



Policy Type: Board

Category: Procurement

Policy Name: Contracting Authority - Board Policy 5.3

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5.3 CONTRACTING AUTHORITY

5.3.1 Overview

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

5.3.2 Policy

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

5.3.3 Background

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

5.3.4 Purpose

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



5.3.5 Application of the Policy

5.3.5.1 Authority of the Board

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

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

Board Contracts

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



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

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

- (1) An unanticipated reduction in non-County funding of the contract.
- (2) The level/volume of the contractor's services exceeds original projections to the extent that the original contract award is insufficient to compensate the contractor for services provided, and this increase in level or volume could not have been anticipated by the Agency/Department.
- (3) Governmental requirements for regulations changed, causing additional costs to the contractor.
- (4) A reallocation of funds from one contractor to another will result in an improved ability to provide desired service levels.
- (5) Unforeseen and uncontrollable cost increases jeopardize the ability of the contractor to continue to provide needed services, and these cost increases could not have been anticipated by the Agency/Department.



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

No-Cost Agreements

All no-cost agreements, including but not limited to no-cost Memorandum of Understanding (MOUs) and no-cost intergovernmental agreements, and any amendments thereto may be approved by the County Executive, or designee, following approval by County Counsel as to form and legality. However, if the no-cost agreement or any amendments thereto expressly require the signature of the Board of Supervisors, the no-cost agreement shall be presented to the Board of Supervisors for review and approval following approval by County Counsel as to form and legality.

5.3.5.2 Authority of Director of Procurement

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



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

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

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

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

- (1) Enter into, renew, amend, terminate and/or take any and all necessary action related to the purchase, lease, or license of supplies, materials, equipment, software, or other personal property required by any County Agency/Department, or any other public agency contracting with the County, including supplies, materials or equipment required for the construction or repair of County roads and bridges. The authority to enter into click wrap, click- through, shrink-wrap license agreements for custom off the-shelf software and license agreements for open source software or freeware is covered under this delegation.
- (2) Enter into, renew, amend, terminate and/or take any and all necessary action related to contracts for Non-Professional Services where the cumulative value of each contract, including any amendments, does not exceed \$200,000 per scope of services, per vendor, per fiscal year.



- (3) Enter into, renew, amend, terminate and/or take any and all necessary action related to 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.
- (4) Enter into, renew, amend, terminate and/or take any and all necessary action related to contracts for services (for example, installation, project management, implementation, technical consultation, maintenance or system design) related to a current or past technology acquisition made by the Director of Procurement, provided the total dollar value, including any amendments or options, does not exceed \$500,000 per fiscal year, per contract, following review by County Counsel as to form and legality.
- (5) Award contracts for public projects up to the maximum dollar amount(s) set forth in the Public Contract Code.
- (6) Purchase all official badges and necessary identifying equipment for detectives and investigators of the Office of the District Attorney, for Deputy Sheriffs, for the County's motorcycle officers and motor police, and all other insignia of other County law enforcement officers that may be necessary in the performance of their duties.
- (7) Dispose of County surplus personal property by selling, leasing or using other forms of disposal.
- (8) Enter into, renew, amend, terminate and/or take any and all necessary action related to emergency contracts.
- (9) Enter into, renew, amend, terminate and/or take any and all necessary action related to Non-Disclosure Agreements (NDAs) on behalf of all Agencies/Departments, following review and approval by County Counsel as to form and legality.



- (10) Enter into, renew, amend, terminate and/or take any and all necessary action related to revenue contracts and intergovernmental agreements, provided that the maximum contract value for each such contract, including any amendments, does not exceed \$300,000.

5.3.5.3 Delegated Authority to Agencies/Departments

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

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



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

5.3.6 Applicable Legal Authority

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

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

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

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

Uniform Public Construction Cost Accounting Act

Public Contract Code Sections 20101; 20122; 22032

Related Policies

None.

Related Forms and Information

- Memorandum re: Countywide Contracting Updates - [\[url\]/sites/policies/FormsrelatedtoPolicies/Countywide-Contracting-Updates-20216.pdf](#)
- Memorandum re: Phased Elimination of Dependent Contractors - [\[url\]/sites/policies/FormsrelatedtoPolicies/Memo-Phased-Elimination-of-Dependent-Contractors.pdf](#)



History

Date	Changes Made
5/7/2019	Policy Amended. View legislative file.
11/17/2015	Policy Amended. View legislative file.
3/19/2014	Policy Uploaded. (Kyle Larson)