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STANISLAUS COUNTY
GENERAL SERVICES AGENCY
PURCHASING AND CENTRAL SERVICES DIVISION

PURCHASING AND SALVAGE POLICY

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STANISLAUS COUNTY
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1. INTRODUCTION

1.1. Procurement Policy

Procurement is concerned with acquiring (procuring) goods, services, and work vital to an organization. Procurement involves the process of selecting and vetting vendors/contractors/consultants, establishing payment terms, and strategically negotiating contracts.

This manual establishes a Board of Supervisors' policy that defines when competitive procurement processes are required and outlines the various methods thereof. This policy also establishes criteria where the exemptions and exceptions may be used, and the process for using such exemptions and exceptions. This policy implements applicable provisions of Federal, State, and local laws, regulations, ordinances, resolutions, and policies adopted by the Board of Supervisors ("Laws and Regulations") governing the County's procurement of goods and/or services or contracting for work. In the event of an inconsistency between this policy and applicable Laws and Regulations, County Counsel shall determine the applicable standard.

Depending upon the peculiarities of a specific procurement, the Board of Supervisors or Purchasing may assign procurement or contracting responsibilities to a designated department head or project manager for implementation. Except for procurements which are expressly assigned by the Board of Supervisors or Purchasing to specific a department head or project manager, Purchasing shall be the authorized representative of the County in charge of managing and overseeing procurement and contracting activities, including communicating with vendors, contractors, and consultants during the procurement and contracting processes.

1.2. Purpose. The purpose of establishing policies and procedures to govern County procurement and contracting processes is to:

1.2.1. Foster maximum open and free competition for County purchases and contracts;

1.2.2. Promote economy and efficiency in County procurements;

1.2.3. Ensure adherence to proper standards of conduct by County officers and employees;

1.2.4. Monitor compliance with applicable Laws and Regulations;

1.2.5. Establish and maintain professional, business-like, and ethical relationships with contractors;

1.2.6. Treat prospective vendors, contractors and consultants in a fair and equitable manner; and

1.2.7. Provide opportunities to resolve contract claims or disputes.

1.3. Policy of the Board of Supervisors:

1.3.1. The County shall competitively procure goods, services, and work, unless there is an exception or exemption from the requirements of competitive procurement under Section 10 of this Policy Manual.

1.3.2. The competitive procurement requirements may be satisfied through the procurement processes outlined in this policy manual and as set forth in applicable Laws and Regulations.

1.3.3. The objectives of competitive procurements include providing qualified suppliers, vendors, and contractors with a fair opportunity to participate in the competitive procurement process; promoting competition in a manner conducive to sound fiscal practices; and eliminating favoritism, fraud, and corruption in the selection of suppliers, vendors, and contractors, and in awarding contracts. The competitive procurement requirements outlined in this policy may be satisfied through means which include (but are not limited to) invitations for formal or informal bids, requests for quotes, requests for proposals, requests for qualifications, or cooperative agreements competitively awarded by another governmental agency.

1.4. Responsibilities of Purchasing:

1.4.1. Purchasing is responsible for initiating, coordinating, and monitoring County procurements and solicitations of supplies, equipment, materials, independent contractor services, professional services, and assigned Public Works of Improvement projects, excluding purchasing card procurements. Project or contract management or implementation is the responsibility of the individual department requesting the work or services.

1.4.2. Purchasing is responsible for the sale of County surplus personal property, and the leasing of real and personal property.

1.4.3. In performing its responsibilities, Purchasing is guided by broad policy objectives:

1.4.3.1. Conserve public funds by identifying the best value for the cost of supplies, equipment, materials, services, and construction projects, and reduce the overhead cost of contracting, buying, leasing, renting, and selling.

1.4.3.2. Analyze alternative approaches for each procurement, such as direct purchasing, time sharing, leasing, and inter-governmental/inter-agency agreements (cooperative purchasing).

1.4.3.3. Plan and implement procurement activities.

1.4.3.4. Eliminate purchases of unnecessary or duplicate items and services.

1.4.3.5. Encourage price and quality competition among vendors/ contractors/ consultants.

1.4.3.6. Efficiently maintain accurate transaction documentation.

1.4.3.7. Utilize technical expertise where needed or available for the procurement and contract processes.

1.4.3.8. Maintain compliance with applicable Laws and Regulations, in a manner consistent with applicable standards of conduct and ethics.

1.4.3.9. Require acceptable documentation of product quality and confirm that products have been represented accurately.

1.4.3.10. Follow the policies and processes established in this Policy Manual.

1.4.3.11. Seek the assistance and support of the department requesting the goods, services, or work.

1.4.3.12. Manage salvage activities. Salvage activities involve the process of receiving surplus goods or personal property from County departments and processing these items in the most efficient manner possible for internal redistribution, sale, donation, or disposal by other means when appropriate. See Section 14 of this Policy Manual.

2. PROCUREMENT AND CONTRACTING AUTHORITY

2.1. Contracting Authority.

2.1.1. Policy. This Section addresses which County employees have the authority to enter into contracts on behalf of the County. The County has the power to make contracts that are necessary for the proper exercise of its powers. It is the policy of the Board that County departments conduct their procurement and contracting processes in accordance with applicable Laws and Regulations.

2.1.2. Approval of Contracts. The office of the Purchasing Agent has legal authority to bind the County under contract; therefore, the Purchasing Agent is the default signator for approving contracts. Contracts shall be approved by the Purchasing Agent or the Board of Supervisors, except where mandated under applicable Laws and Regulations, or when such authority is assigned to a department head by the Board of Supervisors.

2.1.3. County is the Contracting Party. In all cases, the County is the contracting entity and contracts should identify the County (and not the responsible department) as the contracting party, and the contract or scope of work must identify the department responsible for post-procurement contract management and implementation. The best practice is to have all contracts and agreements approved as to content by the department responsible for post procurement contract management and implementation.

2.2. Authority of Purchasing Agent.

2.2.1. The Government Code provides for the employment of a County Purchasing Agent, who is authorized to execute contracts for goods, services, and work on behalf of the County. The Government Code and the Public Contract Code specify when the Board may authorize the Purchasing Agent to approve and execute the contracts.

2.2.2. Unless prohibited under applicable Laws and Regulations (such as certain Public Works of Improvement bids which must be publicly opened), the Purchasing Agent may carry out his or her functions described herein by using an electronic procurement process for solicitations and an electronic signature for the approval of contracts.

2.2.3. All procurement and contracting activity that is conducted pursuant to the authority delegated to the Purchasing Agent must conform to applicable Laws and Regulations.

2.3. Office of the Purchasing Agent. GC §25508 provides that the Board of Supervisors may by ordinance establish rules and regulations requiring the Purchasing Agent to obtain quotations by the use of formal or informal bids, in connection with the purchase of materials, supplies, furnishings, equipment, livestock and other personal property which such Purchasing Agent is authorized to purchase for the County and its offices. The Purchasing Agent shall comply with such rules and regulations. The following applicable policies are contained in the Stanislaus County Code, Chapter 2.24 (Purchasing Agent):

2.3.1. Office Established (County Code §2.24.010) Pursuant to the provisions of §25500, et seq., of the Government Code of the State of California, the office of Purchasing Agent is established.

2.3.2. The Board of Supervisors may employ a Purchasing Agent and such assistants as are necessary. (GC §25500).

2.3.3. Duties Generally. The Purchasing Agent shall have the duties and powers prescribed by laws of the state relating to county Purchasing Agents, the provisions of this chapter and the resolutions of the Board of Supervisors. He or she shall be the head of the Purchasing department of the County and shall appoint such deputies, assistants and other employees therein as shall from time to time be authorized therefore in this title. He or she shall furnish the Board of Supervisors with such reports and information as the Board may from time to time require and shall establish methods

and procedures necessary for the proper functioning of the purchasing department in an efficient and economical manner. (County Code §2.24.020)

2.3.4. Purchasing Duties (County Code §2.24.030). Subject to the general direction of the Chief Executive Officer, the Purchasing Agent shall:

2.3.4.1. Purchase for the County and its offices all materials, supplies, furnishings, equipment, livestock and other personal property of whatever kind and nature, and except in cases of emergency as provided in this chapter, no purchase of personal property by any person other than the Purchasing Agent shall be binding upon the County or constitute a lawful charge against any County funds;

2.3.4.2. Rent for the County and its offices, furnishings, equipment, and livestock, excepting, however, road equipment which the road commissioner is authorized by law to rent;

2.3.4.3. Negotiate and execute in the name of the County all equipment service contracts and lease purchase agreements of personal property;

2.3.4.4. Negotiate and execute in the name of the County all rentals of real property which the County may require;

2.3.4.5. Sell any personal property belonging to the County as provided in §2.24.065;

2.3.4.6. Engage independent contractors to perform services for the County and the offices thereof with or without the furnishing of material where the aggregate cost does not exceed the limitation prescribed by the laws of the state. Provided, however, this shall not apply to contracts to do work upon the public roads of the county, contracts to print legal briefs or legal notices, contracts for reporters' services or transcripts, contracts for election, supplies, contracts for expert services to be rendered the offices of the district attorney, county counsel or sheriff, contracts for appraisers' services, contracts for consultants and other experts employed directly by the board of supervisors, or contracts for other services which by law some other officer or body is specifically charged with obtaining;

2.3.4.7. Engage independent contractors to construct, repair, or furnish any building or structure enumerated in GC §25450, PCC §20121; PCC §22000 et seq.) (County Code §4.28.020) when the estimated cost does not exceed that limitation prescribed by Laws or Regulations. (See Section 6 of this Policy Manual).

2.3.4.8. When specifically authorized by Laws or Regulations, purchase for the superintendent of schools or other public officer or agency personal property;

2.3.4.9. When specifically authorized by Laws or Regulations, sell or dispose of personal property of any special district and pay the

proceeds thereof into the treasury of the district, or if an exchange or trade is made, return the proceeds to the special district;

2.3.4.10. Perform such other services as the Board of Supervisors may from time to time by resolution require.

2.3.5. Emergency Purchases (§2.24.040). Emergency purchases may be made by any person or official authorized to sign requisitions when the Purchasing Agent or any of his or her assistants in Purchasing authorized to make purchases are not immediately available and the item or items so purchased are immediately necessary for the continued operation of the office or department involved, or are immediately necessary for the preservation of life or property. Such emergency purchases shall be subsequently approved and confirmed by the Purchasing Agent, or if he refuses such confirmation, the Board of Supervisors may subsequently approve and confirm such purchase by a four-fifths vote of the entire Board. Unless such purchases are so approved and confirmed by either the Purchasing Agent or the Board of Supervisors, the costs thereof shall not constitute a legal charge against the County. ¹ (See Section 10.4 of this Policy Manual).

2.3.6. Requisition Procedure (County Code §2.24.050). Except as to purchases from the revolving fund of the Purchasing Agent, established pursuant to Title 3, Division 3, Chapter 2, Article 2 of the Government Code of California, all purchases, rentals, and contracts shall be made only upon properly written requisitions, the forms of which shall be supplied by the Purchasing Agent to the several offices of the County. No purchase order shall be issued until the County Auditor shall have certified that sufficient money is available in the proper budgeted fund of the department to pay for the purchase. The head of any County office, department, or institution or his or her duly designated assistant is authorized to draw requisitions for purchases for such office, department, or institution in accordance with current budget accounts. Such head may delegate such authority to one or more of his or her deputies, assistants, or employees within the department by filing a written authorization therefor with the Purchasing Agent and the Auditor. (See GC § 29320 et seq.).

¹ NOTE: Subject to compliance with the procedures set forth in PCC §22050 et seq., in the case of an emergency, the County, pursuant to a four-fifths vote of the Board of Supervisors, may repair or replace a public facility, take any directly related and immediate action required by that emergency, and procure the necessary equipment, services, and supplies for those purposes, without giving notice for bids to let contracts. The Board of Supervisors shall review the emergency action at its next regularly scheduled meeting and, except as specified below, every 14 days at a regularly scheduled meeting thereafter until the action is terminated, to determine, by a four-fifths vote, that there is a need to continue the action. An emergency has been defined as “a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.” This includes natural disasters such as floods, fires, and earthquakes. These types of emergencies are exemptions to the bidding process in order to enable agencies to expedite construction and protect public safety. *Marshall v. Pasadena Unified Sch. Dist.*, 119 Cal. App. 4th 1241 (2004). See also, Jean M. Boylan, Barbara R. Gadbois, Shake, Rattle, and Roll, L.A. Law., April 2018, at 16, 21

2.4. Sale of Personal Property (County Code §2.24.065, GC §25504). The Purchasing Agent is authorized to sell, trade, trade in, lease, exchange, or otherwise dispose of any personal property belonging to the county which is deemed to be surplus and not required for public use by the county and which has a value of less than five-thousand dollars (\$5,000) per individual item without prior approval by the board of supervisors. Notwithstanding any other provision of this code, such disposition of surplus property may be made without securing bids or advertising. For disposition of personal property exceeding five-thousand dollars (\$5,000) per individual item, prior approval from the board of supervisors must be obtained. All proceeds from such sales shall be paid into the county treasury for the use of the county.

2.4.1. Surplus Property Sale - Notice (County Code §2.24.070). Notices of sales of surplus personal property shall be posted for not less than five business days preceding the day of sale in the County offices building and in the office of the Purchasing Agent, and in such other public place within the County as the Purchasing Agent may be deem advisable. (GC §25506.)

2.4.2. Surplus Property Sale – Advertising (County Code §2.24.080). In the disposition of any surplus personal property and upon approval of the Board of Supervisors, the Purchasing Agent may purchase advertising space and may advertise the proposed sale or other disposition of the personal property in such newspapers, magazines and other periodicals as in his or her judgment will best publicize the proposed sale or other disposition to those persons most likely to bid for or purchase the personal property. Within the limitation of the order of the Board of Supervisors approving the advertising, the Purchasing Agent shall decide upon the amount, nature, makeup, and content of the advertising. (GC §25507.)

2.4.3. Surplus Property - Transfer to Another department (County Code §2.24.090). Whenever any item of personal property is no longer needed by the office, department, or institution in possession thereof, such fact shall be reported to the Purchasing Agent. Such personal property shall be maintained under the supervision of the Purchasing Agent, and whenever any office, department or institution is in need of an article which has been designated as Purchasing Agent's salvage, or has requisitioned the purchase of a similar article, the Purchasing Agent may upon a property drawn request for transfer or requisition, transfer the article to such department.²

2.4.4. Standards Committee (County Code §2.24.110). The Purchasing Agent may organize Standards Committees as needed to establish standards with respect to the type, design, quality or brand of a certain article or group of related

² NOTE: The above references apply to the disposition of surplus personal property. Assembly Bill (AB) 1486 (Statutes of 2019, Chapter 664) and AB 1255 (Statutes of 2019, Chapter 661) made changes to the Surplus Land Act found in Government Code, Title 5, Division 2, Part 1, Chapter 5, Article 8. Surplus Land. Generally, the purpose of the amendments is to promote affordable housing development on unused or underutilized public land throughout the state to respond to the existing affordable housing crisis. The amendments to the Surplus Land Act (SLA) adopted with AB 1486 and AB 1255 clarify and strengthen reporting and enforcement provisions of the SLA to promote increased compliance with the SLA. The County shall comply with the Surplus Land Act in connection with the lease or disposition of surplus real property.

articles or services purchased by the County. The membership of such Committees shall be the Purchasing Agent who shall be chairperson, the Chief Executive Officer, and the heads of each County office, department or institution that is a primary user of the item or group of items for which the committee is appointed. Any member of the committee may act through a representative appointed by him or her.

2.4.5. Local Vendor Preference (County Code §2.24.125).³
When permitted by law, whenever the Purchasing Agent purchases goods and/or services, including supplies, materials, and/or equipment for the County through the use of a competitive procurement process, including quotes, bids, and proposals, a five percent (5%) preference in connection with the evaluation of proposals shall be granted to local vendors/consultants for evaluation purposes. The Local Vendor Preference does not apply to bids conducted jointly with other public agencies, nor when prohibited by state or federal statutes or regulations that require award to the lowest responsible bidder (such as in Public Works of Improvement projects), or otherwise exempted from local preferences. For the purposes of this section, "Local Vendor" means any business that meets all of the following criteria:

2.4.5.1. The vendor has a fixed office or distribution point located within the County of Stanislaus for at least one (1) year prior to the transaction for which preference is claimed by the vendor. Post office boxes do not qualify as a verifiable business address.

2.4.5.2. The vendor has a current business license issued by the County or by a city within Stanislaus County.

2.4.5.3. The vendor employs at least one (1) full-time employee whose primary residence is located in Stanislaus County, or if the business has no employees, at least fifty percent (50%) of the business shall be owned by one or more persons whose primary residence is in Stanislaus County.

2.4.5.4. The Purchasing Agent will apply the following procedures and guidelines when implementing the Local Vendor Preference program. When applicable, to qualify for the Local Vendor Preference, local vendors may register as a local vendor through the County's electronic procurement system, or may submit with each proposal for which a preference is claimed documentary proof that the vendor meets the local vendor criteria required by the County. The Purchasing Agent (a) shall not be required to verify the accuracy of any such certification (b) shall have sole discretion to

³ NOTE: Where a preference is required to be given by law to the lowest responsible bidder, a preference in favor of local vendors is invalid. (64 Ops.Cal.Atty.Gen. 670 (1981); 48 Ops.Cal.Atty.Gen. 11 (1966).)

NOTE: 24 CFR1 PART 85, Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments, identifies a number of procurement standards that apply to the expenditure of federal grant funds. Of note is the prohibition of using "statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bid or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference." Consequently, state and local grantees may not use valid local preference laws when the procurement is funded by the federal government.

determine if a vendor meets the definition of a local vendor and (c) sole discretion on the decision of whether or not a local vendor preference shall be available or given.

2.4.6. Credit Cards (County Code §2.24.130). County credit cards (also known as “Purchasing Cards”, or “P-Cards”) may be used to pay for goods and/or services for official County business. The County’s Purchasing Card Policy and Travel Policy govern such credit card usage. The County Purchasing Agent is responsible for convening a committee that reviews and updates the P-Card policy. The Auditor Controller’s Office is responsible for administering the P-Card program. P-Card users are required to check with Purchasing for existing contracts before making purchases. Purchasing Cards are a payment method, not a procurement method; therefore, the procurement thresholds and rules contained within this Policy Manual shall still apply when paying by credit card.

2.5. Elections Official Exemption (EC §14100). The County Elections Official, in providing materials required by the Elections Code, shall not be required to utilize the services of the County Purchasing Agent.

2.6. Road Commissioner Exemption. The Road Commissioner must follow the procurement policy except as otherwise authorized by applicable Laws and Regulations. (See, S&H §2006 et seq. and PCC §20395).

2.7. Statutes.

2.7.1. General Authority. GC §25501 provides that the Purchasing Agent may: (a) Purchase for the county and its offices all materials, supplies, furnishings, equipment, livestock, and other personal property. (b) Rent for the county and its offices furnishings, equipment, and livestock. (c) Contract for services pursuant to this article and contract for Public Works of Improvement projects. (d) The Purchasing Agent shall make purchases, rentals, and contracts only upon proper written requisition.

2.7.2. Independent Contractors and Annual Aggregate Cost. Pursuant to GC §25502.5, the Board of Supervisors hereby authorizes 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), subject to County Counsel’s approval of the contract as to form.

2.7.2.1. The Purchasing Agent may award contracts for independent contractor or professional services, with or without the furnishing of materials, where the cumulative value of each contract does not exceed \$200,000 per scope of work, per consultant, contractor, or vendor, per contract year (i.e. one year from the commencement date). Board of Supervisors’ approval is also required on multi-year contracts or master agreements which exceed \$200,000 during the entire term of the contract.

2.7.2.2. The Purchasing Agent may award contracts for goods or personal property, including vehicles, where the contract amount does not

exceed \$200,000. Board of Supervisors' approval is also required on multi-year contracts or master agreements which exceed \$200,000 during the entire term of the contract.

2.7.2.3. The Purchasing Agent may renew, amend, and/or take any and all necessary action related to the procurement of goods/services/work required by the County when the cumulative value of each contract, including any amendments, does not exceed \$200,000 per scope of services, per consultant, contractor, or vendor, per contract year.

2.7.2.4. The Purchasing Agency may enter into click wrap, click-through, shrink-wrap IT license agreements for custom off-the-shelf software and license agreements for open-source software or freeware when the cumulative value of each contract, including any amendments, does not exceed \$200,000 per scope of services, per vendor, per contract year.

2.7.2.5. The Purchasing Agent may enter into, renew, amend, and/or take any and all necessary action related to contracts for services (for example, installation, project management, implementation, technical consultation, maintenance, or system design) related to a current or past technology acquisition made by the Purchasing Agent, provided the total dollar value, including any amendments or options, does not exceed \$200,000 per scope of services, per vendor, per contract year.

2.7.2.6. The Purchasing Agent may enter into, renew, amend, and/or take any and all necessary action related to revenue contracts and intergovernmental agreements, provided that the maximum contract value for each such contract, including any amendments, does not exceed \$200,000 per scope of services, per vendor, per contract year.

2.7.2.7. Upon the request of the Department receiving the goods, services or work, the Purchasing Agent may, terminate a contract or agreement for goods, services or work, subject to the approval of County Counsel.

2.7.3. Special Services (aka Professional Services). GC §31000 provides: "The Board of Supervisors may contract for special services on behalf of the following public entities: the county, any county officer or department, or any district or court in the county. Such contracts shall be with persons specially trained, experienced, expert, and competent to perform the special services. The special services shall consist of services, advice, education or training for such public entities or the employees thereof. The special services shall be in financial, economic, accounting (including the preparation and issuance of payroll checks or warrants), engineering, legal, medical, therapeutic, administrative, architectural, airport or building security matters, laundry services or linen services. They may include maintenance or custodial matters if the board finds that the site is remote from available county employee resources and that the county's economic interests are served by such a contract rather than by paying additional travel and subsistence expenses to existing county employees. The Board may pay from any available funds such compensation as it deems proper for these special services. The Board of Supervisors may, by ordinance, direct the Purchasing Agent to enter into contracts authorized by this section within the monetary limit specified in Section 25502.5

of the Government Code.” Under these authorities, the Board of Supervisors may authorize County Counsel or the Chief Executive Officer to engage outside legal counsel as needed for assistance with urgent confidential matters.

2.7.3.1. Pursuant to GC §31000 and GC §25502.5, the Purchasing Agent may enter into, renew, amend, or terminate, contracts for Professional Services where the cumulative value of each contract, including any amendments, does not exceed \$200,000 per scope of services, per vendor, per fiscal year, subject to County Counsel’s approval of the contract as to form.

2.7.4. Public Works of Improvement and Maintenance Projects. The Board of Supervisors has elected to become subject to the Uniform Construction Cost Accounting procedures established pursuant to the Uniform Public Construction Cost Accounting Act (PCC §22000 et seq.) (County Code §4.28.020). See Section 6 of this Policy Manual. The Purchasing Agent is authorized to award contracts for Public Works of Improvement where the cumulative value of each contract does not exceed \$200,000 per scope of work, per contractor, per contract year.

2.7.5. Leases of Real Property for County Use. Pursuant to GC §25350.51 the Board of Supervisors hereby delegates to the Purchasing Agent the following authority:

2.7.5.1. To lease real property for use by the County or to obtain the use of real property for the County by license for a term not to exceed five years and for a rental not to exceed ten-thousand dollars (\$10,000) per month.

2.7.5.2. To amend real property leases or licenses for improvements or alterations, or both, with a total cost not to exceed ten-thousand dollars (\$10,000) provided that the amendment does not extend the term of the lease or license and that no more than two amendments, not to exceed ten-thousand dollars (\$10,000) each, are made within a 12-month period.

2.7.5.3. Notice of intention to consummate the lease or license shall be posted in a public place for five (5) working days prior to consummation of the lease or license. The notice shall describe the property proposed to be leased or licensed, the terms of the lease or license, and the County officer authorized to execute the lease or license.

2.7.6. Amendments to Contracts. The quarterly Contract Summary Sheet administered by the General Services Agency is an approval mechanism for amendments, extensions, and renewals to existing contracts with a cumulative value above \$200,000 per contract. Departments have the opportunity to either include such amendments on the Contract Summary Sheet, or to seek Board approval on their own through separate agenda items. New contracts above the \$200,000 threshold are not processed through the Contract Summary Sheet and must instead be brought to Board separately for approval, enhancing transparency and accountability. For details, see Board of Supervisors Resolution No. 2024-0347 approved on June 25, 2024, and GSA’s

instructions issued quarterly in line with the annual budget cycles for the approval of amendments, extensions, and renewals through the Contract Summary Sheet.

3. ETHICS.

3.1. Employee Purchases. The County Purchasing Agent and County staff are prohibited from making purchases not related to County business or of a personal nature for any person, employee, or otherwise. Personal purchases from County vendors that could affect the County's business relationship with that vendor must be avoided.

3.2. Stanislaus County Code of Ethics. Purchasing activities shall be conducted in accordance with the Stanislaus County Code of Ethics, as adopted by the Board. The Board of Supervisors and all County employees including elected officials, and both classified and unclassified personnel:

3.2.1. Shall not provide special privileges or accept benefits under circumstances which may influence the performance of one's governmental duties.

3.2.2. Shall not make promises of any kind which conflict with one's public duty and responsibilities.

3.2.3. Shall not engage in business activity inconsistent with the performance of one's duties.

3.2.4. Shall not use confidential information, or information received in the performance of one's governmental duties, for private profit or personal benefit.

3.2.5. Shall not engage in outside activities that are incompatible with the objective performance of duties or delivery of governmental service.

3.2.6. Treat all individuals encountered in the performance of one's duties in a respectful, courteous, and professional manner.

3.2.7. Promote only decisions that benefit the public interest.

3.2.8. Conduct and perform job duties diligently and promptly.

3.2.9. Faithfully comply with all Laws and Regulations applicable to the County and impartially apply them to everyone.

3.2.10. Promote the public interest through a responsive application of public duties.

3.2.11. Demonstrate the highest standards of personal integrity, truthfulness, and honesty in all public activities.

3.2.12. Uphold these principles being ever conscious that public office is a public trust.

3.3. Stanislaus County Gift Policy. Government Code §1090 prohibits an officer, employee, or agency from participating in making government contracts in which the official or employee within the agency has a financial interest. California Penal Code Section 70 makes it a misdemeanor for any public employee or officer to receive any gratuity or reward or promise thereof for performing an official act. Government Code §87300 requires that the County shall adopt and promulgate a Conflict of Interest Code. In general, any Board member, officer, or employee:

3.3.1. Shall abide by all applicable Laws and Regulations relating to conflicts of interest or ethics;

3.3.2. Shall avoid any act of impropriety, or the appearance of impropriety.

3.3.3. Shall not discriminate in the provision of services to the public, including the solicitation or acceptance of gifts in connection with services rendered in the performance of duties.

3.3.4. Shall not accept an economic advantage or discount not available to all County employees.

3.3.5. Stanislaus County Code of Ethics. Procurement and contracting activities shall be conducted in a manner consistent with the applicable provisions of the Stanislaus County Code of Ethics, as may be amended from time to time.

3.3.5.1. County employees must annually report gifts received in accordance with the Stanislaus County Code of Ethics.

3.3.5.2. Board members and officials shall annually report gifts in accordance with the Fair Political Practices Commission's rules and regulations.

3.4. Employee Purchases. The County Purchasing Agent and County staff are prohibited from making purchases paid for with County funds if a) not related to County business or b) the purchases are of a personal nature. Personal purchases by County employees from vendors doing business with the County should be avoided if such purchases could adversely affect the County's business relationship with that vendor.

3.5. California Levine Act. The purpose of the Levine Act is to prevent public officials who are members of boards or commissions or heads of agencies, such as members of the Board of Supervisors, from being influenced by campaign contributions

from individuals and parties appearing before them. The following are the Levine Act's principal requirements:

3.5.1. While a license, permit, contract or other entitlement for use from the County is pending, and for 12 months after a final decision is made on the matter, a County officer may not solicit, accept, or direct a contribution of more than \$250 from a party, a participant with a financial interest, or their respective agents.

3.5.2. A County officer may not make, participate in making, or in any way use their official position to influence a decision regarding a license, permit, contract or other entitlement if they have received a contribution of more than \$250 from a party, a participant, or their respective agents within the previous 12 months unless they have returned the contribution.

3.5.3. A party to a proceeding involving a license, permit, contract or other entitlement for use pending before the County in the proceeding must disclose any contribution of more than \$250 made to a County officer within the previous 12 months made by them or their agents.

3.5.4. GC §84308(a)(4) (the Levine Act) defines an "officer" as follows: "Officer" means any elected or appointed officer of an agency, any alternate to an elected or appointed officer of an agency, and any candidate for elective office in an agency. The term "officer" is further defined 2 Cal. Code Regs. §18438.1, which states:

An officer of an agency includes only those persons who make, participate in making, or in any way attempt to use their official position to influence a decision in the license, permit, or entitlement for use proceeding, or who exercise authority or budgetary control over the agency of officers who may do so, and:

- (1) Serve in an elected position, including an official appointed to an elected position due to an interim vacancy or an election otherwise canceled because the official was the sole candidate for the position;
- (2) Serve as a member of a board or commission;
- (3) Serve as the chief executive of a state agency, or county, city, or district of any kind; or
- (4) Have decision making authority with respect to the proceeding involving a license, permit, or other entitlement for use and is also a candidate for elected office or has been a candidate for elective office in the 12 months prior to the proceeding.

3.5.5. For more information regarding the Levine Act and associated regulations, see GC §84308; FPPC Regulations §18438.1 through §18438.8.

3.6. Government Code §1090.

3.6.1. Conflict of Interest. Under GC §1090, public officers and employees are prohibited from being financially interested in any contract they make in their official capacities. If an official or employee "makes" a public contract in which they have a disqualifying financial interest, the contract is void, and the interested individual

can be subject to civil and criminal liability. *Thomson v. Call*, 38 Cal. 3d 633, 646, 652 (1985).

3.6.2. Applies Throughout Public Contracting Process. GC §1090's proscriptions apply throughout the public contracting process and extend to consultants and independent contractors. Courts have held independent contractors are "officers or employees" under Section 1090 when they have public contracting "responsibilities" similar to those of formal public employees. *See, e.g., People v. Superior Court (Sahlolbei)*, 3 Cal. 5th 230, 240 (2017). Therefore, a GC §1090 conflict may arise when an independent contractor is involved in the early phases of a public project, and the public entity seeks to hire the same contractor in later phases of the same project.

3.6.3. Officer. A.B. 334 defines when an independent contractor is subject to GC §1090 in later phases of a public project. A contractor will not be considered an "officer" under GC §1090 if the contractor did not engage in or advise on public contracting, as defined, on behalf of the public entity during an earlier phase of the project.

3.6.4. Conceptual, Preliminary or Initial Plans. A.B. 334 allows a public entity to hire a contractor that engaged in or advised on public contracting during an earlier phase, if certain criteria are met. The public entity may hire such a contractor so long as the contractor did not "engage in or advise on the making of the subsequent contract": (1) the contractor's previous assistance only involved planning, discussions, or drawing plans or specifications during an initial stage of a project; (2) their participation was limited to conceptual, preliminary, or initial plans or specifications; and (3) all bidders for the subsequent contract have access to the same information, including all conceptual, preliminary, or initial plans or specifications.

3.6.5. Safe Harbors. A.B. 334 includes safe-harbors for individuals who rely on these new requirements in good faith. The first safe harbor may apply if the initial contract contains specific language that limits the contractor's involvement in public contracting. GC §1097.6(c) states: A person who acts in good faith reliance on this section is not in violation of this article and shall not be subject to criminal, civil, or administrative enforcement under this article if both of the following conditions are met:

(1) A statement identical or substantially similar to the following is included in the initial contract between the public entity and the independent contractor:

"Contractor/consultant's duties and services under this agreement shall not include preparing or assisting the public entity with any portion of the public entity's preparation of a request for proposals, request for qualifications, or any other solicitation regarding a subsequent or additional contract with the public entity. The public entity entering this agreement shall at all times retain responsibility for public contracting, including with respect to any subsequent phase of this project. Contractor/consultant's participation in the planning, discussions, or drawing of project plans or specifications shall be limited to conceptual, preliminary, or initial plans or specifications. Contractor/consultant shall cooperate with the public entity

to ensure that all bidders for a subsequent contract on any subsequent phase of this project have access to the same information, including all conceptual, preliminary, or initial plans or specifications prepared by contractor pursuant to this agreement.”

(2) The independent contractor is not in breach of the contractual obligations set forth in paragraph (1). If the initial contract does not contain this statement, A.B. 334 creates a second safe harbor. GC §1097.6(d) will provide “a complete defense” to a §1090 violation “in any criminal, civil, or administrative proceeding” if either of the following apply: (1) the contractor is not considered an “officer” under §1090, or (2) the contractor “did not engage in or advise on the making of the subsequent contract,” as described above.

3.7. Conflict of Interest Policy for Design-Build Public Works of Improvement Projects. The Board of Supervisors has adopted a separate conflict of interest policy for design-build projects in accordance with Public Contract Code 22162(c).

4. Competitive Procurement Process Overview.

4.1. This section is an introduction of competitive procurement processes. Specific processes are detailed in subsequent sections of this Policy Manual. Unless there is a competitive procurement exemption (see Section 10 of this Policy Manual), purchases of equipment, materials, supplies, and services shall be awarded through a competitive procurement process. Below is an overview of the competitive procurement process.

4.2. The primary objectives of the competitive procurement process are to foster open and free competition for County purchases and contracts while promoting economy and efficiency in County procurements. Adherence to proper standards of conduct by County officers and employees, and maintenance of procurement policies and procedures, promote compliance with Laws and Regulations, while establishing and maintaining professional and ethical relationships with contractors.

4.3. To achieve these objectives, Purchasing has established methods to:

4.3.1. Procure goods and/or services to fulfill County departmental needs in a timely manner.

4.3.2. Evaluate new products, and develop standardized specifications where practical.

4.3.3. Identify the “best value” or “lowest responsible bidder” in accordance with applicable Laws and Regulations and this policy manual.

4.3.4. Seek new and/or local sources of supply in order to broaden the competitive bidding base and encompass new products and technology.

4.3.5. Develop sound County-vendor relationships.

4.3.6. Increase awareness of, and encourage participation in, the County's purchasing activities by all businesses.

4.4. Roles and Responsibilities, GSA-Purchasing. Purchasing will:

4.4.1. Carry out or provide guidance on all procurement and purchasing activities in accordance with applicable Laws and Regulations and this Policy Manual.

4.4.2. Respond to purchase requisitions approved by authorized County employees and taking appropriate procurement actions as required. By approval of a requisition, the requesting party certifies that funds have been approved and are available for the requested purchase.

4.4.3. Direct and coordinate vendor contacts, and assist departments directly engaged in the procurement process. Purchasing will also assist departments in obtaining market information, such as new developments or vendor capability, and in other matters concerning purchase transactions.

4.4.4. Analyze purchase requests so that those requests which appear to be excessive, unnecessary, uneconomical, or otherwise inappropriate may be returned to the requesting department for additional justification.

4.4.5. Maintain key procurement documents. Upload or assist departments with uploading the final contract into the County's electronic system.

4.5. Roles and Responsibilities of the Requesting Department. The requesting department, through its department head or designee, will:

4.5.1. Provide the description of goods, services, plans, specifications, technical information, or scope of work necessary to support the solicitation.

4.5.2. Identify designees, if any, that have been formally authorized by the Department Head for the purposes of signature approvals and contract management, or if the Department Head is unavailable or the position is otherwise vacant, as so identified by the CEO.

4.5.3. Monitor and review the project's progress in order to determine whether contract terms and conditions are being met, approve invoices for payment, and review change order requests to determine if they are valid and reasonably priced.

4.5.4. Act as the first line of defense in resolving contractor/vendor/consultant performance issues, working directly with the contractor/vendor/consultant supervisor, and when appropriate, escalating communication

to higher levels of contractor or vendor management and to Purchasing. Purchasing, upon notification of issues, and with the advice and support of County Counsel, may assist in the resolution of any problems concerning adherence to terms and conditions of the contract.

4.5.5. Determine when a project has been completed satisfactorily, and handle project closeout and record Notice of Completion, when appropriate.

4.5.6. All payments and financial matters shall be coordinated with the County Auditor-Controller.

4.5.7. Prepare agenda items and obtain Board of Supervisors approval when required.

4.5.8. Retain documents relating to the project (except procurement documents and the final contract documents will be retained by GSA Purchasing) in accordance with the department's records retention policy.

4.5.9. Provide copies of project closeout information and the Notice of Completion, when applicable, to Purchasing.

4.5.10. Act as project manager for purposes of contract administration.

4.6. Overview of Thresholds and Procurement Types. The competitive procurement process covers a wide variety of purchasing types. Depending upon the type of goods and/or services requested, the urgency of the need, and the cost involved, one of several courses of action will be taken:

4.6.1. Goods/Personal Property. The following thresholds apply to the procurement of goods (excluding contracts for Public Works of Improvement):

4.6.1.1. Micro Purchases (Below 15,000): Purchasing may, without notice, advertisement, or the securing of competitive bids or quotations, negotiate a contract for goods or personal property when the price of an individual item (as distinct from the total contract) is below \$15,000.

4.6.1.2. Small Purchases (\$15,000-\$75,000)
(excluding Public Works of Improvement).

4.6.1.2.1. For the procurement of individual items above \$15,000, but below \$75,000, written price quotes shall be obtained from a minimum of three suppliers. Solicitation by a written Request for Quotation (RFQ) issued to a minimum of three suppliers or vendors is preferred, whenever practicable.

4.6.1.2.2. While quotes must be requested, if a vendor chooses to not provide a quote, the County will record a response of “No Quote”.

4.6.1.2.3. The resulting contract, if any, may either be placed with the vendor providing the lowest-priced, responsive, and responsible quote that materially conforms to all requirements and conditions contained in the solicitation; or alternatively, the vendor providing the “Best Value” to the County as determined by objective performance criteria established by Purchasing or set forth in the RFQ.

4.6.1.2.4. NOTE: More complex purchases within the \$15,000 - \$75,000 range may sometimes be better handled through the written Invitation for Bid (BID), or the Request For Proposal (RFP) process.

4.6.1.3. Goods (\$75,000.01) and Up): For the procurement of goods or personal property which have a value per individual item above \$75,000, a formal notice inviting bids such as a written Invitation for Bids or written Request for Proposal (RFP) process, when qualitative factors are more important than pricing. When a bid process is used, the resulting contract, if any, will be placed with the vendor providing the lowest-priced (or when appropriate, the highest price), responsive, and responsible bid that materially conforms to all requirements and conditions contained in the bid solicitation. Alternatively, when an RFP process is used, the resulting contract, if any, will be awarded to the proposer providing the “Best Value” to the County as determined by objective performance criteria established by Purchasing or set forth in the RFP (See Section 5 of this Policy Manual).

4.7. Public Works of Improvement Projects (Uniform Public Construction Cost Accounting Act) (PCC §22032). Public projects of seventy-five-thousand dollars (\$75,000) or less may be performed by the employees of a public agency by force account, by negotiated contract, or by purchase order. Public projects of two-hundred-twenty-thousand dollars (\$220,000) or less may be let to contract by informal bid procedures as set forth in Section 6 of this Policy Manual. Public Projects of more than \$220,000 may be let to contract by formal bid procedures. (See Section 6 of this Policy Manual).

4.8. Independent Contractor Services. The Purchasing Agent may award contracts for independent contractor services and professional services, with or without the furnishing of material, where the cumulative value of each contract does not exceed \$200,000 per scope of work, per contractor, per fiscal year (GC §25502.5). Board of Supervisors’ approval is required where the cumulative value of each contract exceeds \$200,000 per scope of work, per contractor (including a consultant, vendor, or supplier), per fiscal year. Board of Supervisors’ approval is also required on multi-year contracts or master agreements which exceed \$200,000 during the entire term of the contract. Purchasing may, without notice, advertisement, or the securing of competitive bids or quotations, negotiate a contract for independent contractor services when the contract amount is below \$75,000.

4.9. Special Services (“Professional Services”). The Board of Supervisors may contract for “special services” (also known as “professional services”) on behalf of the following public entities: the County, any County officer or department, or any District or Court in the County. Such contracts shall be with persons specially trained, experienced, expert, and competent to perform the special services. The special services shall consist of services, advice, education, or training for such public entities or the employees thereof. The special services shall be in financial, economic, accounting (including the preparation and issuance of payroll checks or warrants), engineering, legal, medical, therapeutic, administrative, architectural, airport or building security matters, laundry services, or linen services. They may include maintenance or custodial matters if the board finds that the site is remote from available county employee resources and that the county’s economic interests are served by such a contract rather than by paying additional travel and subsistence expenses to existing county employees. The Board may pay from any available funds such compensation as it deems proper for these special services. The Board of Supervisors may, by ordinance, direct the Purchasing Agent to enter into contracts authorized by this section within the monetary limit specified in § 25502.5 of the Government Code. (GC §31000). There is no legal requirement to competitively procure Special Services (Professional Services) defined under GC §31000; however, as a best practice it’s recommended that contracts between \$75,000 and \$200,000 should be procured through a competitive Request for Quotation (RFQ) process, and those in excess of \$200,000 should be procured through a competitive Request for Proposals (RFP) process.

4.10. Architectural & Engineering (A&E) Services. GC §§4526-4529 (aka “Mini-Brooks Act”), mandates that local agencies throughout California select A&E services on the basis of demonstrated competence and professional qualifications, when applicable. When procuring A&E services, the SOQ process is used. (See Section 8 of this Policy Manual). (GC §§4526-4529 and §4529.12).

4.11. Job Order Contracts. The Board of Supervisors may award Job Order Contracts (aka “JOC Contracts”), or individual annual contracts, none of which shall exceed \$3,000,000, adjusted annually to reflect the percentage change in the California Consumer Price Index, for repair, remodeling, or other repetitive work to be done according to unit prices. No annual contracts may be awarded for new construction. The contracts shall be awarded to the lowest responsible bidder and shall be based on plans and specifications for typical work. (PCC §20128.5).

4.12. Design-Build Contracts. Pursuant to PCC §22160, the design-build method of project delivery, using a best value procurement methodology, has been authorized by law. GSA Capital Projects Division is responsible for managing design-build projects on behalf of the County. The Board of Supervisors has adopted a conflict of interest policy for design-build projects in accordance with Public Contract Code §22162(c).

4.13. Exceptions to Competitive Process Requirements. Purchases may be exempted from the competitive procurement process as determined by Purchasing for bona-fide emergencies; where a sole-source situation has been documented by the requesting department and approved by the Purchasing Agent; for Services; or in other

situations where a competitive process is not in the County's best interest, or is not required by law. Exemptions to competitive process requirements are contained in Section 10 of this Policy Manual. It is best practice to conduct a competitive procurement process at least every five years. Such process may include a written Request for Proposals (RFP), or Request for Statement of Qualifications (SOQ), whichever is most appropriate. These processes are further described in Sections 7 and 8 of this Policy Manual.

4.14. Grant Funding -- More Stringent Rules May Apply. In cases where non-County funding is involved, the funding source may impose additional or more restrictive procurement rules. In such cases, the more stringent of either the County's or the funding source's rules shall apply, except as otherwise approved by the grant or funding administrator. Examples may include lower dollar thresholds requiring bids, prohibition of geographical preferences by state or federally-funded programs such as HCD, HUD and FEMA procurement rules that must be followed to be eligible for reimbursement.

5. REQUEST FOR QUOTES (RFQ)

5.1. Goods

5.1.1. Micro Purchases of Goods (Below \$15,000). Purchasing may, without notice, advertisement, or the securing of competitive bids or quotations, negotiate a contract for goods or personal property when the price of an individual item (as distinct from the total contract) is below \$15,000.

5.1.2. Small Purchases of Goods (\$15,000-\$75,000)

5.1.2.1. For the procurement of individual items above \$15,000, but below \$75,000, written price quotes shall be obtained from a minimum of three suppliers. Solicitation by a written "Request for Quotation" ("RFQ") issued to a minimum of three suppliers or vendors is preferred, whenever practicable.

5.1.2.2. The RFQ method does not require formal advertising, but varies according to type of goods being procured. The process may be as simple as contacting vendors and documenting their pricing, choosing the lowest-cost or best option from the responsible and responsive proposers. This simplified approach works well for standardized products. A more formal RFQ process, when goods and/or services are specialized or have a unique application, may require written specifications and a more formal procurement process.

5.1.2.3. While quotes must be requested, if a vendor chooses to not provide a quote, the County will record a response of "No Quote", and if no quotes are received the County shall have no further obligation to seek additional quotes.

5.2. Services

5.2.1. Independent Contractor Services.

5.2.1.1. Purchasing may, without notice, advertisement, or the securing of competitive bids or quotations, negotiate a contract for independent contractor services when the contract amount is below \$75,000.

5.2.1.2. For the procurement of independent contractor services with a contract amount between \$75,000 and \$200,000, a written “Request for Quotation” (“RFQ”) shall be issued to a minimum of three independent contractors.

5.2.1.3. For the procurement of independent contractor services with a contract amount over \$200,000, a written “Request for Proposals (“RFP”) process shall be used.

5.2.2. Professional Services.

5.2.2.1. Purchasing may, without notice, advertisement, or the securing of competitive bids or quotations, negotiate a contract for professional services when the contract amount is below \$75,000.

5.2.2.2. For the procurement of professional services with a contract amount between \$75,000 and \$200,000, the best practice is to issue a written “Request for Quotation” (“RFQ”) to a minimum of three professionals.

5.2.2.3. For the procurement of professional services with a contract amount over \$200,000, the best practice is to issue a written “Request for Proposals” (“RFP”) process.

5.2.2.4. The RFQ method does not require formal advertising, but varies according to type of goods being procured. The process may be as simple as contacting vendors and documenting their pricing, choosing the lowest-cost or best option from the responsible and responsive proposers. This simplified approach works well for standardized products. A more formal RFQ process, when goods and/or services are specialized or have a unique application, may require written specifications and a more formal procurement process.

5.2.2.5. While quotes must be requested, if a vendor chooses to not provide a quote, the County will record a response of “No Quote”.

5.2.2.6. As used in this Section 5, independent contractor services and professional services are collectively referred to as “services”.

5.2.3. Public Works of Improvement.

5.2.3.1. Public projects of seventy-five-thousand dollars (\$75,000) or less may be performed by the employees of a public agency by force account, by negotiated contract, or by purchase order. (County Code §4.28.10 and PCC §22032). (See Section 6 of this Policy Manual)

5.2.3.2. For the procurement of public works of improvement contracts with an amount between \$75,000 and \$220,000, a written “Request for Quotation” (“RFQ”) shall be issued to a minimum of three independent contractors.

5.2.3.3. For the procurement of public works of improvement contracts with an amount exceeding \$220,000, formal sealed bidding is required.

5.3. The Request For Quotation (“RFQ”) Process.

5.3.1. Department purchase requests should describe the requested goods and/or services through a Scope of Work sufficiently to facilitate the competitive procurement process. The clearer such specifications are, the easier it is to obtain pricing proposals. Specifications and standards from previous successful procurements may be reused and updated whenever repeat purchases are made.

5.3.2. The preferred method is to issue a written RFQ solicitation that describes the desired goods and/or services and sets forth the terms of the procurement to potential suppliers, vendors or independent contractors.

5.3.3. Quotes shall be received in writing, by email, or by the County’s e-procurement system, and submitted to Purchasing (as set forth in the instructions contained in the RFQ).

5.3.4. Quote proposals are not required to be publicly opened and read aloud, but are subject to audit review and public information requests after the contract is negotiated.

5.4. Award of Contract. Whenever two (2) or more quotes are received for goods and/or services, award will be made in the sole discretion of the Purchasing Agent, upon consideration of one or more of the following factors:

5.4.1. Best value to the County.

5.4.2. Quality and Service. Examine the quality of the goods and/or services each vendor provides, as well as their customer service.

5.4.3. Vendor’s History. Evaluate the vendor’s previous performance, reliability, and professionalism.

5.4.4. Delivery Time. If time is a factor, the vendor’s ability to deliver the goods and/or services within the required timeframe.

5.4.5. Sustainability: Evaluate eco-friendly practices and ability to comply with SB §1383 requirements relating to Recycled-Content Paper Products and Recycled-Content Printing and Writing Paper”. (See Section 15 of this Policy Manual).

5.5. Draw Lots -- Tied Bids. *Notwithstanding any other provision of law*, in the event there are two or more identical lowest or highest bids, as the case may be, submitted to the County for the purchase, sale, or lease of real property, supplies, materials, equipment, services, bonds, or the awarding of any contract, pursuant to a provision requiring competitive bidding, the County may determine by lot which bid shall be accepted. (GC §53064).

5.6. No Quotes Received. In any case where no quotes are received, or a proposal is rejected as non-responsive, the following shall apply:

5.6.1. Goods and services: If no quotes are received in response to a RFQ for goods and/or services, the County may negotiate a contract without issuing another RFQ.

5.6.2. If a quote or quotes is/are rejected as nonresponsive, the County may negotiate a contract without conducting another RFQ with a qualified vendor other than with the vendor whose quote was nonresponsive.

5.6.3. Formal announcement of award is not required, but unsuccessful proposers should be notified out of courtesy.

5.6.4. The resulting contract may be through a Purchase Order, Service Purchase Order, or by written Contract or Agreement, as appropriate. (Refer to Section 11 of this Policy Manual for guidance on selecting agreement types.)

5.7. Insurance Requirements. RFQ documents shall include a form outlining the County's minimum insurance requirements for the resultant contract, if any. Consult with Risk Management for assistance in identifying the appropriate insurance requirements.

6. PUBLIC WORKS OF IMPROVEMENT PROJECTS, AND SEALED BIDDING (BID).

6.1. General. The Invitation for Sealed Bids (BID) process is primarily used for Public Works of Improvement projects (construction and maintenance work), but may also be appropriate for procuring goods and services where the scope of work is well-defined and the selection is price-driven.

6.1.1. Bid Process for Goods and Services. A Request for Sealed Bids process for goods and/or services may be used when price factors are more important than qualitative factors. The strict statutory requirements for Public Works of Improvement contracts are not applicable to a procurement of goods and/or services when the resulting contract is not a Public Works of Improvement contract, but otherwise the process is nearly identical. In a bid process for goods and services the product specifications and minimum qualifications of the bidders must be clearly outlined in the invitation to bid. A bid process for goods and/or services may be performed through the County's electronic procurement system if the resulting contract is not a Public Works of Improvement contract. When approved by the Purchasing Agent, a bid process for goods

and/or services may provide for an award to multiple bidders and include minimum qualification requirements.

6.1.2. Bid Process for Public Works of Improvement. Public Works of Improvement Projects may be initiated by GSA, or by another County department when authorized by the Board or by law. Any reference in this section to “Purchasing” includes, when appropriate, GSA Capital Facilities or a department authorized by the Board or law to initiate the bid and contracting process. Unless otherwise assigned by the Purchasing Agent, Purchasing generally is responsible for Public Works of Improvement bid processes for contracts under \$220,000 that do not require a permit or code compliance review; GSA Capital Facilities is responsible for implementation of the Capital Improvement Plan and most projects over \$220,000 which require a permit or code compliance review, as determined by the Purchasing Agent; Public Works handles infrastructure, road, bridge and other work authorized by the Streets and Highways Code.

6.2. Initiation. The department requesting the initiation of a Public Works of Improvement project shall provide the following to Purchasing:

6.2.1. Evidence of compliance with the California Environmental Quality Act, when applicable. For assistance, contact the Department of Planning and Community Development.

6.2.2. Documentation, plans, technical specifications, and scope of work (“Scope of Work”) which adequately describe the project. The Scope of Work should be prepared by a qualified person, and when appropriate, a consultant or design professional shall be retained to prepare the Scope of Work.

6.2.3. Desired contract commencement and completion dates.

6.2.4. Estimated cost of the work.

6.2.5. Before making a request to initiate a Public Works of Improvement project, the requesting department shall confirm that it has sufficient budgeted funds to cover the resultant contract. If sufficient funds are not budgeted, the department must obtain approval from the Board of Supervisors, and provide documentation to Purchasing identifying the County’s Board Resolution or agenda item authorizing the solicitation for bids.

6.2.6. An approved budget for the project, with a contingency line item. The contingency line item is usually 10% of the estimated cost of the work, but for remodels, the contingency is often higher. If the requesting department does not have a reliable estimate, the services of a cost estimator should be secured.

6.2.7. A recommended project manager, when appropriate, who is knowledgeable about the project or program, and whose duties will include acting as a liaison between the requesting department and Purchasing, and overseeing contractor performance after the construction contract is signed.

6.2.8. Approval by the head of the requesting department.

6.2.9. Upon receipt of the above, GSA will prepare a proposed bidding schedule, including advertising and contract commencement dates.

6.3. Labor Code and Prevailing Wage Requirements.

6.3.1. Definition of Public Works. As used LC §1720, “public works” includes all of the following:

6.3.1.1. Construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds...For purposes of this paragraph, “construction” includes work performed during the design, site assessment, feasibility study, and other preconstruction phases of construction, including, but not limited to, inspection and land surveying work, regardless of whether any further construction work is conducted, and work performed during the postconstruction phases of construction, including, but not limited to, all cleanup work at the jobsite. For purposes of this paragraph, “installation” includes, but is not limited to, the assembly and disassembly of freestanding and affixed modular office systems....

6.3.1.2. Street, sewer, or other improvement work done under the direction and supervision or by the authority of an officer or public body of the state, or of a political subdivision or district thereof, whether the political subdivision or district operates under a freeholder's charter or not.

6.3.1.3. The laying of carpet done under a building lease-maintenance contract and paid for out of public funds.

6.3.1.4. The laying of carpet in a public building done under contract and paid for in whole or in part out of public funds....

6.3.1.5. Tree removal work done in the execution of a project under paragraph

6.3.2. Other. The installation of cable and wiring is generally considered to require the payment of prevailing wages. Consult with County Counsel relating the prevailing wage and Labor Code requirements for hauling contracts.

6.3.3. Prevailing Wages on Leased Property. LC §1720.2 provides: For the limited purposes of Article 2 (commencing with Section 1770) of this chapter, “public works” also means any construction work done under private contract when all of the following conditions exist:

(a) The construction contract is between private persons.

(b) The property subject to the construction contract is privately owned, but upon completion of the construction work, more than 50 percent of the assignable square feet of the property is leased to the state or a political subdivision for its use.

(c) Either of the following conditions exist:

(1) The lease agreement between the lessor and the state or political subdivision, as lessee, was entered into prior to the construction contract.

(2) The construction work is performed according to plans, specifications, or criteria furnished by the state or political subdivision, and the lease agreement between the lessor and the state or political subdivision, as lessee, is entered into during, or upon completion of, the construction work.

6.4. Contract Amounts; Bonds, Apprenticeship. For any Public Works of Improvement contract in excess of \$1,000, prevailing wages must be paid. For any Public Works of Improvement contract in excess of \$25,000, payment and performance bonds are required. Projects of \$30,000 or more must meet DIR's apprenticeship requirements. Contractors must be registered with DIR except as follows: (a) a Public Works of Improvement project of twenty-five-thousand dollars (\$25,000) or less when the project is for construction, alteration, demolition, installation, or repair work or (b) a Public Works of Improvement project of fifteen-thousand dollars (\$15,000) or less when the project is for maintenance work. The County is required to submit a PWC 100 form to the Department of Industrial Relations to fulfill the required Public Works of Improvement project award notification as required by Labor Code §§1773.3, 1773.35, and 8 Cal. Code Reg. §16451(a).

6.5. Uniform Public Construction Cost Accounting Act. Section 4.28.10 of the Stanislaus County Ordinance Code provides that the County has adopted the California Uniform Public Construction Cost Accounting Act (the "**Act**") (PCC §22032). Under the Act, the following thresholds apply to Public Works of Improvement projects:

6.5.1. Public projects of seventy-five-thousand dollars (\$75,000) or less may be performed by the employees of a public agency by force account, by negotiated contract, or by purchase order.

6.5.2. Informal Bid Process. Public projects of two-hundred-twenty-thousand dollars (\$220,000) or less may be let to contract by informal procedures as set forth below.

6.5.2.1. The notice inviting informal bids shall describe the project in general terms, indicate how to obtain more detailed information about the project and state the time and place for the submission of the bids.

6.5.2.2. Unless the product or service is proprietary, not less than ten (10) calendar days before the date set for opening informal bids, the purchasing agent shall notify contractors using one or both of the following methods: (1) Mail notices to each contractor on a list maintained by the County for the category of work to be performed or (2) Mail notices to each of the construction trade journals specified in §22036 of the Act.

6.5.3. Formal Bid Process. Public projects of more than two-hundred-thousand dollars (\$220,000) shall, except as otherwise provided in this article, be procured by a formal bidding procedure in PCC §22037 and below:

6.5.3.1. The notice inviting formal bids shall state the time and place for the receiving and opening of sealed bids and distinctly describe the project.

6.5.3.2. The notice shall be published at least 14 calendar days before the date of opening the bids in a newspaper of general circulation, printed, and published in the jurisdiction of the public agency;

6.5.3.3. The notice inviting formal bids shall also be sent electronically, if available, by either facsimile or electronic mail and mailed to all construction trade journals specified in PCC §22036.

6.5.3.4. The notice shall be sent at least 15 calendar days before the date of opening the bids. In addition to notice required by this section, the public agency may give such other notice as it deems proper.

6.5.4. Pursuant to PCC §22039 and PCC §22032, the Board of Supervisors or its designated representative shall adopt plans, specifications, and working details for all public projects exceeding \$220,000.

6.5.5. In all cases the County shall not arbitrarily split contracts or procurements to avoid more formal bidding procedures (PCC §20123.5).

6.6. Off-Road Diesel Regulations. The notice inviting bids shall include, when appropriate, Off-Road Diesel Requirements. Prior to award of the contract, the Contractor shall provide valid Certificates of Reported Compliance, as described in Off Road Regulation section 2449(n) of Title 13, California Code of Regulations, for the fleet selected for the contract and their listed subcontractors, if applicable. All Certificates of Reported Compliance must be submitted to the County within the deadline stated in the notice inviting bids and no later than award of the contract.

6.7. Process Summary. The Notice Inviting Bids shall include detailed specifications, general provisions, special provisions, bond forms, legal requirements, prevailing wage requirements, affidavits, or other documents. The bidder submits the required information in a sealed bid for public opening by Purchasing at a specified date, time, and place. The outcome of this bid is summarized in a bid abstract and is available to the requestor for review. Purchasing may execute a contract or purchase order with the lowest-priced responsive and responsible bidder, which is defined as the bidder submitting the lowest-priced bid that materially conforms to all requirements of the invitation for bids, and has demonstrated ability to perform the work. Conversely, award of revenue-generating contracts shall be made to the highest-priced responsive and responsible bidder.

6.8. Publication in Trade Journals. The Notice inviting formal and informal bids must be published in the following trade journals:

Must Publish at #2 and #3:

2. Construction Bidboard (Ebidboard)
11622 El Camino Real, #100
San Diego, CA 92130
Phone: 800-479-5314
Email: support@ebidboard.com
Website: www.ebidboard.com
California

3. Dodge Data & Analytics
830 Third Avenue, 6th Floor
New York, NY 10022
Phone: 877-784-9556
Email: support@construction.com
Website: www.construction.com

ADDITIONALLY, Must Publish Notice in at Least Two Trade Journals Below:

10. Sacramento Region Builders Exchange
951 E. 8th Street
Chico, CA 95928
Phone: 530-343-1981
Email: planroom@srbx.org

16. Builders' Exchange of San Joaquin
4561 Quail Lake Drive, Suite B2
Stockton, CA 95207
Phone: 209-478-1000
Email: crobinson@besonline.com
Website: <http://www.bxsj.org>

17. Valley Builders Exchange, Inc.
1118 Kansas Avenue
Modesto, CA 95351
Phone: 209-522-9031
Contact: Holly Bowden, habowden@valleybx.com
info@valleybx.com
Website: www.valleybx.com

19. Central California Builders Exchange
1244 N. Mariposa Street
Fresno, CA 93703
Phone: 559-237-1831
Email: info@cencalbx.com
Website: <http://cencalbx.com/>

The trade journal publication requirement is contained in the California Cost Accounting Policies and Procedures Manual at https://www.sco.ca.gov/Files-ARD-Local/cuccac_manual_2021_edition.pdf

If there is a change in applicable laws or regulations or the California Cost Accounting Policies and Procedures Manual, this Policy Manual shall be deemed to be amended to incorporate those changes.

6.9. Deadline for Submitting Bids. Although the Act allows a shorter time frame, the preferred practice is to allow at least 30 days between the time the Notice Inviting Bids is issued and when bids are due.

6.10. Bid Documents. Purchasing shall prepare bid documents with input from the requesting department, which at a minimum, shall include the following items:

6.11. CEQA. The requesting department shall contact Planning to evaluate whether environmental review under the California Environmental Quality Act (CEQA) is required.

6.11.1. The lead agency must: Determine if the proposed activity is a "project" is subject to CEQA; if subject to CEQA, then (a) determine if the project is exempt from CEQA; if subject to CEQA and not exempt, then (b) determine, through an Initial Study if the proposed project has the potential to have a significant effect on the environment.

6.11.2. The Initial Study is used to decide whether to prepare an Environmental Impact Report (EIR) or a Negative Declaration (Neg Dec). The lead agency can issue a Negative Declaration if it finds the proposed project will have no potential for significant impacts. If the Initial Study identified potentially significant effects resulting from the project, but the project is altered or the applicant agrees to conditions which will mitigate the identified significant impacts, then the lead agency may issue a Mitigated Negative Declaration. If the Initial Study finds substantial evidence that the project will have a significant effect on the environment, then an EIR must be prepared. Intended to provide decision makers with the necessary information to make a well-informed decision, the EIR is a detailed report that identifies the potentially significant environmental effects the project is likely to have; identifies feasible alternatives to the proposed project; and indicates the ways in which significant effects on the environment can be mitigated or avoided. Contact the Planning Department relating to CEQA questions.

6.12. Plans and Specifications. If a design professional is needed to prepare plans and specifications for the work, a qualifications-based procurement process is required, or the use of existing on-call contracts with design professionals can be considered, subject to the prior approval of the Purchasing Agent.

6.13. Permits. The requesting Department shall evaluate whether permits, code compliance review or estimating services are needed before issuing the

notice inviting bids, and designate the person who is responsible for applying for the permit, performing the code compliance review or obtaining estimating services.

6.14. Intergovernmental Immunity.

6.14.1. The County is not required to comply with City “building ordinances” on property owned by the County within the City limits. In *Hall v. City of Taft*, the California Supreme Court held that a city cannot require a public school district, as an “agency of the state,” to comply with city building regulations. The court reasoned that “[s]chool districts are agencies of the state for the local operation of the state school system,” and in carrying out its authorized activities, a state entity “is not subject to local regulations unless the Constitution says it is or the Legislature has consented to such regulation.” *Hall v. City of Taft* (1956) 47 Cal.2d 177, 181-183. Thereafter, relying on *Hall*, the Court of Appeal in *Town of Atherton v. Superior Court* held that public school districts are also exempt from local zoning ordinances that would affect the location of school sites. *Town of Atherton v. Superior Court* (1958) 159 Cal.App.2d 417, 427-428. After *Hall*, the Legislature undertook a study to examine the effect of the decision on the ability of cities and counties to effectively zone and regulate building within their respective limits. That study led to the enactment of GC § 53090 et seq., which forms an article of the Government Code entitled “Regulation of Local Agencies by Counties and Cities.” One provision of this statutory scheme—GC § 53091, subdivision (a) generally requires each “local agency” to “comply with all applicable building ordinances and zoning ordinances of the county or city in which the territory of the local agency is situated.” Another provision—GC § 53090—defines “local agency” somewhat narrowly as “an agency of the state for the local performance of governmental or proprietary function within limited boundaries [but which] does not include the state, a city, [or] a county ...” In other words, by excluding cities and counties from GC § 53090’s definition of “local agency,” the Legislature did not change the balance of regulatory authority between cities and counties. Therefore, that where the County owns real property within the city limits, and itself uses that property for County purposes, the County’s extraterritorial property is not subject to the City’s building and zoning ordinances. The definition of “building ordinances” is set forth in GC § 53090(b).

6.14.2. The County is not required to apply its own building ordinances on the County’s public works projects within the City limits. In 101 Ops. Cal. Atty. Gen. 88 (Cal.A.G.), 19 Cal. Daily Op. Serv. 3867, the California Attorney General stated that in the absence of controlling county requirements, a County is free to apply its own rules (provided they don’t conflict with mandatory state requirements). In general, a County has power conferred by the California Constitution “to make and enforce within its limits all local police, sanitary, and other ordinances and regulations not in conflict with general laws.” However, the State Building Standards Law applies to buildings throughout the state (although local jurisdictions may adopt more restrictive standards where warranted). Therefore, a County’s extraterritorial properties would be subject to the California Building Standards Code.

6.14.3. GC § 65402(b) requires the County to report to the City on proposed public work within the City limits, but the County may disregard City’s adverse determination; see *Zack v. Marin Emergency Radio Authority* (2004) 118 C.A.4th 617, 627, 638, 13 C.R.3d 323 [local zoning regulations did not apply to joint powers agency made up

of county and 25 local public agencies located in county; because county, as designated party in joint powers agreement, was not subject to local regulations, neither was joint powers agency). Further, GC §53095 provides that the provisions of governmental immunity shall prevail over... GC §65402 of the Government Code relating to notice to the City.

6.15. Bid Alternates. The County may require a bid for a Public Works of Improvement contract to include prices for items that may be added to, or deducted from, the scope of work in the contract for which the bid is being submitted. (PCC §20103.8).

6.16. Basis of Award. Whenever additive or deductive items are included in a bid, the bid solicitation shall specify which one of the following methods will be used to determine the lowest bid.

6.16.1. The lowest bid shall be the lowest bid price on the base contract without consideration of the prices on the additive or deductive items.

6.16.2. The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items that were specifically identified in the bid solicitation as being used for the purpose of determining the lowest bid price.

6.16.3. The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items that when taken in order from a specifically identified list of those items in the solicitation, and added to, or subtracted from, the base contract, are less than, or equal to, a funding amount publicly disclosed by the local agency before the first bid is opened.

6.16.4. The lowest bid shall be determined in a manner that prevents any information that would identify any of the bidders or proposed subcontractors or suppliers from being revealed to the public entity before the ranking of all bidders from lowest to highest has been determined.

6.16.5. In the absence of a specification, the lowest bid shall be the lowest bid price on the base contract without consideration of the prices on the additive or deductive items.

6.16.6. A responsible bidder who submitted the lowest bid as determined by this section shall be awarded the contract, if it is awarded. This section does not preclude the local agency from adding to or deducting from the contract any of the additive or deductive items after the lowest responsible bidder has been determined. (PCC §20103.8).

6.16.7. Pre-Bid Conference. If a Pre-Bid Conference is scheduled, the Notice shall advise of the date, time, and location of the conference. The Notice shall state whether attendance is mandatory or not mandatory. If mandatory, an attendance sign-in sheet will be used as a permanent record of the Pre-Bid Conference and shall contain the names, contact information, and business affiliations of all bidders and other interested persons in attendance.

6.16.8. Prequalification of Bidders. In contracts where the nature of the work is such that the qualifications of the bidders are essential criteria for evaluating the bidders' responsibility, the County may prequalify bidders. In 1999, the California Legislature enacted a law that allows public agencies to require licensed contractors that wish to bid on Public Works of Improvement jobs to “pre-qualify” for the right to bid. The law authorizes such public agencies to adopt a pre-qualification system. The Department of Industrial Relations developed the model pre-qualification questionnaire in 2000. The questionnaire, enhanced in 2018, now relates to the California Labor Commissioner’s enforcement objectives and helps awarding bodies fulfill their statutory obligations. The new Labor Commissioner’s Model Questionnaire can be customized to suit the specific needs of the County. (PCC §20101).

6.17. Contract Documents. The Contract Documents, including the Instructions to Bidders, General Conditions, Special Conditions, and plans and specifications set forth standard terms and conditions which govern the bid process and contractual relationship between the successful bidder and the County. Below are some common provisions contained in the Contract Documents:

6.18. Labor Code Requirements. Public Works of Improvement projects are subject to complex Labor Code requirements, including but not limited to:

- Contractor Registration with the Department of Industrial Relations (LC §1725.5). Working Hours (LC §1810 et seq.).
- Workers compensation insurance (LC §1860 et seq.)
- Debarred Contractors (LC §1777.1 et seq.)
- Prevailing Wages on contracts over \$1,000 (LC §1720 et seq.)
- Apprentices on Public Works of Improvement Projects over \$30,000 (LC §1777.5 et seq.).
- Penalties may be imposed on the contractor or the County for failure to comply with the statutory requirements.

6.19. Time; Liquidated Damages. The Contract Documents should include a start date, completion date and liquidated damages clause. A liquidated damages clause provides that each day completion is delayed beyond the specified time for performance, the contractor shall pay to the County a specified sum of money, to be deducted from any payments due or to become due to the contractor.⁴

⁴ A Public Works of Improvement contract that contains a clause that expressly requires a contractor to be responsible for delay damages is not enforceable unless the delay damages have been liquidated to a set amount and identified in the Public Works of Improvement contract. The amount to be established as liquidated damages shall be reasonable in light of the anticipated harm that may be caused by a delay in contract performance. Purchasing staff shall evaluate these factors, and set a sum as liquidated damages. (PCC §7203(a)).

6.20. Scope of Work. The Contract Documents should include detailed plans and specifications, including descriptions of both the qualitative and quantitative nature of the products or work being procured. They must also set forth the minimum essential characteristics and standards to which the products and services must conform in order to satisfy the County's needs. The use of design drawings, diagrams, charts, and maps is encouraged to clarify the requirements.

6.21. "Or Equal" Clause. Specifications shall not be drafted to unduly restrict competition. Brand names may be used in technical specifications only when it is impractical or uneconomical to specify clear and adequate descriptions of the technical requirements for a particular type of needed product. In all cases where brand names are used, bidders shall be afforded the opportunity to propose to the County a substitute alternate product of equal quality or value as specified in the bid documents. The County's decision to approve or disapprove such alternate product shall be final and binding on the bidder. PCC §3400 sets forth a time limit for seeking a substitution of a product. The section states: "Specifications shall provide a period of time prior to or after, or prior to and after, the award of the contract for submission of data substantiating a request for a substitution of "an equal" item. If no time period is specified, data may be submitted any time within 35 days after the award of the contract." The Contract Documents should specify a period of time to request substitution shortly after the Notice of Intent to award so there is no confusion about the products or materials which will be ordered or supplied.⁵

6.22. Bid Proposal. The bidder's completion and submission of the Bid Proposal and all required documents shall constitute the bidder's acceptance of all the terms and conditions contained in the bid documents. The Bid Proposal shall indicate the bidder's price. The Bid Proposal shall either be a lump sum amount or a specific pricing schedule, prepared or approved by Purchasing. If a pricing schedule is used, the schedule shall request separate cost quotations for all relevant aspects of the procurement, including, where applicable, unit price, extended price, sales or use taxes, and cost of installation and delivery. In all cases, the Bid Proposal or pricing schedule shall be structured to allow the County to make an objective comparison of all bids. Whenever possible, this will be accomplished by requesting a Total Bid Price.

6.23. Insurance Requirements. The Contract Documents shall include a form outlining the County's minimum insurance requirements for the resultant contract, if any. Consult with Risk Management for assistance in identifying the appropriate insurance requirements. Such insurance requirements should be included in the Invitation to Bid package to avoid contractor confusion and price increases after bidding closes.

6.24. Bonding Requirements. Public works of improvement (construction and maintenance) projects of \$25,000 and above require bonding as follows:

6.24.1. Bid Bonds. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of

⁵ Note that additional restrictions on using brand-name specifications may apply to federally funded procurements. Refer to Section 14 of this Policy Manual for additional details.

bidder's security protect the County's interests in the event that a bidder refuses to honor its bid or fails to enter into a contract awarded by the County. Generally, 10% of total bid, though the County may adjust this amount. The Bid Bond may be a bidder's bond, cash, or certified or cashier's check (PCC §20129, §20405). 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.

6.24.2. Performance Bonds. Performance bonds provide a guarantee that a contractor will fulfill all of its obligations under a construction contract, including maintenance and warranty obligations. If the contractor fails to do so, the Surety company is responsible for completing the contract obligations, either by securing a new contractor to complete the job or by financial compensation. The instrument must be a surety bond issued by a California-admitted surety for 100% of total contract price - no alternate payment methods are permitted. (PCC §20129).

6.24.3. Payment Bonds. The payment bond assures the contractor's full discharge of its obligations to its subcontractors, suppliers, and other labor used on the project. In all Public Works of Improvement (including construction and maintenance) contracts over \$25,000 a payment bond is required. For contracts for the procurement of services or products which involve subcontracting, a payment bond may be required. The instrument must be a surety bond issued by a California admitted surety for 100% of total contract price - no alternate payment methods are permitted. (CC §3247 and §3248).

6.24.4. Warranty Bonds. The County may sometimes require warranty bonds. The performance bond may cover warranty obligations or the contractor may purchase a separate warranty bond from the surety for the benefit of the County. If the contractor fails to comply with its warranty obligations, the Surety company is responsible for completing the warranty obligations, either by securing a new contractor to complete the job or by financial compensation. A warranty bond is sometimes in the amount of 10% of the contract price, but that amount may vary depending on the specific project.

6.24.5. County Discretion is Limited. The County has some discretion with regards to acceptable bid bond or warranty bond alternatives, but not for performance and payment bonds. If a bidder is unable to secure both performance and payment bonds in cases where they are mandatory, then the County must move on to the next-lowest-priced responsible and responsive bidder.

6.24.6. Special Provisions. Special Provisions prescribe terms and conditions specifically tailored to the particular contract being sought, including identifying which party is responsible for obtaining permits.

6.25. Bid Addenda.

6.25.1. County employees, and consultants, or contractors under the supervision of County employees, should refrain from discussing with prospective

bidders any details of goods and/or services advertised for bid, unless so authorized by Purchasing.

6.25.2. Bidder questions should be referred to Purchasing as specified within the bid solicitation documents. If an answer could affect the bid of other bidders, then all bidders shall be so advised, to prevent any one bidder from obtaining an unfair advantage.

6.25.3. Once the Notice Inviting Bids has been published, any necessary changes, modifications, or adjustments to specifications, requirements, or bid quantities, corrections, deadline extensions, or otherwise revise the bid documents shall be accomplished through the issuance of written Addenda, authorized and published by Purchasing. No private modifications shall be made.

6.25.4. Plans, specifications, and technical data included in the Addenda may be drafted by the requesting department and approved by Purchasing before publishing. Addenda shall include the bid number and title, date of issuance, Addendum number, a specific reference to the provisions in the bid documents being amended, and the substance of such amendment.

6.25.5. Purchasing will publicly issue Addenda so that each is available to all firms or persons who have received a copy of the bid documents, except for bids that require mandatory attendance of Pre-Bid Conference(s), in which case only those vendors in attendance may be forwarded Addenda.

6.25.6. The date and time for receiving bids shall be extended by no less than 72 hours if Purchasing issues any material changes, additions, or deletions to the invitation later than 72 hours prior to the bid closing. Any bids received after the time specified in the notice or any extension due to material changes shall be returned unopened. As used in this section, the term "material change" means a change with a substantial cost impact on the total bid as determined by the awarding agency. (PCC §4104.5).

6.26. Bid Opening.

6.26.1. Sealed bids shall be submitted in writing to the location specified in the Notice Inviting Bids before the specified time and date. Telephone bids may be obtained during emergencies.

6.26.2. Purchasing shall date and time stamp sealed bids as they are received. Sealed bids shall remain unopened and stored securely until the public opening date and time specified in the Invitation for Bid or subsequent addenda.

6.26.3. Any bids received after the specified date and time of bid opening will not be accepted by Purchasing, but will instead be date and time stamped, and returned unopened.

6.26.4. Bids shall be opened publicly opened. A bid opening attendance record shall be prepared at the time of the opening, containing the names,

contact information, and business affiliations of all bidders and other interested non-County persons in attendance.

6.26.5. Bid pricing shall be read aloud by the person opening the bids. Upon request, other non-confidential information contained in the bid forms shall also be read aloud or otherwise made available for inspection. Members of the public shall be permitted to witness the bid opening.

6.26.6. From and following the specified date and hours of the bid opening, no bidder shall be permitted to change their bid. If the opening of the bids is delayed beyond the time specified in the Notice, all bidders shall be so notified.

6.26.7. Original bid documents shall be retained on file in Purchasing, until no longer required by GSA's Records Retention Policy, grant requirements, or other applicable law.

6.27. Evaluation of Bids.

6.27.1. Criteria. Contract award, if any, shall be made to the lowest responsive and responsible bidder, which is defined as the bidder submitting the lowest-priced bid that materially conforms to all requirements of the invitation for bids (PCC §22038(b)). For bids handled by Purchasing, Purchasing shall be principally responsible for the evaluation of bids.

6.27.2. Price/Cost Analysis. Purchasing shall examine the bids to determine which bid is the lowest in price. In doing so, staff shall observe the following guidelines:

- The formula for determining the basis of award, as described in the contract documents, shall be utilized;
- The unit price shall govern whenever both unit price(s) and extended price(s) or total(s) are given.
- All bids showing item extensions and/or totals shall be reviewed for accuracy. No corrections or changes are to be made on or to the contractor's bid. Any math errors in bidders' calculations shall be noted on a separate sheet of paper.
- If the contractor requests relief from a bid because of a mistake (PCC §5101 et seq.) Purchasing shall prepare a report in writing to document the facts establishing the existence of each element required by PCC §5103.

6.28. Responsive and Responsible Bidder. Purchasing shall:

6.28.1. Determine whether the lowest monetary bid is responsive and ensure that the bidder has made no unauthorized deletions, amendments, or other changes. "A bid is responsive if it promises to do what the bidding instructions demand."

(Taylor Bus Service, Inc. v. San Diego Bd. of Education (1987) 195 Cal.App.3d 1331.) If a low bid is determined to be non-responsive, i.e. defective, Purchasing next determines if the defect is “material” or “immaterial”. A defect is material if it affects “the amount of the bid or gives a bidder an advantage or benefit not allowed other bidders”. (Konica Business Machines U.S.A., Inc. v. Regents of University of California (1988) 206 Cal.App.3d 449.) Under this standard, determining if a defect is material is very fact specific and good-faith arguments can sometimes be made on both sides. Examples of material defects are using a lower quality (and therefore probably less expensive) material than is called for in the solicitation, not providing a bid bond, or not having the right type of contractor’s licenses. These are material because it gives a bidder a chance to undercut other bidders by using cheaper material, allowing the bidder to walk away from their bid without financial consequences, or by allowing a bid by a contractor who isn’t allowed to perform the work. Examples of immaterial defects are forgetting to list the title of the person signing the bid, a clerical typo of the quantity of a material used (when the price is correct). These defects don’t result in an advantage to the bidder. This distinction is important because material defects cannot be waived by the County, whereas immaterial defects can be waived in Purchasing’s sole discretion. Notwithstanding the foregoing, Purchasing retains the discretion to reject a bid with immaterial defects.

6.28.2. Verify “bid responsiveness” by ensuring that all required proposal forms and certificates have been completed and that all bidder signatures are in place and appear in order. Purchasing may make a determination as to whether the deficiency is a minor irregularity (e.g., omission of a signature on a form, or a bidder’s security submitted in an improper amount), or whether the deficiency is more substantive in nature (e.g., taking exception to warranty provisions, or extending the delivery period). Purchasing may contact the bidder and discuss the aspects of any bid which appears non-responsive. With respect to deficiencies representing minor irregularities, the bidder may be given the opportunity to correct the deficiency so that the bid may be considered responsive. If the bidder does not correct the minor irregularity and make the bid responsive, or if the deficiency is substantive in nature, Purchasing shall determine which bidder is the next lowest or highest monetary bidder and shall follow the procedure above to determine the responsiveness of that bidder.

6.28.3. A “responsible bidder,” means a bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the Public Works of Improvement contract (PCC §1103). A non-responsibility finding requires the County to provide notice and an opportunity to the bidder to be heard and present evidence as to why it should not be deemed non-responsible.

6.29. Rejection of Bids. If after the invitation of bids all bids are rejected, after reevaluating its cost estimates of the project, the County shall have the option of either of the following:

6.29.1. Abandoning the project or readvertising for bids in the manner described below.

- For Public Works of Improvement projects below the formal sealed bidding threshold, or for the bidding of goods or non-construction/non-

maintenance services, the Board of Supervisors and the Purchasing Agent have the right to reject any and all bids when it is in the best interest of the County to do so.

- For Public Works of Improvement projects above the formal sealed bidding threshold, by passage of a resolution by a four-fifths vote of its governing body declaring that the project can be performed more economically by the employees of the public agency, may have the project done by force account without further complying with this article. (PCC §22038). Prior notice to the apparent low bidder is not required, and a hearing on a decision to reject all bids is not required, if the County or the Purchasing Agent does not intend to have the work performed by employees of the County.

6.29.2. Grounds for rejection of all bids may include:

- The bids received were too high, or the budgeted funds are insufficient to cover the amount of the contract, even if awarded to the lowest-priced responsible bidder;
- None of the bids were responsive to the requirements of the contract documents;
- A determination is made that awarding the contract would not be in the best interests of the County.

6.30. Tied Bids. Notwithstanding any other provision of law, in the event there are two or more identical lowest or highest bids, as the case may be, submitted to the County for the purchase, sale, or lease of real property, supplies, materials, equipment, services, bonds, or the awarding of any contract, pursuant to a provision requiring competitive bidding, the County may determine by lot which bid shall be accepted. (GC §53064).

6.31. No Bids Received. If no bids are received through the formal or informal procedure, the project may be performed by County employees by force account, or the County may negotiate a contract without conducting another bid (PCC §22038(c)).

6.32. Mistakes in Bids. (PCC § 5100 et seq). A bidder shall not be relieved of the bid unless by consent of the awarding authority. The Board of Supervisors or the Purchasing Agent is the awarding authority for purposes of giving relief to a bidder on the grounds of a mistake. The bidder shall establish to the satisfaction of the awarding authority that: (a) A mistake was made. (b) He or she gave the County written notice within five working days, excluding Saturdays, Sundays, and state holidays, after the opening of the bids of the mistake, specifying in the notice in detail how the mistake occurred. (c) The mistake made the bid materially different than he or she intended it to be. (d) The mistake was made in filling out the bid and not due to error in judgment or to carelessness in inspecting the site of the work, or in reading the plans or specifications. (PCC §5103).

If the County deems it is in its best interest, it may, on refusal or failure of the successful bidder to execute the contract, award it to the second lowest bidder (PCC §5106).

6.33. Award of Contract

6.33.1. The Purchasing Agent may award a contract where the cumulative value of each contract does not exceed \$200,000 per scope of work, per contractor, per fiscal year. (GC §25502.5).

6.33.2. The Board of Supervisors' approval is required where the cumulative value of each contract exceeds \$200,000 per scope of work, per contractor per fiscal year. Board of Supervisors' approval is also required on multi-year contracts or master agreements which exceed \$200,000 during the entire term of the contract, such as Job Order Contracts. (GC §25502.5).

6.33.3. If a contract is awarded, the contract shall be awarded to the lowest responsive and responsible bidder (or in accordance with the basis of award set forth in the bid documents) whose proposal materially meets the specifications and requirements outlined in the Invitation for Bid documents. In the case of non-Public Works of Improvement bids for revenue-generating programs, award will be made to the highest-paying responsive and responsible bidder.

6.33.4. Upon completion of bid evaluation and analysis, a notification to bidders will be made in writing of the County's intent to award a contract. The successful bidder must follow the instructions set forth in the notice of intent to award, which may include signing the Contract and related documents, and providing bonds, proof of insurance, and other required documentation, within the time specified in the notice.

6.34. Notice to Proceed. Upon receipt of the successful bidder's executed Contract, sureties, and evidence of insurance, the County may issue a Notice to Proceed (NTP) where the deadline for completion of the work is a material requirement of the contract.

6.35. Change Order Authority.

6.35.1. Public Works of Improvement contracts must be let by competitive bid and each individual change order in excess of 10% of the original contract amount essentially creates a new contract which must also be competitively bid (PCC §20137). A new competitive bid process is not required, however, if a finding can be made 1) that that the total project, including change order work, is under \$60,000; 2) no competitive advantage exists to re-bid the project or 3) an unforeseen emergency arises after the beginning of the work and the changes are incidental, not substantial. If those findings cannot be made, then the County must competitively bid the additional work out.

6.35.2. The Purchasing Agent, the Deputy Director of GSA and the Purchasing Manager are authorized, on behalf of, and in the name of the County, to negotiate and execute changes, amendments, alterations, deletions, and additions to work

being performed in connection with Public Works of Improvement contracts (each, a "Change Order"), in accordance with provisions of the PCC §20142, as may be amended from time to time, provided the funding for each Change Order is within the department's budget approved by the Board of Supervisors. Each Change Order issued and executed pursuant to this authority shall be in accordance with monetary limits stated in PCC §20142, as follows:

Original Contract Amount	Limit for <i>Each</i> Change Order
Less than \$60,000	\$5,000
\$60,000 to \$250,000	10% of the original contract
More than \$250,000	\$25,000 plus 5% of the amount of the original contract cost in excess of \$250,000. No change or alteration shall exceed \$210,000.

6.35.2.1. The contract documents should provide that the contractor shall advise the County in writing immediately upon notice of any unanticipated condition or contingency that may cause a change in the scope of work, time, or compensation. Such written notice must explain the circumstances leading to the unforeseen condition or contingency, identify any proposed adjustment in compensation. Subject to available funding, and written approval by the Purchasing Agent (within his/her authority) or Board, change orders shall be approved in writing prior to performance of the change order work.

6.35.2.2. Changes initiated by the County shall be coordinated with the Purchasing Agent. Any changes initiated by a department must evaluate cost impact, schedule changes, and changes in scope. Changes shall be within the monetary limitations established by law. Subject to available funding and department head approval, change orders shall be approved in writing by the Purchasing Agent and designated project manager prior to performance of the change order work.

6.35.3. When adding to the scope of work on a Public Works of Improvement contract under \$60,000, an additional scope of work may be negotiated without a competitive bid process through a new contract or an amendment pursuant to PCC §22032 (a), if the amendment does not exceed \$60,000.

6.35.4. If a change order arises because of a latent condition not known at the time of bidding, the County may consider, subject to County Counsel approval, negotiating a new contract with the contractor for less than \$60,000, in accordance with PCC §22032(a).

6.35.5. Any change orders in excess of the limits set forth above, or which are \$200,000 or more, require approval by the Board of Supervisors.

6.35.6. If PCC §20142 is amended, this policy shall automatically be revised to conform to such amendments.

6.36. Resolution of Construction Contract Claims or Disputes. The contract documents should provide that if a dispute arises as to the payment of any additional compensation arising out of revisions issued by the County, or for any cause, including any alleged act or failure to act by the County, or the happening of any event, thing or occurrence, the contractor shall submit a written notice of potential claim to the project manager. The written notice of potential claim shall set forth the reasons for which the contractor believes additional compensation will or may be due, the nature of the cost involved, and, insofar as possible, the amount of the potential claim. Public Works of Improvement contracts have statutory dispute resolution clauses. (PCC §9201-9204 and PCC §20104). The project manager shall review the notice of potential claim and conduct an investigation relating to the claim. The project manager shall consult with Purchasing and County Counsel prior to making a final determination on the claim.

6.37. Installation Labor in Connection with the Purchase of Goods:

6.37.1. If the purchase of goods or personal property is through a cooperative purchase arrangement where the price has been determined by another agency through a competitive procurement process, installation costs under \$75,000 may be negotiated through a contract separate from the purchase of goods or personal property without a competitive bid process pursuant to PCC §22032(a).⁶

6.37.2. For purchases of goods or personal property that require installation when the installation cost exceeds \$75,000, refer to the “50/50/10” rule of thumb” for determining whether separate bidding of the installation labor is required:

6.37.2.1. Installation costs in excess of \$75,000 and in excess of 50% of the product value shall be bid out separately.

6.37.2.2. Installation costs in excess of \$75,000 and in excess of 10%-50% of the product value may need to be bid out separately. Refer to County Counsel for assistance in making a determination.

6.37.2.3. Installation costs in excess of \$75,000 but below 10% of the product value are considered incidental to the product purchase, and do not need to be bid out separately.

7. REQUEST FOR PROPOSALS (RFP).

⁶ Note that Installation work is typically considered a Public Works of Improvement contract. For any Public Works of Improvement contract in excess of \$1,000, prevailing wages must be paid. For any Public Works of Improvement contract in excess of \$25,000, payment and performance bonds are required. Projects of \$30,000 or more must meet DIR's apprenticeship requirements. Contractors must be registered with DIR except as follows: (a) a Public Works of Improvement project of twenty-five-thousand dollars (\$25,000) or less when the project is for construction, alteration, demolition, installation, or repair work or (b) a Public Works of Improvement project of fifteen-thousand dollars (\$15,000) or less when the project is for maintenance work. The County is required to submit a PWC 100 form to the Department of Industrial Relations to fulfill the required Public Works of Improvement project award notification as required by Labor Code sec. 1773.3, 1773.35, and 8 Cal. Code Reg. sec. 16451(a).

7.1. General. Except as otherwise provided in Section 10 of this Policy Manual, purchases of goods and/or services shall be awarded through a competitive procurement process. The Request for Proposals (RFP) process is best suited to procurements where non-price factors are more important than pricing, or where the County has defined goal but does not have defined process or means to accomplish that goal. For services other than Architectural and Engineering (A&E) services, the RFP process is preferred. When procuring A&E services, the Request for Statement of Qualifications (SOQ) process is used instead (refer to Section 8 of this Policy Manual). When the procurement of goods and/or services requires little professional judgment, the County's Request for Quotes (RFQ) or Request for Sealed Bids (BID) processes may be used when the Scope of Work supports it. Note, however, that many of the statutory requirements for bidding a Public Works of Improvement project do not apply when using a bid process for goods and/or services.

7.2. Best Value. Under an RFP procurement, award of contract is made on a "best value" basis by identifying the best solution for the County's needs, with both price and non-price factors considered. Evaluation criteria identified in the RFP solicitation documents are used by an evaluation committee for scoring received proposals. Award need not be made to the lowest-priced proposer.

7.3. Process Summary.

7.3.1. Requests for Proposals (RFP) shall include a description of the goods and/or services requested, and a detailed scope of work (where possible, or when not, a specific desired outcome), general provisions, special provisions, legal statements, affidavits, sample contracts, and other pertinent requirements. The proposer must complete the required information and submit a timely proposal to Purchasing as instructed in the RFP documents.

7.3.2. Proposal submittals are not publicly opened, but are instead evaluated privately against criteria identified in the RFP documents on a "best value" basis, considering both pricing and other factors. Generally, it is best to consider non-price factors independently of the pricing component, to prevent pricing from affecting the evaluation of non-price factors. Once the winning proposal has been determined, the County may issue a Notice of Intent to Award, and may proceed with contract negotiations and execution after the protest period window has passed.

7.4. Initiation. The department requesting the procurement action shall provide the following to Purchasing:

7.4.1. Documentation, scoring criteria, and scope of work/services which describes the goods and/or services requested.

7.4.2. A list of at least three (3) qualified potential proposers in order to provide sufficient force of competition.

7.4.3. The estimated cost of the contract. If the requesting department does not have sufficient funding in the current budget for the resultant contract, the department must obtain approval from the Board of Supervisors, and in its documentation to Purchasing shall identify the funding source; or the County's Board Resolution authorizing the RFP solicitation or the proposed items, work, or services.

7.4.4. A suggested project manager, when appropriate, whose duties will include acting as a liaison between the requesting department and Purchasing.

7.4.5. Approval by the head of the requesting department, or their designee. Purchasing shall review the requesting department's documentation and confirm that the procurement is appropriate for the RFP process.

7.5. RFP Documents. Purchasing shall prepare the RFP documents, with input from the requesting department. Purchasing shall establish a review schedule, based upon the anticipated date of advertisement, which designates the date upon which all changes, comments, and required approvals must be submitted to Purchasing. Such schedule shall permit enough time period for review of the contract documents by the individuals involved. Although the provisions and requirements in RFP documents may vary, the RFP documents shall, at a minimum, contain the following items:

7.5.1. Notice Requesting Proposals. The notice requesting proposals ("Notice") is a publicly advertised document which notifies potential proposers of the title and nature of the contract, the date for a Pre-Proposal Conference, if one is scheduled, and also establishes the subsequent date, time, and means by which proposals must be submitted to the County, and the evaluation criteria by which proposals will be ranked. Purchasing shall advertise the Notice, which shall refer to and incorporate by reference all RFP documents (i.e., the Instructions to Proposers and General Conditions or sample contract, Special Provisions, technical specifications, and other certificates, forms, and documents), and shall designate the method for obtaining copies of such documents.

7.5.2. General Conditions. The General Conditions set forth standard terms and conditions which govern the contractual relationship between the successful Proposer and the County.

7.5.3. Special Provisions. Special Provisions prescribe terms and conditions specifically tailored to the particular contract being sought.

7.5.4. Pre-Proposal Conference. If a Pre-Proposal Conference is scheduled, the Notice shall advise of the date, time, and location of the conference. An attendance sign-in sheet will be used to document the attendees at the Pre-Proposal Conference and shall contain the names, contact information, and business affiliations of all proposers and other interested persons in attendance.

7.5.5. Qualifications of Proposers. In contracts where the nature of the work is such that the qualifications of the proposers, the goods or the services are essential evaluation criteria, Purchasing shall include a clause in the RFP

documents setting forth such required qualifications. In addition, contracts where technical guidance and advice are called for, the RFP shall also contain a provision requesting the qualifications of proposers or recommendations for goods and/or services best suited to the County's needs. The RFP shall clearly state that the County may reject any proposal that does not meet the minimum requirements set forth in the RFP. Included in qualifications clause may be requirements that Proposers demonstrate they are regularly engaged in the provision of the work or product called for in the contract, and that they have the necessary experience, training, resources, facilities, and personnel to perform such work, and a requirement for evidence of financial stability from each Proposers, preferably and usually in the form of audited financial statements. The RFP may request that proposers attest that they have previously and satisfactorily performed work with characteristics comparable to those specified in the contract. Finally, proposers may be required in the RFP to furnish adequate references. Purchasing may, at its option, prepare and include with the RFP documents a form to be completed by proposers that will cover the specific qualification requirements for that solicitation.

7.6. Scope of Work / Goods or Services.

7.6.1. The RFP shall include specifications for the goods and/or services being requested, applicable terms and conditions, the time in which the project must be completed, requirements concerning coordination with other entities, other information that may be useful in preparation of the proposal, and evaluation criteria specifically tailored to the project. Such criteria should, when appropriate, include the consultant's or vendor's proven experience and competence, bondability (if required), insurability, understanding of the scope of work, financial ability, resources to perform the work, willingness to cooperate with Purchasing and technical staff, and the proposed method for assuring timely and acceptable performance and management of the work. In the event that the County assigns weighted values to the evaluation criteria, such values shall be indicated in the RFP. In addition, résumés of the consultant's staff may be requested to allow the evaluation committee to determine the staff's training, education, experience, and overall competence to perform the work.

7.6.2. Specifications in the RFP may include detailed descriptions of the qualitative and quantitative nature of the goods and/or services to be procured. The RFP may also set forth the minimum essential characteristics and standards to which the goods and/or services must conform in order to satisfy the County's intended use. The RFP's use of blueprints, diagrams, charts, and maps is encouraged to clarify the specifications and requirements. Specifications should not be drafted to unduly restrict competition. Brand names may be used in technical specifications for the procurement of goods, provided the salient features or properties of the brand are identified. Proposers may be given the opportunity to substitute an alternate product of equal quality or value, based upon the identified salient features or properties. The County's decision to approve or disapprove such alternate product shall be final and binding on the proposer.

7.6.3. Pricing Schedule. Whenever reasonable and appropriate, a firm not-to-exceed price quotation may be requested in the RFP. In other cases, the RFP shall solicit a labor fee schedule for all categories of personnel to be

utilized by the consultant in connection with the project, and a total proposed project budget. The Proposer's completion of the pricing schedule shall constitute both the Proposer's prices and acceptance of all the terms and conditions contained in the RFP documents, unless exceptions thereto are so noted and approved by the County. Purchasing will develop the pricing schedule in coordination with the requesting department. The pricing schedule will seek separate cost quotations for all relevant aspects of the procurement, including, where applicable, unit price, extended price, sales or use taxes, and cost of installation and delivery. In all cases, the pricing schedule will be structured to allow the County to make an objective comparison of all proposals received. Whenever possible, this will be accomplished by requesting a total proposed price.

7.6.4. Insurance Requirements. RFP documents shall include a form outlining the County's minimum insurance requirements for the resultant contract. Consult with Risk Management for assistance in identifying the appropriate insurance requirements and documents.

7.6.5. Advertisement. Purchasing will publish the RFP solicitation electronically. Additional notices or advertisements may be required by grant funding agencies or by law. The solicitation shall state the time and manner for the receiving of proposals and shall describe the goods, services, or scope of work to be performed.

7.6.5.1. As a general rule, a minimum of 30 days should be allowed between the date an RFP is published and the date proposals are due. If exigent or unusual circumstances exist, the time limit may be increased or decreased as determined by the Purchasing Agent; however, decreasing the time between the issuance date and the date proposals are due generally results in lower vendor participation and fewer offers being tendered, reducing opportunities to obtain the best value.

7.6.5.2. County employees, and consultants or contractors under the supervision of County employees, shall refrain from discussing details of the requested goods and/or services with prospective proposers, unless so authorized by Purchasing.

7.6.6. Addenda.

7.6.6.1. All proposer questions should be referred to Purchasing as specified within the RFP solicitation documents. If an answer would likely affect the RFP of other proposers, then all proposers shall be so advised, to prevent any one proposer from obtaining an unfair advantage. Any necessary changes, modifications, or adjustments to specifications, requirements, or quantities shall be authorized and publicized by Purchasing. No private or verbal modifications shall be made.

7.6.6.2. Once the RFP has been electronically published, all changes necessary to correct any errors in the RFP documents, to extend deadlines, or to otherwise revise the RFP documents, shall be accomplished through

the issuance of a written Addendum, authorized and publicized by Purchasing. No private modifications shall be made.

7.6.6.3. All technical information to be included with the RFP or the Addenda shall be supplied by the requesting department or other qualified staff or consultant and shall be reviewed and approved by Purchasing before the RFP is published. Addenda shall identify the RFP number and title, date of issuance, Addendum number, and specific reference to the provisions in the RFP documents being amended and the substance of such amendment.

7.6.6.4. Purchasing shall electronically publish each addendum so that it is available to all firms or persons who have received a copy of the RFP documents, except in the cases of RFPs that require mandatory attendance of a pre-proposal conference, in which case addenda may be issued to only those vendors who attended the pre-proposal conference.

7.6.7. Proposal Submittals. Proposals shall be submitted in writing to Purchasing before the time and date specified in the RFP documents. Proposals shall be submitted as instructed in the RFP. Proposals will be date and time stamped as they are received. Any proposals received after the specified date and time proposals are due will not be accepted or reviewed by Purchasing. Between the specified date and time proposals are due and a decision on the successful proposer, no Proposer shall be permitted to change its proposal except provide additional information as may be requested by the County.

7.6.8. Documents to be Retained. RFP, proposal documents, and contract documents shall be retained on file in Purchasing, until no longer required by the GSA's Records Retention Policy, or by applicable law.

7.6.9. Evaluation Committee.

7.6.9.1. Proposals and financial documents will be reviewed by the Purchasing Agent or authorized designee to determine responsiveness.

7.6.9.2. The County will establish an Evaluation Committee (EC) composed of representatives from the County for the purpose of evaluating the proposals received in response to an RFP. The County may include as part of the Committee qualified representatives from other agencies or entities.

7.6.9.3. The project manager, if any, and other County or government personnel who possess appropriate technical expertise may also be included in the review process.

7.6.9.4. Proposal documentation requirements shall be set forth in the RFP to provide guidance regarding the information considered by the EC. The EC shall be responsible for performing the evaluations of each proposal based on the stated criteria, and in cases where there is a known budget limit provided to proposers, including an evaluation of the proposed budget allocations. In all other cases Purchasing

will evaluate the proposed costs separately from the EC after non-price factors have been considered, using a mathematical weighting formula.

7.7. Evaluation Process.

7.7.1. Initial Proposal Submission. For procurements handled by Purchasing, Purchasing will conduct an initial pass/fail analysis of each proposal submittal package for completeness and responsiveness. This initial pass/fail review may include a review of the proposer's financial information. Upon completion of this analysis, Purchasing will forward the proposals of the passing proposers to the Evaluation Committee (EC).

7.7.2. Evaluation of Qualifications.

7.7.2.1. Each member of the EC will rate the qualification proposals separately unless the proposals are technical in nature, in which case a subject matter expert may be called upon to score that section. The scores of each member of the EC shall then be totaled, and the total scores added and divided by the number of members of the EC to provide a score for each of the proposers. The scores of the EC shall be documented in writing and maintained by the Purchasing Agent.

7.7.2.2. Reference checks may be performed, and proposers may also be required to submit to interviews, provide presentations, allow facility surveys, and other items deemed necessary during the evaluation process. In no case shall the County's discretionary use or disuse of these optional additional evaluation processes be grounds for protest of an award decision.

7.7.2.3. Should the County exercise the option to interview, only those proposers judged by the EC to be the most qualified to perform the work will be requested to make a formal presentation to the County. On the basis of the oral presentation and the written proposal, the evaluators will make a final ranking of potential proposers.

7.7.3. Evaluation of Pricing

7.7.3.1. Price proposals should be submitted in a separate sealed envelope and are not generally considered when evaluating qualifications. Price proposals will remain with Purchasing until the EC has completed the evaluation of the proposals, except in cases where the RFP requires proposers to identify what services will be provided for a County-specified budget and how such funds will be allocated, in which case the EC may evaluate this information.

7.7.3.2. Purchasing may conduct a price analysis to determine whether the compensation terms of the proposals under consideration are fair and reasonable, and may evaluate pricing using a weighted average, with the lowest price assigned 100% of the points possible, except as otherwise set forth in the RFP.

7.7.3.3. Notwithstanding any other provision of law, in the event there are two or more identical lowest or highest bids, as the case may be, submitted to the County for the purchase, sale, or lease of real property, supplies, materials, equipment, services, bonds, or the awarding of any contract, pursuant to a provision requiring competitive bidding, the County may determine by lot which bid shall be accepted. (GC §53064)

7.7.4. Final Ranking. Upon completion of all phases of the evaluation process, Purchasing shall total the scores to rank the proposals and identify the highest-ranking proposers.

7.8. One or No Proposals Received.

7.8.1. In the event that no proposals are received or no responsive proposals are received, then the goods and/or services may be procured by negotiation (without competitive procurement) with a qualified proposer after finding that the compensation to be paid is fair and reasonable. In the event the Purchasing Agent finds 1) that there was a material flaw in the RFP process and 2) that reissuing the RFP would most likely result in an increased interest by qualified proposers, the Purchasing Agent may elect in its sole discretion to re-issue the RFP.

7.9. Negotiations.

7.9.1. Upon Purchasing's authorization, a department, project manager, if any, and County personnel with technical expertise relating to the project, shall negotiate with the highest-ranked proposer(s) in order to establish a precise scope of work, work schedule and completion date, cost of services, and the method and manner of payment. A recommendation for award may be made upon the successful completion of negotiations with respect to the terms, conditions, and technical requirements of the proposed agreement.

7.9.2. In the event that negotiations with the highest-ranked proposer prove unsuccessful, the County shall terminate negotiations with this firm and commence discussions with the next-highest-ranked proposer until an agreement determined to be fair and reasonable to both parties is obtained. Once negotiations have been terminated with a firm, the County may not go back to that firm for additional negotiations – even if the next lower ranked respondent is higher in price.

7.10. Award of Contract.

7.10.1. Under the RFP approach, award of contract is made on a "best value" basis by identifying the best solution for the County's needs, with both price and non-price factors considered. Award need not be made to the lowest-priced proposer.

7.10.2. Upon completion of RFP evaluation and analysis, Purchasing shall notify all proposers in writing of the County's intent to award a contract. The successful proposer must sign the agreement and submit the required Certificates

of Insurance within the time specified in the RFP, or if no such time is specified therein, within the time specified in the notice of intent to award issued by Purchasing.

7.10.3. Proposers shall be afforded the right to appeal the County's selection pursuant to the protest and appeal provisions outlined Section 12 of this Policy Manual.

7.11. Contract Administration. The requesting department shall be responsible for contract administration and implementation. Purchasing will maintain a procurement and contract file and distribute copies of relevant documents to the department upon request of the department. The department shall be responsible for monitoring and reviewing the progress of the work to determine whether contract terms and conditions are being met. Purchasing, with the assistance of County Counsel, will endeavor to resolve any problems concerning the successful proposer's adherence to the terms and conditions of the contract.

7.12. Flexible Application of RFP Process. The RFP process outlined herein summarizes the best practices for RFP solicitations. Depending on the amount involved or the type of goods and/or services being procured, the Purchasing Agent, Capital Projects, or the department of Public Works are authorized to modify the procedures set forth above to adjust to the specific characteristics of the procurement as long as the modified process complies with applicable law and adheres to the primary objective of the competitive procurement process - to foster open and free competition for County purchases and contracts while promoting the integrity of the competitive procurement process and efficiency in County procurements.

8. REQUEST FOR STATEMENT OF QUALIFICATIONS (SOQ)

The Request for Statement of Qualifications (SOQ) process may be used as an alternative to the RFP process for procuring services, with the chief distinction of the SOQ process being that award of contract is made by identifying the most qualified proposer first, before receiving price proposals. See Section 7 of this Policy Manual for details on the RFP process, which is generally applicable to the SOQ process.

8.1. General - Qualifications Based Selection for A&E Services.

8.1.1. GC §4525 states: "Architectural, landscape architectural, engineering, environmental, and land surveying services" (A&E Services) includes those professional services of an architectural, landscape architectural, engineering, environmental, or land surveying nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform."

8.1.2. Notwithstanding any other provision of law, selection of A&E Services shall be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required. (GC §4526).

8.1.3. All A&E Services shall be procured pursuant to a fair, competitive selection process which prohibits governmental agency employees from participating in the selection process when they have a financial or business relationship with any private entity seeking the contract, and the procedure shall require compliance with all laws regarding political contributions, conflicts of interest or unlawful activities (GC §4529.12).

8.2. Process Summary. The SOQ process is similar to the RFP process defined in this Policy Manual, except proposers are ranked solely on qualification, without regard to pricing. Pricing may be requested in the initial solicitation if it is kept separately sealed from the information used to evaluate and rank the proposers. Once the most-qualified proposer is identified, the County may open the selected proposer's pricing and begin negotiations as set forth below.

8.3. Negotiations. Upon Purchasing's authorization, the project manager, if any, and County personnel with technical expertise relating to the project, shall negotiate with the highest-ranked proposer in order to establish a precise scope of work, work schedule and completion date, cost of services, and the method and manner of payment. A recommendation for award may be made upon the successful completion of negotiations with respect to the terms, conditions, and technical requirements of the proposed agreement. In the event that negotiations with the highest-ranked proposer prove unsuccessful, the County shall terminate negotiations with this firm and commence discussions with the next-highest-ranked proposer until an agreement determined to be fair and reasonable to both parties is obtained. Once negotiations have been terminated with a firm, the County may not go back to that firm for additional negotiations – even if the next lower ranked respondent is higher in price.

8.4. Award of Contract. Upon completion of SOQ evaluation and analysis, Purchasing shall notify all proposers in writing of the County's intent to award a contract. The successful proposer must execute the contract and submit the required Certificates of Insurance within the time specified in the SOQ or contract, or if no such time is specified therein, within the time specified in the notice of intent to award issued by Purchasing.

8.5. Form of Contract. Upon successful completion of price negotiations, the County may execute a contract with the successful respondent using County Counsel's approved Professional Design Services Agreement, obtaining Board approval if so required. A Service Purchase Order ("SERPO") should not be issued for architectural or engineering services, for the reason of indemnity protection found only in the formal agreement form.

8.6. Contract Administration. The requesting department shall be responsible for contract administration. Purchasing will maintain a contract file and distribute copies of relevant documents to the department. The department shall be responsible for monitoring and reviewing the progress of the work to determine whether contract terms and conditions are being met. Purchasing, with the assistance of County Counsel, will endeavor to resolve any problems concerning adherence to the terms and conditions of the contract.

9. REQUEST FOR INTEREST (RFI). The competitive Request for Interest (RFI) process is generally used in cases where the County is seeking information in order to better define the scope of services being developed for an upcoming competitive process, such as an RFP, or in cases where the County is seeking to identify potential vendors who might be interested in responding to such an RFP.

9.1. Process. The RFI process is not a procurement process governed by law, but rather is an information-seeking activity. As such, there are no rules governing the solicitation process, though good judgement should be exercised in crafting the written solicitation and efforts should be made to advertise it appropriately to ensure a satisfactory response. RFIs should only be conducted when necessary, as they add to the time required to complete the eventual RFP process. To avoid such delays, the RFI process should be skipped if sufficient Scope of Work information and a ready pool of potential contractors exist to facilitate conducting an RFP.

9.2. RFI Documents. RFI documents may consist of a simple open letter requesting responses be sent to a specified person or location by a specified time and date. Purchasing's documents may be used as a template.

9.3. Evaluation. There are no formal evaluation or award processes, as an RFI seeks only to gather information.

9.4. Negotiations. In cases where no vendors respond to the RFI, and if the County determines that insufficient marketplace competition exists to conduct a competitive process, the County may proceed with negotiating and awarding an agreement with a single vendor, subject to Purchasing Agent's approval. However, departments shall not conduct RFIs to circumvent the competitive RFP process.

10. EXEMPTIONS TO COMPETITIVE PROCUREMENT REQUIREMENTS.

10.1. General. Exemptions and sole source exceptions must be consistent with applicable Laws and Regulations. Absent a statutory requirement, public entities are not bound to engage in competitive procurements (*San Diego SAFE v. Superior Ct.*, (1988) 198 CA 3d 1466, and *Grayden v. Pasadena Redevelopment Agency* (1980) 104 CA 3d 631). Sometimes it is undesirable or impossible to advertise for bids for particular work. In such cases the statutory requirement is deemed not to apply. In *2 Dillon, Municipal Corporations*, 1199, § 802, the law is thus stated: 'It has been held that where competitive proposals work an incongruity and are unavailing as affecting the final result, or where they do not produce any advantage ... or it is practically impossible to obtain what is required and observe such forms, a statute requiring competitive bidding does not apply.' Our courts have approved this doctrine. *Los Angeles G. & E. Corp. v. Los Angeles*, 188 Cal. 307, 205 P. 125; *Miller v. Boyle*, 43 Cal. App. 39, 184 P. 421. (*Los Angeles Dredging Co. v. City of Long Beach* (1930) 210 Cal. 348, 354 [291 P. 839, 842]).

10.2. Generally, competitive procurements over minimum thresholds are required, unless exempted. Exemptions from County-initiated competitive

procurement requirements may be made when the Purchasing Agent determines that at least one of the following exemptions discussed in this Section applies:

- Procurements below approved thresholds, including Public Works of Improvement contracts under \$75,000;
- Micro Purchase;
- Emergency;
- Sole-Source or Single Source;
- Use of a Cooperative Purchasing/Piggyback agreement awarded through a competitive process by others;
- Professional Services (GC §31000);
- No Advantage;
- Categorical Exemption;

10.3. Procurements Below Approved Thresholds.

10.3.1. Goods. For the purchase of goods, the following competitive procurement thresholds apply based on the price per individual item (as distinct from the total contract):

\$1 – \$14,999 (Micro Purchase). Procurement by negotiated contract (no competitive solicitation required).

\$15,000 to \$75,000 (Small Purchase). At least three quotes must be requested.

Above \$75,000 (Large Purchase). Competitive procurement requirement: RFP or Bid process.

10.3.2. Public Works of Improvement Contracts (Uniform Public Construction Cost Accounting Act) and County Code. Public projects of seventy-five-thousand dollars (\$75,000) or less may be performed by the employees of a public agency by force account, by negotiated contract, or by purchase order. (County Code §4.28.10 and PCC §22032). (See Section 6 of this Policy Manual).

10.3.3. Services.

10.3.3.1. Special (Professional) Services (GC §31000). Contracts for special services (a.k.a. Professional Services) are not legally required to be competitively procured as long as the price is justifiable (the price must be fair and reasonable). However, competitive procurement of such services is best practice for all contracts over \$200,000 unless exempted under this Section 10 of the Policy Manual.

10.3.3.2. Independent Contractor Services. Contracts for independent contractor services (other than Professional Services) should be competitively procured where it is estimated that the contract amount will exceed \$75,000, unless exempted under this Section 10 of the Policy Manual.

10.3.3.3. A & E Services. Procurement of A & E services must be through a qualifications-based SOQ process. (See Section 8 of this Policy Manual) (GC §4526, §4527).

10.4. Emergencies.

10.4.1. A competitive procurement or bid process is not required for goods and/or services, including a Public Works of Improvement Project, when immediate action is required to avoid imminent danger to persons or property. An emergency has been defined as “a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.” This includes natural disasters such as floods, fires, and earthquakes. These types of emergencies are exemptions to the bidding process in order to enable agencies to expedite construction and protect public safety. *Marshall v. Pasadena Unified Sch. Dist.*, 119 Cal. App. 4th 1241 (2004). See also, Jean M. Boylan, Barbara R. Gadbois, Shake, Rattle, and Roll, L.A. Law., April 2018, at 16, 21

10.4.2. Emergency procurements must be authorized by the County Purchasing Agent, or if such persons are not immediately available, may be made by any person or official authorized to sign requisitions. All such emergency procurements shall be made by County personnel who have expertise related to the emergency situation, and shall be subsequently approved and confirmed by the Purchasing Agent. If the Purchasing Agent refuses such confirmation, the Board of Supervisors may subsequently approve and confirm such purchase by a four-fifths vote of the entire board. Unless such purchases are so approved and confirmed by either the Purchasing Agent or the Board of Supervisors, the costs of the emergency purchase shall not constitute a legal charge against the County (County Code §2.24.040).

10.4.3. For emergencies which involve a Public Works of Improvement contract, Public Contract Code §22050 applies. In the case of an emergency, a public agency, pursuant to a four-fifths vote of its governing body, may repair or replace a public facility, take any directly related and immediate action required by that emergency, and procure the necessary equipment, services, and supplies for those purposes, without giving notice for bids to let contracts. If the Board orders emergency action, the Board governing body shall review the emergency action at its next regularly scheduled meeting and every 14 days thereafter.

10.4.4. During a natural disaster or other such emergency, all related emergency procurements will be coordinated through the County’s designated Emergency Operations Center. To be eligible for reimbursement by the Federal Emergency Management Association (FEMA), purchases must follow FEMA’s procurement rules and regulations.

10.5. Sole-Source; Single-Source.

10.5.1. In certain circumstances, a sole-source or single-source procurement may be used in lieu of a competitive procurement.

10.5.1.1. A sole-source procurement is one in which only one vendor can supply the commodities, technology and/or perform the services required by the County. Procurement by this method must be documented in the Procurement Record by an explanation of: (i) the unique nature of the requirement; (ii) the basis upon which it was determined that there is only one known vendor able to meet the need, i.e., the steps taken to identify potential competitors; and (iii) the basis upon which the agency determined the cost to be reasonable, i.e., a “fair market price” that could be anticipated had normal competitive conditions existed, and how that conclusion was reached. (Examples of such a determination may include a comparison to product catalogs, published price lists, retail market surveys, records of previous similar purchases, by consulting with other purchasing officials, or by using professional experience.)

10.5.1.2. A single-source procurement is one in which two or more vendors can supply the commodity, technology and/or perform the services required by the County, but the County selects one vendor over the others for reasons such as expertise or previous experience with similar contracts. Circumstances leading an agency to select this method of procurement may include, for example, an agency's need for a specific consultant firm where a number of firms are available to perform the work. In such a case, the agency can demonstrate a rational basis for selecting a single vendor because of specific factors such as past experience with a particular issue, familiarity with specific agency operations, experience with similar projects at other agencies or at other levels of government, demonstrated expertise, or capacity and willingness to respond to the situation. In a single-source procurement, the department must document in the Procurement Record: (i) the circumstances leading to the selection of the vendor, including the alternatives considered; (ii) its rationale for selecting the specific vendor; and (iii) the basis upon which it determined the cost was reasonable, as in the case of a sole-source procurement, and how that conclusion was reached.

10.5.2. A competitive procurement process is not required when the procurement qualifies for sole-source or single source exemption, as justified by the department requesting the goods, services or work, and approved by the Purchasing Agent. A sole-source or single source decision is not permitted merely upon the grounds that such approach is the most convenient, or that the subject product demonstrates technical or administrative superiority, or is preferred by staff.

10.5.3. Acceptable sole-source or single-source justifications include:

- Negotiated or sole-source or single source purchases that have been specifically pre-authorized by the Board of Supervisors.
- After evaluating a number of sources, Purchasing determines that procurement of a basic item or service is available only from a single vendor or from a single manufacturer.

- Competition is precluded because of the existence of patent rights, copyrights, secret processes, control of the basic raw material(s) or similar circumstances, and no equivalent goods and/or services are available.
- The procurement is for parts or components for equipment, and no information or data is available to ensure that the parts or components obtained from another supplier will perform the same function in the equipment; or the parts or components could compromise the safety or reliability of the product, or would void or invalidate a manufacturer's warranty or guarantee.
- The procurement is for services from a provider with unique knowledge, skill, experience, or ability not available from other sources.
- A distributor or service provider has a territorial agreement, an exclusive franchise or operating agreement with the supplier of goods to be purchased or maintained, and no other person or entity may provide, install, service or maintain the goods in the service area. This does not include the purchase of goods where a same or similar good may be purchased and is not otherwise defined as a single-source item.
- The procurement is for goods and/or services where standardization is beneficial for reasons including maintenance, procurement of parts, repair, training, and interoperability.
- The procurement is for goods and/or services where continuity of providers will provide efficiency or critical knowledge, and other providers of the goods and/or services cannot provide similar efficiencies or critical knowledge.
- When so directed or authorized by the Court, the funding source, by applicable law, by grant requirements, or other relevant authority.

10.5.4. The requesting department shall request a sole-source or single-source procurement by completing a written justification for a sole-source or a single-source procurement, which shall be approved by the head of the requesting department or authorized designee, and then sent to Purchasing for approval. The requesting department head, or designee, is not authorized to proceed with sole-source or single-source procurement without the approval of the Purchasing Agent.

10.5.5. Prior to taking action on the proposed sole source or single source procurement, the Purchasing Agent or authorized designee shall verify that the sole-source or single-source procurement meets the requirements of this policy.

10.5.6. Cost Analysis.

10.5.6.1. Unless the reasonableness of the sole-source or single-source vendor's price can be established on the basis of a catalog or market price for similar commercial products sold in substantial quantities to the general

public, or on the basis of prices set by law or regulation, using best practice, a cost analysis should be conducted. A cost analysis is an evaluation of the cost elements that comprise the proposed price to determine whether the vendor is applying sound management and appropriate resources to the procurement and whether the costs are reasonable.

10.5.6.2. Such cost analysis involves the verification of cost data, the evaluation of specific cost elements (including labor hours, quantities, tooling, testing, etc.), and the projection of the cost data to determine its effect on prices.

10.5.6.3. In evaluating whether the price offered is reasonable, consideration shall be given to the necessity for certain costs; the reasonableness of amounts estimated for necessary costs; the basis for allocating overhead costs; allowances for contingencies; and the appropriateness of allocations of particular overhead costs to the contract.

10.6. Cooperative or Piggyback Purchasing.

10.6.1. Procurement may be made through cooperative purchasing where the requirement for competitive procurement (also known as piggyback procurement) has already been met by the actions of another agency. Non-competitive ("negotiated") cooperative agreements of other agencies are not acceptable for use by the County in situations where competitive procurement is required by County policy or by the funding source.

10.6.2. The Purchasing Agent shall have the authority to join with other parties in cooperative purchasing plans, programs, or pricing agreements that the Purchasing Agent determines serve the best interest of the County. The Purchasing Agent is authorized to recommend a cooperative or "piggyback" purchase on an awarded contract for services or equipment, entered into by other governmental agencies for similar goods and/or services.

10.6.3. The Purchasing Agent may also buy directly from a vendor at prices established by a competitive procurement process conducted by another parties and in substantial compliance with the County's Procurement policies, even if the County had not formally joined with that public agency in the cooperative purchase. The Purchasing Agent may also purchase from the United States of America, or any state, municipality, or other public corporation or agency therein without competitive procurement.

10.7. Standardization.

10.7.1. Notwithstanding the general requirement for a competitive procurement process, an exception may be granted by the Purchasing Agent in cases where the County requires standardization to ensure consistency, compatibility, and efficiency in the operation, maintenance, and training of certain systems or equipment. This exception may apply to, but is not limited to, the following:

10.7.1.1. Locks and Key Cards: When a unified security system is necessary for the safety and security of the agency's facilities, standardization of locks and key card systems may be permitted to ensure seamless access control and integration with existing security infrastructure.

10.7.1.2. HVAC Systems and Other Building Systems: To maintain consistent climate control, reduce operational complexity, and facilitate streamlined maintenance and repair, the County may standardize HVAC systems or other building systems across its facilities.

10.7.1.3. Maintenance and Training: Standardization of equipment, tools, and systems may be allowed to ensure uniformity in maintenance procedures and training programs, thereby enhancing operational efficiency and safety.

10.7.1.4. Other Systems: Similar exceptions may be made for other systems or equipment where standardization is deemed essential for operational consistency, interoperability, cost-effectiveness, or compliance with regulatory standards.

10.7.2. Approval for exceptions under this policy must be obtained from the Purchasing Agent, and a written justification detailing the need for standardization and the anticipated benefits must be provided by the requesting department. The decision to grant an exception shall be based on a thorough evaluation of the circumstances and shall be documented.

10.8. No Advantage. The County is not required to perform a competitive process when there is no legal requirement for bidding; no monetary advantage would be gained by requiring bids; any potential savings would be lost by the cost of the competitive bid process; or any other reason at the reasonable discretion of the Purchasing Agent.

10.9. Categorical Exemptions.

The following categories of goods and/or services are exempt from competitive procurement requirements:

- **Utility Services:** The item or service to be procured is from a utility or a direct access provider and qualifies as a single-source.
- **Educational Services:** Procurement of educational services from a not-for-profit organization.
- **Inter-Governmental Agreement (IGA) or Agreement/Memorandum of Understanding (MOU):** IGAs/MOUs between governmental agencies including agreements for trading services in kind; donating or selling surplus property to other governmental agencies or nonprofits; or for specialized services with other governmental agencies or nonprofits that only the

specified agency is capable of providing (such as law enforcement services in a designated jurisdiction).

- **Publications and Subscription Services:** Notices, advertisements, and publication services used to post notices required by law or necessary to support the County operations. Information sources governed by publisher agreement, subscriptions (on-line or print) to newspapers, journals, and other periodicals. Legal research services and publications used for legal research and analysis.
- **Memberships:** Memberships in groups or organizations for which competitive procurement is not feasible.

10.10. Grant Funding. Procurements funded by Federal or State grants may be subject to thresholds different from those approved under this Policy manual. In such cases, the more stringent of such policies shall be followed.

11. CONTRACTS OR AGREEMENTS.

11.1. Form of County Contracts.

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

11.1.2. Contracts must be approved as to form by County Counsel; and approved as to content by the head of the contracting department except for PO's and form agreements previously approved as to form by County Counsel.

11.1.3. Length of Term of Contracts.

11.1.3.1. The length of the contract term (beginning and ending date) may vary depending on the type of contract, but the best practice is to limit contract terms to no more than 5 years with two one-year extensions for a total of 7 years.

11.1.3.2. The County generally seeks to avoid contracts with auto-renewal clauses, also known as "evergreen" contracts. The automatic renewal of such contracts may result in non-compliance with established procurement rules and contract spending limit authority.

11.1.4. Monitoring, Administration, and Evaluation of Contracts

11.1.4.1. Monitoring, administration, and evaluation of County contracts are essential to promoting the most cost-effective use of taxpayer dollars

and County resources and to ensure that the County receives the goods and/or services for which it contracts.

11.1.4.2. The department receiving the goods and/or services is responsible for (a) assigning a County employee to serve as project manager, (b) monitoring and reviewing a project's progress in order to determine whether contract terms and conditions are being met, (c) approving invoices for payment, and (d) reviewing change order requests to determine if they are valid and reasonably priced. The project manager shall also act as the first line of defense in resolving contractor performance issues, working directly with the contractor's on-site supervisor, and when appropriate, escalating communication to higher levels of contractor management and to Purchasing. The project manager shall be responsible to determine when a project or scope of work has been completed satisfactorily, and shall coordinate with Purchasing to process final payments, and retain all documentation relating to the project. Although the method used to monitor, administer, and evaluate a contract will depend on the type of contract, the project manager is required to implement a process that incorporates comprehensive monitoring, administration, and evaluation of contract performance.

11.1.5. Contract Payment Terms. Wherever possible, payment terms should be tied to performance or level of effort, or a fixed amount established through a competitive bid process.

11.1.6. Reimbursements. Due to the County administrative time to properly document and validate reimbursable expenses such as meals, travel costs, mailing costs, hotel costs, printing costs, such reimbursable expenses should be included in the consultant's hourly rate, fixed unit price or firm fixed price. This policy contemplates that, as best practice, proposers will include reimbursable expenses in their proposed rates.

11.1.7. Change Orders or Contract Amendments. A written amendment or change order must be entered into in writing when the project manager deems it necessary that extra work be performed or deleted, or that modifications be made regarding the contract. These written revisions assume that any dispute over the pricing of the contract modification have been resolved. For Public Works of Improvement contracts, there are statutory limits on the monetary amount of the change order, depending on the total value of the contract. See Section 6 of this Policy Manual.

11.1.8. Exercise of Options or Extensions. County contracts for the provision of goods and/or services that have been awarded pursuant to competitive bidding may allow for an optional term, renewal, or extension of the contract term. If the original specifications provided for such an option, the department shall evaluate the performance of the contractor or consultant to determine if said performance has been satisfactory, and whether there are sufficient funds in the approved operating budget for the project to be extended or renewed. If the contractor's or consultant's performance has been satisfactory and there are funds in the approved operating budget to cover the option term, renewal, or extension of the contract term, such extension may be made in accordance with those terms and conditions specified in the original contract documents.

11.1.9. Bonding. The County requires insurance and may require payment and performance bonds bonding from the contractor/vendor/consultant for the County's protection in the event of default, failures to perform, accident, injury, or other liability or loss. The County's Public Works of Improvement contracts over \$25,000 require payment and performance bonds. (See Section 6 of this Policy Manual).

11.1.10. Warranty Repairs. In the event that a department discovers any breakdown, patent or latent defect, or other failure in any item procured that is under warranty, such discovery shall be made known to Purchasing. In consultation with County Counsel and confirmation that the defect or failure is covered by the warranty, contained in the contract or agreement the department shall request warranty service or repairs from the contractor/vendor.

11.2. Fidelity Bonds. In cases where a contractor/vendor/consultant's employees will be performing services involving a high degree of confidentiality and trust with County property or funds, with County facilities, or riding or driving in County vehicles, the County may require the contractor to furnish an employee fidelity bond. Such bonds provide protection for the County in cases of negligence, misconduct, or theft by contractor's employees. The coverage type and amount shall be established by Risk Management.

11.3. Insurance. All contracts for services or construction shall carry, at a minimum, Workers' Compensation, and comprehensive general liability insurance, including coverage for automobile operation. In addition, any contracts for the procurement of supplies, equipment, or materials, where on-site installation, inspection, or delivery activities are incident to the procurement, shall also include these insurance coverages. The specific amounts and types of coverage shall be determined by the CEO-Risk Management Department. County approval of a contractor's insurance policies and coverages shall be a condition precedent to entering into a contract.

11.4. Commencement Dates; Termination Dates.

11.4.1. Each contract should have a clearly established commencement date and termination date. Automatic renewals are strongly discouraged. It is each department's responsibility to closely monitor the commencement date and termination date of contracts and ensure that services or work are not performed after the contract termination date. If a contract has expired or has terminated, and goods and/or services are still being provided to the department after the termination date, the department receiving the goods and/or services must inform the Purchasing Agent and County Counsel, who will make a determination on an appropriate solution. This includes services when POs are utilized.

11.4.2. Purchasing's electronic contract system issues a notice to advise departments whenever a contract is due to expire within 120 days. The department is responsible for necessary and appropriate follow-up, including communicating with Purchasing on matters relating to the contract, including an extension, amendment, a new solicitation or new agreement.

11.4.3. For leases which extend beyond the termination date, it is important to confirm that there is a holdover clause allowing the lease to continue on a month-to-month basis.

11.5. Inadvertent Expiration. It is each department's responsibility to monitor contracts so that goods/services/work are not provided or performed after the contract termination date. However, in the event a contract has inadvertently expired or terminated by its terms but the consultant, contractor or vendor has, in good faith, continued providing or performing the goods/services/work, and it is in the best interest of the County to continue to contract for the goods/services/work, then 1) Board action may be necessary to approve the payment for the goods/services/work provided or performed after the expiration or termination date as determined by County Counsel; and/or 2) Board action may be necessary to ratify the contract with an extended termination date, or to approve a new contract with the contractor, consultant or vendor as determined by County Counsel.

11.6. Retroactive Dates. Retroactive agreements are those where the contract term start date has already passed, or where goods are delivered or services or work are performed, before the contract could be fully executed. It is each department's responsibility to ensure that contracts are fully executed before receiving goods and services, as such "retroactive" agreements circumvent the legal authority of the Purchasing Agent expose the County to significant risks.

Retroactive agreements require Board of Supervisors (BOS) approval, except in emergency situations where immediate Purchasing Agent signature is needed to avoid discontinuation of essential public services or other severe harm to the County, in which case the Purchasing Agent may provide provisional approval. In such emergency situations, the requesting department is still required to report the retroactive agreement to the Board, explaining the circumstances and the urgency that required immediate Purchasing Agent action.

The Purchasing Agent may also authorize agreements up to 30 days in arrears in unusual cases where such action is needed to protect persons (i.e., child protection services) or the County itself (i.e., urgent legal services), where it is not in the protected person's or the County's best interest to publicly disclose such contract details.

11.7. Bridging Purchase Order. Purchasing, at its own discretion, may issue "bridging" POs as means to temporarily cure the following situations:

11.7.1. When a department desires to continue receiving services under an expiring agreement but is unable to fully execute a replacement contract with the vendor old contract expires, the Purchasing Agent may issue a "bridging" Purchase Order to allow continuity of services during the gap in time between the old and replacement contracts. In such cases, the new agreement shall not be retroactive.

11.7.2. If a department needs to temporarily increase the County's financial obligation under a contract, and terminating the contract or taking other action is not in the best interest of the County, the Purchasing Agent may issue a Bridging

Purchase Order for the minimum amount necessary to bridge the gap until Board approval can be obtained if 1) the Bridging Purchase Order is within the Purchasing Agent's Authority and 2) Board Approval of the contract amendment shall be promptly obtained when required. Such circumstances include:

11.7.2.1. The contractor, consultant or vendor performed in good faith to provide goods and/or services to the County and is due compensation.

11.7.2.2. An unanticipated reduction in non-County funding of the contract, but where the department wants to continue providing the goods/services/work.

11.7.3. The cost of the goods/services/work exceeds the original contract amount, the cost increase could not have been anticipated by the department, and it is in the best interest of the County to continue to receive the goods/services/work.

11.7.4. Governmental requirements for regulations changed, or supply issues arise, causing significant and unexpected or unanticipated additional costs to the consultant, contractor or vendor. Unforeseen and uncontrollable cost increases jeopardize the ability of the consultant, contractor or vendor to continue to provide needed services, and these cost increases could not have been anticipated by the Agency/department.

11.8. Types of Contracts or Agreements, General. The County uses a variety of agreements designed for many different applications.

11.9. Purchase Orders.

11.9.1. Purchase Order. Purchase Orders (POs) are the most basic form of contract used by the County, generally for non-complex transactions or small purchases. POs reference a standardized set of Terms and Conditions. POs are not required for certain types of expenses where it may be more practical to procure and pay using alternative means, such as Purchasing Cards or other non-PO payment vehicles. Such expenses include utility payments, conference registration fees, employee training, membership fees/dues, public notices, and subscriptions. Exceptions may be made by the Purchasing Agent or Designee, in coordination with the Auditor-Controller's Office.

11.9.2. Service Purchase Order.

11.9.2.1. Service Purchase Orders (SERPOs) may be used for services with a well-defined scope of work. SERPOs reference one of several standardized sets of Terms and Conditions, selected according to the type of services being procured.

11.9.2.2. For a SERPO for Public Works of Improvement in excess of \$1,000, prevailing wages must be paid. For Public Works of Improvement projects in excess of \$25,000, payment and performance bonds are

required, and a formal written agreement is recommended instead of a SERPO. Projects of \$30,000 or more must also meet DIR's apprenticeship requirements. Contractors must be registered with DIR except as follows: (a) a Public Works of Improvement project of twenty-five-thousand dollars (\$25,000) or less when the project is for construction, alteration, demolition, installation, or repair work or (b) a Public Works of Improvement project of fifteen-thousand dollars (\$15,000) or less when the project is for maintenance work. The County is required to submit a PWC 100 form to the department of Industrial Relations to fulfill the required Public Works of Improvement project award notification as required by Labor Code §§1773.3, 1773.35, and 8 Cal. Code Reg. §16451(a).

11.9.2.3. A SERPO should not be used for Architectural and Engineering (A&E) services, due to the insurance and indemnity coverage required to protect the County's interests. The recommended contract form for A&E services is the Agreement for Professional Design Services.

11.9.3. Blanket Purchase Order. A Blanket Purchase Order (BPO), also known as a standing or open purchase order, is a procurement method that allows departments to make multiple purchases from a single vendor over a specified period (typically one Fiscal Year). BPOs streamline purchasing for recurring needs by pre-establishing vendor agreement terms and pricing while maintaining flexibility for as-needed orders, and are useful for recurring purchases where the quantity or timing of needs is uncertain. Examples of appropriate BPO use include: (a) the purchase of supplies, equipment, or other goods throughout the fiscal year; (b) non-professional services that are routine and/or standardized, such as vehicle lock repairs, wheel alignments, and windshield replacements.

11.9.3.1. BPOs may be used when a department anticipates making multiple purchases from a single vendor during a Fiscal Year, either through scheduled deliveries or on an as-needed basis.

11.9.3.2. Pricing and/or vendor qualifications must be competitively procured, unless otherwise exempt from competitive procurement requirements. Procurement requirements may be met through a competitive procurement process conducted by the County, or via cooperative purchasing agreements that were competitively solicited by other governmental agencies.

11.9.3.3. The Purchasing Agent is authorized to approve a BPO when the total amount is less than \$200,000. Before submitting requisitions to Purchasing for BPOs that exceed \$200,000 in total, regardless of the value of individual purchases being made, Departments must first obtain Board approval authorizing the Purchasing Agent to process them. After Purchasing Agent approval, the requesting department shall monitor the amounts paid under the contract to ensure that the contract limit is not exceeded.

11.9.3.4. BPOs are intended for departmental use only and should not be confused with countywide master agreements administered by GSA Purchasing. BPOs must not be used as a substitute for formal written agreements when such agreements are more appropriate.

11.9.4. Agreement for Independent Contractor Services.

Independent contractor agreements are appropriate for services other than special services or professional services discussed below). Examples of Independent contractor agreements are window washing, janitorial services, and food delivery for seniors. Usually, Independent Contractor Agreements state that the independent contractor must provide general liability insurance, workers compensation insurance and auto liability insurance, but not professional liability insurance.

11.9.5. Agreement for Special Services (aka Professional Services). The County may contract for “special services” (a.k.a. “professional services”) which are defined in GC §31000. The Professional Services Agreement is suitable for specially trained and experienced persons or firms (“consultants”) from a variety of fields such as finance, economics, accounting, legal, medical, therapeutic, administrative, hardware/software systems, technology services, or other matters involving specialized expertise or unique skills. In general, these services also include advice, education, or training for the County (GC §31000). Usually, Professional Services Agreements state that the consultant must provide professional liability insurance, in addition general liability insurance, workers compensation insurance and auto liability insurance.

11.9.6. Agreement for Design Professional Services. Similar to a Professional Services Agreement, the Design Professional Services Agreement is used whenever contracting with specially trained persons providing services in architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms. (GC §4526 and §4527). Selection of Design Professional Services must be qualifications-based. See the Request for Statement of Qualification (SOQ) process discussed in Section 8 of this Policy Manual.

11.10. Agreement for Temporary Help.

11.10.1. The procurement of temporary labor/staffing services must be coordinated through the County’s CEO-HR department to ensure compliance with applicable Laws and Regulations, including County Code Title 3 – Personnel.

11.10.2. The Board of Supervisors may contract with temporary help firms for temporary help to assist county agencies, departments, or offices during any peak load, temporary absence, or emergency other than a labor dispute, provided the board determines that it is in the economic interest of the county to provide such temporary help by contract, rather than employing persons for such purpose. Use of temporary help under this section shall be limited to a period of not to exceed 90 days for any single peak load, temporary absence, or emergency situation. (GC §31000.4).

11.11. Master Agreements.

11.11.1. Master Agreements are established by Purchasing through competitive procurement processes when required, and are generally intended for countywide participation. This is different from agreements established by departments for goods and/or services intended for their own internal use.

11.11.2. Under the Master Agreement, vendors, contractors, or consultants agree to provide goods and/or services at specific prices for specific periods of time, in accordance with the general Scope of Work and Terms and Conditions contained in the agreement. Purchasing estimates County-wide participation under the Master Agreement, and establishes an aggregate Not-To-Exceed dollar limit for the Master Agreement.

11.11.3. Departments may order specific goods, services, or work under the Master Agreement by means of subordinate Project Agreement, Purchase Order (PO), Blanket Purchase Order (BPO), Service Purchase Order (SERPO), or Work Authorization as may be appropriate under the terms of the Master Agreement. Each department shall monitor such departmental activity under the Master Agreement and periodically advise Purchasing relating to the department's anticipated needs for goods, services, and work under the Master Agreement.

11.12. Job Order Contracts. The County may award contracts for repair, remodeling, or other repetitive work to be done according to unit prices. Each contract shall have a maximum contract value up to the state maximum allowable by PCC §20128.5. The job order contract program is managed by GSA Capital Projects.

11.13. Public Works of Improvement Contracts. The Public Works of Improvement contract is used for projects that include "construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds" LC §1720(a)(1). This type of work is subject to many special regulations, and failure to follow specified procedures could expose the County to significant penalties. Departments not well-versed in procuring such work should seek Purchasing's assistance. See Section 6 of this Policy Manual.

11.14. Cooperative Purchasing Agreements or "Piggy-Backing". The Purchasing Agent shall have the authority to join with other public jurisdictions in cooperative purchasing plans, programs, or pricing agreements. The Purchasing Agent is authorized to recommend a cooperative or "piggyback" purchase on an awarded contract for services or equipment, entered into by other governmental agencies through a competitive procurement process for the same or similar personal property or services. The Purchasing Agent may also buy directly from a vendor at prices established by a competitive procurement process conducted by third parties and in substantial compliance with the County's procurement policies, even if the County had not formally joined with that public agency in the cooperative purchase. The Purchasing Agent may also purchase from the United States of America, or any state, municipality, or other public corporation or agency therein.

11.15. Inter-Governmental Agreement Memorandum of Understanding (MOU). The County may approve Inter-Governmental Agreement (IGA) or a Memorandum of Understanding (MOU) between governmental agencies including agreements for trading services in kind; donating or selling surplus property; or for specialized services that only the specified agency is capable of providing (such as law enforcement services in a designated jurisdiction). The County may approve agreements

between internal County departments, between the County and other governmental agencies, or between the County and 501(c)(3) non-profit corporations when such agreements are within the Purchasing Agent's authority.

11.15.1. Vehicle and Equipment Leases. Leases for vehicles and equipment are typically executed on the vendor's forms, after review and approval by County Counsel. Because of the complexities involved in negotiating and drafting lease documents, such agreements are coordinated by Purchasing.

11.15.2. Leases of Real Property. Leases of real property are managed by the GSA-Real Property Manager. The Surplus Land Act (GC §54220 et seq.) may apply if the County is leasing out County-owned property. The appropriate form of the lease of real property must be approved by the GSA-Real Property Manager and County Counsel. For the authority of the Purchasing Agent relating to lease of real property for County use, see Section 2 of this Policy Manual and GC §25350.51.

11.15.3. Grant Agreements. Grant Agreements involve funds provided by a government or other organization (grantor) for specified purposes to an eligible recipient (grantee). Grants are usually conditional upon certain qualifications, for example, use, maintenance of specified standards, and/or a proportional contribution by the grantee or other grantor(s). Purchasing is not involved in administration of grant agreements; however, Purchasing and the department receiving the grant should be involved in any procurement-related activity required by the grant.

11.16. Maintenance of Records. Purchasing will maintain procurement documents, documents submitted to its electronic recordkeeping system, and contracts, amendments, and change orders, except as otherwise required by the contracting department's records retention policy. The department maintains all other documents, including information relating to the administration and implementation of the contract and performance of the work. All records must be maintained in a manner consistent with the Department's record retention policy or as otherwise mandated to be kept longer by the funding source for the procurement or contract or by applicable Laws and Regulations.

12. Vendor Relations. It is essential that a professional and businesslike relationship of mutual trust and confidence exist between the County and its suppliers. The primary responsibility for establishing this relationship for the County rests with the Purchasing Agent. This section is intended to summarize the basic County policies governing vendor relationships, and to furnish information on specific purchasing practices. It is intended to supplement the policies and regulations set forth elsewhere in this Manual.

12.1. General. The following concepts are fundamental to the County's vendor relationships:

12.1.1. If a vendor contacts a department, the vendor should be directed to make their initial contact through Purchasing. The Purchasing Agent, when

appropriate, may include the department in vendor communications. Vendors shall be encouraged to request appointments in advance.

12.1.2. The County shall avoid vendor "back door" selling, which is an attempt by a vendor to get a customer department to specify to Purchasing a specific brand, product, or supplier, to the exclusion of legitimate competition. To promote full and fair procurement practices:

12.1.2.1. Department requests for information from a vendor should be handled by Purchasing. In cases where the required technical detail or preliminary information make it advisable for a Department to handle the request, Purchasing should be sent copies of all correspondence, including any technical detail, preliminary information, proposals or quotations.

12.1.2.2. Product demonstrations and/or samples should be coordinated by the department interested in the procurement. The department provide all information obtained to Purchasing for use in connection with a procurement or a contract.

12.1.2.3. Occasionally, it is to the advantage of the County to require bidders to submit regular production samples of products which the County intends to purchase. For example, samples may be required for new, untried products where workmanship may be a significant factor, or in cases when most of the bidders are expected to be distributors and may offer a wide variety of similar products. County personnel should inform bidders that if they want their samples returned, the Bidders must make arrangements for the return of such goods at the bidder's expense.

12.1.2.4. The County should not make unnecessary or unreasonable demands or requests for goods and/or services which are beyond the scope of a contract or purchase order.

12.1.2.5. County personnel shall not request or expect contractors to perform pre-purchase design, demonstrations, layouts, or presentations at no charge, as such services cannot be considered by Purchasing when making an award.

12.1.2.6. When pre-purchase services are necessary (such as consulting services to assist the County in defining a scope of work), such services shall be procured separately from any purchase of equipment, supplies, or services. Government Code §1097.6(c) provides states that the following language should be included as a "safe harbor" in all contracts for services:

"Contractor/consultant's duties and services under this agreement shall not include preparing or assisting the public entity with any portion of the public entity's preparation of a request for proposals, request for qualifications, or any other solicitation regarding a subsequent or additional contract with the public entity. The public entity entering this agreement shall at all times retain responsibility for public contracting, including with respect to any subsequent phase of this project.

Contractor/consultant's participation in the planning, discussions, or drawing of project plans or specifications shall be limited to conceptual, preliminary, or initial plans or specifications. Contractor/consultant shall cooperate with the public entity to ensure that all bidders for a subsequent contract on any subsequent phase of this project have access to the same information, including all conceptual, preliminary, or initial plans or specifications prepared by contractor pursuant to this agreement."

12.1.2.7. Unless a vendor is under a Purchase Order, Blanket Purchase Order, Service PO, or contract, County departments should not accept offers from vendors for free products, repairs, or services.

12.2. Suspension and Debarment Verification. The County shall not enter into any agreement with a party who has been suspended or debarred from doing business with the government. Before entering into a federally funded agreement, the County must ensure the intended contractor isn't listed among the suspended and debarred individuals and businesses or sanctioned identified by the federal government. Departments are responsible for completing the review to confirm contractors and vendors are not suspended or debarred before entering into an agreement regardless of funding source, and this is especially important when determining eligibility for federally funded agreements.

12.3. The California Contractors License Board maintains a list of debarred contractors at: <https://www.dir.ca.gov/dlse/debar.html>

In addition to performing debarment and suspension checks, the County should include language in its agreement that contains representations that the contractor/vendor/consultant has not been debarred:

"Contractor/vendor/consultant (herein "Contractor") represents and warrants, to the best of its knowledge and belief, that neither Contractor nor any of its Principals (meaning, an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity) is presently debarred, suspended, proposed for debarment, voluntarily excluded, or involuntarily excluded from receiving a contract from any federal, state, or local government or agency, nor does it appear on any federal, state, or local government's Excluded Parties List System. Contractor shall provide immediate written notice to the County if, at any time Contractor learns that this representation was erroneous by reason of changed circumstances. The representations and warranties above are a material representation of fact upon which reliance was placed when entering into this agreement. If it is later determined that Contractor knowingly made a false representation, in addition to other remedies available to the County, the County may terminate this Agreement."

12.4. Bidder, Vendor Lists. It is not practical nor economically feasible for the County to mail or otherwise solicit bids from all business enterprises who have requested to be placed on bidder lists. It remains the responsibility of these business enterprises to learn of procurement opportunities for commodities or services through regularly posted advertisements in local newspapers, trade journals, and through the

County's online procurement opportunity postings. See Section 6 for the trade journal publication requirements for Public Works of Improvement contracts.

12.5. Protests and Appeals. Unless a different policy is contained in the RFP, Invitation for Bids, or other solicitation or contract documents issued by the County, the following protest procedure shall apply. Bidders or proposers wishing to protest or appeal a decision by Purchasing must follow the process identified in the solicitation documents, based on the following. Protests or appeals not submitted in accordance with such procedures will not be reviewed. A challenge to the RFP or bid process and procedures, including evaluation criteria, shall not be proper grounds for an appeal.

12.5.1. Any bid or procurement protest ("Protest") must be submitted in writing to the Stanislaus County Purchasing Agent located at 1010 10th Street, Suite 5400, Modesto, CA 95354, before the earlier of the following dates: 2:00 PM of the fifth business day following issuance of the Notice of Intent to Award or within five (5) business days after the protesting party knows, or should have known, of the occurrence of the action which is protested. The Protest shall be followed by an email to the Purchasing Agent.

12.5.2. Only parties who responded to the County's bid or procurement solicitation (each, a "Respondent") who the County deemed responsive and/or responsible are eligible to submit a Protest. Additionally, on a Public Works of Improvement project, only a Protest from a bidder who a) has submitted a bid and b) will be the "lowest responsible bidder meeting specifications" if the Protest were to succeed, will be considered. A Protest from a Respondent who the County deemed not responsive and/or not responsible will not be considered.

12.5.3. A formal Protest must be in writing signed by the protesting party and shall contain:

12.5.3.1. A specific identification of the statutory or regulatory provision(s) that the action complained of is alleged to have violated;

12.5.3.2. A specific description of each act alleged to have violated the statutory or regulatory provision(s) identified above;

12.5.3.3. A precise statement of the relevant facts;

12.5.3.4. An identification of the issue(s) to be resolved;

12.5.3.5. Argument and authorities in support of the Protest; and

12.5.3.6. Proof that copies of the Protest have been mailed or delivered to all Respondents who submitted bids, proposals or offers for the contract involved. A certification that copies were supplied to all interested parties with a

list of the addresses the Protest was sent to will be accepted as proof of delivery of copies. Names and addresses of such Respondents may be obtained by sending a written request for the information to the Purchasing Agent.

12.5.4. In the event of a timely Protest has been made, and an award has not been made, the County will not proceed further with the solicitation or award of the contract unless a final decision on the Protest is made.

12.5.5. The Purchasing Agent may receive written responses to the Protest from Respondents who submitted bids, proposals or offers for the contract involved and from other interested parties. The protesting party will be given notice of written responses received.

12.5.6. The Purchasing Agent will issue a written decision on the Protest.

12.5.7. The decision of the Purchasing Agent on a Protest may be appealed by the protesting party to the County's Chief Executive Officer ("CEO"). An appeal of the decision of the Purchasing Agent must be written and received by the CEO at 1010 10th Street, Suite 6800, Modesto, CA 95354 no later than ten (10) business days after the date of the Purchasing Agent's decision. A copy of the appeal shall be sent by email to the Purchasing Agent.

12.5.8. If the protested procurement involves state or federal funds, the grant agreement protest procedure may apply.

12.5.9. A copy of the appeal must be mailed or delivered by the appealing party to each Respondent who submitted a bid, proposal or offer for the contract and must contain a certified statement by the appealing party that such copies have been provided.

12.5.10. An appeal review committee comprised of the Chief Executive Officer or designee, and two members of the Board of Supervisors selected by the Chief Executive Officer, shall review and decide the appeal based on the grounds and documentation set forth in the original protest to the Purchasing Agent. Each party shall bear its own costs and expenses involved in the protest and appeal process, including any subsequent litigation. The decision of the appeal review committee shall be final.

12.5.11. Any Protest regarding this procurement must be handled through the processes defined herein. Protests or appeals which are not submitted in accordance with these procedures will not be reviewed or rejected.

12.5.12. Failure to adhere to or attempt to circumvent or influence this process by contacting persons other than the Purchasing Agent, or if on appeal, the Chief Executive Officer, shall result in the termination of the protesting party's Protest or appeal, and the immediate disqualification of the protesting party from consideration of award.

12.6. Consultant, Vendor, Contractor Performance.

12.6.1. Stanislaus County has developed many business relationships with both local and national firms. An occasional delayed shipment is to be expected; however, a consultant or vendor may be barred from doing business with the County if that consultant or vendor materially defaults on delivery of goods and/or services, or whose goods and/or services do not conform to specifications .

12.6.2. A vendor or consultant may be declared "not responsible" if it is (1) slow to respond or provides unsatisfactory services and deliveries; (2) in violation of applicable federal, state, or local laws, ordinances, rules, or regulations; or (3) fails to respond to bid requests or other requests for information. Before declaring a vendor or consultant to be "not responsible," the Purchasing Agent shall make a reasonable effort to give such firm an opportunity to correct the problem. County Counsel shall review and approve any determinations of non-responsibility. A licensed contractor licensed by the California State Contractor's Board is entitled to prior notice and an opportunity to respond before a determination of non-responsibility is made.

13. LEASES.

13.1. Personal and Real Property Leases.

13.1.1. The Purchasing Agent, subject to direction by the Chief Executive Officer, and subject to GC §25350.51 (discussed below), may negotiate and execute in the name of the County all leases of personal property and real property that the County may require (County Code §2.24.030).

13.1.2. Department requests for real property leases shall be initiated through a request to Purchasing, which includes a detailed description of departmental needs, including square footage, interior layout, parking, etc. In developing such a description, departments should consider the following:

- Number of full-time, part-time, seasonal or intern staff anticipated;
- Specialized (non-workstation) spaces, such as conference rooms, waiting rooms, interview rooms, workrooms, etc.;
- Number of visitors expected at any one time (affects space and parking capacity requirements);
- Quantity and type of security requirements;
- Clientele expected, and appropriate neighbors;
- Geographic boundaries for the anticipated function;
- Accessibility to public transportation;

- Business hours and days services will operate, and any other specialized needs; and
- Amount and source of funds proposed for monthly lease obligations and any up-front costs for tenant improvements.

13.1.3. Before leasing from a third-party Landlord, the Purchasing Agent or GSA's Real Property Manager shall determine if any County-owned spaces meet the requesting department's needs; and identify any Tenant Improvements to be completed. If no County-owned space is available or appropriate to satisfy the department's request, the Purchasing Agent or GSA's Real Property Manager shall interface with the department's assigned CEO manager to obtain written consent with the concept of a new lease, communicated to the requesting department. Upon receipt of such written consent, the GSA Real Estate Program Manager shall, with the participation of the requesting department, search for a suitable location, and once found, shall negotiate lease terms using the Proposed New Lease Fact Sheet.

13.1.4. When evaluating and comparing potential premises to be leased, the department involved with the lease shall identify:

- Whether the cost of Tenant Improvements will be paid up front by the County, or up front by the landlord and reimbursed by the County over the initial lease term (generally, not to exceed five years).
- Which party is responsible for maintenance of the Premises; which party is responsible for the replacement of major capital improvements, including roofs or HVAC systems.
- What utility services (water, sewer, electric, telephone, janitorial, maintenance and repairs, etc.) will be paid by which party. If the lease space is "multi-tenant" with other private or public parties, the departments involved shall determine how utility services are calculated, and which party is responsible for billing, collections, payment, and coordination of such utility services. departments shall consult GSA prior to negotiation of janitorial service agreements.
- Parking arrangements and terms, such as whether off-street parking is provided with the lease, or in addition to the lease.
- Cost of the space (price per square foot), and options or extensions of the leased area.
- Term of the agreement, including effective and termination dates, renewal options, and how and when termination shall be effected.

13.2. Letter of Intent. A letter of intent shall not be signed by the department without prior approval from County Counsel, the Chief Executive Office and the Real Property Manager. Any Letter of Intent must be nonbinding and shall be

expressly subject to and conditioned upon the approval of the Purchasing Agent or the Board of Supervisors.

13.3. Purchasing Agent's Authority re: Leases for County Use:

13.3.1. Pursuant to GC §25350.51, the Board of Supervisors delegates to the Purchasing Agent the following authority:

“To lease real property for use by the County or to obtain the use of real property for the County by license for a term not to exceed five years and for a rental not to exceed ten-thousand dollars (\$10,000) per month.

To amend real property leases or licenses for improvements or alterations, or both, with a total cost not to exceed ten-thousand dollars (\$10,000) provided that the amendment does not extend the term of the lease or license and that no more than two amendments, not to exceed ten-thousand dollars (\$10,000) each, are made within a 12-month period.

A notice of intention to consummate the lease or license shall be posted in a public place for five working days prior to consummation of the lease or license. The notice shall describe the property proposed to be leased or licensed, the terms of the lease or license, and the County officer authorized to execute the lease or license.”

In all cases, leases exceeding \$200,000 in aggregate require approval by the Board of Supervisors.

13.3.2. Board of Supervisors' approval is required for leases in excess of the amounts set forth in GC §25350.51.

13.4. Tenant Improvements. Any changes, alterations, modifications to leased premises must be approved by the Landlord, the Purchasing Agent or the Board of Supervisors by written agreement or addendum prior to the commencement of the work. The requesting department shall contact the landlord and obtain an itemized cost estimate of the tenant improvements or shall obtain an estimate from an appropriate design professional or cost estimator. The Purchasing Agent shall review the requested improvements to determine whether such may be made within the limitations of State law and County policy (i.e., sole-source contractor selection; Labor Code and Prevailing Wage requirements; supplement to lease agreement, etc.). The preference is for the landlord to construct tenant improvements when the property is owned by a private party landlord.

13.5. Real Property Leases – County as Landlord. The process for leasing real property owned by the County is detailed in GC §25520 et seq. For leases of real property when the County is the landlord, a competitive proposal process is required (GC §25526 et seq. and County Code §4.24.010 (alternate procedure)):

13.5.1. County Code §4.24.010 sets forth a procedure for leasing County-owned property which is an alternative to the procedure set forth in GC §25526:

“The Board of Supervisors shall either accept the highest proposal for the proposed lease submitted in response to a call for bids posted in at least three public places for not less than fifteen days and published for not less than two weeks in a newspaper of general circulation, or reject all bids. Electronic posting may be concurrently, but not in place of, the physical posting and newspaper publication described herein.

The proposed form of lease shall be and remain on file in the office of the Clerk Recorder for at least fifteen days prior to the opening of bids.

Terms of lease, oral bidding, minimum rental, deposit required, and any other terms of the proposal shall be provided by order of the Board of Supervisors authorizing the call for bids.”

13.5.2. County Code §4.24.020 contains two key exclusions from the alternate procedure set forth in County Code §2.24.010:

“Leases made pursuant to Government Code Section 25536 and leases not exceeding the duration and estimated monthly rental set forth in subdivision (b) of Section 25537 of the Government Code, as hereafter may be amended, are excluded from the prescribed bidding procedures, and may be made by the board of supervisors without competitive bidding.”

13.5.2.1. GC §25536 provides:

“Contracts, acquiring, leasing, or subleasing property pursuant to Section 1261 of the Military and Veterans Code, or, by a four-fifths vote of the board, entering into leases, or concession or managerial contracts involving leasing or subleasing all or any part of county-owned, leased, or managed property devoted to or held for ultimate use for airport, vehicle parking, fairground, beach, park, amusement, recreation, or employee cafeteria purposes, or industrial or commercial development incidental thereto or not inconsistent therewith without compliance with this article.” (GC §25536).

13.5.2.2. GC §265537(b) provides:

“Leases or licenses of a duration not exceeding 10 years and having an estimated monthly rental not exceeding a dollar limit that may be established by ordinance of the board, or, if no ordinance is adopted, not exceeding ten-thousand dollars (\$10,000), may be excluded from the bidding procedure specified in subdivision (a), except that notice shall be given pursuant to Section 6061, posted in the office of the clerk of the board of supervisors, and if the lease or license involves

residential property, notice shall be given to the housing sponsors, as defined by Sections 50074 and 50074.5 of the Health and Safety Code. The notice shall describe the property proposed to be leased or licensed, the terms of the lease or license, the location where offers to lease or license the property will be accepted, the location where leases or licenses will be executed, and any county officer authorized to execute the lease or license. If a lease or license is excluded from the bidding procedure, the actual monthly rental in the executed lease or license may not exceed a dollar limit that may be established by ordinance of the board, or, if no ordinance is adopted, may not exceed ten-thousand dollars (\$10,000), the term of the executed lease or license shall not exceed 10 years, and the lease or license is not renewable.”

13.6. Equipment Leases. Because equipment leases are typically executed on the vendor’s forms, County Counsel review of these forms is important to protect the County’s interests. All such leases shall be executed by the Purchasing Agent except in unusual cases where such authority has been granted by the Board of Supervisors naming another individual to execute a specific agreement. Contact the Auditor/Controller for its policies relating to purchase of fixed assets vs. leasing of equipment or vehicles.

14. SURPLUS PROPERTY. Stanislaus County is committed to the effective and efficient management of its property and resources. To facilitate and encourage the timely disposal of surplus personal and real property such as equipment and furniture, Stanislaus County has adopted the following surplus/salvage policy:

14.1. Real Property -- Surplus Land Act. The County shall abide by the Surplus Land Act (GC §54220 et seq. and Surplus Land Act Guidelines issued by the California Department of Housing and Community Development) in connection with the disposition of surplus real property.

14.2. Salvage of Personal Property.

14.2.1. Salvage activities involve the process of receiving surplus personal property from County departments and processing these items in the most efficient manner possible for internal redistribution, sale, donation, or disposal by other means when appropriate. The purpose of establishing policies and procedures to govern the management and disposition of surplus and salvage personal property is to:

14.2.1.1. Promote Stanislaus County's system for management and disposition of surplus personal property that are no longer of use to the County;

14.2.1.2. Provide a means to transfer County-owned items between County departments or other public agencies;

14.2.1.3. Provide a method to allow County departments to have an opportunity to obtain surplus personal property prior to final disposal;

14.2.1.4. Allow for transfer of surplus personal property to local non-profit organizations or other government agencies;

14.2.1.5. Minimize disposal costs for items that have little or no re-market value;

14.2.1.6. Reduce space used to store surplus personal property, and

14.2.1.7. Promote recycling, reuse, and repurposing of items.

14.2.2. GSA Purchasing is responsible for the sale of surplus personal property turned in for salvage, and will follow these general policies:

14.2.2.1. Except as otherwise approved by the Board of Supervisors, the sale, disposal, or donation (“disposition”) of all surplus/obsolete personal property, regardless of value, is arranged by the General Services Agency (GSA) – Purchasing and Central Services Division, and when appropriate, with the assistance of the GSA Facilities Maintenance and Fleet Services Divisions.

14.2.2.2. Any County department may declare an item to be "surplus" if the item:

- Has reached the end of its useful life cycle.
- Is beyond economical repair or is too expensive to operate.
- Involves outdated technology.
- Is inappropriate for current operations.

14.2.2.3. Excluding items having an asset tag or appearing on the County inventory sheet, items of personal property which are broken, have reached the end of their useful life cycle, are beyond economical repair, or involve outdated technology should not be sent to the Central Services warehouse. These items should be put into a dumpster or disposed of in a manner compliant with environmental regulations and fiscal responsibilities. Examples of such items include fans, broken calculators, and phone cords. When infeasible for a department to dispose of an item, the department should contact the Central Services warehouse for assistance.

14.2.2.4. All items which are asset tagged or appear on the County inventory sheet should be sent to the Central Services warehouse for disposal, along with the Inventory Transfer form provided by Purchasing, which must be completed by the department seeking to dispose of surplus property. An electronic version of this form may be accessed online at the GSA intranet page.

14.2.2.5. Items identified for disposal must be disposed of and may not be retained by any County employee or transferred to a member of the public. Items which are first transferred to Central Services warehouse may be donated or sold to a local non-profit corporation or other public agency; or sold at auction.

14.2.2.6. Salvaged property must be consistent with the Auditor/Controller Capital Assets Inventory Policy. When required by the Capital Asset Inventory Policy, the disposition of any item must be communicated to the Auditor/Controller.

14.3. Policy.

14.3.1. The Purchasing Agent is authorized to sell, trade, trade in, lease, exchange, or otherwise dispose of any personal property belonging to the County which is deemed to be surplus and not required for public use by the County, and which has a value of less than five-thousand dollars (\$5,000) per individual item without prior approval by the Board of Supervisors. The disposition of such surplus property may be made without securing bids or advertising. All proceeds from such sales shall be paid into the county treasury for the use of the county. (County Code §2.24.065, §2.24.070, §20.24.080).

14.3.2. Unless otherwise provided in this section, disposition of personal property exceeding five-thousand dollars (\$5,000) per individual item, either tagged or untagged, the Purchasing Agent must obtain prior approval of the Board of Supervisors. With approval by the Board of Supervisors, notices of sales of surplus personal property shall be posted for not less than five business days preceding the day of sale in the county offices building and in the office of the Purchasing Agent, and in such other public place within the county as the Purchasing Agent may deem advisable. The Purchasing Agent may purchase advertising space and may advertise the proposed sale or other disposition of the personal property in such newspapers, magazines, and other periodicals to publicize the proposed sale or other disposition. Within the limitation of the order of the Board of Supervisors approving the advertising, the Purchasing Agent shall decide upon the amount, nature, makeup, and content of the advertising. All proceeds from such sales shall be paid into the County Treasury for the use of the County. (County Code §2.24.065, §2.24.070, §2.24.080).

14.3.3. GSA Central Services shall periodically prepare a surplus property list identifying materials and equipment still possessing some useful life that could be utilized by other County departments, and make such list available to departments. Department heads shall determine if such material or equipment can be used by their department. Any department may request such material or equipment from GSA Central Services up to the time of the actual final disposition.

14.3.4. Thirty (30) days after circulation of the list to department heads, GSA Central Services will submit a list of surplus materials to the Purchasing Agent and, upon Board of Supervisor's approval for items valued above \$5,000, will proceed with the disposition of the property by one of the following methods:

- Return to manufacturer or supplier for credit;
- Trade-in on new equipment;
- Sell to another public agency or nonprofit at appraised value;
- Donate to another public agency or nonprofit;
- Sale to the public through sealed bids;
- Sell at public auction;
- Sell for scrap value;
- Lease;
- Determine if the property has commercial value, or the estimated cost of its continued care, handling, maintenance, or storage would exceed the proceeds of sale; or
- Otherwise dispose of any personal property in the best interest of the County.

14.4. Salvage Procedure.

14.4.1. Departments are responsible for determining the usefulness of property under their control, and only equipment no longer needed should be sent to salvage.

14.4.2. Departments shall notify the GSA Central Services Division of surplus or obsolete material or equipment according to salvage procedures established by GSA Central Services.

14.4.3. For items valued less than five-thousand dollars (\$5,000) per individual item, the Purchasing Agent may sell, trade, trade in, lease, exchange, or otherwise dispose of the surplus property without prior approval by the Board of Supervisors.

14.4.4. For items valued above five-thousand dollars (\$5,000) per individual item, the Purchasing Agent must obtain prior approval of the Board of Supervisors before proceeding with disposition.

14.5. IT Equipment. Before transferring computers to the GSA warehouse, departments are responsible for coordinating with Information Technology Central (ITC) to ensure any stored data is fully and irrevocably rendered unreadable. This is vital to protect against confidential data and ensures any unlicensed software is not released to others.

14.6. Equipment Purchased with Grant, State, or Federal Funding. Equipment purchased with grant, state, or federal funding, including vehicles, may have specific requirements. Departments should review these special funding programs prior to disposing of any asset purchased with grant funding, and follow the more stringent of requirements identified.

14.7. Sale or Donation of Surplus Property to Nonprofit or Government Agency.

14.7.1. The County may occasionally identify surplus items that could be used by another public agency or by a local non-profit organization. Before donating such items, departments must work with GSA Central Services to determine that no other County departments have use for the item. The California Constitution prohibits gifting public funds or property to private persons or entities unless a public purpose is served, and private entities are benefited only as an incident to the public purpose. (Cal. Const., art. XVI; California Housing Finance Agency v. Elliott (1976) 17 Cal.3d 575, 583.)

14.7.2. Requests from the general public for donation of County surplus property shall be directed to the Chief Executive Office (CEO), identifying the:

- Person making the request
- Organization making the request
- Function of the requesting organization
- Requested items and quantity
- Intended use of the requested items

14.7.3. If the CEO determines the donation or sale to be in the public's best interest, the donating department will verify the status of the receiving public agency or non-profit organization, and in coordination with GSA Central Services and the Chief Executive Office, shall prepare a Board Agenda Item for Board approval, containing the availability, description, and estimated market value of the requested property. Should the Board approve, the property may then be transferred to the Purchasing Agent, who will then transfer the property to the receiving party by following the procedures established by GSA Central Services. (See County Code §2.24.065)

14.8. Transfer from GSA Central Services to a Department. GSA Central Services will maintain a list of equipment available to County departments on the County's internal (intranet) website. Departments may schedule an appointment to view the items at the warehouse and arrange for pick up or delivery at that time, and use the Inventory Transfer form to transfer the item to the new department. It is the receiving department's responsibility to asset tag the item and add it to the County inventory, if applicable. An interactive version of the Inventory Transfer form can be found on the GSA intranet page. (County Code §2.24.090)

14.9. Transfer of Assets between Departments/Divisions.

14.9.1. Assets may be transferred from one County department to another using the GSA Central Services' forms and procedures. Such transfers are shared with the Auditor/Controller to record the asset transfer in the financial system. In this situation, the asset tag is not removed.

14.9.2. For transfers within a department, it is the department's responsibility to coordinate with the Auditor/Controller to ensure asset keys, fund/cost centers, and locations in the County inventory are accurately updated.

14.10. Sale to the Public. Sale of items to the public may be done through auction, bids, or sale directly to the public, in accordance with County Ordinances. All proceeds from such sales shall be paid into the County Treasury for use by the County.

14.11. Disposal of Vehicles. Disposal of Stanislaus County-owned vehicles must be facilitated by GSA's Fleet Services Division, who will work directly with the Purchasing Agent. Prior to disposal of any vehicle, including motor vehicles for on-road use, all-terrain vehicles (ATVs), and electric vehicles, Fleet Services will evaluate the vehicle for usage in other County departments, in accordance with the County's Fleet Policy, which may result in transfer of the asset to another department, without compensation to the originating department. To transfer a County-Owned vehicle to Fleet Services, use the Inventory Transfer form provided by Fleet Services.

15. ENVIRONMENT AND RECYCLING

15.1. General. Stanislaus County encourages innovation and efficiency improvements. By adopting environmentally friendly purchasing practices, the County can reduce its environmental impact, reduce costs and liabilities, and improve environmental quality.

15.2. Policy. This Policy's primary goals are to minimize environmental impacts and promote the purchase of recycled and environmentally preferred products, and will help the County to:

- Protect and conserve natural resources, water, materials, and energy; and
- Increase employee awareness that many used items can serve an additional purpose; and
- Reduce the consumption of space in landfills; and minimize the County's contribution to climate change, pollution, and solid waste disposal; and
- Comply with State requirements as contained in 14 CCR Division 7, Chapter 12, Article 12 (SB 1383 procurement regulations) to purchase Recycled-Content Paper Products and Recycled-Content Printing and Writing Paper.

15.3. SB 1383 Definitions.

15.3.1. "Paper Products" include, but are not limited to, paper janitorial supplies, cartons, wrapping, packaging, file folders, hanging files, corrugated boxes, tissue, and toweling; or as otherwise defined in 14 CCR §18982(a)(51).

15.3.2. "Printing and Writing Papers" include, but are not limited to, copy, xerographic, watermark, cotton fiber, offset, forms, computer printout paper, white woven envelopes, manila envelopes, book paper, note pads, writing tablets, newsprint, and other uncoated writing papers, posters, index cards, calendars, brochures, reports, magazines, and publications; or as otherwise defined in 14 CCR § 18982(a)(54).

15.3.3. "Recordkeeping Designee" means the public employee appointed by the County to track procurement and maintain records of Recovered Organic

Waste Product procurement efforts both by the County and others, if applicable, as required by 14 CCR, Division 7, Chapter 12, Articles 12 and 13.

15.3.4. "Recyclability" means that the Paper Products and Printing and Writing Paper offered or sold to the County are eligible to be labeled with an unqualified recyclable label as defined in 16 Code of Federal Regulations §260.12 (2013).

15.3.5. "Recycled-Content Paper Products and Recycled-Content Printing and Writing Paper" means such products that consist of at least thirty percent (30%), by fiber weight, postconsumer fiber, consistent with the requirements of PCC §§22150 to 22154 and §§ 12200 and 12209 as amended.

15.3.6. "SB 1383" means Senate Bill 1383 of 2016 approved by the Governor on September 19, 2016, which added §§ 39730.5, 39730.6, 39730.7, and 39730.8 to the Health and Safety Code, and added Chapter 13.1 (commencing with §42652) to Part 3 of Division 30 of the Public Resources Code, establishing methane emissions reduction targets in a statewide effort to reduce emissions of short-lived climate pollutants, as amended, supplemented, superseded, and replaced from time to time.

15.3.7. "SB 1383 Regulations" or "SB 1383 Regulatory" means or refers to, for the purposes of this policy, the Short-Lived Climate Pollutants (SLCP): Organic Waste Reductions regulations developed by CalRecycle and adopted in 2020 that created Chapter 12 of 14 CCR, Division 7 and amended portions of regulations of 14 CCR and 27 CCR.

15.3.8. "State" means the State of California.

15.4. Recycled-Content Paper Procurement -- Requirements for County Departments.

15.4.1. If fitness and quality are equal, all County departments shall purchase Paper Products and Printing and Writing Paper, instead of nonrecycled products whenever recycled products are available at the same or a lesser total cost than nonrecycled items. PCC §22150(a)).

15.4.1.1. Printing and writing paper shall consist of at least 30 percent, by fiber weight, postconsumer fiber;

15.4.1.2. Other paper products shall consist of at least 30 percent, by fiber weight, of postconsumer recycled content fiber, except as specified below:

15.4.1.3. Toilet paper shall consist of at least 45 percent, by fiber weight, postconsumer recycled content fiber;

15.4.1.4. Paper towels shall consist of at least 40 percent, by fiber weight, postconsumer recycled content fiber;

15.4.1.5. Facial tissue shall consist of at least 10 percent, by fiber weight, postconsumer recycled content fiber;

15.4.1.6. Toilet seat covers shall consist of at least 20 percent, by fiber weight, postconsumer recycled content fiber;

15.4.1.7. General purpose paper wipers shall consist of at least 40 percent, by fiber weight, postconsumer recycled content fiber;

15.4.1.8. Food serviceware, including but not limited to, napkins, plates, bowls, food trays, takeout boxes, placemats, etc. shall consist of at least 40 percent, by fiber weight, postconsumer recycled content fiber.

15.4.2. The County shall require all business, as defined in PCC §12200, to certify in writing the minimum, if not exact, percentage of postconsumer materials in the products, materials, goods, or supplies, offered or sold. All contract provisions impeding the consideration of recycled products shall be deleted in favor of performance standards. (PCC §22152(a)).

15.4.3. All printing contracts made by the County shall provide that the paper used shall meet the recycled content requirements of PCC §12209 (PCC §22153).

15.4.4. All businesses shall certify in writing to the Purchasing Agent and each department's contracting officer, or his or her representative, the minimum, if not exact, percentage of postconsumer material in the products, materials, goods, or supplies being offered or sold to the County (PCC §22154(a)).

15.4.5. If fitness and quality of Recycled-Content Paper Products and Recycled-Content Printing and Writing Paper are equal to that of non-recycled items, all departments and divisions of County shall:

15.4.5.1. Purchase Recycled-Content Paper Products and Recycled-Content Printing and Writing Paper that consists of at least thirty percent (30%), by fiber weight, postconsumer fiber, whenever available at the same or a lesser total cost than non-recycled items, consistent with the requirements of the Public Contracts Code, PCC §§22150 through 22154 and PCC §§12200 and 12209, as amended.

15.4.5.2. All Paper Products and Printing and Writing Paper shall be eligible to be labeled with an unqualified recyclable label as defined in Title 16 Code of Federal Regulations §260.12.

15.4.5.3. Provide records to the Recordkeeping Designee, on a schedule to be determined by the Recordkeeping Designee, of all Paper Products and Printing and Writing Paper purchases (both recycled-content and non-recycled content, if any is purchased) made by a division or department or employee of the County. Records shall include a copy of the invoice or other documentation of purchase, written certifications as required by law for recycled-content purchases, vendor

name, purchaser name, quantity purchased, date purchased, and recycled content (including products that contain none), and if non-Recycled-Content Paper Products and/or non-Recycled-Content Printing and Writing Paper are provided, include a description of why Recycled-Content Paper Products and/or Recycled-Content Printing and Writing Paper were not provided.

15.4.6. Requirements for Vendors. All vendors that provide Paper Products (including janitorial Paper Products) and Printing and Writing Paper to County shall:

15.4.6.1. Provide Recycled-Content Paper Products and Recycled-Content Printing and Writing Paper that consists of at least thirty percent (30%), by fiber weight, postconsumer fiber, if fitness and quality are equal to that of non-recycled item, and available at the same or a lesser total cost than non-recycled items.

15.4.6.2. Provide Paper Products and Printing and Writing Papers that meet Federal Trade Commission Recyclability standard as defined in Title 16 Code of Federal Regulations §260.12.

15.4.6.3. Certify in writing, under penalty of perjury, the minimum percentage of postconsumer material in the Paper Products and Printing and Writing Paper offered or sold to the County. This certification requirement may be waived if the percentage of postconsumer material in the Paper Products, Printing and Writing Paper, or both can be verified by a product label, catalog, invoice, or a manufacturer or vendor internet website.

15.4.6.4. Certify in writing, under penalty of perjury, that the Paper Products and Printing and Writing Paper offered or sold to the County is eligible to be labeled with an unqualified recyclable label as defined in Title 16 Code of Federal Regulations §260.12.

15.4.6.5. Provide records to the Recordkeeping Designee, on a schedule to be determined by the Recordkeeping Designee, of all Paper Products and Printing and Writing Paper purchased from the vendor (both recycled-content and non-recycled content, if any is purchased) made by a division or department or employee of the County. Records shall include a copy of the invoice or other documentation of purchase, written certifications as required above for recycled-content purchases, purchaser name, quantity purchased, date purchased, and recycled content (including products that contain none), and if non-Recycled-Content Paper Products and/or non- Recycled-Content Printing and Writing Paper are provided, include a description of why Recycled-Content Paper Products and/or Recycled-Content Printing and Writing Paper were not provided.

15.4.6.6. All vendors providing printing services to the County via a printing contract or written agreement, shall use Printing and Writing Paper that consists of at least thirty percent (30%), by fiber weight, postconsumer fiber, or as amended by PCC §12209 (PCC §22153).

15.5. Recordkeeping Responsibilities. The County's Chief Executive Office will select an employee to act as the Recordkeeping Designee, who will be responsible for obtaining records pertaining to Procurement Recycled-Content Paper Products and Recycled-Content Printing and Writing Paper. The Recordkeeping Designee will do the following to track Procurement Recycled-Content Paper Products, and Recycled-Content Printing and Writing Paper:

15.5.1. Collect and collate copies of invoices or receipts (paper or electronic) or other proof of purchase that describe the procurement of Printing and Writing Paper and Paper Products, including the volume and type of all paper purchases; and, copies of certifications and other required verifications from all departments and/or divisions procuring Paper Products and Printing and Writing Paper (whether or not they contain recycled content) and/or from the vendors providing Printing and Writing Paper and Paper Products. These records must be kept as part of County's documentation of its compliance with 14 CCR §18993.3.

15.5.2. Collect, collate, and maintain documentation submitted by the County, Direct Service Providers, and/or vendors, including the information reported to the Recordkeeping Designee.

15.5.3. Compile an annual report on the County's direct procurement of Recycled-Content Paper Products, and Recycled-Content Printing and Writing Paper, consistent with the recordkeeping requirements contained in 14 CCR §18993.4 for Recycled-Content Paper Products and Recycled-Content Printing and Writing Paper procurement. This report shall be made available to the department head of the County's Department of Environmental Resources (DER), who is the responsible entity for compiling the annual report to be submitted to CalRecycle (which will include a description of compliance on many other SB 1383 regulatory requirements) pursuant to 14 CCR Division 7, Chapter 12, Article 13.

16. OTHER POLICIES AND PROCEDURES

16.1. Public Records Act.

16.1.1. In *Michaelis, Montanari & Johnson v. Superior Court* (38 Cal.4th 1065 (Cal. 2006)) the California Supreme Court held that the Public Records Act does not require public agencies to disclose competitive proposals during the proposal, evaluation, or negotiation process. In balancing the public interest in disclosure versus the public interest in nondisclosure under section GC §6255, the Court agreed that there was a "legitimate and substantial" public interest in reviewing the agency's selection of a winning proposal. The Supreme Court held that "public disclosure of such proposals properly may await conclusion of the agency's negotiation process, occurring before the agency's recommendation is finally approved by the awarding authority."

16.1.2. Because the Public Works of Improvement bid processes contemplates a public bid opening, Public Works of Improvement bid information may be disclosed after bid opening.

16.1.3. Other than Public Works of Improvement bids, proposals or bids which are not required to be publicly opened are not subject to public examination a) prior to proposal or bid opening b) during the proposal and evaluation process, or c) during contract negotiation process that follows. The County issuance of the Notice of Intent to Award publicly signals the start of the negotiations process. Only after a contract or agreement is finally approved by the awarding authority (i.e., the Purchasing Agent or Board of Supervisors, or others if so designated by the Board) may the proposals or bid submittals be shared publicly.

16.2. State and Federal Grant Requirements.

16.2.1. The procurement of goods and/or services using state or federal grant funds is often subject to requirements different from those ordinarily employed by the County. An overview of such federal requirements may be found in the specific grant agreement or applicable federal law, including 2 Code of Federal Regulations (CFR) §200.318 - §200.327 (General Procurement Standards).

16.2.2. In order to preserve the County's state and federal grant funding eligibility, in cases where conflict exists between the County's policies of those of the non-County funding source, the more stringent of such rules and practices shall apply.

16.2.2.1. This is important when making emergency procurements in disaster situations for which the County may apply for Federal Emergency Management Agency (FEMA); complying with HUD or Housing and Community Development requirements; state or federal law enforcement grants; or state or federal agricultural grants.

16.2.2.2. Additional processes required for federally-funded procurements include:

- Different dollar thresholds for bidding processes.
- More stringent requirements for "piggyback" purchases. Such purchases are rarely allowed.
- Documented targeting of solicitations to Small/MBE/WBE/DVBE contractors (2 CFR § 200.321).
- Documentation of awards to Small/MBE/WBE/DVBE contractors.
- Inclusion of references to specific federal laws and acts.
- Inclusion of specific language in solicitations and contracts.
- Mandatory procurement of recovered materials (2 CFR § 200.322).
- Encouraged use of federal excess and surplus property in lieu of purchasing new equipment and property, whenever feasible.
- Encouraged use of Value Engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions.
- Development of an internal independent cost estimate before receiving bids or proposals (2 CFR § 200.323(a)).

- Mandatory detailed cost or price analysis for procurements beyond the Federal Simplified Acquisition Threshold (2 CFR § 200.323(a)).
- Profit must be negotiated separately for agreements where no competition exists (2 CFR § 200.323(b)).
- All federally funded procurement and contract records must be made available for funding/awarding agency or pass-through entity review (2 CFR § 200.324).
- When applicable, contracts must contain the applicable provisions described in 2 CFR Part 200 – Contract Provisions for non-Federal Entity Contracts Under Federal Awards (CFR § 200.326, and Appendix II to Part 200).
- When applicable, small/MBE/WBE, DBVE selection process.

16.2.2.3. Processes which may be prohibited in federal or state funded procurements include:

- Geographical (i.e., Local) Vendor Preferences, or otherwise limiting solicitations or competition geographically.
- Negotiated (no-bid) agreements.
- Time & Materials (T&M) agreements without ceiling spending limits or when other types of agreements would be more suitable.
- Cost-plus-percentage-of-cost agreements, under any circumstances (2 CFR § 200.323(d)).
- Brand Name product specifications without identifying product qualities and including “or equal” language.
- Continuing non-bid work under an “emergency” premise after the urgency has past, rather than bidding out the continuing work separately.

Individual federal agencies may impart additional unique requirements beyond those listed above or found in the CFRs. For this reason, it’s important that County departments work with the appropriate funding agencies for such details when planning the procurement process.

16.3. Compliance with Accessibility/ADA Laws. Stanislaus County is a local agency subject to Title II of the Americans with Disabilities Act. Title II requires State and local governments to make their programs and services accessible to persons with disabilities. While many individuals with disabilities are able to take part in various government programs and activities without any accommodations, for many others their disabilities combined with environmental obstacles impose significant barriers to an equal opportunity to participate. The ADA protects the civil rights of people with disabilities against discrimination on the basis of disability. Title II of the ADA outlines the ways in which environmental, communication, and policy barriers must be addressed by Stanislaus County and those who enter into contracts with the County. (American with Disabilities Act of 1990, Title II). Proposers with a disability may receive reasonable accommodation regarding the means of communication and participating in the procurement process. Proposers with a disability should contact Purchasing’s designated representative as identified in the solicitation documents to request reasonable accommodation.

16.4. Electronic Procurement (E-Procurement) and Electronic Signatures.

16.4.1. Unless prohibited under applicable laws or policies (such as certain Public Works of Improvement bids which must be publicly opened), the Purchasing Agent may carry out his or her functions described herein by using electronic procurement processes.

16.4.2. Pursuant to GC §16.5, Stanislaus County Information Technology Central shall be authorized to develop, implement, and facilitate procedures for the use of electronic records, digital signatures, and security procedures for all other purposes, and may authorize methods, means, and standards for secure electronic procurement transactions for non-personnel expenditures of County funds. This includes conducting all or some of the procurement function over the Internet through point, click, buy, and ship Internet technology, as well as conducting more complicated competitive procurement solicitation, submittal, communication, and evaluation processes online. When mentioned throughout this Policy Manual, the term “written” does not preclude the use of an electronic format.

16.4.3. The use of a digital signature shall be at the County’s option, and shall have the same force and effect as the use of a manual signature only if it embodies all of the following attributes:

1. It is unique to the person using it.
2. It is capable of verification.
3. It is under the sole control of the person using it.
4. It is linked to data in such a manner that if the data are changed, the digital signature is invalidated.
5. It conforms to regulations adopted by the Secretary of State.

16.5. Approval as to Form by County Counsel; Approval as to Content by Department. All contracts and agreements (except purchase orders or work authorizations on templates previously approved by County Counsel), shall be “approved as to form” by County Counsel. The department requesting the goods or services should approve all contracts and agreements “as to content.”

17. GLOSSARY OF PROCUREMENT TERMS

The terms defined in this section shall have the meanings set forth below whenever they appear in this Manual.

A/E (ARCHITECTURAL & ENGINEERING) SERVICES: Design professional services that require performance by a registered architect or engineer that are associated with research, planning, development, design construction, alteration, or improvement of a public project as defined in the California Public Contract Code.

ADVERTISE: To make a public announcement or legal notice of a solicitation with the aim of increasing the response and enlarging the field of competition; often required by law or policy.

AGREEMENT: An understanding, usually in writing, between two or more competent parties, under which one party agrees to perform as defined in the agreement and the second party agrees to pay compensation for the performance in accordance with the conditions of the agreement. The terms *Agreement* and *Contract* are frequently used synonymously. Also see *CONTRACT*.

AMENDMENT: 1. An agreed addition to, deletion from, or correction or modification of a document or contract. 2. To revise or change an existing document; a formal revision, improvement, or correction.

AUCTION: A public sale in which property or items are sold to the highest bidder.

AWARD: The acceptance of a bid or proposal; the presentation of a purchase agreement or contract to a bidder or offeror.

BEST PRACTICE: A business process, activity or operation that is considered outstanding, innovative, or exceptionally creative by a recognized peer group. It may be considered as a leading-edge activity that has been successfully adopted or implemented and has brought efficiency and effectiveness to an organization. It may result in improved productivity, quality, reduced costs, and increased customer service.

BID: A solicitation made to potential vendors/contractors requesting costs to provide supplies, equipment, materials, and labor. A bid may be classified as “formal” or “informal”. Also refers to the proposal submitted by a bidder in response to a solicitation. Sometimes the complete set of bid solicitation documents may be referred to as “the Bid”. See also *INVITATION FOR BIDS*.

BID BOND: See *BOND, BID*.

BID, INFORMAL: A competitive bid, price quotation, or proposal process for goods and/or services that is conveyed verbally, by letter, fax, e-mail, or other manner, that does not require a formal sealed bid or proposal, public opening, or other formalities. Used where price is the primary decision factor. This term is also used by the Public Contracting Code to refer to the less-rigorous sealed bidding process applicable to Public Works of Improvement projects valued above \$75,000 but below \$220,000 (PCC §22032(c)).

BID, INVITATION FOR: A competitive sealed bidding process, and complete assembly of related documents (whether attached or by reference) furnished to a prospective bidder for the purpose of bidding.

BID, FORMAL: Broadly refers to sealed bidding and RFP processes in general; however, the Public Contracting Code uses this term specifically for the more rigorous competitive

sealed bid process reserved for Public Works of Improvement projects valued at or above \$220,000 (PCC §22032(c)). See also *FORMAL PROCUREMENT*.

BID OPENING: The official process in which sealed bids are opened, usually in the presence of one or more witnesses, at the time and place specified in the invitation for bid. The amount of each bid is recorded, and bids are made available for public inspection. It may be open to the public. Note: Electronically submitted bids are automatically sealed until the bid date. A bid tabulation or bid summary is provided to all respondents within a reasonable time frame.

BID, SEALED: A competitive procurement process by which bidders respond to an Invitation for Bid (BID) by submitting a sealed price proposal that is only opened on the date and time identified in the solicitation. Award is made to the lowest-priced bidder who is both responsive (conforming with material bid requirements) and responsible (competent and otherwise qualified to perform under any resulting contract).

BIDDER LIST: A listing of names and addresses of vendors from whom bids, proposals or quotations can be solicited. The list is generally retained in a retrievable electronic data base.

BIDDING, COMPETITIVE: The process of inviting and obtaining bids from competing sources in response to advertised competitive specifications, by which an award is made to the lowest-priced "responsive and responsible" bidder meeting the specifications. The process contemplates giving potential bidders a reasonable opportunity to bid, and requires that all bidders be placed on the same plane of quality. Each bidder must bid on the same advertised specifications, terms, and conditions in all the items and parts of a contract. The purpose of competitive bidding is to stimulate competition, prevent favoritism, and secure the best goods and/or services at the lowest practicable price, for the benefit of the agency. Competitive bidding cannot occur where contract specifications, terms, or conditions prevent or unduly restrict competition, favor a particular supplier, or increase the cost of goods and/or services without providing a corresponding benefit to the agency.

BID TABULATION: A summary of all bids received based upon bid evaluation criteria, such as price and other terms, applicable to determining the best value or lowest responsive and responsible bid. It lists each bidder and their applicable bid information.

BLANKET PURCHASE ORDER (BPO): A Blanket Purchase Order (BPO), also known as a standing purchase order, is a procurement method that allows a department to make multiple purchases of goods, supplies and standardized services from a single vendor over a specified period (typically, one Fiscal Year).

BOND, BID: An agreement, accompanied by a monetary commitment which guarantees that the bidder will not withdraw their bid. The Bid Bond may be a bidder's bond, cash, or certified or cashier's check (PCC §20129, §20405). 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.

BOND, PAYMENT: An instrument executed, subsequent to award, by a successful bidder that protects the public entity from loss due to the bidder's inability to pay subcontractors and suppliers. A financial or contractual instrument, issued by a surety, that guarantees that subcontractors will be paid for labor and materials expended on the contract. The instrument must be a surety bond for 100% of total contract price - no alternate payment methods are permitted (CC §3247 and §3248).

BOND, PERFORMANCE: An instrument executed, subsequent to award, by a successful bidder that protects the public entity from loss due to the bidder's inability to complete the contract as agreed. The instrument must be a surety bond for 100% of total contract price - no alternate payment methods are permitted (PCC §20129).

BUYER: The Purchasing Agent or designated Purchasing staff.

CALIFORNIA CODE SECTIONS REFERENCED IN THIS MANUAL:

CC	Civil Code
EC	Elections Code
GC	Government Code
LC	Labor Code
PCC	Public Contract Code
S&H	Streets and Highways Code
H&S	Health and Safety Code

CAN: Permissive (discretionary) form of action.

CHANGE ORDER: An amendment to a Public Works of Improvement contract relating to scope, time, or compensation.

CHIEF EXECUTIVE OFFICER: The County's Chief Executive Officer and his or her duly authorized designees and managers.

COMPETITIVE PROCUREMENT: Any procurement process leveraging competitive market forces through the solicitation of offers, either directly by the County, or by another agency when using Cooperative Agreements.

CONSTRUCTION: The process of utilizing labor to build, alter, repair, improve, maintain, or demolish any structure, building or public improvement. Public Works of Improvement laws apply to construction contracts (See Section 6 of this Policy Manual).

CONSULTING SERVICES: Special Services (aka Professional Services) under GC 31000 of an advisory nature required to support policy development, decision-making, administration, or management of a business or public entity; generally provided by individuals or organizations who possess specific knowledge, technical skills, or unique abilities not usually available in-house or from within the entity.

CONTRACT: A legally binding promise, enforceable by law; an agreement between parties with binding legal and moral force, usually exchanging goods and/or services for

money or other considerations. The terms “contract” and “agreement” are synonymous. The term “contract” includes, but is not limited to, a purchase order, a contract for services, an addendum or change order, a letter agreement, or a memorandum of understanding. A contract may also include leases, revenue generating contracts and other forms of agreements as applicable to the County. Also see *AGREEMENT*.

CONTRACT AWARD: Final agreement on the terms and conditions of a contract between the County and Vendor/Contractor as authorized by the Board of Supervisors or the Purchasing Agent. See also *NOTICE OF INTENT TO AWARD*.

CONTRACT EXTENSION: An action to extend a contract termination date pursuant to a provision in the scope of work and upon written mutual agreement by both parties. Reasons for a contract extension include: an excusable delay, a contractor’s acceptable performance record, unused allocated funding, or agency need for continued service until a new contract is in place. Extension should be based on sound legal advice so as to avoid challenges by other interested contractors. A contract extension is not the same as a contract renewal. See also *CHANGE ORDER* or *AMENDMENT*.

CONTRACT RENEWAL: A renewal clause allows an agreement to continue for a defined period if the existing agreement isn’t renegotiated within a specified time measured from the expiration of the current contract. The term of renewal depends on the specific contract language, but such clauses generally provide that the contract shall be automatically renewed for the same period (or some lesser term) unless either party, at some stipulated and predetermined time (i.e., 60 days before expiration), gives notice to the other of its desire to end the agreement. Automatic renewals are discouraged.

CONTRACTOR: Includes any manufacturer, supplier, vendor, consultant, contractor, or individual doing business under contract with the County.

COOPERATIVE AGREEMENT: A form of purchasing agreement in which the County adopts the pricing and terms of a competitively-procured contract entered into by another entity, often a government entity. Also known as a “piggyback” agreement.

COOPERATIVE PROCUREMENT / COOPERATIVE PURCHASING: The action taken when two or more entities combine their requirements to obtain advantages of volume purchases, including administrative savings and other benefits, or a variety of arrangements whereby two or more public procurement units purchase from the same supplier or multiple suppliers using a single IFB or RFP. Cooperative procurement efforts may also result in the County entering into a contract based on a competitively procured proposal obtained by another public agency (a.k.a. “piggybacking”).

COUNTY: Stanislaus County, a political subdivision of the State of California.

COUNTY EMPLOYEE: A person officially occupying a position with the County. This includes all probationary, permanent, full-time, or part-time employees or extra-help employees and others who are considered “agents” of the County as defined by contract between the individual and the County.

DEBARMENT: To prohibit a contractor, consultant or vendor from bidding or proposing on future solicitations for cause for a certain period of time. A sanction brought against a contractor, consultant, or vendor whereby they may not engage in future procurement actions. To exclude or shut out of future solicitations and contracting opportunities.

DELEGATION OF AUTHORITY: The conferring of authority by someone who has actual authority, to another person, in order to accomplish a task.

DEPARTMENT: Any department or agency of the County, including its duly authorized representative(s).

DIGITAL SIGNATURE: An electronic identifier, created by computer, intended by the party using it to have the same force and effect as the use of a manual signature. Provides the ability to execute a signature electronically via the Internet.

DISADVANTAGED BUSINESS ENTERPRISE (DBE): A for-profit small business concern where socially and economically disadvantaged individuals own at least a 51% interest and also control management and daily business operations. African Americans, Hispanics, Native Americans, Asian-Pacific and Subcontinent Asian Americans, and women are presumed to be socially and economically disadvantaged. Other individuals may also qualify as socially and economically disadvantaged on a case-by-case basis.

DISADVANTAGED INDIVIDUALS: In federally-funded procurements, bidders may be eligible if they are a member of a group of persons the funding agency considers as disadvantaged, which may include women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian-Pacific Americans, or other minorities found to be disadvantaged by the U.S. Small Business Administration (SBA). Persons who are not members of one of the above groups and own and control their business may also be eligible if they establish their "social" and "economic" disadvantage. People with disabilities have disproportionately low incomes and high rates of unemployment, and therefore may also be considered socially and economically disadvantaged. A determination of whether an individual with a disability meets DBE eligibility criteria is made on a case-by-case basis by the funding agency.

DISPOSITION: Transferring, trading-in, selling, recycling, destroying, or otherwise discarding of items that are excess property, surplus property, or scrap.

EQUIPMENT: Major items such as tools, equipment, furnishings, and fixtures that are not expendable except through depreciation or wear and tear and which, although they may be fixed or positioned in prescribed places, do not lose their identity, or become integral parts of other items or installations.

E-PROCUREMENT (Electronic Procurement): Conducting all or some of the procurement function over the Internet.

EVALUATION COMMITTEE (EC): The individuals appointed to evaluate proposals submitted in connection with an RFP process.

FORMAL BID: (See BID, FORMAL)

FORMAL PROCUREMENT: A structured, written procedure to solicit bids, proposals, or statement of qualifications, requiring a written document officially noticed to the public, and distributed as widely as possible with specific instructions regarding due date and format for written responses; may include an evaluation and selection process.

GOODS: Any and all consumable supplies, materials, equipment and tangible property acquired by the County other than services or real property. Also see *PERSONAL PROPERTY*. While goods in a public agency context are generally tangible items, the County may also deal with intangible goods, such as digital services or access to information. The line is sometimes blurred between what is considered a "good" versus a "service," but the defining characteristic is typically whether or not the item is tangible and transferable.

GRANT: A transfer of federal or state government funds to state or local governments to support or stimulate programs authorized by federal or state laws, and to accomplish objectives that are locally defined and managed under a broad federal or state program.

INFORMAL BIDS (See BID, INFORMAL):

INFORMATION TECHNOLOGY (IT): An all-encompassing term that refers to the devices used for creating, storing, using, or exchanging information, and to the design and practical application of the devices themselves.

INVITATION FOR BID (IFB): Refers to both the process and the complete collection of documents used to solicit competitive or multi-step sealed bids. A formal solicitation method where price is the determining factor after it has been determined the bidder offer meets the minimum specifications of the solicitation and the bid is both responsive and responsible.

LAWS AND REGULATIONS: All applicable Federal, State, and local laws, regulations, ordinances, resolutions, and policies adopted by the Board.

LEASE: A contract by which one party (lessee) enters into a contract with a second party (lessor) for possession and use of an asset (property or equipment) for a specified period of time at a predetermined cost. The benefits of leasing are: Obsolescence can be minimized or eliminated; Avoidance of large capital outlays; Maintenance problems may be reduced; The Lessee's working capital is not consumed and may be utilized for other projects.

LEASE-PURCHASE AGREEMENT: A lease in which the lease payments are applied, in whole or in part, as installment payments for equity or ownership upon completion of the agreement.

LEASE RATE: The periodic rental payment to a lessor for the use of assets. (Alternative definition: The implicit interest rate in minimum lease payments.)

LEGAL NOTICE: A public notice required by law, ordinance, or executive order. Generally placed in a newspaper of general circulation or may be posted on a website, magazine, or other media, depending on the specific legal requirements.

LESSEE: The user of equipment or property being leased. In the context of real property, the party which has the exclusive right to occupy real property pursuant to the terms of a lease.

LESSOR: The party to a lease agreement who has legal or tax title to the equipment or property, grants the lessee the right to use the equipment or property for the lease term, and is entitled to receive the rental payments.

LOWEST-PRICED RESPONSIVE AND RESPONSIBLE BIDDER: The bidder who fully complied with all of the bid requirements and whose past performance, reputation, and financial capability is deemed acceptable, and who has offered the most advantageous pricing or cost benefit, based on the criteria stipulated in the bid documents.

MAINTENANCE: The upkeep of property that doesn't add to its permanent value appreciably, but instead keeps it in an efficient operating condition.

MATERIAL: A raw or partially processed substance from which something is made or can be made, such as building materials, metals, paper, plastic, etc.

MAY: Permissive (discretionary) form of action.

MULTIPLE AWARD CONTRACTS: Contracts awarded to more than one supplier for comparable supplies and services. Awards are made for the same generic types of items at various prices.

MULTI-YEAR CONTRACT: A procurement contract that extends for longer than one year.

MUST: Imperative (non-discretionary) form of action.

NOTICE OF INTENT TO AWARD: Final agreement on the terms and conditions of a contract between the County and Vendor/Contractor as authorized by the Board of Supervisors or the Purchasing Agent. See also *CONTRACT AWARD*.

OPTION TO RENEW: A contract provision that allows a party to reinstate the contract for an additional term, beyond that stated in the original contract, in accordance with contract terms.

PAYMENT BOND: See, *BOND, PAYMENT*.

PERFORMANCE BOND: See *BOND, PERFORMANCE*.

PERSONAL PROPERTY: Every kind of property that is not real property is "personal property." (CC §663). Personal property, also referred to as "movable" property, is any property that is not affixed to land and can be moved from one location to another. It

includes tangible items like goods, supplies, tools, equipment, furniture, or vehicles. The defining characteristic of personal property is its mobility and non-permanent nature in relation to a location. *See also, GOODS and compare to REAL PROPERTY.*

PIGGYBACK AGREEMENT: *See COOPERATIVE PROCUREMENT.*

PREVAILING WAGE RATE: The mandatory wage rate, including fringe benefits, paid to workers on Public Works of Improvement projects above \$1,000 in a geographic area for the identified type of work as established by the California Department of Industrial Relations (DIR).

PROCUREMENT: Purchasing, renting, leasing, or otherwise acquiring any materials, equipment, supplies, services, or construction. Also included are all activities related to obtaining the above items, such as functions that pertain to the acquisition, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration. Also includes the combined functions of purchasing, inventory control, traffic and transportation, receiving, inspection, storekeeping, salvage, and disposal operations.

PROCUREMENT CARD / PURCHASING CARD (P-CARD): A payment method whereby internal customers (requisitioners) are empowered to deal directly with suppliers for purchases using a credit card issued by a bank or major credit card provider. Generally, a pre-established credit limit is established for each card issued. The Purchasing Agent must approve credit limit increases and GSA-Purchasing is involved with reviewing and updating P-Card policies; however, the Auditor Controller's Office manages the P-Card program for the County of Stanislaus.

PROFESSIONAL SERVICES: *See SERVICES, SPECIAL.*

PROPOSAL: The assembly of documents provided by a contractor in response to a Request for Proposal. This will minimally include a discussion of the task or product, the intent of the contractor to provide the task or product, and the pricing involved.

PROTEST: A written objection by a bidder or potential bidder to a solicitation or award of a contract, with the intention of receiving a remedial result.

PUBLIC BID OPENING: The process of opening and reading bids at the time and place specified in the solicitation and in the presence of anyone who wishes to attend. Electronic bid submittals are sealed until the deadline for submitting bids. In lieu of a public opening, bids are tabulated into a summary and electronically distributed to bidders and publicly made available on the County's website for transparency.

PUBLIC NOTICE: An announcement made by a public agency concerning a solicitation or other information of general public interest. Public notices are usually placed on a website and in a newspaper of general circulation or circular, magazine, or other vehicle of general publication.

PUBLIC WORKS OF IMPROVEMENT: Construction, reconstruction, erection, alteration, renovation, demolition, maintenance, and repair work paid for in whole or in part out of public funds. May include pre-construction activities such as inspection and land surveying (Labor Code §§1720-1743).

PURCHASE: All forms of acquisitions of supplies, materials, equipment, and services, including rental, lease, or lease purchase.

PURCHASE ORDER (PO): A written document issued by Purchasing to a contractor stating all terms and conditions of the proposed transaction, or referring to such terms and conditions as may exist in an accompanying contract. A PO in and of itself is a legal and binding contract.

PURCHASE REQUISITION (PR): A document created by a requestor authorizing the commencement of a purchasing transaction. PRs include a description of the need and other information relative to the transaction.

PURCHASING AGENT: The Office of the Purchasing Agent of Stanislaus County, as established by Stanislaus County Ordinance §2.247.010, and the official appointed to such office to be in charge of procurement, who is authorized to enter into contracts and is responsible for oversight of all associated procurement programs, and his/her duly authorized designees.

QUOTE: A price proposal for goods and/or services. See also REQUEST FOR QUOTATION.

REAL PROPERTY: Real property refers to land and things affixed to land, such as buildings. (Civil Code §658.)

REGULATION: A statement by a governmental body to implement, interpret, or prescribe law or policy, or to describe organization, procedure, or practice, often in accordance with an administrative procedures act.

REQUEST FOR INFORMATION, or REQUEST FOR INTEREST (RFI): 1) The RFI process is generally used in cases where the County is seeking a) information in order to better define the scope of services being developed for an upcoming competitive process, such as an RFP, or b) in cases where the County is seeking to identify potential vendors who might be interested in responding to such an RFP. It is a non-binding method whereby a jurisdiction publishes via newspaper, internet, or direct mail, or email its need for input from interested parties for an upcoming solicitation. Generally, price or cost is not requested. Feedback may include best practices, industry standards, technology issues, etc. 2) A Request for Information is also a process used in construction to request clarification about documents, drawings, specifications, or other project conditions. In this context, RFIs are used to resolve information gaps, eliminate ambiguities, and capture and share specific decisions during the course of the project.

REQUEST FOR PROPOSAL (RFP): A competitive procurement process used where non-price factors weigh heavily. Also refers to the complete assembly of related

solicitation documents issued by the County to prospective contractors for the purpose of presenting a proposal.

REQUEST FOR QUOTATION (RFQ): An informal competitive procurement process used for goods and/or services where there is a well-defined need and price is the primary decision factor. Also refers to the complete assembly of related solicitation documents issued by the County to prospective contractors for the purpose of presenting a price proposal. Generally used for small orders. Evaluation and recommendation for award should be based on the quotation that best meets price, quality, delivery, service, past performance, and reliability.

REQUEST FOR STATEMENT OF QUALIFICATIONS (RFSOQ): A formalized competitive procurement process used whenever contracting with specially trained persons providing services in architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms. (GC §4526 and §4527). Selection of Design Professional Services must be qualifications-based. See the Request for Statement of Qualification (SOQ) process discussed in Article 8 of this Policy Manual.

REQUISITIONER: The specific individual in a County department who initiates a Requisition. It may also refer to the department represented by the specific individual.

RESPONSIBLE BIDDER: A vendor, business entity or individual who is fully capable to meet all of the requirements of the solicitation and subsequent contract. Must possess the full capability, including financial and technical, to perform as contractually required.

RESPONSIVE BIDDER: A vendor, business entity or individual who met all of the requirements of the solicitation with their bid proposal.

SCOPE OF SERVICES: Written contractual language describing the work a contractor shall perform, usually including such things as a narrative, drawings, tables, timelines, goals, and deliverables. Implemented at the time of contract negotiation, it is typically based on the scope of work from the competitive solicitation that led to the resultant contract. *See also SCOPE OF WORK.*

SCOPE OF WORK: A detailed, written description of the requirements for a project, including plans and specifications for a Public Works of Improvement project. It is developed at the beginning of the procurement cycle, as a written description of the County's needs and desired outcomes for the procurement, and becomes the basis for any resulting solicitation and contract. It defines what will be done, how, by whom, and cost, and may include such things as a narrative, plans, specifications, drawings, tables, timelines, goals, and deliverables. *See also SCOPE OF SERVICES.*

SEALED BID: *See BID, SEALED.*

SERVICE PURCHASE ORDER (SER-PO): A specialized type of Purchase Order issued for services.

SERVICES: The furnishing of labor, time, or effort by a contractor which normally does not involve the delivery of a specific end product other than reports. Services are generally performed by independent contractors for the County. Examples include electric power, gas, telephone, guard service, and garbage services; rental of equipment or machinery (with or without operator); towel, uniform, window washing and cleaning services; construction, remodeling, or repair services; and all other types of agreements under which the contractor or consultant provides services required by the County. Note that separate forms of Agreement are used for independent contractors, professional services, construction contracts, and design professional services.

SERVICES, PROFESSIONAL: See *SERVICES, SPECIAL*.

SERVICES, SPECIAL: Work or services, inclusive of the services, advice, education, and training enumerated in GC section 31000, and exclusive of Public Works of Improvement under the Public Contract Code. *SPECIAL SERVICES* are also known as “*Professional Services*”.

SERVICE CONTRACT: An agreement calling for an independent contractor’s or consultant’s time and effort, including the furnishing of labor, time, or effort by a vendor, which may involve to a lesser degree, the delivery or supply of products.

SHALL: Imperative (non-discretionary) form of action.

SINGLE SOURCE: A procurement decision whereby purchases are directed to one source because of standardization, warranty, or other factors, even though other competitive sources may be available. A single-source procurement is one in which two or more vendors can supply the commodity, technology and/or perform the services required by the County, but the County selects one vendor over the others for reasons such as expertise or previous experience with similar contracts. Circumstances leading an agency to select this method of procurement may include, for example, an agency's need for a specific consultant firm where a number of firms are available to perform the work. In such a case, the agency can demonstrate a rational basis for selecting a single vendor because of specific factors such as past experience with a particular issue, familiarity with specific agency operations, experience with similar projects at other agencies or at other levels of government, demonstrated expertise, or capacity and willingness to respond to the situation. See *also SOLE SOURCE*.

SOLE SOURCE: A situation where only one manufacturer, distributor, supplier, or service provider can provide the required goods and/or services, resulting in the selection of that one particular supplier to the exclusion of all others. This decision may be based on lack of competition, proprietary technology, copyright, or a supplier’s unique capability. Requires a completed Sole Source Justification form. See *also SINGLE SOURCE*.

SOLICITATION: An invitation for bids, a request for proposals, request for qualifications, telephone calls, or any document used to obtain bids or proposals for the purpose of entering into a contract.

SOURCING: The identification and selection of the supplier whose costs, qualities, technologies, timeliness, dependability, and service best meet the organization's needs.

SPECIAL SERVICES: See *SERVICES, SPECIAL*.

SPECIFICATIONS: A precise description of the physical or functional characteristics of a product, good or construction item; a description of goods and/or services; a description of what the purchaser seeks to buy and what a bidder must be responsive to in order to be considered for award of a contract. Specifications generally fall under the following categories: design, performance, combination (design and performance), brand name or approved equal, qualified product lists and samples.

STANDARDIZATION: The adoption of a single product or group of products to be used by different organizations or all parts of one organization.

STATEMENT OF QUALIFICATIONS (SOQ): A proposer's response provided to the County's competitive solicitation request. May also be used to collectively refer to the complete assembly of related solicitation documents (whether attached or by reference) issued by the County to prospective contractors for the purpose of presenting a proposal. See also REQUEST FOR STATEMENT OF QUALIFICATIONS (RF-SOQ).

SUPPLIES - Those products, often of a minor nature, which are used outright, and which are generally consumed through use.

SURPLUS PERSONAL PROPERTY: 1. Overstocked quantity of goods that exceeds the County's needs. The overstocked goods may be returned to the vendor, sold at auction or disposed of in a method acceptable to the entity. 2. Personal property or materials that are obsolete or no longer needed by the agency and are designated for disposal.

SURPLUS REAL PROPERTY. "Surplus land" means land owned in fee simple for which a local agency's governing body takes formal action at a regular public meeting declaring land to be surplus and not necessary for a local agency's use. Land must be declared either "surplus" or "exempt surplus" as supported by written findings before a local agency may take any action to dispose of it consistent with an agency's policies or procedures. A local agency, on an annual basis, may declare multiple parcels as "surplus" or "exempt surplus." (See § 102 of the Surplus Land Act Guidelines).

SUSPENSION: The temporary removal of a firm's name from bid lists or disqualification of that firm from doing business with the County for a specified period of time. SEE ALSO DEBARMENT.

TERM CONTRACT: A contract in which a source of supply is established for a specified period of time.

USER: The County department which requests ultimately and/or utilizes a product or service.

VALUE ENGINEERING: A systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lowest cost. Typically required in larger federally funded construction projects.

VENDOR: Any manufacturer, supplier, vendor, contractor, or individual doing business by contract with the County

WAIVER OF BIDS: A process, usually statutory, whereby a government purchasing office may procure items without formal bidding procedures because of unique circumstances related to that particular action. For example, bids are waived for emergency purchases due to a threat to the public safety.

WILL: Imperative (non-discretionary) form of action.

WORK: The work contemplated under a Public Works of Improvement solicitation or contract.

END OF PROCUREMENT AND SALVAGE POLICY