of County representatives.
- B. Based on the topic of discussion at any particular Working Group, additional AFSCME or County representatives may attend at the mutual agreement of AFSCME and the County.
- C. The length of each meeting will be mutually agreed upon by the County and AFSCME.
- D. The group will conclude within six (6) months of its first meeting after adoption of the 2023-2026 MOU. ~~By mutual agreement, the workgroup may be extended up to an additional six (6) months if reasonable progress has been made regarding the objectives of the Working Group.~~

Section 3. Objectives

~~A.~~ The Working Group shall meet once a month, or more than once a month by mutual agreement, for the purpose of reviewing the forms and documents of the current evaluation process, as well as the methods in which the evaluation process is implemented. The Working Group will develop specific recommendations ~~including, but not~~ limited to:

- 1. ~~Evaluation processes for new hire probationary employees~~Definitions of "Does Not Meet Performance Expectations," "Meets Performance Expectations," and "Exceeds Performance Expectations."
- 2. ~~Evaluating performance standards~~Creating a supervisor reference sheet identifying each competency being rated and the demonstrable behaviors associated with each rating above.

3. ~~Methods to assist an employee if performance standards are not being met~~ How Article XIX, Section 4 Performance Ratings impacts evaluation ratings based on specific eligibility staff assignments.
4. ~~The implementation of the performance evaluation process~~

A.B. The County may provide information regarding new evaluation systems and/or processes that may be considered to replace the current evaluation process.

B.C. County management shall review the recommendations of the Working Group and where practicable, adopt documents, forms, and/or procedures proposed by the Working Group.

Section 4. Operating Procedures

- A. The Working Group shall establish its own operating procedures.
- B. The Working Group will endeavor to meet on dates in which AFSCME Union Officers are provided release time in accordance with Article XIV, Section 7. Release Time for Union Officers. For other County employees who serve as AFSCME representatives in the Working Group during paid work time, AFSCME will reimburse the County for all compensation costs in accordance with Senate Bill 1085.

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APPENDIX A

Classes included in the Eligibility Worker Unit:

7005	Eligibility Technician
7009	Employment and Eligibility Specialist

DEAL POINTS

**FOR A SUCCESSOR MEMORANDUM OF UNDERSTANDING BETWEEN THE
COUNTY OF ORANGE
AND
AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES
COUNCIL**

October 20, 2023

Contract Term	June 30, 2023 – June 25, 2026
Salary	<ul style="list-style-type: none"> - Effective the first day of the first full pay period following Board of Supervisors adoption of MOU, increase salary schedule by 4.75%. - Effective June 28, 2024, the salary schedule will be increased by 4.25%. - Effective June 27, 2025, the salary schedule will be increased by 4.0%.
Health Reimbursement Arrangement	<ul style="list-style-type: none"> - Effective the first day of the first full pay period following Board of Supervisors adoption of MOU, a Health Reimbursement Arrangement (HRA) will be made available for current and future employees in this bargaining unit. - Effective the first day of the first full pay period following Board of Supervisors adoption of MOU, the County will contribute to the HRA, \$60.00 per pay period for each regular, limited-term and/or probationary employee and \$30.00 for each part-time employee (scheduled to work at least 40 hours per pay period). - County contribution to the HRA will be increased by 2.5% annually each first full pay period beginning July 2024.
Insurance – County contributions to AFSCME Insurance Trust Fund	County agrees to reopen negotiations during the term of this MOU, but no earlier than one (1) year from ratification concerning County contribution amounts to the Union's Trust upon AFSCME's notice and submission of documentation that shows a marked decline in the trust fund

	balances or a marked increase in insurance premiums.
Insurance	Establish an Insurance working group to discuss a redesign of the Wellness Credit program, how employees earn their 5% credit, and reducing the cost of health insurance.
Jail Salary Supplement	Effective the first day of the first full pay period following Board of Supervisors adoption of MOU, employees who work an assigned shift at Central Jail/Intake/Release Center, Theo Lacy Facility, and James A. Musick Facility shall in addition to his/her regular salary, be paid a jail salary supplement of an additional seventy-five cents (\$0.75) per hour for each hour and partial hour actually worked at one of the listed jail facilities during an assigned shift.
Bereavement Leave	Effective the first day of the first full pay period following Board of Supervisors adoption of MOU, use of bereavement leave may be extended beyond six months from the date of the loss, to 12 months, provided an employee obtained written approval from a supervisor within six months of the loss.
Holidays	Observe Native American Day holiday in lieu of Columbus Day to align with Superior Court operations.
Release Time for Health and Welfare Trustees	<ul style="list-style-type: none"> - Provide up to 90 minutes of paid release time (limited to six (6) times annually) for three (3) employees who are trustees of the AFSCME Health and Welfare Trust to attend bi-monthly Board of Trustee meetings. - Provide, annually, up to three (3) days of paid release time for three (3) employees to attend a trustee continuing education conference.

Other Contract Provisions	The parties agreed to additional administrative and non-economic changes in the MOU, such as: extending a probationary period when an employee is placed on administrative leave; establish a Leave Language working group; probation release alleging discrimination is not referable to arbitration; update objectives in the Performance Evaluation Working Group; update the General Provisions of the Union-Management Council; amend Distribution of Overtime process; and incorporate side letters into the contract.
----------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

The signatures below indicate the parties have reached a tentative agreement on the foregoing subjects. This is an abbreviated version of the tentative agreement agreed to by the parties. This document does not and is not intended to set out the tentative agreements agreed upon in their entirety. Final agreement is dependent upon drafting of specific contract language and ratification by the AFSCME membership and adoption by the County's Board of Supervisors.

FOR AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES
COUNCIL

DocuSigned by:

307E5863721B4E8... 10/26/2023

Cory Cordova
Union Representative, AFSCME Date

FOR THE COUNTY OF ORANGE

DocuSigned by:

A1E6C10B96224FE... 10/26/2023

Nik Daftary
Chief Negotiator, County of Orange Date



BOARD OF SUPERVISORS

MEMORANDUM

RECEIVED

2023 OCT 31 PM 1:13

CLERK OF THE BOARD
COUNTY OF ORANGE
BOARD OF SUPERVISORS

10/31/2023

To: Robin Stieler, Clerk of the Board

From: Supervisor Doug Chaffee, Fourth District

Subject: Add Supplemental Agenda Item for November 7, 2023 Board of Supervisors Meeting

Doug Chaffee

S12E

Supervisor Doug Chaffee requests the Clerk of the Board to add a supplemental item to the agenda for the November 7, 2023 Board of Supervisors meeting. The title should read:

Approve the addition of Adopt-a-Family Holiday Campaign Event to the County Events Calendar.

Find under Government Code section 26227 that Adopt-a-Family Holiday Campaign events will serve a public purpose of the County of Orange and will meet the social needs of the population of the County, including but not limited to, the areas of health, law enforcement, public safety, rehabilitation, welfare, education and legal services, and the needs of physically, mentally and financially handicapped persons and aged persons; that County staff and resources may be used in furtherance of such events; and that County staff may solicit donations of funds and services for such events.



RECEIVED

2023 NOV -1 PM 1:17

MEMORANDUM

CLERK OF THE BOARD
COUNTY OF ORANGE
BOARD OF SUPERVISORS

To: Robin Stieler, Clerk of the Board

From: Chairman Donald P. Wagner, Third District

In April for DW

Date: November 1, 2023

RE: Supplemental Item for November 7, 2023 Board of Supervisors Meeting

S12F

I would like to include on the agenda for the November 7, 2023 Board of Supervisors meeting a supplemental item adding Veteran and Military events to the County Events Calendar with the following recommended actions:

1. Approve the addition of Veteran and Military events to the County Events Calendar.
2. Find under Government Code section 26227 that Veteran and Military events will serve a public purpose of the County of Orange and will meet the social needs of the population of the County, including but not limited to, the areas of health, law enforcement, public safety, rehabilitation, welfare, education and legal services, and the needs of physically, mentally and financially handicapped persons and aged persons; that County staff and resources may be used in furtherance of such events; and that County staff may solicit donations of funds and services for such events.



County Executive Office

Memorandum

November 2, 2023

To: Clerk of the Board of Supervisors
From: Frank Kim, County Executive Officer
Subject: Exception to Rule 21

Digitally signed by Frank Kim
DN: cn=Frank Kim, o=County
of Orange, ou=CEO,
email=frank.kim@ocgov.com
, c=US
Date: 2023.11.02 11:53:14
-07'00'

CLERK OF THE BOARD
COUNTY OF ORANGE
BOARD OF SUPERVISORS

2023 NOV -2 PM 2:09

RECEIVED

5126

The County Executive Office is requesting a Supplemental Agenda Staff Report for the November 7, 2023, Board Hearing.

Agency: County Counsel

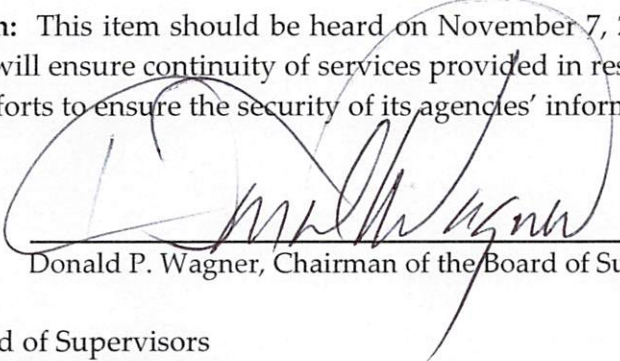
Subject: Retroactive Agreement with Baker & McKenzie LLP for Legal Services

Districts: All Districts

Reason Item is Supplemental: This is a supplemental item to allow the Board to consider hiring special counsel for incident response and associated services related to the cyberattack on the District Attorney's information technology system.

Justification: This item should be heard on November 7, 2023, agenda because the proposed agreement will ensure continuity of services provided in responding to the cyberattack and the County's efforts to ensure the security of its agencies' information technology services.

Concur:


Donald P. Wagner, Chairman of the Board of Supervisors

cc: Board of Supervisors
County Executive Office
County Counsel



SUPPLEMENTAL AGENDA ITEM AGENDA STAFF REPORT

MEETING DATE: 11/07/23
LEGAL ENTITY TAKING ACTION: Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S): All Districts
SUBMITTING AGENCY/DEPARTMENT: County Counsel
DEPARTMENT HEAD REVIEW: Leon J. Page
Department Head Signature
DEPARTMENT CONTACT PERSON(S): Leon J. Page (714) 834-3300
James C. Harman (714) 834-5257

Digitally signed by Leon J. Page
DN: cn=Leon J. Page, o=County of Orange,
ou=County Counsel,
email=leon.j.page@ocgov.com, c=US
Date: 2023.11.02 11:42:01 -0700

RECEIVED
2023 NOV -2 PM 2:09
CLERK OF THE BOARD
COUNTY OF ORANGE
BOARD OF SUPERVISORS

SUBJECT: Retroactive Agreement with Baker & McKenzie LLP for Legal Services

CEO CONCUR

Digitally signed by Frank Kim
DN: cn=Frank Kim, o=County of
Orange, ou=CEO,
email=frank.kim@ocgov.com,
c=US
Date: 2023.11.02 11:52:40 -0700

CEO Signature

COUNTY COUNSEL REVIEW
Approved Agreement as to Form

Action

Digitally signed by James C. Harman, Chief Assistant County Counsel
DN: cn=James C. Harman, Chief Assistant County Counsel, ou=Office
of County Counsel, ou=Administrative Services, o=County of Orange, c=US
Date: 2023.11.02 11:46:09 -0700

County Counsel Signature

CLERK OF THE BOARD

Discussion

3 Votes Board Majority

Budgeted: Yes

Current Year Cost: See Financial
Impact Section

Annual Cost: See Financial
Impact Section

Staffing Impact: N/A

of Positions:

Sole Source: Yes

Current Fiscal Year Revenue: N/A

Funding Source: GF: 100%

County Audit in last 3 years N/A

Levine Act Review Completed: Yes

Prior Board Action: N/A

RECOMMENDED ACTION(S)

Approve retroactive agreement with Baker & McKenzie LLP for legal services effective October 25, 2023.

SUMMARY:

The proposed agreement will provide specialized legal services to the County and District Attorney in technically complex matters relating to the District Attorney's information technology system.

BACKGROUND INFORMATION:

The Orange County District Attorney detected a cybersecurity incident on October 20, 2023. As a proactive and protective measure, OCDA immediately isolated its network to prevent further intrusion into its system or other partner agencies. Upon detecting the incident, the District Attorney promptly worked with the Orange County Information Technology (OCIT) department and retained leading cybersecurity experts to support its investigation, containment, and remediation efforts.

The District Attorney and OCIT worked with a number of County departments and vendors to address the various issues raised by the cyberattack. The law firm of Baker & McKenzie was brought on as part of the team to address complex legal issues associated with the cyberattack. Baker & McKenzie is an international law firm with over 6,500 attorneys in 70 global offices that has represented entities in some of history's largest cybersecurity-related incidents. It advises local government agencies on cybersecurity incidents, and the firm currently advises the New York City Office of Technology and Innovation. The firm assists clients with cyber risk management, incident response, remediation, and navigating critical infrastructure regulation and compliance timelines. The firm includes former computer analysts, government employees, and chief information security officers. More information on the firm's services is included in the presentation attached here as Attachment B.

The firm's team will be led by partner Justine Phillips who, "focuses her practice on both proactive and reactive cybersecurity and data privacy services, representing clients in matters related to information governance, diligence in acquisitions and investments, incident preparedness and response, the California Consumer Privacy Act, privacy litigation, and cyber litigation." The firm has agreed to a rate, discounted from the firm's market rates, for Ms. Phillips's services at \$950/hr. and \$630/hr. for associates. Further information on Ms. Phillips' background is found in Attachment C.

FINANCIAL IMPACT:

Appropriations for this Contract can be absorbed within County Counsel and District Attorney existing appropriations and if needed, either department may submit required adjustment for Board approval during CEO mid-year budget adjustment process.

STAFFING IMPACT:

N/A

ATTACHMENT(S):

Attachment A – Agreement for Special Counsel
Attachment B – Baker & McKenzie Overview
Attachment C – Justine Phillips Professional Background

AGREEMENT
BY AND BETWEEN
THE COUNTY OF ORANGE
AND BAKER & MCKENZIE LLP
FOR PROFESSIONAL LEGAL SERVICES

OCTOBER 25, 2023

**AGREEMENT WITH BAKER & MCKENZIE LLP
FOR PROFESSIONAL LEGAL SERVICES**

This Agreement for Professional Legal Services (this “Agreement”) is effective October 25, 2023, by and between the County of Orange, a political subdivision of the State of California (the “County”), on the one hand, and Baker & McKenzie LLP an Illinois limited liability partnership (“Attorneys”), on the other hand. County and Attorneys are sometimes individually referred to as “Party”, or collectively referred to as “Parties.”

RECITALS

WHEREAS, the County desires to contract for professional legal services;

WHEREAS, attorneys provide professional legal services, and are particularly qualified to perform required services due to their legal competence and expertise; and

WHEREAS, County desires to retain Attorneys’ services in connection with the Scope of Services provided herein.

NOW, THEREFORE, the Parties mutually agree as follows:

ARTICLES

1. **Scope of Work:** The Scope of Work for this Agreement is attached hereto and incorporated herein by this references as Attachment A.

2. **Compensation:** The compensation to be paid to Attorneys for performing services in accordance with this Agreement is specified in Attachment B, which is attached hereto and incorporated herein by this reference, and includes full compensation for providing all services performed under this Agreement. The approved personnel whose services will be provided by Attorneys under this Agreement and their respective hourly rates are set forth on Attachment B, which list of personnel may be amended from time to time as necessary by the Attorneys and the Office of the Orange County Counsel (“County Counsel”) through letter agreements. The approved hourly rates set forth in this Agreement, however, may not be amended or increased without approval of the County Board of Supervisors (“Board of Supervisors”).

3. **Invoicing/Payment:** All invoicing and payment for services performed under this Agreement shall be as specified in Attachment B hereto.

4. **Agreement Term:** The Term of this Agreement shall commence on October 25, 2023, and shall continue until completion of the matters for which Attorneys have been retained, unless sooner terminated as provided herein.

5. **Professional Conflict of Interest:** Without limitation as to, or alteration of, obligations otherwise imposed on Attorneys with respect to County under the Rules of Professional Conduct or under law, and in addition to such obligations, Attorneys agree to comply with the following portion of the Conflicts of Interest Policy adopted by the County's Board of Supervisors on September 24, 1985:

“It is the policy of the Orange County Board of Supervisors, on behalf of County and all other government entities of which it is the governing board, to prohibit the employment by any law firm adverse to County while simultaneously being employed by County, unless the Board is advised of, and given specific consent to, such adverse employment.

Any law firm which has been retained by County which desires employment which is or may be adverse to County shall transmit a statement of such desire to the County Counsel prior to undertaking such employment. The statement shall include a description of the employment and the reasons, if any, why County should consent. The County Counsel will forward the request to the Board of Supervisors with recommendation for action.”

If the Board of Supervisors declines to consent to the employment, the Attorneys shall decline any such employment. The Board's authority to give the County's consent is not delegated to any officer or employee of the County.

The County recognizes that this policy may exceed the limitations set forth in the California Rules of Professional Conduct of the State Bar of California. Where applicable, Attorneys shall comply with such rules in security necessary consent from their other clients.

6. **General Conflicts of Interest:** The Attorneys shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Attorneys; the Attorneys' employees, agents, and relatives; sub-tier attorneys and third parties associated with accomplishing services hereunder. The Attorneys' efforts shall include, but not be limited to establishing precautions to prevent their employees or agents from making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the County. The Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. The Attorneys shall not, during the period of this Agreement, employ or offer employment to any County employee for any purpose.

7. **Confidentiality and Communication with County:** Attorneys shall maintain the confidentiality of all information which they may acquire arising out of or connected with activities under this Agreement in accordance with all applicable Federal, State and County laws, regulations, ordinances and directives relating to confidentiality, including the Code of Professional Responsibility. Attorneys shall inform all of their principals, employees, and agents providing services hereunder of the confidentiality provisions of this Agreement.

Attorneys recognize that their relationship with County and its agents and employees, officers and/or representatives is subject to the attorney-client privilege and that any information acquired during the term of this Agreement from or through County is confidential and privileged. Attorneys warrant that they shall not disclose or use in any manner whatsoever any of the information from County's officers, employees, and agents in connection with said relationships or proceedings. Attorneys understand that the County Counsel is the legally empowered legal representative of County and its officers and employees and Attorneys shall not without specific direction from the County Counsel communicate with, advise, or represent County officers or employees. This provision shall not apply to communications between Attorneys and Board of Supervisors members. These confidentiality obligations shall survive this Agreement's termination or expiration.

Attorneys shall be permitted to disclose confidential information to the extent required pursuant to any applicable law, regulations or directives of any relevant government, statutory or regulatory body (including stock exchange) or pursuant to any legal process issued by any court or tribunal of competent jurisdiction or to the insurers of Attorneys to the extent there is a claim related to the County provided Attorneys. To the extent practicably possible and permissible by law or regulations, Attorneys shall give the County prompt and prior notice of any such requirement and shall cooperate with the County to limit the scope of such disclosure to the maximum extent legally permissible.

8. **Independent Contractors:** Attorneys shall be considered as independent contractors and neither Attorneys, its employees nor anyone working under Attorneys shall be considered an agent or employee of County. Neither Attorneys, their employees nor anyone working under Attorneys shall qualify for workers' compensation or other fringe benefits of any kind through County.

9. **Assignment of Sub-Contracting:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the Parties. Furthermore, neither the performance of this Agreement nor any portion thereof may be assigned or sub-contracted by Attorneys without the express written consent of County. Any attempt by Attorneys to assign or sub-contract the performance or any portion thereof of this Agreement without the express written consent of County shall be invalid and shall constitute a material breach of this Agreement. Attorneys may retain consultants or experts as provided in Attachment B.

10. **Performance:** Attorneys shall perform all work under this Agreement, taking necessary steps and precautions to perform the work to County's satisfaction. Attorneys shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documents and other services performed by the Attorneys under this Agreement. Attorneys shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all labor, supervision, materials, and supplies necessary therefore; shall at their sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the services; and, if permitted to subcontractors solely retained by Attorneys, shall be fully responsible for all work performed by such subcontractors.

11. **Compliance with Laws:** Attorneys represent and warrant that services to be provided under this Agreement shall fully comply, at Attorneys' expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Attorneys acknowledge that County is relying on Attorneys to ensure such compliance, and pursuant to the requirements of section 15 below, Attorneys agree that they shall defend, indemnify and hold County and County Indemnitees harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.

12. **Attorneys Personnel:** Attorneys warrant that all Attorneys' personnel engaged in the performance of work under this Agreement shall possess sufficient experience and/or education and the required licenses set forth herein in good standing to perform the services requested by the County. County expressly retains the right to have any of the Attorneys' personnel removed from performing services under this Agreement to the County. Attorneys shall effectuate the removal of the specified Attorneys personnel from providing any services to the County under this Agreement within one business day of notification by County Counsel. County Counsel's Supervising Attorney shall submit the request in writing to the Attorneys. The County is not required to provide any reason, rationale or additional factual information if it elects to request any specific Attorneys personnel be removed from performing services under this Agreement.

Attorneys' Supervising Attorney for this Agreement shall be Justine Phillips. Attorneys' Supervising Attorney shall have full authority to act for Attorneys on all daily operational matters under this Agreement and shall serve as or designate lead counsel ("Lead Counsel") for all activities performed under the scope of services described below. Designation of Lead Counsel shall be subject to County Counsel's written approval. Any change in Attorneys' Supervising Attorney shall be first authorized in writing by County Counsel's Supervising Attorney.

County Counsel's designated Supervising Attorney under this Agreement shall be James C. Harman. County Counsel's Supervising Attorney shall have authority to act for County, within the scope of his or her authority, on all daily operational matters under this Agreement and shall review and approve all Attorneys' reports, whether written or verbal, and any change in Attorneys' Supervising Attorney or Lead Counsel. Whenever County Counsel designates a Supervising Attorney or change in Supervising Attorney, he, she or his or her designee shall notify Attorneys in writing.

13. **Reports/Meetings:** The Attorneys shall develop reports and any other relevant documents necessary to complete the services and requirements as set forth in this Agreement. The County and the Attorneys will meet on reasonable notice, to discuss the Attorneys' performance and progress under this Agreement. If requested, the Attorneys' personnel shall attend all meetings. The Attorneys shall provide such information that is requested by the County for the purpose of monitoring progress under this Agreement.

14. **Patent/Copyright Materials/Proprietary Infringement:** Attorneys shall be solely responsible for clearing the right to use any patented or copyrighted materials in the

performance of this Agreement. Attorneys warrant that any materials and software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Attorneys agree that, in accordance with the more specific requirement contained in the Indemnification section below, they shall indemnify, defend and hold County and County Indemnitees (as defined below) harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, but not limited to, attorney's fees, costs and expenses.

15. **Indemnification:** Attorneys agree to indemnify, defend with counsel approved in writing by County, and hold harmless County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") from any and all claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the performance of services pursuant to this Agreement. If judgment is entered against Attorneys and County (or any County Indemnitee), by a court of competent jurisdiction because of the concurrent active negligence of Attorneys and County or County Indemnitees, Attorneys and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

16. **Insurance Provisions:** Prior to the provision of services under this Agreement, Attorneys agree to purchase all required insurance at Attorneys' expense and to deposit with the County Counsel, Certificates of Insurance, including all endorsements required herein, necessary to satisfy County Counsel's Supervising Attorney that the insurance provisions of this Agreement have been complied with and to keep such insurance coverage and the certificates therefore on deposit with County Counsel during the entire term of this Agreement. In addition, all subcontractors performing work on behalf of Attorneys pursuant to this Agreement shall obtain insurance subject to the same terms and conditions as set forth herein for Attorney.

Attorneys shall ensure that all subcontractors performing work on behalf of Attorneys pursuant to this Agreement shall be covered under Attorneys' insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Attorneys. Attorneys shall not allow subcontractors to work if subcontractors have less than the level of coverage required by the County from Attorneys under this Agreement. It is the obligation of Attorneys to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by Attorneys throughout the term of this Agreement for inspection by County representative(s) at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. If Contractor is self-insured, Contractor will indemnify the County for any and all claims resulting or arising from Contractor's services in accordance with the indemnity provision stated in this contract.

If the Attorneys' fail to maintain insurance acceptable to the County for the full term of this Agreement, the County may terminate this Agreement.

Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the Attorneys shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers Compensation	Statutory
Employers Liability Insurance	\$1,000,000 per occurrence
Professional Liability	\$1,000,000 per claims-made \$1,000,000 aggregate
Network Security & Privacy Liability	\$1,000,000 per claims-made

Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

a) An Additional Insured endorsement using ISO form CG 20 26 04 13, or a form at least as broad naming the ***County of Orange its elected and appointed officials, officers, agents and employees*** as Additional Insureds, or provide blanket coverage, which will state ***AS REQUIRED BY WRITTEN CONTRACT***.

b) A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad evidencing that the Attorneys' insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

Attorneys shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to the County. Failure to provide written notice of cancellation may constitute a material breach of the Agreement, upon which the County may suspend or terminate this Agreement.

If Attorneys' Professional Liability is a "Claims-Made" policy, Attorneys shall agree to maintain coverage for two (2) years following the completion of the Agreement.

The Commercial General Liability policy shall contain a severability of interests clause also known as a "separation of insureds" clause (standard in the ISO CG 0001 policy).

Insurance certificates should be forwarded to the agency/department address listed in the Agreement.

If the Attorneys fail to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified firm.

The County expressly retains the right to require Attorneys to increase or decrease insurance of any of the above insurance types throughout the term of this Agreement. Any increase or decrease in insurance will be mutually agreed by Attorneys as deemed by County of Orange Risk Manager as appropriate to adequately protect the County.

The County shall notify Attorneys in writing of changes in the insurance requirements. If Attorneys do not deposit copies of acceptable Certificates of Insurance and endorsements with the County incorporating such changes within thirty (30) days of receipt of such notice, this Agreement may be in breach without further notice to Attorneys, and the County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Attorneys' liability hereunder nor to fulfill the indemnification provisions and requirements of this Agreement, nor act in any way to reduce the policy coverage and limits available from the insurer.

17. **Ownership of Documents:** The County has permanent ownership of all directly connected and derivative materials produced under this Agreement by the Attorneys. All documents, reports and other incidental or derivative work or materials furnished hereunder shall

become and remain the sole property of the County and may be used by the County as it may require without additional cost to the County. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by the Attorneys without the express written consent of the County. Notwithstanding the foregoing, Attorneys retain ownership of, and copyright in, its template documents, work product or general legal knowledge underlying the work product produced by Attorneys for the County.

18. **Title to Date:** All materials, documents, data or information obtained from the County data files or any County medium furnished to the Attorneys in the performance of this Agreement will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Attorneys after completion or termination of this Agreement without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Agreement unless: (a) required to be retained by law; or, (b) required to be retained for the purposes of Attorneys' insurance or risk management policies or to comply with any applicable professional standards, provided that Attorneys shall maintain the confidentiality of all documents retained.

19. **Records:** The Attorneys shall keep an accurate record of time expended by Attorneys and the subcontractors working for Attorneys in the performance of this Agreement. Such record shall be available for periodic inspection by the County at reasonable times.

20. **Audits/Inspections:** Attorneys agree to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Attorneys for the purpose of auditing or inspecting any aspect of performance under this Agreement. The inspection and/or audit will be confined to those matters connected with the performance of the Agreement including, but not limited to, the costs of administering the Agreement. Attorneys will be provided reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Attorneys' records before final payment is made.

Attorneys agree to maintain such records for possible audit for a minimum of five (5) years after final payment, unless a longer period of records retention is stipulated under this Agreement or by law. Attorneys agree to allow interviews of any employees or others who might reasonably have information related to such records. Further, Attorneys agree to include a similar right to the County to Audit records and interview staff of any subcontractors related to performance of this Agreement.

Should the Attorneys cease to exist as a legal entity, the Attorneys' records pertaining to this Agreement shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to the County Counsel's Supervising Attorney.

21. **Termination for County's Convenience:** Services performed under this Agreement may be terminated in whole or in part at any time County deems termination of this Agreement to be in its best interests. County Counsel's Supervising Attorney shall terminate services by delivering to Attorneys a written Termination Notice specifying the extent to which services are terminated and the effective termination date. After receiving a Termination Notice and unless otherwise directed by County Counsel's Supervising Attorney, Attorneys shall:

- a) Take all necessary steps to stop services on the date and to the extent specified in the Termination Notice.
- b) Complete services not terminated by the Termination notice.
- c) Complete and submit a written Closing Report within 30 days after the termination date, including a brief description of any outstanding legal issues or matters which are pending with the Attorneys (including a discussion of applicable law) a list and description of all scheduled meetings, court appearances or matters which Attorneys were to attend and an assessment of the accomplishments of Attorneys' engagement.
- d) Submit final billing for terminated services no later than sixty (60) calendar days from the effective termination date. If Attorneys fail to submit a final billing within the time allowed, County may determine, on the basis of information available to it, the amount, if any, due to Attorneys. After County makes a determination, it shall pay Attorneys that amount. County's determination shall be final.
- e) Provide County Counsel's Supervising Attorney with copies (electronic and hard copies) of all files and attorneys work product for any matters in which Attorneys were retained by County. This includes any computerized index, computer programs and document retrieval systems created or used for the matters. When instructed by County Counsel's Supervising Attorney, Attorneys shall file with the court the appropriate substitution of counsel.

22. **Breach of Agreement:** The failure of the Attorneys to comply with any of the terms, provisions, covenants or conditions of this Agreement shall constitute a material breach of this Agreement. In such event, the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Agreement:

- a) Afford the Attorneys written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Agreement within which to cure the breach; and/or
- b) Discontinue payment to the Attorneys for and during the period in which the Attorneys are in breach; and offset against any monies billed by the Attorneys but yet unpaid by the County those monies disallowed pursuant to the above; and/or
- c) Terminate the Agreement immediately, without penalty to the County.

23. **Consent to Breach Not Waiver:** No term or provision of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse of any other different or subsequent breach.

24. **Remedies Not Exclusive:** The remedies for breach set forth in this Agreement are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Agreement does not preclude resort by either Party to any other remedies provided by law.

25. **Notices:** Any and all notices, requests, demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the Parties' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day.

All communications shall be addressed to the appropriate Party at the address stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid.

For Attorneys:	Name:	Baker & McKenzie LLP
	Address:	10250 Constellation Blvd., Suite 1850 Los Angeles, CA 90067
	Attn:	Justine Phillips, Partner
	Phone:	(310) 616-5643
	Email:	justine.phillips@bakermckenzie.com

For County	Name:	Office of the Orange County Counsel
	Address:	P. O. Box 1379 Santa Ana, CA 92702-1379
	Attn:	James C. Harman, Chief Assistant
	Phone:	(714) 834-5257
	Email:	james.harman@coco.ocgov.com

26. **Employee Eligibility Verification:** The Attorneys warrant that they fully comply with all Federal and State Statutes and regulations regarding the employment of aliens and others and that all Attorneys' employees performing work under this Agreement meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Attorneys shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but no limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324 et seq., as they currently exist and as they may be hereafter amended. The Attorneys shall retain all such documentation for all covered employees for the period prescribed by law. The Attorneys shall

indemnify, defend with counsel approved in writing by County, and hold harmless, the County and County Indemnitees from employer sanctions and any other liability which may be assessed against the Attorneys or the County/County Indemnitees or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Agreement.

27. **Entire Agreement:** This Agreement including Attachments A, B, and C, which are attached hereto and incorporated herein by this reference, contains the entire Agreement between the Parties with respect to the matters herein and there are no exceptions, alternatives, substitutions, revisions, understandings, agreements, restrictions, promises, warranties or undertakings, whether oral or written, other than those set forth herein or referred to herein.

28. **Amendments:** No alteration or variation of the terms of this Agreement shall be valid unless made in writing by the Parties.

29. **Governing Law and Venue:** This Agreement has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California, without reference to conflict of laws provisions. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another venue.

30. **Appropriation/Contingency of Funds:** This Agreement is subject to and contingent upon applicable budgetary appropriations being approved by the Board of Supervisors for each fiscal year during the Term of this Agreement. If such appropriations are not approved, the Agreement will be immediately terminated without penalty to the County.

31. **Taxes:** Unless otherwise provided herein or by law, the compensation provided for herein includes California state sales or use tax applicable law now or in the future.

32. **Change of Ownership:** Attorneys agree that if there is a change or transfer in ownership of Attorneys' business prior to completion of this Agreement, the new owner(s) or successor(s) to Attorneys shall be required to provide documentation satisfactory to the County that the new owner(s) or successor(s) have assumed and will assume Attorneys' duties and obligations contained in this Agreement and that this Agreement constitutes a valid and fully binding agreement of such new owner(s) or successor(s).

33. **Publication:** No copies of schedules, written documents, and computer-based data, photographs, maps or graphs, resulting from performance or prepared in connection with this Agreement, are to be released by Attorneys and/or anyone acting under the supervision of Attorneys to any person, partnership, company, corporation, or agency, without prior written approval by the County, except as necessary for the performance of the services of this Agreement. All press releases, including graphic display information to be published in newspapers, magazines, etc., are to be administered only by the County unless otherwise agreed to by both Parties.

34. **Headings:** The various headings and numbers herein, the grouping of provisions of this Agreement into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.

35. **Severability:** If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

36. **Calendar Days:** Any reference to the word “day” or “days” herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.

37. **Attorney’s Fees:** In any action or proceeding to enforce or interpret any provision of this Agreement, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney’s fees, costs and expenses.

38. **Interpretation:** This Agreement has been negotiated at arm’s length and between persons sophisticated and knowledgeable in the matters dealt with in this Agreement. In addition, each party has been represented by experienced and knowledgeable independent legal counsel of their own choosing, or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each Party further acknowledges that it has not been influenced to any extent whatsoever in executing this Agreement by any other Party hereto or by any person representing them, or both. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the Party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purpose of the Parties and this Agreement.

39. **Authority:** The Parties to this Agreement represent and warrant that this Agreement has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.

40. **Counterparts and .pdf/Facsimile Signature:** This Agreement may be signed in counterparts, which together shall constitute one original, and such counterpart signature pages may be exchanged and compiled using facsimile and/or .pdf file versions, which shall be deemed to be original signatures.

41. **Arbitration:** Any controversy or claim arising out of or relating to this Agreement, the breach thereof, or Attorneys provision of services to the County, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. The arbitration shall exclusively take place in Los Angeles County and judgment on the award rendered by the arbitrator(s) will be binding and enforceable in the Superior Court of the State of California for the County of Los Angeles or any other court of competent jurisdiction. Arbitration is more informal than a lawsuit in court, uses one or more neutral arbitrators instead of a judge or jury, allows for more limited discovery than in court, and is subject to very limited review by courts. In the event of any dispute arising out of or relating to

this agreement, our relationship, or the services performed (including but not limited to disputes regarding attorneys' fees or costs), such dispute shall be resolved by submission to binding arbitration. This arbitration provision in no way hinders the County's ability to pursue mediation or arbitration under the Mandatory Fee Arbitration Act (MFAA), Article 13 of the California State Bar Act, Bus. & Prof. Code, §§ 6200 to 6206 to the extent the MFAA applies. The MFAA provides for mediation and/or non-binding arbitration of fee disputes. When there is a fee dispute and the MFAA applies, the County may choose to submit the matter to mandatory fee arbitration by a local bar association, and herein agree that if the County chooses to do so, the mandatory fee arbitration will proceed before the Los Angeles County Bar Association's Attorney-Client Arbitration Program or, if that program is not available, a similar program administered by a local bar association located within the County of Los Angeles. If this process does not resolve the dispute, arbitration shall proceed as stated above with the American Arbitration Association

SIGNATURES ON FOLLOWING PAGE

The parties hereto have executed this Agreement on the dates shown opposite their respective signatures below.

Dated:

County:

Leon J. Page
County Counsel

By: _____
James C. Harman
Chief Assistant

Dated:

Attorneys:

Baker & McKenzie LLP

By: _____

Its: _____

Approved As To Form

By:  
Chief Assistant County Counsel

Date: November 2, 2023

ATTACHMENT A
SCOPE OF SERVICES

Attorneys will be required to provide the personnel and all necessary support, including computer hardware and software that is sufficient and adequate to perform the services. Attorneys will need to prepare interim and final reports, updates, and summaries for each phase of work if requested by County Counsel.

The required services include, but are not limited to, the following services as directed by the County Counsel's office:

1. Attorneys shall represent the County of Orange and provide advisory, strategy, and all necessary related legal services concerning information technology services at the Office of the District Attorney, including cybersecurity incident response, post-attack remediation, regulatory compliance, network investigations, and cybersecurity planning.
2. Attorneys shall, if and when requested by County Counsel:
 - a) Consult with and advise County Counsel, the District Attorney, the County Board of Supervisors and designated County staff;
 - b) Hire consultants and/or expert witnesses, subject to approval by County Counsel and/or the Board of Supervisors; and
3. Attorneys shall, if and when requested by County Counsel, attend meetings of the Board of Supervisors and meet with County Representatives as requested by County Counsel.
4. Attorneys shall obtain the approval of County Counsel prior to undertaking legal research of more than twelve (12) hours on any particular issue.
5. Attorneys shall obtain County Counsel's prior approval for travel outside the Counties of: Orange, Los Angeles, Riverside, Imperial, Kern, San Bernardino, Ventura, Santa Barbara or San Diego.

ATTACHMENT B

COMPENSATION, INVOICING AND PAYMENT

A. Hourly Rate Schedule

<u>ATTORNEYS</u>	<u>HOURLY RATE</u>
Partner	\$950
Associate	\$630

The Attorneys shall not be compensated for “travel time.” Itemized receipts/backup documentation for reimbursable expenses must be submitted with the invoice.

NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, INCLUDING ATTACHMENT D, UNLESS ATTORNEYS RECEIVE PRIOR WRITTEN APPROVAL OF THE COUNTY, THE COUNTY WILL NOT COMPENSATE ATTORNEYS FOR THE ATTENDANCE OR PARTICIPATION OF MORE THAN ONE ATTORNEY (INCLUDING ATTORNEYS STAFF) IN ANY MEETING, CONFERENCE CALL, DEPOSITION, COURT APPEARANCE OR SIMILAR MATTER. IN THE EVENT MORE THAN ONE ATTORNEY ATTENDS ANY MATTER, THE COUNTY WILL COMPENSATE ATTORNEYS AT THE HOURLY RATE FOR THE MOST SENIOR ATTORNEY PRESENT.

THE COUNTY WILL NOT PAY ANY ATTORNEY HOURLY RATE FOR TIME SPENT TRAVELING, REGARDLESS OF THE FORM OF TRANSPORTATION (AUTOMOBILE, AIR, ETC.). FOR POLICIES RELATED TO TRAVEL EXPENSE REIMBURSEMENT SEE SECTION B.2, BELOW.

B. Expenses

County shall reimburse Attorneys for their actual out-of-pocket expenses without mark-up, excluding expenses generally considered as overhead already reflected in the Attorneys’ hourly rates.

1. Reimbursable ordinary expenses shall include, but not be limited to:
 - a) Transcript fees.
 - b) Postage.
 - c) Messenger service.
 - d) Process service.

- e) Document reproduction by outside vendor.
- f) In-house document production. If amount charged in any one month exceeds \$500.00, prior County Counsel approval shall be obtained.
- g) Actual charges for electronic databases, such as Lexis and Westlaw. If amount charged in any one month exceeds \$500.00, prior County Counsel approval shall be obtained.

2. Reimbursable extraordinary expenses include charges of which Attorneys have obtained County Counsel' prior approval. Such expenses include, but shall not be limited to:

- a) Consultants, up to \$150,000 per contract, unless otherwise authorized by the County Board of Supervisors.
- b) Expert witnesses up to \$150,000 per contract, unless otherwise authorized by the County Board of Supervisors.
- c) Travel outside the Counties of Orange, Los Angeles, San Bernardino, Riverside, Imperial, Kern, Ventura, Santa Barbara and San Diego. Such extraordinary expenses shall be reimbursed at the IRS prevailing rate for mileage only.
- d) Investigative services.
- e) Any expense item exceeding Five Hundred Dollars (\$500.00).

3. Notwithstanding Attachment D, Non-Reimbursable expenses include, but shall not be limited to:

- a) Staff time or overtime for performing secretarial, clerical, or word processing functions.
- b) Charges for time spent to provide necessary information for County audits or billing inquiries.
- c) Charges for work performed which had not been authorized by County Counsel. Such work shall be gratuitous effort by Attorneys.
- d) Mileage, travel expenses or telephone expenses within the counties of Orange, Los Angeles, San Bernardino, Riverside, Imperial, Kern, Ventura, Santa Barbara and San Diego.

BILINGS AND PAYMENTS

C. Billings

1. Attorneys shall submit monthly billing statements in arrears, no later than the tenth (10th) of the month following the month service was rendered.

2. The original billing statement(s) and one copy shall be submitted to:

County of Orange
Office of the County Counsel
333 W. Santa Ana Blvd., 4th Floor
Post Office Box 1379
Santa Ana, CA 92702-1379
Attn: James C. Harman, Chief Assistant

3. The original of each billing statement shall include a declaration of Attorneys' Supervising Attorney or Lead Counsel as provided in Attachment C.

4. Each billing statement shall be identified by a unique number and shall be itemized to include:

a) Matter or Case names and court number.

b) Staffing level(s), hourly rates and specific activities for each attorney and/or paralegal.

1) Each activity shall be billed separately as a line item in a time reporting format acceptable to County Counsel.

2) A detailed description of specific activities for each attorney and/or paralegal.

c) Total current cumulative monthly fees billed for each staffing level.

d) Total current monthly expenses billed in the following categories:

1) Consultant and expert witness expenses;

2) Deposition and transcript expenses; and

3) Other miscellaneous expenses.

e) The total cumulative expenses to date billed in (d) directly above.

D. Payments

County shall make payment(s) for services rendered under this Agreement monthly in arrears based on the monthly itemized billing statement(s) Attorneys submit to County. County shall make its best effort to process payments promptly after receiving Attorneys' monthly billing statement. County shall not pay interest or finance charges on any outstanding balance(s).

ATTACHMENT C

ATTORNEYS' DECLARATION ON BILLING STATEMENT

The following declaration shall be made on the original of each billing statement and personally signed and dated by Attorneys' Supervising Attorney or Lead Counsel.

"I have personally examined this billing statement. All entries are in accordance with the Agreement for Professional Legal Services, are correct and reasonable for the services performed and costs incurred, and no item on this statement has been previously billed to County."

Date

Signature

Name

Title
(Supervising Attorney or Lead Counsel)

ATTACHMENT D
ATTORNEYS' STANDARD ENGAGEMENT TERMS



Baker & McKenzie LLP

Standard Terms of Engagement for Legal Services

Governing Terms. This statement contains the standard terms for our engagement as your lawyers. Unless modified in writing by mutual agreement, these terms will be an integral part of any agreement we may have with you. Please review this statement carefully and contact us promptly if you have any questions. We suggest that you retain this statement in your file.

Application and Interpretation. Your engagement is with Baker & McKenzie LLP, a member of Baker & McKenzie International. In accordance with the common terminology used in professional service organizations, reference in these Standard Terms, or otherwise in the course of your dealings with us, to a "partner" means a partner, or equivalent, in this or another such law firm. Similarly, references to an "office" means an office of any such law firm.

Client Service Lawyer. One lawyer will generally be assigned primary responsibility for seeing that your requests for legal services are met. Additional lawyers and paralegals from other Firm offices may assist in rendering the most appropriate and efficient legal services, and we will share confidential information with them regarding your matters for the purposes of better serving you.

Scope of Our Engagement and Fees. The scope of any engagement will be set out in a separate letter that will be sent to you each time we agree to represent you on an individual matter (Assignment Letter). Our fee arrangement will be set out in that letter.

Conflicts. We will always honor our duty of confidentiality to you and protect your information. Without detracting from our duty of confidentiality to you, this letter confirms our mutual agreement that, so long as we act in accordance with ethical requirements, we and other Firm offices may without your consent act for other persons or entities whose interests are adverse to you or your affiliates in matters not substantially related to our engagement by you. The adversity may be in litigation, legislative or regulatory matters, or in transactions or otherwise, all regardless of type, importance or severity of the matter.

We agree, however, that we will not act adversely to you in any instance where, as the result of our representation of you, we have obtained sensitive, proprietary or other confidential information of a nonpublic nature that, if known to any such other client of ours, could be used in a matter in which we are retained by our other client to your or your affiliates' material disadvantage, unless we screen our lawyers and paralegals who have such information from any involvement in the adverse representation.

You also understand that we and other Firm offices may obtain confidential information from other clients that might be of interest to you, but which we cannot share with you.

Conflicts With Affiliates. For purposes of our engagement, our client is only the entity designated in our Assignment Letter, and not its

affiliates (the stockholders, parent, subsidiaries, directors, officers, or related companies of any entity, or the individual members of a trade association, or the partners of a partnership or joint venture). Accordingly, for conflict of interest purposes, we and other Firm offices may represent another client with interests adverse to your affiliates without obtaining your or their consent. We will expect you to inform us immediately if the designated client does business under any other name.

Third Parties. Our engagement for you does not create any rights in or liabilities to any third party.

Termination of Services. We are subject to the rules of professional responsibility for the jurisdictions in which we practice, which list types of conduct or circumstances that require or allow us to withdraw from representing a client. We may terminate our representation for any reason consistent with the applicable rules of professional responsibility. We try to identify in advance and discuss with our client any situation that may lead to our withdrawal, and if withdrawal ever becomes necessary we give the client written notice of our withdrawal.

You may terminate our representation at any time by notifying us. Termination of our services will not affect your responsibility for payment for legal services rendered and additional charges incurred before termination and in connection with an orderly transition of your matters.

Our attorney-client relationship will be considered terminated upon our completion of the specific services that you have retained us to perform, or if open-ended services are agreed upon, when more than six months have elapsed from the last time you requested and we furnished any billable services to you. If you later retain us to perform further or additional services, our attorney-client relationship will be revived, subject to these and any subsequent written terms in the Assignment Letter. The fact that we may inform you from time to time of

developments in the law which may be of interest to you, by newsletter or otherwise, should not be understood as a revival of an attorney-client relationship. Moreover, we have no obligation to inform you of such developments in the law unless we are engaged in writing to do so.

Your Papers. When termination occurs, papers and property that you have provided to us will, at your request, be returned to you promptly. Copies of papers we have created for you, which you may need but no longer have, will be made available to you. Our drafts and work product will belong to us. We reserve the right, subject to any applicable laws or rules of professional responsibility to the contrary, to destroy within a reasonable time any items described in this paragraph that are retained by us.

E-mail. Documents sent to you by e-mail (whether or not containing confidential information) will not be encrypted unless you request us, in writing, to encrypt outgoing e-mail and we are able to agree with you and implement mutually acceptable encryption standards and protocols.

We make reasonable attempts to exclude from our e-mails and any attachments any virus or other defect that might affect any computer or IT system. However, it is your responsibility to put in place measures to protect your computer or IT system against any such virus or defect, and we do not accept any liability for any loss or damage that may arise from the receipt or use of electronic communications from us.

Use of Cloud Services for the Storage and Processing of Data. We may utilize cloud services in the provision of legal services related to the provision of services to you. We evaluate all cloud services providers against industry standard frameworks for information security to validate the existence of systems to protect the confidentiality, integrity, and availability of data. All cloud services providers operate under services agreements that require conduct that is consistent with our legal and ethical obligations.

If you require us to use a specific consumer-grade cloud storage provider (e.g., the free, non enterprise versions of Dropbox.com, Box.com, Onedrive.com, etc.) for the storage, sharing or exchange of documents or information generated or used in the course of a specific engagement we assume no responsibility for the security of the data or the provider's security standards. Note that we provide our own secure, encrypted file transfer system as well as a secure Extranet, to facilitate the storage and sharing of information between you and us.

Data protection and International Data

Transfer. We may obtain data about individuals (personal data) in connection with our provision of services to you. Unless we specifically agree otherwise, we act as the owner/controller of personal data, and retain responsibility to address data protection laws to the extent applicable to us. The Firm implements standard contractual clauses and other measures to address cross-border data transfer restrictions in data protection laws. With respect to the administration of the client-attorney relationship (invoicing, archiving, checking for possible conflicts of interest, marketing and knowledge services) and the hosting of data (client, contact, time recording, invoice, cash flow data, etc.) as well as all data in connection with client-related activities (files, documents, emails, data provided by you, etc.), we receive support from other Firm offices and affiliated entities (in particular Baker & McKenzie Global Services LLC¹, B&M Global Services Manila, Inc.² and Baker & McKenzie Global Services NI Limited³). For the purpose of administering the client-attorney relationship, client-related activities, marketing, business development and knowledge management, we may disclose the data to other Firm offices.

Questions. One of our goals is to ensure that legal services are delivered effectively and

efficiently, and that all billings are accurate and understandable. Please direct any questions about services or billing practices to your client service lawyer.

Agreement. These Standard Terms shall be incorporated into any specific engagement and will be part of each Assignment Letter. Except for pending uncompleted assignments, these Standard Terms supersede all prior understandings or agreements between you and us and they shall prevail over any contrary or alternative terms of yours or any third party. Any change to these terms must be made or confirmed in writing in the Assignment Letter and be signed by the Managing Partner of one of our Firm offices.

¹ 300 E. Randolph Dr., Suite 5000, Chicago, Illinois 60601, USA

² 8th Floor, BGC Corporate Center, #3030 11th Ave Cor 30th Street, City Center, Bonifacio Global City, 1634 Taguig City, Manila

³ City Quays One, 7 Clarendon Road, Belfast BT1 3BG



Baker & McKenzie LLP

Schedule of Client Costs

It is the policy of the US Region (offices) to recover only our cost of providing certain goods and services, which are auxiliary to practicing law. Following are statements of how we charge for the provision of the most frequently used goods and services:

Reprographics and Printing. We charge \$0.19 per page for black and white copies and \$0.75 for color copies when materials are produced in our offices. Outsourced printing, copying and assembly/finishing is charged to our clients at actual cost.

Facsimiles. We charge \$1.00 per page for outgoing facsimiles, no charge is made for incoming facsimile transmissions.

Telephone. Baker & McKenzie's discounted Service Provider actual costs are passed through to our clients on all long distance and international calls. No charge is generated to clients for local telephone calls.

Postage, Messenger and Courier Services. Costs for envelopes and packages mailed, or delivered, on a client's behalf are billed at cost. When the time sensitivity of a delivery requires we use internal staff to insure proper handling,

we charge a flat fee of \$9.50 plus any additional costs incurred.

Document Production and Support Services. No charge is made for secretarial services and word processing during the regular work day. When overtime is required to complete a client project, we charge the marginal costs incurred. Other support services such as translation, notary, file retrieval and duplication are billed at cost.

Electronic databases. For electronic databases such as Lexis and Westlaw, we charge the discounted rate that we are charged by these companies.

Travel, Transportation and Meals. When a Baker & McKenzie LLP employee travels on behalf of a client, we charge the costs that the employee actually incurs. We strive to use discounted rates for airline travel and hotels.

We continue to work to minimize all of these charges to our clients. The attorneys of Baker & McKenzie LLP will be happy to discuss these policies with you at any time and welcome your comments.



Baker & McKenzie LLP

United States Client Costs Schedule

COPY AND PRINT		
Photocopy – B&W	0.19	
Photocopy – Color	0.75	
Desktop / Multi Function Device Printing	0.19	
Assembly and Finishing		Actual cost
Image Scanning – External		Actual cost
Blueprints		Actual cost
Bates Stamping		Actual cost
MESSENGER AND DELIVERY		
FedEx, Other		Actual cost
Postage		Actual cost
Courier, Messenger – External		Actual cost
Courier, Messenger – Internal Baker & McKenzie	9.50	Flat fee, plus actual expenses
COMMUNICATIONS/TELEPHONE		
Telephone – Local		No charge
Telephone – Long Distance		Actual cost
Communications – Cellular		Actual cost
Facsimiles – Outgoing	1.00	Per page, inclusive of phone charges
Facsimiles – Incoming		No charge
Teleconferencing		Actual cost
Videoconferencing		Actual cost
Web Casting		Actual cost
TRAVEL		
Travel		Actual cost
Travel – Local Client		Actual cost, or standard mileage rate
DOCUMENT PRODUCTION / OTHER		
Travel – Local Client – Parking		Actual cost
Document Production – Outsourced		Actual cost
Document Production – Internal Baker & McKenzie	55.00	Per hour
Secretarial Services – Over-time		Actual cost
Translation – External		Actual cost
Notary – Internal Baker & McKenzie		No charge
Notary – External		Actual cost
File Retrieval		Actual cost
Misc. Supplies		Actual cost
Facilities – Catering		Actual cost



Overview of Cybersecurity and Incident Response Services

Prepared for Orange County



October 2023

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Introduction

Dear Mr. Harman,

On behalf of your Baker McKenzie team, thank you for the opportunity to present our cybersecurity capabilities to Orange County. As a trusted partner, we seek to expand our relationship with you and share our common values.

We are happy to answer and questions and look forward to discussing your needs and our capabilities to assist Orange County in more detail.



Justine Phillips
Relationship
Partner
Los Angeles

+ 310 616 5643
justine.phillips@bakermckenzie.com



Deep experience with cybersecurity: Our global team of cyber attorneys has represented companies in some of the largest cybersecurity-related incidents of the last 15 years, spanning a wide range of industries, including technology and other critical infrastructure sectors. We advise clients seamlessly on their cybersecurity needs at every stage, including during a crisis, a transaction, daily operations, or helping organizations prepare for new legislation. We bring our knowledge of critical issues, concerns, and drivers of cyber incidents to provide tailored, specialist advice to help our clients pre-empt and address the particular complexities of navigating this swiftly evolving sector. With our global presence and industry-wide experience, we are uniquely positioned to provide Orange County with strategic counsel aligned to the complex cybersecurity issues you face, including legal, reputational, and regulatory issues.



Local expertise and seamless global support: You seek a partner that not only has the technical capabilities you need, but who you can also trust to mobilize teams with sufficient strength and depth to manage an event, wherever you require them and at very short notice. Given our unique footprint, we stand ready to assist you with your cybersecurity needs utilizing our global Baker McKenzie network which provides international competence and local expertise. We take a coordinated and cohesive approach with our global, regional and local teams to manage your work and deliver consistent results. We have a proven record of success handling large-scale, highly sensitive cybersecurity incidents in real time, 24 hours a day, every day of the year.



Deep technical and regulatory experience: While we have deep experience in cybersecurity from a legal perspective, we also have relevant technical experience in the field. For example, our team includes Cyrus Vance, former Manhattan DA, who co-founded the NYC cyber critical infrastructure task force, a public/private partnership to protect NYC's critical infrastructure from cyber-attack. We are supported by a robust team, including former computer analysts, government employees and CISOs which we highlight on our "team" section.

Your trusted partner on critical infrastructure

Navigating critical infrastructure requirements

Helping you mitigate cyber risk and achieve cyber resiliency

The Trend

Cyberattacks are on the rise across all industry sectors and geographies, and pose serious risks to an organization's operations, its internal digital infrastructure and its supply chain. Governments and regulators are increasingly concerned about the cyber-resilience of organizations that provide essential services to individuals and other public and private sector organizations. Putting in place effective technical defenses, legal policies and processes to manage cyber risk is essential. Our global team is ready to assist clients through the various time-sensitive stages of a cyber-attacks, including the data security breach investigation, technical response, and stakeholder notification process.

Are You Critical Infrastructure?

The definition of "critical infrastructure" providers (i.e. such as providing essential services or certain digital service providers) is being broadened, so that more and more organizations are caught in the scope of critical infrastructure regulation. There are 16 critical infrastructure sectors whose assets, systems, and networks, whether physical or virtual, are considered so vital to the United States that their incapacitation or destruction would have a debilitating effect on security, national economic security, national public health or safety, or any combination thereof. CIRCIA "critical infrastructure sectors" include: (1) Chemical, (2) Commercial Facilities, (3) Communications, (4) Critical Manufacturing, (5) Dams, (6) Defense Industrial Bases, (7) Emergency Services, (8) Energy, (9) Financial Services, (10) Food & Agriculture, (11) Government Facilities, (12) Healthcare & Public Health, (13) Information Technology, (14) Nuclear, (15) Transportation, and (16) Water & Wastewater Systems.

What Cyber Requirements Apply?

Regulations are also becoming more onerous, imposing tighter reporting deadlines and stricter obligations to take appropriate technical cyber defense measures. These emerging regulations vary by industry sector and require companies to have robust cybersecurity policies, manage vendor relationships and put in place incident response protocols. Key regulations include:

- Executive Order (EO) 14028 "Improving the Nation's Cybersecurity"
- Cyber Incident Reporting for Critical Infrastructure Act (CIRCIA)
- The European Union's revised Network and Information Security Directive (NIS2)
- The Security & Exchange Commission (SEC)'s Final Rules on Cybersecurity
- New York Department of Financial Services (NY DFS) Cybersecurity Regulation
- FTC (Federal Trade Commission) Health Breach Notification Rule
- FTC (Federal Trade Commission) Safeguards Rule

How we can help. We offer our clients end-to-end solutions from compliance to incident response to breach notification. Our goal is to seamlessly help your organization mitigate legal risk while allowing you to achieve your business objectives amidst the complex regulatory landscape. We can assist with: proactive cyber risk management, incident response, remediation and litigation management and navigating critical infrastructure regulation and compliance timelines.

Experienced team

Our expertise is your strength

Deep regulatory and technical expertise, and experience advising government agencies



With a global network consisting of a combination of former **Department of Justice (DOJ) prosecutors, Securities and Exchange Commission (SEC) enforcement officials, Federal Bureau of Investigation (FBI) investigators, and Chief Information Security Officers (CISO)**, as well as regional experts around the world, Baker McKenzie is uniquely equipped to help clients across industry sectors that fall within the critical infrastructure category. We understand the importance of corporate and government sectors collaborating to form critical public-private partnerships that create measurable solutions to decrease cyber risk facing our critical infrastructure. We work with law enforcement around the world on data incidents, and where appropriate, national security services. We have worked with the **Department of Homeland Security (DHS)** and we have also worked with **Cybersecurity & Infrastructure Security Agency (CISA)** and **FBI** on multiple occasions.



We have unique experience advising **local government agencies** on cybersecurity incidents, and we currently serve as cybersecurity counsel to the New York City Office of Technology and Innovation. Our global team has also handled **over 250 breaches/incidents**. Many of these have been ransomware cases, and we have advised clients on responses involving every major threat actor group and ransomware variant, including Conti, Lockbit 2.0 and 3.0, Hive, CLoP, Darkside, REvil, and others.



An important distinction regarding our team is that we actively monitor darkweb blogs associated with these threat actor groups in order to understand the types of industries being targeted, tactics related to disclosure and exfiltration of proprietary data, and other particulars. We strongly believe that each threat actor group comes to the table with different strategies and reacting to the threat actor group in front of you is critical. We also maintain strong relationships with every law enforcement agency active in this space, and can advise on and assist with referrals as needed and appropriate.

An experienced team working for Orange County

Highlighting our critical infrastructure, government and technical expertise

- **Justine Phillips** focuses her practice on both proactive and reactive cybersecurity and data privacy services, representing clients in matters related to information governance, diligence in acquisitions and investments, incident preparedness and response, the California Consumer Privacy Act, privacy litigation, and cyber litigation.
- **Cy Vance** is one of the most well-known law enforcement officials in the US. As District Attorney in Manhattan, Cy oversaw a Cyber unit that handled more than 2,000 forensic interrogations of devices annually and investigated and prosecuted significant cyber fraud. Cy also co-founded New York City's Cyber Critical Infrastructure Task Force, the only public-private partnership in the US to address risk and prevent cyberattacks on New York's critical infrastructure. In addition, with the City of London Police, Cy founded the Global Cyber Alliance, a non-profit cross-border/cross-sector consortium to advise membership from every continent on cyber risks and cyberattack prevention.
- **Liz Roper** served as Bureau Chief for the Cybercrime and Identity Theft Bureau in the Manhattan DA's office. In that position, she directed the investigation and prosecution of all types of cybercrime impacting Manhattan, including sophisticated cyber-enabled financial crime such as identity theft, payment card fraud, and money laundering; network intrusions, hacking, ransomware, and "middleman" attacks; intellectual property theft; "dark web" trafficking of contraband; and the theft and illicit use of cryptocurrencies. In that capacity, she cultivated strong relationships with agencies including the U.S. Secret Service, the F.B.I., D.O.J., and other local, federal, and international partners. Liz also partnered with the National Cyber-Forensics Training Alliance (NCFTA) and California's Regional Enforcement Allied Computer Team (REACT) Task Force to share intelligence and build cases against the most elite cybercriminals.
- As former Special Counsel to the General Counsel of the US Dept. of Commerce, **Brian Hengesbaugh** played a key role in the development and implementation of the US Government's domestic and international policy in the area of privacy and electronic commerce, serving on the core team that negotiated the US-EU Safe Harbor Privacy Arrangement and earning a Medal Award. He also participated on behalf of the US in the development of a draft Council of Europe Treaty on Cyber Crime, and in the negotiation of a draft Hague Convention on Jurisdiction and the Recognition of Foreign Judgments.
- **Jerome Tomas** served as a senior attorney in the SEC's Division of Enforcement where he investigated, litigated, and tried alleged violations of the federal securities laws and worked closely with several US Attorneys' Offices on parallel investigations. He is a former member of the SEC Division of Enforcement's Cyberforce, the agency's internet and cyber fraud unit.

Our team has worked on a wide range of data security incidents for companies, from the simple unauthorized access to a customer file to the elaborate cyber-extortion against publicly traded companies. In addition to advising several Counties on its cyber response strategy and incident response, we highlight a sample of our representative matters on the following slide.

Proposed US cyber team and global key contacts

Core US team



Justine Phillips

Partner
Los Angeles

+ 1 310 616 5643
justine.phillips
@bakermckenzie.com

Justine Phillips focuses her practice on both proactive and reactive cybersecurity and data privacy services, representing clients in matters related to information governance, diligence in acquisitions and investments, incident preparedness and response, the California Consumer Privacy Act, privacy litigation, and cyber litigation.

Justine provides actionable and practical guidance to help businesses manage data, technology, cyber threats, privacy, security and digital assets. As businesses navigate complex and far-reaching laws and regulations, Justine proactively creates compliance programs customized to client needs and budgets, including data mapping, vendor management, privacy and security by design, cyber risk management and mitigation, eWorkforce policies, data retention and destruction policies and implementation, consumer request workflows, cyber-awareness policies and trainings, and CCPA/CPRA readiness audits. She also provides reactive cyber services, including incident response, crisis management, privileged forensic investigations into business email compromises, data breaches and ransomware attacks, compliance with notice obligations to individuals and regulators, regulatory inquiries and investigations, and cyber litigation. Justine also handles employment litigation and counseling, as well as commercial litigation.



Garrett Stallins

Associate
San Francisco

+1 415 591 3205
garrett.stallins
@bakermckenzie.com

Garrett Stallins' practice focuses on helping clients build effective information governance programs, comply with privacy laws and regulations, and respond to cybersecurity incidents.

As a Certified Information Privacy Professional (CIPP/US), Garrett assists clients on state, federal, and international privacy laws and regulations, including the California Consumer Privacy Act (CCPA), the Health Insurance Portability and Accountability Act (HIPAA), and the General Data Protection Regulation (GDPR).

In his cybersecurity practice, Garrett assists clients in identifying and managing risks through their information governance programs. He also assists clients in coordinating their response to cyber incidents from threat discovery through remediation and recovery. Garrett also has experience with data mapping projects and privacy impact assessments.

Core US team

**Ella Noll**

Associate
San Francisco

+1 415 591 3235

ella.noll

@bakermckenzie.com

Ella is an associate in our Firm's Intellectual Property & Technology Practice Group and is based in our San Francisco office.

While in law school, Ella worked in the Worker's Rights Clinic, where she provided free legal representation to clients dealing with employment matters. Ella also holds a bachelor's degree in Computer Science and specialized in machine translation and natural language processing.

Ella's assists with matters involving intellectual property and technology transactions, including transactions for multinational corporations.

**Charles Lanzdorf**

Lawyer
Tampa

+1 813 519 0019

charles.lanzdorf

@bakermckenzie.com

Charles Lanzdorf is an attorney based in our Tampa service center.

Charles has accumulated over fifteen years of experience leading large eDiscovery teams in New York, Florida, Washington D.C., and Belfast. He consults on appropriate uses of eDiscovery review platforms, provides guidance on establishing workflows and quality control oversight, and manages large-scale, high-value, eDiscovery matters from inception through delivery.

Our global privacy and cybersecurity key contacts



*Trench Rossi Watanabe and Baker McKenzie have executed a strategic cooperation agreement for consulting on foreign law.

Capabilities overview



Our cybersecurity capabilities

As one of the world's preeminent cybersecurity law firms, Baker McKenzie helps clients mitigate risk in an era of increasing data breaches and cyber crime.

Industry Recognition

In its 2022 editorial, **Chambers Global** notes "Baker McKenzie's international data security practice forms a core part of the law firm's offering in key hubs across the globe. The firm has dedicated teams situated across Europe, North America and Asia. Its areas of focus include: GDPR and CCPA compliance as well as cross-border data transfers; and cybersecurity concerns including incident response and data breach matters."

"Baker McKenzie is an outstanding firm," notes one client, who further praises the lawyers' "exceptional capability" and notes: "Their strengths include an ability to mobilize globally and pull expertise around the world when needed."

Chambers ranks us Band 2 in Data Protection and Band 1 in Outsourcing and TMT for 15 consecutive years (2008-2023)

Another client remarks: "They are such supreme experts in their respective fields, and we always have the utmost confidence in the advice they provide."

Global Data Review ranked us a Global Elite Firm (top 25 data law firms in the world) in GDR 100 (2023)

Breach Coach awarded by **NetDiligence**

Baker McKenzie has had a global data security practice in place for more **than two decades**. This experience has resulted in our privacy and data security practice being unmatched in its global scope and depth of expertise.

Global industry expertise. Our team of experts have handled global data security projects spanning more than 60 countries. We have represented companies in some of the largest cybersecurity-related incidents of the past 15 years, spanning a wide range of industries, including technology systems, the defense industrial base and other critical infrastructure sectors. Our experience in these matters has led to a deep understanding of not only general cyber risks, but also industry-specific cyber risks and the techniques best suited to managing them.

End-to-end capabilities. We cover all aspects of data privacy and protection planning and implementation, and also provide world-class service to clients when data is compromised, including:

- Advisory (covering employee, customer, vendor and other data)
- Transactional (including sourcing and cloud computing)
- Crisis management

Cyber risk mitigation. Our leading team helps protect against cybersecurity threats by developing, managing and implementing data security policies, procedures and emergency plans. We are available to advise seamlessly on your privacy and data protection needs at every stage, from offering strategies for daily operations, to providing valuable counsel during a crisis.

Breach response. In the event of a data security breach, we help clients understand how to handle the breach and cross-border security from a legal, technical and reputational perspective. We can guide you through the urgent regulatory and internal investigations that are required, as well as the mandatory notifications to data protection authorities.

Our cybersecurity and data protection specialists are also available to train personnel on the strategies and policies to help effectively minimize data security risks, as well as how to respond to urgent data security incidents. We have the vast experience to provide quality representation in the event of disputes and/or investigations following data security breaches.

Our cybersecurity capabilities

Cyber risk and protection are on everyone's agenda. No one is immune to cybercrime, however robust their protection programs. The complexity and rapidly-changing nature of cybercrime increases the challenge of risk mitigation as technology evolves and regulation grows to meet it. To help protect our clients in this digital economy, we offer an end-to-end approach to cybersecurity and data protection that works in this dynamic risk landscape.

Board cybersecurity oversight	Pre-incident counseling	Security incident planning	Network intrusion investigations
We advise boards of directors on the oversight obligations of directors related to cybersecurity risks and provide crisis management counseling to senior management and boards of directors when confronting an actual or potential network intrusion or data theft issue.	We mitigate risks and prepare you before a crisis hits by advising on the cybersecurity legal obligations applicable to your business and assess cybersecurity and information security programs for compliance with applicable standards.	We develop bespoke cybersecurity scenarios, games, and exercises designed to test a company's incident response and crisis management plans. We identify vulnerabilities, offer integrated advice on broader potential implications (reputation, criminal and civil litigation exposure, and employee-investor relations) and design appropriate steps on remediation.	We oversee and advise on investigations into security incidents under attorney-client privilege, including retaining and managing leading technology vendors under privilege, addressing data collection and preservation issues, and helping engage with insurance providers.
Cybersecurity incident response	Communication and crisis management counseling	Regulatory engagement and reporting	Class action and counter-party litigation
We provide end-to-end and round-the-clock advice on timing and sequencing of notifications, as well as advise clients on data security breach and incident response to regulatory investigations and post-breach remediation, including class-action litigation defense and representation before data protection authorities and other government agencies.	We protect corporate reputations and shareholder value when dealing with urgent and time-pressured issues subject to intense public scrutiny and support on engagement with the press, government and stakeholders in terms of identifying legal risk and in formulating appropriate messaging.	We coordinate regulatory reporting and notifications owed to affected data subjects, assist through various time-sensitive stages of a data security breach investigation and stakeholder notification, and provide extensive experience and relationships of trust established with industry regulators across jurisdictions.	We defend class actions related to security incidents and advise on counter-party risks associated with network intrusion incidents. We manage consequential litigation, develop proportionate strategies for breach investigations across multiple jurisdictions and protect the internal and external investigation teams, including third-party providers.

Cybersecurity preparedness and incident response

How we can help

Breach counseling

- Pre-breach/compliance services, refining processes and procedures; reviewing data breach response plans; and assisting with red team/simulations.
- Identify vulnerabilities and degree of risk around breach - accounting for regulatory obligations owed across jurisdictions including the ICO, SFO, FCA, PRA, FTC, DFS and state regulators.
- Establish the scale and severity of any breach.
- Offer integrated advice on broader potential implications for reputation, criminal and civil litigation exposure, employees and investor relations that may flow from an incident.
- Design and implement appropriate steps on remediation; demonstrate the credibility of those plans to regulators by reference to investigations data.



Regulatory engagement and reporting

- Coordinate regulatory reporting and notifications owed to affected data subjects.
- Assist you through the various time-sensitive stages of a data security breach investigation and stakeholder notification process.
- Provide extensive experience and relationships of trust established with relevant industry regulators across jurisdictions - reinforcing the credibility of advocacy on engagement.
- Ensure joined up engagement with regulators across jurisdictions.

Investigations

- Develop proportionate strategies for investigating breaches and coordinate investigations across multiple jurisdictions.
- Advise on safeguarding and maintaining legal privilege around the investigation.
- Project manage the internal and external investigations teams, including third party providers.
- Manage consequential litigation, including class actions.

Communication and crisis management

- Protect your individual and corporate reputations and shareholder value when dealing with urgent, time pressured issues subject to intense public scrutiny by leveraging our considerable crisis management experience.
- Support you on engagement with the press, Government, shareholders, investors and customers— both in terms of identifying legal risk and in formulating appropriate messaging.

Partnerships

Experience working with forensics and public relations crisis management firms



We have longstanding relationships with a wide variety of forensics, security consulting, and public relations firms. Where helpful for asserting attorney-client and work product privileges, we often will engage such third parties as our sub-contractors to assist us in advising the client on its legal obligations and risks.



We would be happy to suggest vendors across areas related to incident response, but we understand that you may already have preferred vendors for data security incidents. We would be glad to discuss the context for any engagement, and how to address privilege and related issues (e.g., adopting a three-way side letter agreement, and the like). Additionally, we would discuss how to structure engagements with vendors across other areas (e.g., public relations).



We prefer a coordinated approach that links together all relevant providers (forensics, public relations, call center/notice fulfillment and identity theft protection) under a common governance structure such as an enterprise-wide data security incident response and breach notice policy.



We also recommend scenario testing and table top exercises to "stress test" and develop acquired learning for the team on how to manage these situations.



Handling data incidents: From start to finish

We have extensive experience helping companies prepare for and respond to data incidents, including ransomware attacks, which are increasingly common given the proliferation of at-home work as a result of the pandemic. The following slides outline our approach with clients to these attacks. We would be happy to work with you on incident readiness, which may include a table top exercise, so we can review current protocols and build together a tailored crisis management and response plan or playbook as needed.

Pre-attack Preparation

- What InfoSec preparations should be done?
- What decisions should be made upfront?



Attack Response

- Internal communications
- Technical response
- Outward response

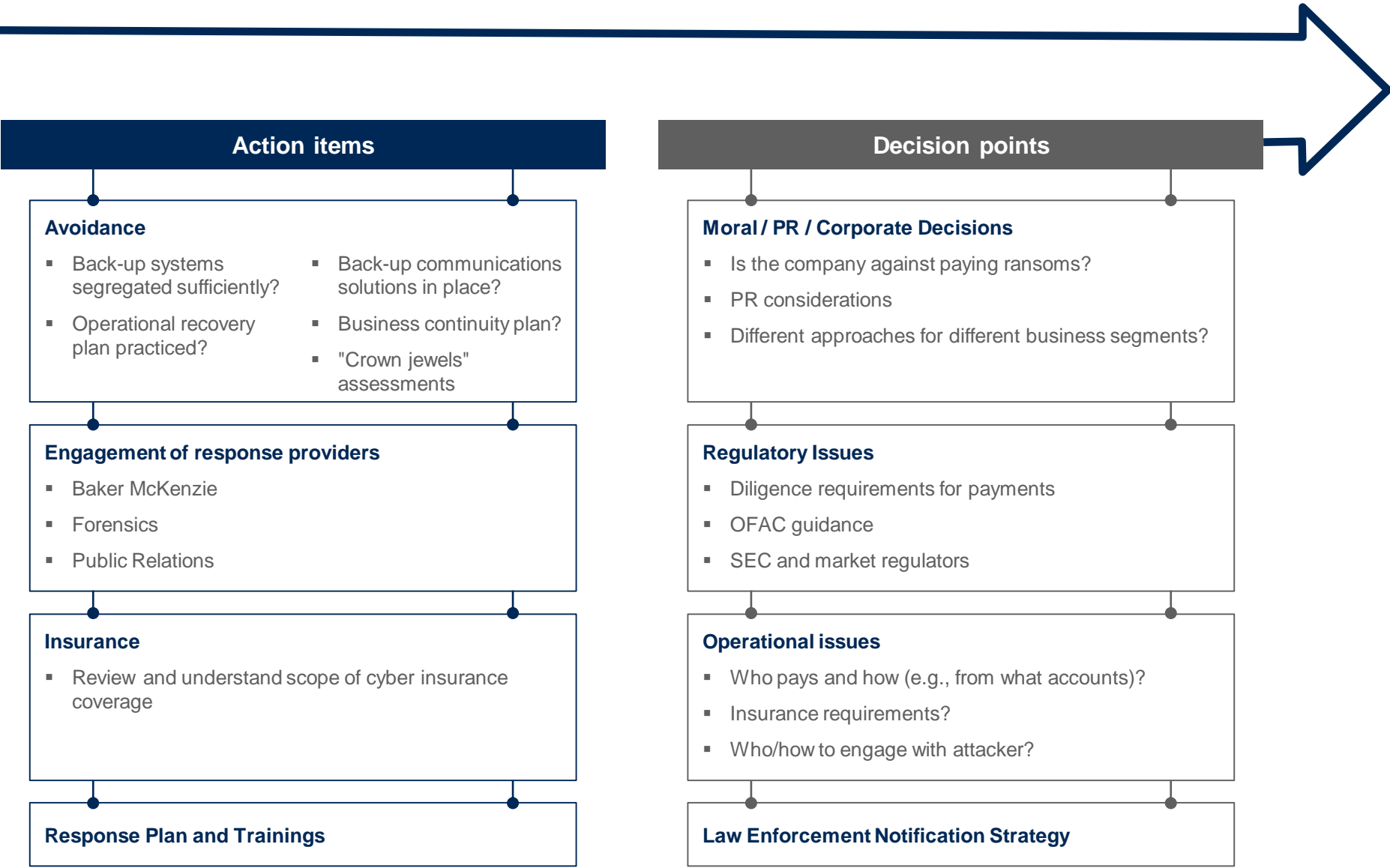


Post-attack Remediation

- Addressing regulator and enforcement inquiries
- PR issues
- Technical response



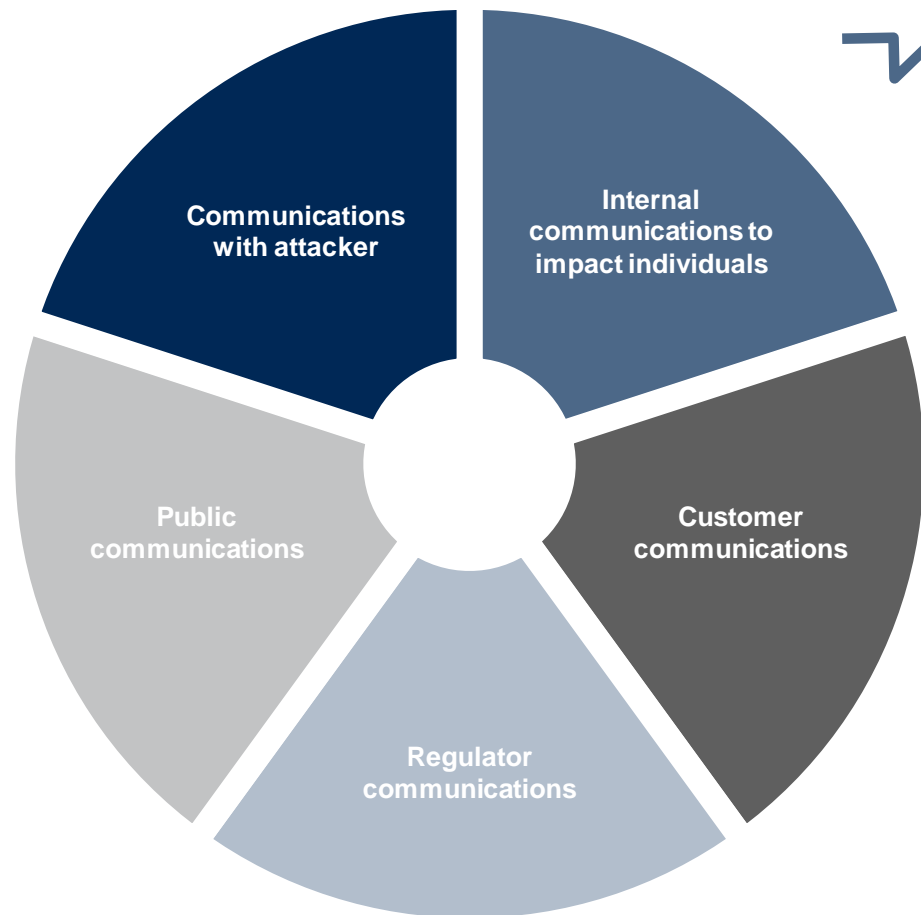
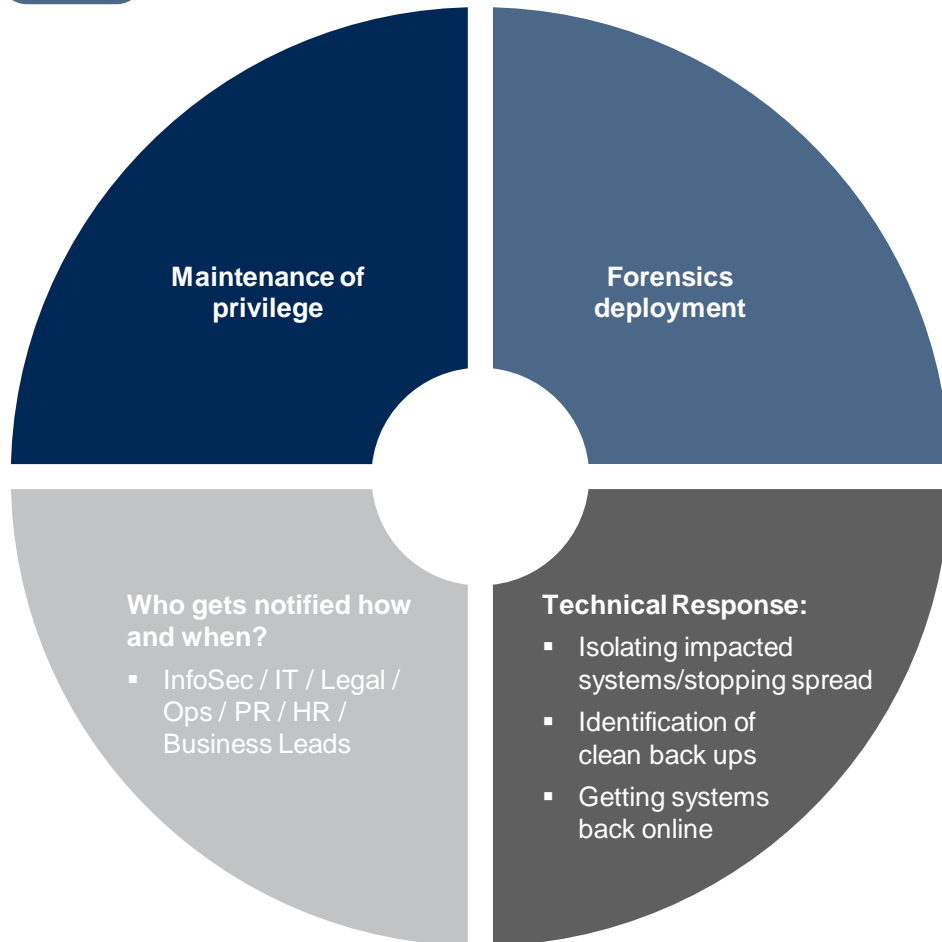
Pre-attack preparation



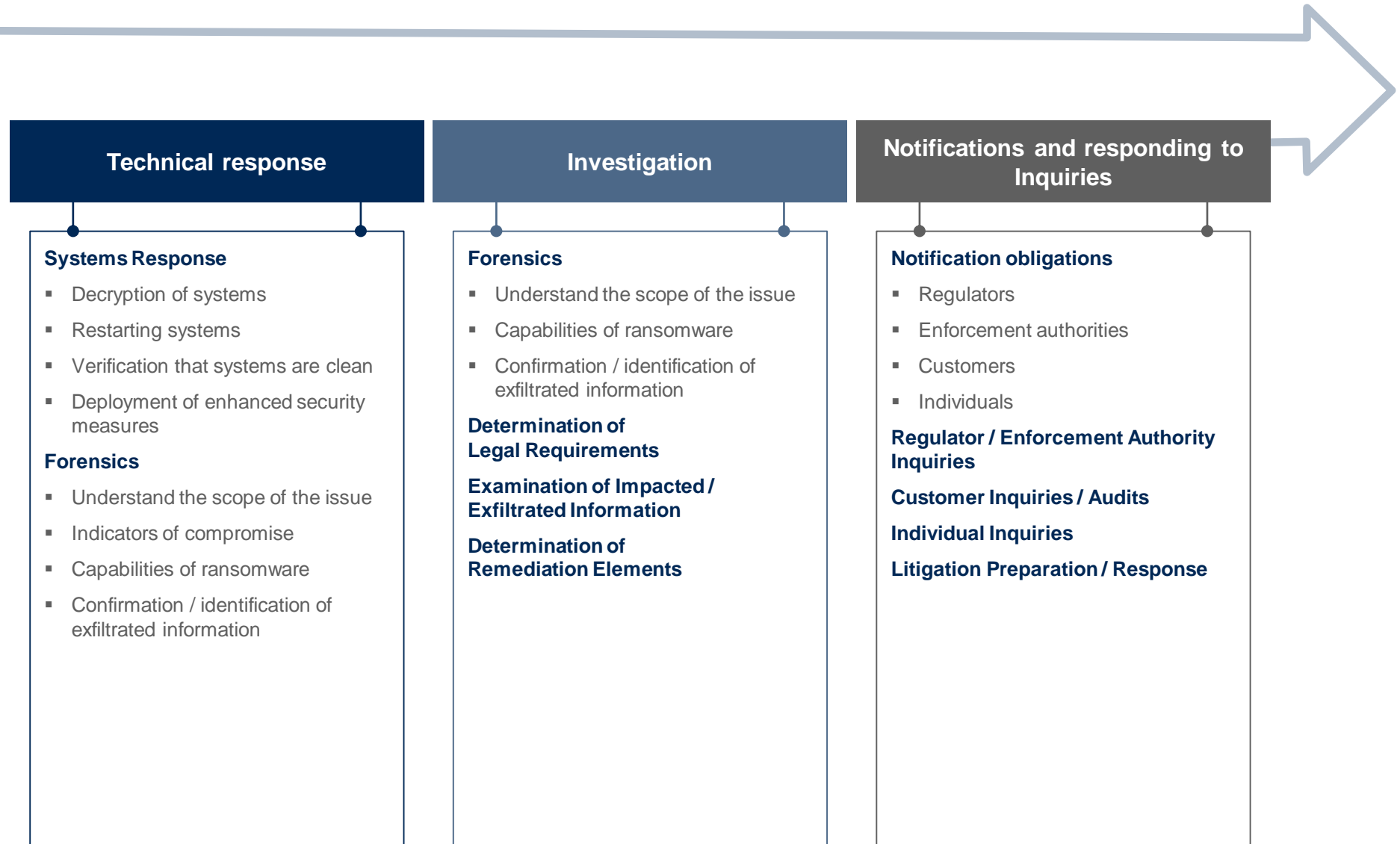
Attack response



Communications and Response



Post-attack remediation



Value-added services and resources

Cost-effective services

There are a number of possible cost-saving measures that can be employed to reduce your bottom line legal spend which also serve to:

- Deepen relationships
- Encourage better understanding of your needs and requirements
- Improve efficiency in the delivery of legal services

Horizon scanning

We stay current on cybersecurity regulations by proactively conducting global practice group calls to discuss new developments that impact global companies. Our team regularly engages with colleagues across regions to identify gaps in thinking or suggest areas of focus. We take pride in not only reporting on new and existing legislation, but on spotting trends in each region. Our team of cybersecurity lawyers have extensive experience advising multinational clients on cybersecurity issues. We also have good relationships with the cybersecurity regulators around the globe and have regular engagements with them. This allows us to better understand the legislative intent of the pending / proposed legislation and the potential enforcement priorities. Recent thought leadership published by our team is on the following slide.

Table top exercises

We are well-versed in the development and delivery of tabletop exercises and have conducted trainings in the form of a data security incident tabletop exercise to meet the specific objectives of our clients. We are happy to work with you to develop bespoke cybersecurity scenarios, games, and exercises designed to test your incident response and crisis management plans. We identify vulnerabilities, offer integrated advice on broader potential implications (reputation, criminal and civil litigation exposure, and employee-investor relations) and design appropriate steps on remediation. The tabletop exercise would provide stakeholders with an opportunity to engage in a series of mock data security scenarios so as to better understand the issues and develop a sense of how an organization would respond in the event of an actual data security incident. The focus of the exercise would be on communications, business decisions, and procedural issues, as opposed to a more technical testing of your information security teams, thus we anticipate that this exercise would involve key stakeholders, as well as information security, legal, and other key functional and business units.

On-site workshops / legal training

Our cybersecurity and data protection specialists are available to train personnel on the strategies and policies to help effectively minimize data security risks, as well as how to respond to urgent data security incidents. Topics that may interest you include the following:

- The Technical Bit: How and Why Cyberattacks Happen
- New Cybersecurity Threats and Working with Law Enforcement
- Coming for your (Online) Coffers: Cyber Trends in Emerging Technology
- Dark Patterns Primer and Enforcement Trends
- Cybersecurity Trends and Regulatory Considerations
- Global Cybersecurity and Ransomware Response
- Mitigating Risks of SEC Enforcement Scrutiny as a Public Company
- Cyber Due Diligence in M&A Transactions
- Global Data Breach Response: Managing Incidents in a Post-COVID World

Complimentary client resources

Our practice groups regularly produce handbooks, manuals, alerts, white papers, publications, blogs, podcasts, webinars, seminars, and more to keep our clients up to date on legal developments and business issues that concern our clients. Our resources are located on our [InsightPlus](#) platform, which you can tailor to receive based on the areas of interest to you and how often you and your team would like to receive this information. Below is a sample of resources offered by our Global Data Privacy & Cybersecurity teams that our clients find most useful. We look forward to sharing these with you.



Connect on Tech Blog and Podcast Series

Our blog and podcast series covering a broad range of topics such as data privacy and security, cybersecurity, digital innovation and transformation, generative AI and machine learning and other topics. The podcast features short 10-minute interviews with Baker McKenzie attorneys across the globe to discuss practical tips and the impact of data and technology on business.

Recent thought leadership published by our team:

- [SEC Adopts Final Cybersecurity Rules](#)
- [Buyer Beware: Cyber Diligence in M&A](#)
- [Podcast Episode: The SEC's Final Cybersecurity Rules - A Look at Evolving Risks in the New Age](#)
- [Podcast Episode: Cyber Risk and Resiliency: A Call to Board Members and Public Companies \(Part 1 of 2\)](#)
- [Podcast Episode: Cyber Risk and Resiliency: Key Takeaways from the National Cybersecurity Strategy \(Part 2 of 2\)](#)
- [Federal Oversight of Cyber Threats to Critical Infrastructure Continues to Gain Traction](#)
- [The Network and Information Security Directive 2 – What You Need to Know](#)
- [Podcast Episode: In Conversation with Cy Vance - Cybersecurity Considerations in the Current Threat Landscape](#)



Global Data Privacy & Security Handbook

It has never been easier for companies to collect, copy and transfer personal data around the world. But at the same time, the introduction of a wide range of privacy and security laws worldwide imposes complex and often inconsistent privacy and data protection standards impacting on multinational companies. Our Global Privacy Handbook provides detailed overviews of the increasingly complex and sophisticated privacy and data protection standards in over 50 countries.

Inclusion and diversity

Recent accolades | Inclusion and diversity



What I find to stand out is that our leaders are passionate about the priority status of our I&D initiative. It's authentic and genuine to them.

Anna Brown
Chief Inclusion and Diversity Officer



Mansfield Plus Certified, Diversity Lab



Stonewall's Global Trans Inclusion, Top Global Employers and Global Network Awards



Best International Firm for Women in Business Law and Best International Firm for Minority Women Lawyers, Euromoney



Human Rights Campaign Foundation Corporate Equality Index – perfect score



Best Place to Work in Mexico for the LGBT Community by the Human Rights Campaign



Best Office for Diversity at the Spanish Forbes Abogados



Best rated law firm for inclusion in the South African Workplace Equality Index



Top 10 UK employer for LGBT+ equality in Stonewall's Top 100 Best Employers



Top 10 UK employer in the Social Mobility Employer Index listing



Law360's Best US Law Firms for Female Attorneys



Chambers Outstanding Firm for Furthering Diversity and Inclusion in Latin America



WGEA Employer of Choice for Gender Equality in Australia



AWEI Silver Employer, Pride in Diversity – Australian Workplace Equality Index

Inclusion and diversity

At Baker McKenzie, we expect all of our people to be I&D champions and to consider opportunity, equity, inclusion, accessibility, and belonging in all we do.

Baker McKenzie's holistic approach focuses on embedding I&D across our global organization.

We don't stop at just discussing the importance of diversity -- we live diversity and inclusion in order to nurture a diverse workforce. We selected the top practitioners at the firm in relevant practice areas for this proposal, and our team is composed of attorneys of varying gender and ethnic backgrounds. We believe a diverse team leads to better results for our clients, as demographic representation delivers a breadth of thought, perspective, and experience.

While we have many I&D programs and initiatives, we do not stop there. We are outcome driven, intensely focused on further building and developing diverse and inclusive talent pipelines, driving inclusive representation at all levels, and strengthening the experience of all of our people.

Moreover, we are focused on community engagement, in close collaboration with our clients, to accelerate sustainable societal change.

- To support our goal of increasing diverse representation at our most senior levels, we've set clear measurable targets and regularly report on progress to align initiatives with impact.
- We've been taking concrete steps to ensure inclusive and diverse pipelines with focused efforts on recruitment, development, mentorship, sponsorship and advancement of our talent.
- Our efforts are underpinned by policies, practices and related programs designed to dismantle barriers, support our people and drive inclusion.
- We seek to empower our people through ongoing I&D education and proactive engagement, recognizing and amplifying their many different experiences.
- Through close collaboration with our clients and communities, we work to ensure sustainable societal change.

Accountable and Inclusive Leadership

- Drive equity in systems, policies and practices
- Set targets and measure impact
- Engage and educate workforce
- Build, recruit and develop inclusive and diverse talent pipeline
- Accelerate sustainable societal change

Inclusion and diversity



Global Policies and Code of Conduct

- **Code** focuses on I&D stating discrimination, harassment and bullying are unacceptable
- **Master Services Agreement** for all suppliers includes compliance with the Code's principles
- **PointOne** Workplace Safety, Respect and Inclusion Initiative reinforces Code and sets clear structure for raising and effectively responding to concerns



LGBT+

- Policies provide for **LGBT+ equality and inclusion** in all of our offices regardless of jurisdiction
- **Gender Transition and Identify Policy** in NA, Australia and London, outlines protections for transgender, gender non-conforming and non-binary employees and reflects best practices shared by the HRC and the Transgender Law Centre
- Global **BakerPride+Allies Business Resource Group** brings together professionals from around the globe



Client Collaboration

- Through collaboration, we can deepen the dialogue, share best practices, develop talent and make an impact. Partnering opportunities include: **Mentorship Exchange**, **Best Practice Sharing Sessions**, **Joint Continuing Education Programs**, **Participation in our US/Canada I&D Client Summer Scholars Program**



Gender

- **Targets** by July 2025: Global targets for partners and leadership of 40% women, 40% men and 20% flexible (women, men or non-binary persons)
- **Leaders Investing For Tomorrow (LIFT)** sponsorship initiative to progress women to leadership roles
- **HeForShe** initiative to encourage male leaders to act as allies and champions for gender diversity
- Signatory of the **UN Women's Empowerment Principles**



Race and Ethnicity

- **Targets** by July 2025: US/Canada targets for racial and ethnic minorities: 15% of equity partners; 20% of non-equity partners and 15% of leadership; London: 14% BAME representation across every level in the office
- **Global Task Force on Racial and Ethnic Diversity** to develop and operationalize tools that advance racial equity across our offices
- **Anti-racism and allyship education** to foster inclusion and develop a culture of learning and accountability
- **Colour Brave** campaign to foster open discussion on race
- **Retention and promotion initiatives** including affiliate mentoring, networking and development circles



Additional inclusion and diversity initiatives

- Championing social mobility
- Inclusion of persons with disabilities
- Supporting health and wellbeing
- Advancing equitable recruitment practices



Community engagement

Community engagement and initiative support to build a more diverse and inclusive legal profession:

- Catalyst
- Stonewall
- Black Lawyers Directory (BLD)
- HK Gala
- Leadership Council on Legal Diversity
- Workplace Gender Equality Agency
- Institute for Inclusion in the Legal Profession (IILP)
- Legal Diversity and Inclusion Alliance LDIA
- Lawyers for LGBT and Allies Network (LLAN)
- 30% Club
- Lambda Legal
- Human Rights Campaign
- City Solicitors Horizons
- Social Mobility Foundation
- Business in the Community
- My Plus Consulting
- Business Disability Forum
- Rare Recruitment
- Out leadership
- Minority Corporate Counsel Association (MCCA)
- Quest - A Global Leadership Institute for Early Career Women
- Leonard Cheshire Philippines Foundation
- Employers Network for Equality and Inclusion (ENEI)

#WeAreNotNeutral

About the Firm



For the 12th consecutive year,
Thomson Reuters has named our
Firm the world's strongest law firm
brand, ranking us No. 1 in each of the
four core brand measures:
Awareness, Favorability,
Multijurisdictional Litigation and
Multijurisdictional Deals.

Solutions for a connected world

In an increasingly connected world, opportunities and risks often span multiple markets, business sectors, and areas of law. Maintaining a connected perspective is essential in delivering your business objectives while mitigating risk. Baker McKenzie's integrated client solutions have been developed to meet the needs of our clients by providing seamless advice, underpinned by deep practice and sector expertise and first-rate local market knowledge. We will partner with you to meet your complex challenges, providing the right perspective and applying holistic solutions to help you drive growth that is sustainable and inclusive. Our solutions for a connected world focus on six key areas:



Strategic Transactions

With unmatched experience leading on complex cross-border transactions, we can help you capitalize on opportunities while minimizing risk. By combining knowhow and an innovative mind-set, we will ensure seamless and efficient delivery of your strategic transactions, while maximizing value throughout the deal cycle and beyond.



Workforce Redesign

Embracing new ways of working means managing uncertainty. By providing practical solutions to complex problems relating to employment, tax, data, compliance and IP law, we can help protect your business from workforce-related challenges while allowing you to build a flexible future for your organization.



Supply Chains

In the face of the global pandemic and geopolitical volatility, strengthening and transforming your supply chains for the future means navigating unprecedented complexity driven by commercial, operational and legal interdependencies. We will apply holistic solutions to these challenges, helping you to identify vulnerabilities and risks and build stronger supply chains for the future.



Digital Transformation

We can help you shape and realize your digital transformation strategy by cutting through tech hype and identifying legal risks and opportunities early to enable successful transformation. Our connected solutions will help you make informed, confident decisions and we will guide you on your transformation journey, through disruption, to recovery and growth.



Energy Transition

The transition to a carbon-neutral economy presents strategic, operational and reputational challenges, but also opportunities for growth. Our multi-disciplinary team offers in-depth knowledge of the global energy industry, regulatory environment, and energy transition technologies and can help you implement a robust energy transition strategy, considering market benchmarks and sustainability goals.



Sustainability

Our expertise on transactions, advisory and contentious matters across all major markets and industries gives us a top-down view on sustainability. We can help you address big picture questions on sustainability issues as well as specific legal risks, from a global and local perspective. From setting strategy to executing transactions, collaborations and investments, we will help you deliver on your sustainability objectives and report on your progress.



For more information on our Solutions for a connected world and knowledge resources click [here](#)

Baker McKenzie delivers integrated solutions to complex challenges.

Complex business challenges require an integrated response across different markets, sectors and areas of law. Baker McKenzie's client solutions provide seamless advice, underpinned by deep practice and sector expertise, as well as first-rate local market knowledge. Across more than 70 offices globally, Baker McKenzie works alongside our clients to deliver solutions for a connected world.

bakermckenzie.com

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Justine Phillips

Partner

Baker & McKenzie LLP

Los Angeles

Justine.Phillips@bakermckenzie.com

T + 1 310 616 5643

Related Expertise

Artificial Intelligence

Cybersecurity & Data Privacy

Data & Technology

Digital Transformation

Intellectual Property

Technology, Media &
Telecommunications

Biography

Justine Phillips is a partner in our Firm's North America Intellectual Property & Technology Practice Group.

Practice Focus

Justine focuses her practice on both proactive and reactive cybersecurity and data privacy services, representing clients in matters related to information governance, diligence in acquisitions and investments, incident preparedness and response, the California Consumer Privacy Act, privacy litigation, and cyber litigation.

She provides actionable and practical guidance to help businesses manage data, technology, cyber threats, privacy, security and digital assets. As businesses navigate complex and far-reaching laws and regulations, Justine proactively creates compliance programs customized to client needs and budgets, including data mapping, vendor management, privacy and security by design, cyber risk management and mitigation, eWorkforce policies, data retention and destruction policies and implementation, consumer request workflows, cyber-awareness policies and trainings, and CCPA/CPRA readiness audits. She also provides reactive cyber services, including incident response, crisis management, privileged forensic investigations into business email compromises, data breaches and ransomware attacks, compliance with notice obligations to individuals and regulators, regulatory inquiries and

investigations, and cyber litigation. Justine also handles employment litigation and counseling, as well as commercial litigation.

Professional Honors

- Named to The Best Lawyers in America for Privacy and Data Security Law (2023)

Professional Associations and Memberships

- Infragard San Diego - Vice president
- Cyber Law Symposium - Founder and chair
- Lawyers Club of San Diego, Life & Law Committee - Founder and former chair

Corporate Responsibility

- American Red Cross of San Diego/Imperial Counties - Board member
- Mother Attorney Mentoring Association of San Diego - Founding member and past president
- Kawasaki Disease Foundation - Board member

Admissions

California~United States

Education

University of San Diego School of Law (J.D., magna cum laude) (2005)

University of San Diego (B.A.) (1999)

Publications

Publications

- Co-author, Data Privacy Program Guide: How to Build a Privacy Program that Inspires Trust, Ciso DRG Publishing (2022)
- "What to Do – And What Not to Do – In the Aftermath Of A Cybersecurity Attack," The Wall Street Journal, December 2020
- "No Income and Number 88,000 In Line: This Is What It's Like to Be Unemployed in America," USA Today, May 2020

- "New State Law Gives Californian's More Rights When It Comes to Protecting Data Online," ABC News, July 2018
- "New Calif. Data Breach Law May Fall Short," Law360, October 2014
- "Calif. Smart-Meter Data Law Hints at Privacy Bills to Come," Law360, January 2014

Events

- Speaker, "The Renaissance of Trust and Privacy: Making Everything, Everywhere Happen All At Once," Privacy Symposium Conference, April 2023
- Speaker, "The Rules of Engagement: Emerging Cyber Laws and 'Reasonable Security,'" RSA Conference, April 2023
- Panelist, "Cyber Fraud: FBI & San Diego Cyber Council Present on the Importance of Humans in Cybersecurity," 2022 Fraud Prevention and Ethics Symposium, July 2022
- Panelist, "Impacts of Nation State Sponsored Cyber Attacks," WiE National Conference, May 2022
- Panelist, "Navigating Privacy Opportunities and Challenges Globally" Cybersecurity, Privacy & Data Protection Retreat, Sub-Four Capital, May 2022
- Panelist, "Data Retention & Deletion: Building and Operationalizing Policies into Your Privacy Program," IAPP Global Privacy Summit, April 2022
- Presenter, "Governing Cyber Risk," WiE, April 2022
- Presenter, "Wisdom of Insecurity: Managing 2022 Cyber Risk," Association of Corporate Counsel, April 2022
- Presenter, "Cyber Industry," 2022 Customer + Corporate Symposium, Western Energy, February 2022
- Presenter, "Wisdom of the Tiger: Governing Privacy & Security Risk," San Diego ISSA Chapter, February 2022
- Panelist, "Cybersecurity & Fraud in 2022," Wells Fargo, February 2022
- Panelist, "An Introduction to the Role of Governance in Privacy and Cybersecurity," DLA Cyber Law Roundtable, January 2022
- Presenter, "The Current Ransomware Landscape: A Journey Through the Stars," Utah iSymposium CLE, October 2021

- Panelist, "External vs. Insider Threat: Responding to a Cyber Attack Caused by an Authorized User," IAPP Privacy.Security.Risk Conference, October 2021
- Panelist, "From CCPA to CPRA," Techno Security and Digital Forensics Conference, October 2021
- Presenter, "Rising Cyber Crimes & Working from Home," Special FBI Briefing, August 2021
- Panelist, "Mitigating Cyber Risk," Sheppard Mullin Cyber Law Roundtable, March 2021
- Presenter, "Making Space for New Laws: 2021 Privacy & Security Laws for InfoSec Pros," San Diego ISSA Chapter, February 2021
- Panelist, "Roundtable: Fostering and Strengthening Relationships 'Attorneys and Litigation Support'," International Legal Technology Association, November 2020
- Speaker, "Implicit Bias and Diversity in the In-House Counsel Setting," California Lawyers Association Shelter in Place Institute, November 2020
- Panelist, "360 Degrees of a Ransomware Attack: Decision Points in Defense, Response and Mitigation," Infragard San Diego, November 2020
- Moderator/Panelist, "Protect the Privilege: Maintaining Attorney-Client & Work Product Privilege During a Cyber Incident," USD Cyber Law Risk & Policy Symposium, October 2020
- Speaker, "2020 VIP Backstage Pass: Investigating Cyber Events & HR Matters During a Pandemic," County of Los Angeles, October 2020
- Panelist, "Cybersecurity Workshop: 'Do's and Don'ts of Incident Response'," North West Academic Computing Consortium, October 2020
- Recording Session, "Cybersecurity in the Age of Telemedicine – 'Lessons Learned'," National PACE Association, October 2020
- Speaker, "Girl Scouts Cybersecurity Workshop Sessions 'Cybersecurity Investigations'," Girl Scouts of America synED, September 2020
- Panelist, "Journey to the Cloud," InfoCgv for Legal Operators, September 2020
- Speaker, "Virtual Lunch with Leaders 'Mentorship' Webinar," San Diego Paralegal Association, August 2020
- Speaker, "Planning for a Safe Return to the Office in a Covid World," San Diego InfraGard Webinar, August 2020
- SynEdPanelist, Data Governance for Legal Operators Webinar, August 2020
- Speaker, "Cyber Instructors/Coaches Training: Wrap-Up National Collaborative

Efforts," June 2020

- Panelist, "Data Privacy & Security | The New Litigation and Regulation Battleground," June 2020
- Speaker, "WITI OC Virtual Event: A Guardians of the Galaxy's approach to California's Consumer Privacy Act (CCPA)," Women in Technology International, June 2020
- Speaker, "Unique considerations in managing the risks of phishing and ransomware attack," Ernst & Young LLP, June 2020
- Panelist, "PrivacyConnect San Diego: Expert Panel Session, Q&A," One Trust, May 2020
- Speaker, "Reasonable Security and the CCPA," WSJ Pro Cybersecurity, May 2020
- Speaker, "The COVID-19 Pandemic: Special FBI Briefing on Rising Cyber Crimes & Working from Home," Infragard San Diego, April 2020
- Speaker, "'Vision: Preparing for CCPA' Speaking Presentation Timeslot," 2020 Techno Security & Digital Forensics Conference, March 2020
- Speaker, "Get Smart 'Cyber-Intelligent Corporate Counsel Reduce Risks'," American Bar Association 2020 Corporate Counsel CLE Seminar, February 2020
- Speaker, "VIP Backstage Pass 'Ethical Issues in Responding to a Cyber Attack'," Association Corporate Counsel 2020 MCLE La-Law Pooza, January 2020
- Speaker, "Center for Real Estate Cyber Security: What It Means for Commercial Real Estate," The Paul Merage School of Business, January 2020
- Speaker, "Security is Mostly a Superstition 'Reasonable Security' Under the California Consumer Privacy Act," Wall Street Journal Cybersecurity Symposium, January 2020
- Speaker, "New Technologies and the Potential Privacy & Responsibility Challenges They Present," SDSC's Annual Winter Forum on Data, December 2019
- Speaker, "GDPR and its implications," SDSC's Annual Winter Forum on Data, December 2019
- Panelist, "Risk Management Considerations," Cybercon 2019 Conference, November 2019
- Moderator, "'Reasonable Security' Under the California Consumer Privacy Act," USD 2nd Annual Cyber Law Risk and Policy Symposium, November 2019 • Speaker, "Cyber Security Discussion," Coronado Rotary Club, October 2019
- Panelist, "CISO Coalition: California Consumer Privacy Act (CCPA) Discussions,"

Gartner, October 2019

- Speaker, Happy Hour with Your Labor Lawyer, October 2019
- Panelist, Workplace 2020: "20/20 Vision in the Workplace," SDEAC, October 2019
- Speaker, "CCPA's Legislative Updates & Amendments," Sheppard Mullin's Cyber Law Roundtable webinar, October 2019
- Panelist, "Breakfast Panel Discussion: Automation & Compliance," PwC, September 2019
- Speaker, "Implications of the California Consumer Privacy Act and the Rapidly Changing Legal Precedents on Corporate Security," June 2019
- Speaker, "CCPA with ESET," Tech San Diego's Cybersecurity Summit, June 2019
- Speaker, "CCPA & GDPR," OneTrust PrivacyConnect Roadshow, June 2019
- Speaker, "Cyber Law Roundtable – CCPA and The Three Questions," Sheppard Mullin's Cyber Law Roundtable webinar, April 2019
- Panelist, "Tribes Are Prime Targets: Threats and Solutions for Cybersecurity & Criminal Activity," Native American Finance Officers Association, April 2019
- Speaker, "Collection of Ephemeral Messaging, Social Media & Other Emerging Media," 2019 Techno Security & Digital: Impermanence in Forensics & eDiscovery, March 2019
- Speaker, Southern California Tribal CFO Roundtable on the California Consumer Protection Act, March 2019
- Speaker, "Warrior One: Yoga & Meditation for Legal Professionals," Life & Law, January 2019
- Speaker, "Lost in Space: Navigating "Reasonable Security," ISACA's San Diego Chapter, January 2019

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County Executive Office

Memorandum

November 2, 2023

To: Clerk of the Board of Supervisors
From: Frank Kim, County Executive Officer
Subject: Exception to Rule 21

Digitally signed by Frank Kim
DN: cn=Frank Kim, o=County
of Orange, ou=CEO,
email=frank.kim@ocgov.com,
c=US
Date: 2023.11.02 14:33:27
+0700

512H

The County Executive Office is requesting a Supplemental Agenda Staff Report for the November 7, 2023, Board Hearing.

Agency: John Wayne Airport
Subject: Mandatory Capacity Withdrawal for 2023 Plan Year
Districts: All Districts

Reason Item is Supplemental: It is critical that the John Wayne Airport (JWA) be authorized to issue a mandatory seat withdrawal for the remainder of 2023 to all JWA air carriers as soon as possible. This Agenda Staff Report was finalized after the filing deadline to the Clerk of the Board.

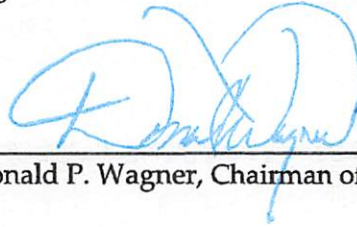
Justification: Section 6.2.2 of the Access Plan requires the Airport Director notify the Board and all air carriers if there is a substantial risk of exceeding the 11.8 Million Annual Passenger (MAP) limitation during any Plan Year. There are currently only two months remaining in 2023 and it has become imperative that mandatory seat withdrawals are implemented consistent with the provisions of the Phase 2 Access Plan and Regulation (Access Plan) as quickly as possible in order to ensure compliance with the 1985 Settlement Agreement and subsequent amendments. Over the past several months, Airport staff has continuously and closely monitored the capacity situation. In August and September, after contacting each air carrier, JWA received voluntary seat returns. However, after monitoring year-to-date capacity numbers, and analyzing holiday travel projections, there is substantial risk that the 11.8 MAP limitation will be exceeded.

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BOARD OF SUPERVISORS

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Exception to Rule 21
November 2, 2023
Page 2

Concur:



Donald P. Wagner, Chairman of the Board of Supervisors

cc: Board of Supervisors
County Executive Office
County Counsel

Agenda Item
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512H



SUPPLEMENTAL AGENDA ITEM AGENDA STAFF REPORT

MEETING DATE: 11/07/2023
LEGAL ENTITY TAKING ACTION: Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S): 5
SUBMITTING AGENCY/DEPARTMENT: John Wayne Airport
DEPARTMENT HEAD REVIEW: *Charlene Reynolds*
 Department Head Signature
DEPARTMENT CONTACT PERSON(S): Charlene V. Reynolds (949) 252-5183
 Eric R. Freed (949) 252-5043

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SUBJECT: Mandatory Capacity Withdrawal for 2023 Plan Year

CEO CONCUR

Frank Kim

Digitally signed by Frank Kim
 DN: cn=Frank Kim, o=County of
 Orange, ou=CEO,
 email=frank.kim@ocgov.com,
 c=US
 Date: 2023.11.02 14:33:10 -0700

CEO Signature

COUNTY COUNSEL REVIEW

Digitally signed by
 Christine Nguyen

County Counsel Signature

CLERK OF THE BOARD
Discussion

3 Votes Board Majority

Budgeted: N/A

Current Year Cost: N/A

Annual Cost: N/A

Staffing Impact: No

of Positions:

Sole Source: N/A

Current Fiscal Year Revenue: N/A

Funding Source: N/A

County Audit in last 3 years No

Levine Act Review Completed: N/A

Prior Board Action: 8/8/2023 #4, 11/8/2022 #2

RECOMMENDED ACTION(S)

1. Authorize the Airport Director to require a mandatory withdrawal of Seat Capacity during the 2023 Plan Year to ensure continued compliance with the 11.8 million annual passenger limitation at John Wayne Airport, consistent with the requirements set forth in Section 6 of the Phase 2 Commercial Airline Access Plan and Regulation.

SUMMARY:

Authorizing the Airport Director to require mandatory withdrawals of Seat Capacity during the 2023 Plan Year consistent with Section 6 of the Phase 2 Commercial Airline Access Plan and Regulation will ensure compliance with the Million Annual Passenger limitation in the 1985 Settlement Agreement, as amended.

BACKGROUND INFORMATION:

Pursuant to the 1985 Federal District Court Settlement Agreement, as amended, the County of Orange must ensure compliance with the 11.8 Million Annual Passenger (MAP) limitation at John Wayne Airport (JWA) during each Plan Year (which corresponds to the calendar year). Each year, JWA staff provides capacity allocations to the Commercial and Commuter Air Carriers at JWA, an involved and complex process, which includes forecasting trends and utilization of allocated capacity by the carriers during the upcoming Plan Year. The Board of Supervisors (Board) previously approved capacity allocations on August 8, 2023, and November 8, 2022.

Aviation industry experts had anticipated post-pandemic air travel to recover sometime in 2024. In 2023, air travel throughout the United States has significantly exceeded expectations. JWA is seeing record numbers of passengers and higher than expected load factors (percentage of seats filled vs. seats available) for all carriers operating at JWA. Over the past several months, JWA staff has continuously and closely monitored the actual number of commercial passengers served at JWA and is in contact with each carrier in order to predict (to the extent reasonably feasible) the actual number of passengers that will be served at JWA during the Plan Year. In August and September, after contacting each carrier, JWA received requested voluntary seat returns, which were credited to each carrier's Seat Block withdrawal obligation set forth in the Phase 2 Commercial Airline Access Plan and Regulation (Access Plan), Appendix D. However, after monitoring year-to-date capacity numbers, and analyzing upcoming holiday travel projections, there remains a substantial risk that the 11.8 MAP limitation will be exceeded this Plan Year.

Section 6.2.2 of the Access Plan requires the Airport Director to notify the Board and all carriers if there is a substantial risk of exceeding the 11.8 MAP limitation during any Plan Year and to make recommendations to the Board regarding capacity withdrawals. Because there are only two months remaining in 2023; the Airport Director is seeking authority from the Board to implement mandatory seat withdrawals consistent with Section 6.2.3 of the Access Plan as soon as possible to ensure compliance with the MAP limitations in the 1985 Settlement Agreement, as amended. Consistent with Section 6.2.3, the mandatory capacity withdrawals will be conducted based on, and in the order of, the seat block withdrawal priorities provided in Appendix D of the Access Plan.

Compliance with CEQA:

The proposed action is a necessarily included element of the project considered in Final Environmental Impact Report (EIR) No. 617 for the JWA Settlement Agreement Project, certified by the Board on September 30, 2014, which adequately addressed the effects of the proposed action. No substantial changes have been made in the project, no substantial changes have occurred in the circumstances under which the project is being undertaken and no new information of substantial importance to the project, which was not known, or could not have been known, when the Final EIR No. 617 was certified, has become known; therefore, no further environmental review is required.

FINANCIAL IMPACT:

N/A

STAFFING IMPACT:

N/A

ATTACHMENT(S):

N/A



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OFFICE OF THE COUNTY COUNSEL
COUNTY OF ORANGE

400 West Civic Center Drive, Suite 202
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E-Mail: leon.page@coco.ocgov.com

LEON J. PAGE
COUNTY COUNSEL

Agenda Item No. SCS- 2
November 7, 2023

MEMORANDUM

October 30, 2023

TO: Robin Stieler, Clerk of the Board of Supervisors
FROM: Leon J. Page, County Counsel
SUBJECT: Request for Supplemental Closed Session

I am requesting a supplemental closed session on Tuesday, November 7, 2023 to discuss with the Board the status of existing litigation, pursuant to Government Code section 54956.9(d)(1).

Accordingly, please prepare the Agenda Item to read:

“CONFERENCE WITH LEGAL COUNSEL --
EXISTING LITIGATION Pursuant to Government Code Section
54956.9(d)(1).
Name of Case: *Orange County Flood Control District v. JRJ
Ranch, L.P., et al.,*
San Bernardino Superior Court Case No. CIVSB2026475.

RECOMMENDED ACTION: Conduct Closed Session.”

Thank you.

LJP:vl

cc: Members of the Board of Supervisors
Frank Kim, CEO



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COUNTY OF ORANGE
BOARD OF SUPERVISORS

OFFICE OF THE COUNTY COUNSEL
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Direct No.: (714) 834-3303

E-Mail: leon.page@coco.ocgov.com

LEON J. PAGE
COUNTY COUNSEL

Agenda Item No. SCS- 3
November 7, 2023

MEMORANDUM

October 30, 2023

TO: Robin Stieler, Clerk of the Board of Supervisors

FROM: Leon J. Page, County Counsel

SUBJECT: Request for Supplemental Closed Session

I am requesting a supplemental closed session on Tuesday, November 7, 2023 to discuss with the Board the status of existing litigation, pursuant to Government Code section 54956.9(d)(1).

Accordingly, please prepare the Agenda Item to read:

“CONFERENCE WITH LEGAL COUNSEL --
EXISTING LITIGATION Pursuant to Government Code Section
54956.9(d)(1).

Name of Case: *County of Orange and Orange County Flood
Control District vs. Southern California Edison and T Mobile*,
Orange County Superior Court Case No. 30-2023-01353934.

RECOMMENDED ACTION: Conduct Closed Session.”

Thank you.

LJP:vl

cc: Members of the Board of Supervisors
Frank Kim, CEO



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CLERK OF THE BOARD
COUNTY OF ORANGE
BOARD OF SUPERVISORS

LEON J. PAGE
COUNTY COUNSEL

OFFICE OF THE COUNTY COUNSEL
COUNTY OF ORANGE

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Santa Ana, CA 92701

Direct No.: (714) 834-3303

E-Mail: leon.page@coco.ocgov.com

Agenda Item No. SCS- 4
November 7, 2023

M E M O R A N D U M

October 30, 2023

TO: Robin Stieler, Clerk of the Board of Supervisors
FROM: Leon J. Page, County Counsel
SUBJECT: Request for Supplemental Closed Session

I am requesting a supplemental closed session to be held on Tuesday, November 7, 2023, for the Board to consider the initiation of litigation pursuant to Government Code section 54956.9(d)(4).

Accordingly, please prepare the Agenda Item to read:

“CONFERENCE WITH LEGAL COUNSEL –
ANTICIPATED LITIGATION – INITIATION OF LITIGATION
pursuant to Government Code section 54956.9(d)(4).
Number of Cases: One Case

RECOMMENDED ACTION: Conduct Closed Session.”

Thank you.

LJP:vl

cc: Members of the Board of Supervisors
Frank Kim, CEO



LEON J. PAGE
COUNTY COUNSEL

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OFFICE OF THE COUNTY COUNSEL
COUNTY OF ORANGE

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Santa Ana, California 92701
Direct No.: (714) 834-3303
E-Mail: leon.page@coco.ocgov.com

Agenda Item No. SCS-5
November 7, 2020

MEMORANDUM

November 1, 2023

TO: Robin Stieler, Clerk of the Board of Supervisors

FROM: Leon J. Page, County Counsel

SUBJECT: Request for Closed Session

Pursuant to Government Code section 54956.9(d)(1), I am requesting a supplemental closed session to be held on Tuesday, November 7, 2023, to discuss with the Board the retention of outside counsel in pending bankruptcy litigation.

Accordingly, please prepare the Agenda Item to read:

"CONFERENCE WITH LEGAL COUNSEL --
EXISTING LITIGATION Pursuant to Government Code Section
54956.9(d)(1).
Name of Case: *In re Bed Bath and Beyond, Inc.*, U.S. Bankruptcy
Court, District of New Jersey Case No. 23-13359 (VFP)

RECOMMENDED ACTION: Conduct Closed Session."

Thank you.

LJP:vl

cc: Members of the Board of Supervisors
Frank Kim, CEO



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CLERK OF THE BOARD
COUNTY OF ORANGE
BOARD OF SUPERVISORS

OFFICE OF THE COUNTY COUNSEL
COUNTY OF ORANGE

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LEON J. PAGE
COUNTY COUNSEL

Agenda Item No. SCS- 16
November 7, 2023

MEMORANDUM

November 2, 2023

TO: Robin Stieler, Clerk of the Board of Supervisors
FROM: Leon J. Page, County Counsel
SUBJECT: Request for Supplemental Closed Session

I am requesting a supplemental closed session to be held on Tuesday, November 7, 2023, for the Board to consider anticipated litigation pursuant to Government Code section 54956.9(d)(2).

Accordingly, please prepare the Agenda Item to read:

“CONFERENCE WITH LEGAL COUNSEL –
ANTICIPATED LITIGATION – SIGNIFICANT EXPOSURE TO
LITIGATION pursuant to Government Code section
54956.9(d)(2).

Number of Cases: One Case.

RECOMMENDED ACTION: Conduct Closed Session.”

Thank you.

LJP:vl

cc: Members of the Board of Supervisors
Frank Kim, CEO



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COUNTY OF ORANGE
BOARD OF SUPERVISORS

OFFICE OF THE COUNTY COUNSEL
COUNTY OF ORANGE

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LEON J. PAGE
COUNTY COUNSEL

Agenda Item No. SCS-7
November 7, 2023

MEMORANDUM

November 2, 2023

TO: Robin Stieler, Clerk of the Board of Supervisors

FROM: Leon J. Page, County Counsel

SUBJECT: Request for Supplemental Closed Session

I am requesting a supplemental closed session to be held on Tuesday, November 7, 2023, for the Board to consider the initiation of litigation pursuant to Government Code section 54956.9(d)(4).

Accordingly, please prepare the Agenda Item to read:

“CONFERENCE WITH LEGAL COUNSEL –
ANTICIPATED LITIGATION – INITIATION OF LITIGATION
pursuant to Government Code section 54956.9(d)(4).
Number of Cases: One Case

RECOMMENDED ACTION: Conduct Closed Session.”

Thank you.

LJP:vl

cc: Members of the Board of Supervisors
Frank Kim, CEO