



Board of County Commissioners Agenda Request



Requested Meeting Date: May 26,2020

Title of Item: Approve Changes to Procurement Policy

<input checked="" type="checkbox"/> REGULAR AGENDA	Action Requested:	<input type="checkbox"/> Direction Requested
<input type="checkbox"/> CONSENT AGENDA	<input checked="" type="checkbox"/> Approve/Deny Motion	<input type="checkbox"/> Discussion Item
<input type="checkbox"/> INFORMATION ONLY	<input type="checkbox"/> Adopt Resolution (attach draft)	<input type="checkbox"/> Hold Public Hearing* <i>*provide copy of hearing notice that was published</i>

Submitted by: Jessica Seibert	Department: Administration
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Presenter (Name and Title): Jessica Seibert, County Administrator	Estimated Time Needed: 5 minutes
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Summary of Issue:

Changes were made to the Procurement Policy removing the procurement/contracting sections from the General Operations Policy and combining them with the updated Procurement Policy. Purchasing/Contract levels were also updated to coincide with recent State guidelines. This was a request made during recent audits to update funding levels to match statute. Changes are indicated on the attached copy.

Alternatives, Options, Effects on Others/Comments:

Recommended Action/Motion:
Approve Changes to Procurement Policy.

Financial Impact:

Is there a cost associated with this request? Yes No

What is the total cost, with tax and shipping? \$

Is this budgeted? Yes No *Please Explain:*



PROCUREMENT POLICY

**Adopted by County Board
April 11, 2017
May 2020**

PROCUREMENT POLICY
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Procurement Policy

I. PROCUREMENT POLICY STATEMENT OF PURPOSE

The purpose of this policy is to provide County departments, citizens and vendors with purchasing and contracting services of the highest professional standards in accordance with state and federal laws and regulations. This policy will also guide County employees in the purchase of items at the best price and quality, promote and maintain a good working relationship with suppliers, and emphasize cooperation between and among departments in identifying and implementing standardized organizational programs to save time and money.

II. SCOPE

This policy applies to all procurement procedures for all departments of the County, unless otherwise stated.

III. OBJECTIVES OF THE PURCHASING SYSTEM

A. LIFECYCLE COSTING

In addition to initial purchase price, the County will consider long-term value by taking into account the long-term maintenance, operating costs, and other indirect costs of a purchase.

B. QUALITY

The County will strive to secure goods and services at the lowest lifecycle cost possible proportionate with quality requirements.

C. FULL AND OPEN COMPETITION

The County maintains a policy of full and open competition, where all responsible sources are permitted to compete in the purchasing process.

D. ETHICS AND CONFLICTS OF INTEREST

County employees in a position to procure goods or services will abide by the County's Code of Ethics policy, located within the County's Personnel Policy. This provision includes an employee's documentation of potential and actual conflicts of interest as part of the County's Code of Ethics Confirmation.

IV. PROCUREMENT AUTHORITY

Procurement is under the broad direction of the County ~~Administrative Services~~ Department Administrator. Authority to procure products and services is granted to each department head and his/her official designee(s). Department heads are authorized to sign contracts not requiring County Board approval. Department heads or their designee(s) are required to maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

V. PROCUREMENT GUIDELINES

A. PROCUREMENT OF SOFTWARE OR TECHNOLOGY

In any consideration of the purchase of software or technology, a department must consult with IT as early in the process as feasible, in order to ensure the new software or technology is one that is able to be supported by the County. The department must also work with IT to consider any ongoing or future maintenance fees, license fees, upgrade fees, or other known fees. Quotation and bid requirements for software or technology are the same as those for professional services. All computer hardware and software purchases must be for County business purposes only. The following procedures are to be followed when a department desires to purchase hardware and/or software:

Procurement Policy

- 1) The requesting department, when applicable, is responsible for securing County Board/Department Head authorization to proceed with the purchase.
- 2) After appropriate approval, IT Department staff will assist with preparation of specifications, which will be used for the procurement process. The County's purchasing guidelines will be followed to procure the computer hardware and/or software.
- 3) Updates to software for word processing and spreadsheets will be Microsoft Office products, unless specific and compelling reasons can be demonstrated to purchase another brand. IT will be trained in and support Microsoft Office products. Other software products will not be supported with training as aggressively as Microsoft Office products.

B. CONTRACTING RENEWALS

~~A department head or their designee(s) is granted the authority to renew a contract provided that the only change is to the term of the contract (i.e., length of service, charges). Should the contract contain changes in the verbiage of the contract or in the description of services provided, the renewal must be treated as a new contract and follow procedures detailed in this policy.~~

~~Contracts for Community Services that are otherwise required to obtain County Board approval are excluded from this provision.~~

~~The combined signature of the County Board Chair and the County Board Clerk is the official signature of the County Board.~~

~~The County Administrator is authorized to execute contracts on behalf of the County Board, without prior County Board approval when:~~

- ~~1) The specific approval of the County Board is not required by federal law, statute, rule or other County Board policy; and~~
- ~~2) The expense of the contract will not exceed the current budget; and The expense of the contract is less than \$25,000 \$10,000; and~~
- ~~3) The contract does not bind the County for a period longer than the current fiscal year OR the contract contains a provision allowing at-will termination of the agreement with 30 days' notice or less.~~

~~Department Heads are authorized to execute contracts on behalf of the County Board, without prior County Board approval when:~~

- ~~1) The specific approval of the County Board is not required by federal law, statute, rule or other County Board policy; and~~
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- ~~3) The expense of the contract is less than \$10,000 \$5,000; and~~
- ~~4) The contract does not bind the County for a period longer than the current fiscal year OR the contract contains a provision allowing at-will termination of the agreement with 30 days' notice or less.~~

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Procurement Policy
this policy.

The County Administrator is authorized to manage the County's expenses by taking immediate action on an existing contract which exceeds the delegated authority. In these rare circumstances, the County Administrator is authorized a reasonable amount of discretion to exceed the dollar limit, but not the duration limit, in this policy when it is documented that waiting until the next County Board meeting to approve a contract amendment or change order will likely cost the County a greater amount. In these circumstances, the Department Head requesting the purchase and the County Administrator should be in agreement, and the request shall be submitted to the County Board at the next regular County Board meeting.

The County Highway Engineer has the authority to execute change orders and contract modifications deemed reasonable by the Engineer and within the scope of the project approved by the County Board. The Engineer must use discretion; taking in to account the scope of the project, the total cost of the project compared to the change order and the resources available.

The County Highway Engineer has the authority to execute right-of-way agreements; taking into account the market value of properties, project costs, and financial stability of county resources.

Department Heads have the authority to execute routine multi-year contractual agreements for budgeted items under \$25,000 with County Administrator approval. The Competitive Bidding Process must be followed.

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C. BEST VALUE PROCUREMENT

As an alternative to bidding, the County may elect a "best value" procurement process for construction, building, alteration, improvement, or repair work. If such a method is used, the County will solicit Request for Proposals (RFPs). The County will comply with all requirements for best value procurement under Minn. Stat. § 16C.28.

D. RESPONSIBLE BIDDER

Awards shall be made only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to matters such as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

E. COUNTY ISSUED CREDIT CARDS

The County has elected to issue certain County employees a County credit card under Minn. Stat. § 375.171. The "Request For ~~County Issued~~ Credit Card" form will be completed by the department head and submitted to the County Administrator for approval and processing. Credit limits will be set by the Credit and Purchasing Cards Policy. Purchases exceeding these limits will not be allowed; personal use of the credit card is prohibited. See the *General Operations Policy* for additional guidance.

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Commented [KMR3]: Did not make any changes in this area. Refers to Credit Card policy which is part of Gen Ops. I thought it was ok as is.

F. LEASES

Any department considering entering into a lease agreement shall consult with Financial Services Auditor's Office to ensure no similar lease is already in place, and to ensure the best pricing can be obtained.

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VI. EXCEPTIONS TO BIDDING

A. COOPERATIVE PURCHASES AND FEDERAL EXCESS AND SURPLUS PROPERTY

Aitkin County is a member of the Cooperative Purchasing Venture with the State of Minnesota. Purchases from State Contracts are excluded from bid process procedures, but are still required to obtain County Board approval when over the applicable dollar value.

The County is also a member of ~~National Joint Powers Alliance~~ Sourcewell. This agreement allows the County to utilize nationwide contracts. Such purchases are also excluded from bid process procedures, but are still required to obtain County Board approval when over the applicable dollar value.

Departments are encouraged to use federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

B. SOLE SOURCE/BRAND PROCUREMENT

Sole source/brand purchasing minimizes or eliminates competition and should be avoided whenever possible. Sole source requests should not be made unless the department is confident that the request is reasonable, appropriately justified to meet the County's requirements, and can withstand a possible audit or other public scrutiny. These purchases are excluded from standard bid process procedures, but are still required to obtain County Board approval when over the applicable dollar value.

Procurement through solicitation of a quote, proposal, or bid from only one source may only be used when one or more of the following circumstances apply:

- (1) The item is available only from a single source;
- (2) The public need or emergency will not permit a delay resulting from competitive solicitation;
- (3) The Federal awarding agency of pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the County (applies to Federal funds only); or
- (4) After solicitation of a number of sources, competition is determined inadequate.

C. STANDARDIZATION

When supplies, equipment, or services are uniformly adopted or otherwise standardized, or when an item is designed to match others in use by the County, the purchase may be exempt from bidding requirements or may be made with limited competition to distributors of the manufacturer of the standardized item. Compatibility issues between differing technologies will also be considered for exception.

D. EMERGENCIES

A valid emergency is one where the items purchased or services provided are *immediately necessary* for the continued operation of the office or department involved; OR are immediately necessary for the preservation of life or property. An emergency need is one that could not have been foreseen. Failure to procure an item or service on time does *not* constitute a valid emergency. The County shall comply with Minn. Stat. § 375.21 and 375.22 for emergency procurements.

VII. PROCUREMENT AND PURCHASING WITH NON-FEDERAL FUNDING

A. PROCUREMENT AND PURCHASING THRESHOLDS AND METHODS OF

PROCUREMENT All departments shall comply with the following policies regarding ~~the purchase of commodities and services purchases when the funding source is anything other than federal dollars, subject to other requirements per state grant agreements, or other agreements.~~ Contract requirements shall not be artificially divided to avoid bidding requirements. All departments of the County shall comply with Minn. Stat. § 471.345 and 2 CFR 200.317 – 200.326, and follow the County's Procurement Procedures.

PURCHASING

The County Administrator is authorized to make purchases on behalf of the County Board, without prior County Board approval when:

Procurement Policy

- 1) The specific approval of the County Board is not required by federal law, statute, rule or other County Board policy; and
- 2) The expense will not exceed the current budget; and
- 3) The expense is less than \$25,000 ~~\$10,000~~; or
- 4) The expense is considered a normal operational expense and is within the budgeted amount of a specifically identified line item under the County Administrator's management. Capital purchases are excluded.

Department Heads are authorized to make purchases on behalf of the County Board, without prior County Board approval when:

- 1) The specific approval of the County Board is not required by federal law, statute, rule or other County Board policy; and
- 2) The expense will not exceed the current budget; and
- 3) The expense is less than \$10,000 ~~\$5,000~~; or
- 4) The expense is considered a normal operational expense and is within the budgeted amount of a specifically identified line item under the Department Head's management (i.e. Road salt and sand line item may be expended up to the budgeted amount without County Board approval). Capital purchases are excluded.

The County Administrator may manage the County's expenses by taking immediate action on a purchase which exceeds the delegated authority of the County Administrator. In these rare circumstances, the County Administrator is authorized a reasonable amount of discretion to exceed the dollar limit in this policy when it is documented that waiting until the next County Board meeting to approve the purchase will likely cost the County a greater amount. In these circumstances, the Department Head requesting the purchase and the County Administrator should be in agreement, and the request shall be submitted to the County Board at the next regular County Board meeting.

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4. PROCUREMENT OF COMMODITIES OR CONSTRUCTION

\$1 – \$5,000

Competitive bidding is not required and department heads or their designee(s) shall handle purchases for commodities. Purchases may be made on the open market, and may be procured using a County issued credit card if applicable and within the holder's limit. The County shall make an effort to ensure the lowest acceptable price is received; a minimum of two written quotes or bids is preferred, but not required. Verbal quotes are acceptable if they are documented in writing. The department may engage in direct negotiation with vendors. Any quotation or bid support shall be scanned for retention and maintained by the department for a period of at least one year in accordance with Minn. Stat. § 471.345, subd. 5.

\$5,001 – \$25,000

A minimum of two written quotes or bids is required; departments may engage in direct negotiation with vendors. Department heads or their designee(s) are responsible for initiating the procurement process and complying with procurement policies and procedures. Supporting quotation or bid information will be scanned for retention and maintained by departments for a period of at least one year in accordance with Minn. Stat. § 471.345, subd. 5. The procurement is awarded based on the lowest quote or to the lowest responsive, responsible bidder.

\$25,001 – \$100,000

Procurement of commodities may be made either through bid process or by direct negotiation. The County must consider the availability, price and quality of supplies, materials, or equipment available through the state's cooperative purchasing venture before purchasing through another source, per Minn. Stat. § 471.345 sub. 15. The County shall attempt to obtain a minimum of two quotes or bids. All quotes or bids must be written and will be scanned for retention, and all parties will be notified in writing of the outcome. The department will maintain supporting quotation or bid documents for a period of at least one year in accordance with Minn. Stat. § 471.345, subd. 5. The procurement is awarded based on the lowest quote or to the lowest responsive, responsible bidder.

Greater than \$100,000

The County must consider the availability, price and quality of supplies, materials, or equipment available through the state's cooperative purchasing venture before purchasing through another source, per Minn. Stat. § 471.345 subd. 15. If purchases through the state's cooperative purchasing agreement are not feasible, the County shall undergo a formal sealed bid process. County Board approval is required for public advertisement for the receipt of sealed bids. All sealed bids must go through Financial Services with the exception of Road and Bridge Construction. Final bid award will be made by the County Board, and the contract will be approved by the County Board. Bid documentation will be maintained for a period of at least ten years after project completion and will include, but is not limited to, rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

1. PROCUREMENT WITH FEDERAL FUNDING OR NON FEDERAL FUNDING

Aitkin County will follow the dollar requirements as established under the Uniform Municipal Contracting Law (Minnesota State Statute 471.345). Therefore, if the dollar amounts are different between

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Procurement Policy

this policy and the Municipal Contract Law, the amounts and requirements of the law should be followed.

2B. PROCUREMENT OF SERVICES

All service contracts of any dollar amount shall have a legal review, due to potential County liability. ~~Contracts for Community Services that are otherwise approved by the County Board are excluded from this requirement.~~ Quotation/bid procedures for service contracts vary depending upon whether the contract is for a *biddable service* or a *professional service*.

a1. BIDDABLE SERVICES

The following services shall comply with procurement requirements for commodities as detailed above, in accordance with Minn. Stat. § 471.345:

- (1) Services related to the manufacture, construction, alteration, or repair of personal property such as computers, copy machines, automobiles, machinery, and other equipment;
- (2) Services related to the maintenance of real or personal property; or
- (3) Other non-technical services which are typically acquired through the bidding process, such as janitorial services, waste disposal services, etc.

Any contract for the procurement of a biddable service in excess of \$100,000 annually shall be approved by the County Board. All service contracts shall be maintained in Administration.

b2. PROFESSIONAL SERVICES

A contract for professional services is a contract that *does not change the property*. Professional services include architectural and engineering (A&E) services; other professional and technical services that are intellectual in character, including consultation, analysis, evaluation, predication, planning, programming, or recommendation, and result in production of a report of the completion of a task.

The County will consider all factors that any reasonable purchaser would use in selecting the greatest value for cost that will achieve the desired outcomes in purchasing professional services. The method of vendor selection that will reasonably consider the maximum number of appropriate service providers and proposals will be used. Vendor selection will be on the basis of predetermined criteria by knowledgeable individuals.

Any contract for the procurement of a professional service in excess of \$50,000 annually shall be approved by the County Board. All service contracts shall be maintained in ~~Financial Services~~ Auditor's Office.

VIII. ~~PROCUREMENT WITH FEDERAL FUNDING~~

~~All departments shall comply with the following policies when the funding source is either direct or pass-through federal dollars. Contract requirements shall not be artificially divided to avoid bidding requirements. All departments of the County shall comply with Minn. Stat. § 471.345 and 2 CFR 200.317–200.326, and follow the County's Procurement Procedures.~~

A. ~~PROCUREMENT THRESHOLDS AND METHODS OF PROCUREMENT~~

1. ~~PROCUREMENT OF COMMODITIES OR CONSTRUCTION (2 CFR 200.320)~~

~~**\$1 – \$2,000 (Construction) and \$1 – \$3,000 (Commodities)**~~

~~Competitive bidding is not required and department heads or their designee(s) shall handle purchases for commodities or construction. Purchases may be made on the open market, and may be procured using a County-issued credit card if applicable and within the holder's limit. The County shall make an effort to ensure the lowest acceptable price is received; a minimum of two written quotes or bids is preferred, but not required. Verbal quotes are acceptable if they are documented in writing. Where practicable, the County will distribute these types of purchase equitably among qualified suppliers. Any quotation or bid support shall be maintained by the department for a period of at least one year in accordance with Minn. Stat. § 471.345, subd. 5.~~

~~**\$2,001 – \$25,000 (Construction) or \$3,001 – \$25,000 (Commodities)**~~

~~A minimum of two written quotes or bids is required. Department heads or their designee(s) are responsible for initiating the procurement process and complying with procurement policies and procedures. Supporting quotation or bid information will be maintained by departments for a period of at least one year in accordance with Minn. Stat. § 471.345, subd. 5. The procurement is awarded based on the lowest quote or to the lowest responsive, responsible bidder.~~

~~**\$25,001 – \$100,000 (Construction and commodities)**~~

~~Procurement of commodities may be made either through bid process or by direct negotiation. The County must consider the availability, price and quality of supplies, materials, or equipment available through the state's cooperative purchasing venture before purchasing through another source, per Minn. Stat. § 471.345 sub. 15. The County shall attempt to obtain a minimum of two quotes or bids. All quotes or bids must be written and will be scanned for retention, and all parties will be notified in writing of the outcome. The department will maintain supporting quotation or bid documents for a period of at least one year in accordance with Minn. Stat. § 471.345, subd. 5. The procurement is awarded based on the lowest quote or to the lowest responsive, responsible bidder.~~

~~**Greater than \$100,000**~~

~~The County must consider the availability, price and quality of supplies, materials, or equipment available through the state's cooperative purchasing venture before purchasing through another source, per Minn. Stat. § 471.345 subd. 15. If purchases through the state's cooperative purchasing agreement are not feasible, the County shall undergo a formal sealed bid process. County Board approval is required for public advertisement for the receipt of sealed bids. All sealed bids must go through Financial Services with the exception of Road and Bridge Construction. Final bid~~

~~award will be made by the County Board, and the contract will be approved by the County Board. Bid documentation will be maintained for a period of at least ten years after project completion and will include, but is not limited to, rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.~~

2. ~~BIDDABLE SERVICES~~

~~The following services shall comply with procurement requirements for commodities as detailed above in VIII.1., in accordance with Minn. Stat. § 471.345 and 2-CFR 200.317 – 200.326:~~

- ~~(1) Services related to the manufacture, construction, alteration, or repair of personal property such as computers, copy machines, automobiles, machinery, and other equipment;~~
- ~~(2) Services related to the maintenance of real or personal property; or~~
- ~~(3) Other non-technical services which are typically acquired through the bidding process, such as janitorial services, waste disposal services, etc.~~

~~Any contract for the procurement of a biddable service in excess of \$100,000 annually shall be approved by the County Board. All service contracts shall be maintained in Administration.~~

3. ~~PROFESSIONAL SERVICES~~

~~A contract for professional services is a contract that does not change the property. Professional services include architectural and engineering (A&E) services; other professional and technical services that are intellectual in character, including consultation, analysis, evaluation, predication, planning, programming, or recommendation, and result in production of a report of the completion of a task.~~

~~The County will consider all factors that any reasonable purchaser would use in selecting the greatest value for cost that will achieve the desired outcomes in purchasing professional services. The method of vendor selection and contract negotiation that will reasonably consider the maximum number of appropriate service providers and proposals will be used. Vendor selection will be on the basis of predetermined criteria by knowledgeable individuals.~~

~~Any contract for the procurement of a professional service in excess of \$50,000 annually shall be approved by the County Board. All service contracts shall be maintained in Financial Services.~~

~~The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply in accordance with 2-CFR-200.320:~~

- ~~(1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;~~
- ~~(2) Proposals must be solicited from an adequate number of qualified sources.~~

- ~~(3) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and~~
- ~~(4) The County may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. This method, where price is not used as a selection factor, can only be used in procurement of A/E professional services.~~

BC. COMPETITION

All procurement transactions must be conducted in a manner providing full and open competition in accordance with 2 CFR 200.319. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, and invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include, but are not limited to:

- (1) Placing unreasonable requirements on firms in order for them to qualify to do business.
- (2) Requiring unnecessary experience and excessive bonding.
- (3) Noncompetitive pricing practices between firms or between affiliated companies.
- (4) Noncompetitive contracts to consultants that are on retainer contracts.
- (5) Organizational conflicts of interest.
- (6) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement.
- (7) Any arbitrary action in the procurement process.

The County will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state or local geographical preferences in the evaluation of bids or proposals, except in those areas where applicable Federal statutes expressly mandate or encourage geographical preference.

DC. SUSPENSION OR DEBARMENT (Only Use with Federal Funding)

The County will not engage in a contract with any vendor that is debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities. ~~The County~~Each department will verify vendors are ~~eligible~~eligibility by:

- (1) Checking SAM exclusion (2 CFR 200 Appendix II (H)), or
- (2) Collecting a certification from the vendor (2 CFR 180.300), or
- (3) Adding a clause or condition to the contract (2 CFR 180.300).

ED. CONTRACT REQUIREMENTS (Only Use with Federal Funding)

2 CFR 200 Appendix II requires contracts let under federal funding to contain certain clauses or meet certain criteria, as follows:

- (1) Contracts over \$150,000 must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- (2) All contracts in excess of \$10,000 must address termination for cause and for convenience by the County, including the manner by which it will be effected and the basis for settlement.

- (3) All contracts that meet the definition of “federally assisted construction contract” under 41 CFR Part 60 must include the equal opportunity clause provided under said statute.
- (4) When required by federal program legislation, all prime construction contracts in excess of \$2,000 awarded by the County must include a provision for compliance with the Davis-Bacon Act as supplemented by Department of Labor regulations. In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The County must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The County must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act, as supplemented by the Department of Labor regulations. The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The County must report all suspected or reported violations to the Federal awarding agency.
- (5) Where applicable, all contracts awarded by the County in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by the Department of Labor regulations. Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases or supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- (6) If the federal award meets the definition of a “funding agreement” under 37 CFR 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- (7) Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the County to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act and the Federal Water Pollution Control Act. Violations must be reported to the federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- (8) Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or

attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award.

- (9) The County and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. These requirements include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. (2 CFR 200.322)

FE. COST OR PRICE ANALYSIS

A cost or price analysis must be performed for every procurement action, including contract modifications, in excess of \$150,000, in accordance with 2 CFR 200.323. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the County must make independent estimates before receiving bids or proposals. Additionally, the cost plus a percentage of cost, and the percentage of construction cost methods of contracting must not be used.

GF. TIME AND MATERIAL CONTRACTS

The County may use time and material type contracts only after a determination is made that no other contract is suitable and only if the contract includes a ceiling price that the contractor exceeds at its own risk. The County must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

HG. RESPONSIBILITY

The County alone is responsible, in accordance with good administrative practice and sound business judgement, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the County of any contractual responsibilities under its contracts. The federal awarding agency will not substitute its judgement for that of the County unless the matter is primarily a federal concern. [2 CFR 200.318(k)]

IXVIII. PROCUREMENT POLICY ADOPTION

The County's Procurement Policy shall be adopted by resolution of the County Board. The policy shall be reviewed on a biennial basis by the Finance Committee and any modifications made thereto must be approved by the County Board.