



**Policy Type:** Board

**Category:** Procurement

**Policy Name:** County Contracting Activities - Board Policy 5.4

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## **5.4 COUNTY CONTRACTING ACTIVITIES**

### **5.4.1 Overview**

This section provides an overview of the County's contracting activities and sets forth the policy requirements for contracting activities in the County.

### **5.4.2 Policy**

It is the policy of the Board that Agencies/Departments conduct their contracting activities in conformance with the County's specific requirements for such activities.

### **5.4.3 Background**

The County contracts with individuals, private for-profit firms and corporations, private non-profit organizations, and other public agencies for various products and services. In this Chapter of the Board Policy Manual, these entities may be referred to as contractors, vendors, or suppliers.



#### **5.4.4 Purpose**

The purpose of Section 5.4 is to establish a policy that describes the requirements for contracting activities in the County.

#### **5.4.5 Application of the Policy**

##### **5.4.5.1 Definitions**

###### **(A) County Contract**

A contract is an agreement between the County and a non-County entity or individual that contains a promise or set of promises or the mutual obligations of the parties. Agencies/Departments, however, cannot contract with each other. Although Agencies/Departments may enter into intra-agency agreements and letter agreements describing arrangements reached between the departments, such intra-County documents are not contracts enforceable by an Agency/Department against another.

A document need not be titled "contract" or "agreement" to be considered a contract. Examples of contracts include, but are not limited to, a legally-binding MOU with a non-County entity, an amendment to a contract, a field purchase order, and Non-Disclosure Agreements. A document can be considered a contract even if there is no exchange of money.

###### **(B) Grants**

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).



(C) Goods and Related Services

Goods and Related Services refer to the goods, materials, software, equipment, and related services (such as delivery, installation, maintenance, consulting and warranty services) procured by the County, such as furniture and office supplies.

(D) Professional Services

Professional Services are any technical or consultant services that provide support to and facilitate department operations and the governmental functions of the County administration/management, program management or innovation. Professional services for purposes of the County's procurement process include, but are not limited to the following: (1) Licensed Professional services, such as Physicians, Psychologists, Marriage and Family Therapist; (2) Consulting Services; (3) Trainer Services; (4) Medical Services; (5) Legal Services; (6) Information Technology and Communications Consulting Services; (7) Fiscal Consulting Services; and (8) Human Services.

Professional Services are typically not furnished with the acquisition of goods and materials.

(E) Architect-Engineer-Construction Project Management Services

- (i) "Architectural, landscape architectural, engineering, environmental, and land surveying 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;



- (ii) "Construction project management" means those services provided by a licensed architect, registered engineer, or licensed general contractor which have the requisite expertise and experience for management and supervision of work performed on state construction projects; and
- (iii) "Environmental services" means those services performed in connection with project development and permit processing in order to comply with federal and state environmental laws.

(F) Non-Professional Services

Non-Professional Services are all services not within the scope of the definitions of Professional Services, Architect-Engineer-Construction Project Management and Goods and Related Services above. They are non-technical or non-consultant services that provide support to and facilitate department operations.

Non-Professional Services for the purposes of the County's contracting process include, but are not limited to the following: (1) Laboratory Services; (2) Courier Services; (3) Equipment Maintenance Services; (4) Maintenance and Repair Operations Services; (5) Laundry Services; (6) Landscape Services; (7) Garbage and Recycling Services; (8) Records Retention and Destruction Services; and (9) Printing Services.

Non-professional services may be rendered with or without furnishing of goods and materials.

If an Agency/Department needs assistance in identifying the appropriate category of services being procured, it should consult with the Procurement Department.

**5.4.5.2 Types of County Contracts**



The County enters into numerous contracts annually, majority of them being contracts to procure goods and/or services. These include contracts with contractors that specialize in providing services to the public including, but not limited to the following: education and counseling services of a nonmedical nature; job training and placement services; disease prevention; paid and/or volunteer services for the elderly, handicapped, disadvantaged or indigent in the community; health, educational, or personal growth and improvement services; social welfare and self-help for the elderly, handicapped, disadvantaged or indigent in the community; and treatment services. For example, the County contracts with different organizations, such as Community Based Organizations (CBOs), to provide human services to the public. Human services refer to services that maintain or improve the social, economic, physical, or mental well-being of persons for whom the County bears such a responsibility. Funding for these contracts may come from grants and/or County funds.

The County also enters into revenue contracts and contracts for services with other federal and state agencies. Typically, the contracts with the federal and state agencies stipulate that the County will abide by various rules and regulations as a condition of receiving funds to carry out services that are supported in whole or in part by the federal and state governments. The County also may contract with the state and federal governments to provide certain services and may be compensated for those services, or with other public agencies to form joint powers authorities (JPAs). JPAs are generally formed to carry out specific responsibilities that are multi-jurisdictional in nature and reflect regional interest.

### **5.4.5.3 Form of County Contracts**



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 County Counsel, Procurement Department and/or OCCM on the appropriate form to use for a particular contract.

#### **5.4.5.4 Length of Term of Contracts**

The length of the contract term (beginning and ending date) may vary depending on the type of contract, but the term must not be more than 5 years, unless the contract falls under one of the exceptions below and the exception is approved by the required authority. The maximum 5-year term includes any amendments to the contract term.

An Agency/Department must obtain prior approval of the exception. If the exception is for a Board contract or contract pursuant to a delegation, the Agency/Department must submit written justification to OCCM demonstrating that an exception is warranted. If the exception is for a contract that falls within the Procurement Director's authority, then the Agency/Department must submit written justification to the Procurement Director demonstrating that an exception is warranted. If an exception is approved, the Agency/Department can proceed with awarding the contract. If an exception is approved by the OCCM, Agencies/Departments will not be required to ask the Board to approve the exception, but must attach the OCCM approval to any legislative file submitted to the Board requesting approval of a contract based on such exception.

The 5-year maximum term for contracts does not apply to the contracts where Board Policy or other Board action provides for a different maximum term.



The exceptions to the maximum 5-year term are:

- (1) When the funding source for a contract provides that the contract term must exceed five years. Such funding sources may include the State or Federal government or an outside funding source (private or foundation grant);
- (2) When the County "piggybacks" on another jurisdiction's contract that is more than five years or that is subsequently extended for more than the initial five-year term;
- (3) When a specific law, code or regulation requires that a particular type of contract includes certain contract term(s) that exceed 5 years;
- (4) Contracts for goods, which includes equipment, that have a lifespan that exceeds five years and the benefits to the County of exceeding a five-year term outweigh the benefits of creating and executing a new contract after five years;
- (5) Contracts for technology software or hardware that have a lifespan exceeding five years and the benefits to the County of exceeding a five-year term outweigh the benefits of creating and executing a new contract after five years;
- (6) Proprietary maintenance contracts;
- (7) Contracts for project-specific professional services where the length of the project is expected to exceed five years;
- (8) Revenue contracts;



- (9) Contracts with other governmental entities; and,
- (10) When an Agency/Department is otherwise able to justify that it is in the County's best interest to exceed the maximum 5-year term requirement. For example, an Agency/Department is able to demonstrate that the financial and/or programmatic impact on the County would be significant if the contract term does not exceed the maximum 5-year term requirement.

#### **5.4.5.5 Monitoring, Administration, and Evaluation of Contracts**

Monitoring, administration and evaluation of County contracts are essential to promoting the most cost-effective use of taxpayer dollars and County resources and to ensuring that the County receives the goods and/or services for which it contracts.

Although the method used to monitor, administer and evaluate a contract will depend on the type of contract, Agencies/Departments are required to develop performance standards and implement a process that incorporates monitoring, administration and evaluation of contracts. For example, self-monitoring and self-reporting may be appropriate for certain contracts.

Agencies/Departments must also document their performance evaluations of contractors. The retention period for this documentation should be the same as the retention period for the subject contract. These performance evaluations may be used by Agencies/Departments to evaluate the propriety of entering into contract extensions or future agreements with the same contractor. The Board or Board Committees may also request copies of evaluations from time to time.

#### **5.4.5.6 Contract Payment Terms**



Wherever possible, payment terms should be tied to performance or level of effort, and expense reimbursements for consulting contracts must be consistent with the County's travel policy, unless it is a fixed price contract, in which case no expense reimbursement above the fixed price is authorized. All consultant contracts where travel and per diem cost or other identified direct cost are reimbursed must also be consistent with the County's travel policy, unless such costs are included in either a fixed unit price or a firm fixed price. This policy does not require the County to pay for travel and does not prohibit Agencies/ Departments from negotiating better terms for the County than what is contained in the County's travel policy.

#### **5.4.5.7 Contract Coordination**

Agencies/Departments must make every reasonable effort to ensure that services provided by and funding provided to contractors by other Agencies/Departments are not duplicated. Intra-agency agreements may be utilized to facilitate the coordination of effort and to avoid duplicating efforts if deemed advisable by Agencies/Departments and OCCM. Agencies/Departments that are responsible for oversight of human services contracts and their funding shall share contract inventories and any other information that may be appropriate to assist with the coordination effort with OCCM.

#### **5.4.6 Applicable Legal Authority**

The applicable legal authority for this Section includes, but is not limited to the following: California Government Code Sections 4525 et seq.

#### **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
- Service Agreement Amendment Form -  
[url]  
/sites/forms/proc/ProcurementCountywideForms/Service%20Agreement%20Amendment%20Form.aspx
- Service Agreement Checklist -  
[url]  
/sites/forms/proc/ProcurementCountywideForms/Service%20Agreement%20Checklist.aspx
- Service Agreement Form -  
[url]  
/sites/forms/proc/ProcurementCountywideForms/Service%20Agreement.aspx

### **History**

Date	Changes Made
11/17/2015	Policy Amended. <a href="#">View legislative file.</a>
5/19/2015	Policy Amended. <a href="#">View legislative file.</a>
3/19/2014	Policy Uploaded. (Kyle Larson)



# County of Santa Clara

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