



**Policy Type:** Board

**Category:** Procurement

**Policy Name:** Procurement Process - Board Policy 5.6

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## **5.6 PROCUREMENT PROCESS (Amended 5-19-15, Amended 3-19-19, Amended 5-7-2019, Amended 8-27-19)**

### **5.6.1 Overview**

This section describes the policies related to contractor selection that Agencies/Departments are required to follow in their solicitation and contracting process, unless otherwise provided.

### **5.6.2 Policy**

It is the policy of the Board that the County conduct an open, fair and full competitive solicitation process for the procurement of goods and/or services, with exemptions for certain goods, services and classes of procurement, and case-by-case exceptions, subject to an approval process. This policy does not address the use of Field Purchase Orders, Direct Pay or P-cards.

### **5.6.3 Background**

The County solicits services and goods and related services by conducting one of the following types of procurement, which are described in this section: (1) Formal Competitive Procurement, (2) Informal Competitive Procurement, and (3) Non- Competitive Procurement.



The formal competitive procurement requirements of this policy may be satisfied through conducting either (a) Formal Bidding, or (b) Competitive Negotiated Procurement.

Formal Bidding refers to a competitive procurement process in which prospective vendors respond to a solicitation for bids, for example, an Invitation to Bid (ITB). On the other hand, Competitive Negotiated Procurement refers to a procurement process in which prospective vendors respond to a solicitation for pricing and other information, and the negotiation of contract terms occurs prior to contract award, for example, a Request for Proposals (RFP).

The County of Santa Clara may also act as the lead agency in a cooperative purchasing process provided that the process complies with the County's Board of Supervisors' Policy on Soliciting and Contracting and any other applicable laws. Cooperative purchasing occurs when two or more public agencies identify a common need and combine their requirements into a single solicitation.

In addition to the processes described above, the County utilizes other solicitation methods to acquire goods and related services, professional services and non-professional services, some of which are described in this policy. The County's Contracting Manual includes a description of the different solicitation methods and guidance on when to use a particular method. These solicitation methods must also adhere to the policies contained herein.

Unless otherwise prohibited under applicable laws or policies, Agencies/Departments can engage in an electronic procurement process to conduct the procurement processes described herein.



#### **5.6.4 Purpose**

The purpose of Section 5.6 is to promote the efficient procurement of services, and goods and related services from contractors doing business with the County.

#### **5.6.5 Application of the Policy**

##### **5.6.5.1 Solicitation Process (Amended 5-7-19; Amended 8-27-19; Amended 6-23-20; Amended 9-01-20)**

In order to ensure a successful solicitation process, Agencies/Departments are required to engage in advance acquisition planning after identifying a need to ensure that the selected solicitation process will result in the best outcome for the County. Agencies/Departments must also maintain proper documentation reflecting how the process was conducted, as well as justification for the selection of a contractor, and they must ensure that employees involved in the contracting process are adequately trained.

##### **(A) Review and Approval of Solicitations**

##### **(1) Review Process**

##### **(a) RFPs and Request for Grant Applications (RFGAs)**

OCCM and the Procurement Department should develop a process by which RFPs and RFGAs are reviewed and approved before being issued. The purpose of this process is to ensure that the soliciting and contracting processes being utilized by Agencies/Departments result in the most cost-effective use of tax- payer dollars and County resources, while ensuring that Agencies/ Departments are following the guidelines and procedures



established in the Administrative Guidelines and County Contracting Manual.

Proposed RFPs and RFGAs for Goods and Related Services and Non-Professional Services are reviewed by the Procurement Department.

(b) Informal Competitive Procurement

Prior to engaging in an informal competitive procurement process, an Agency/Department must first obtain advance approval from the Director of Procurement. The written justification to the Director of Procurement seeking approval must explain why a formal competitive process is not appropriate for the services being procured. If an Agency/Department receives approval to engage in this process, the Agency/Department will still need to explain to the signature authority how the Agency/Department selected the 3 or more vendors to participate in this informal process.

(2) Reports to the Board

An Agency/Department is required to submit to the Board a report of all RFPs and RFGAs it plans to issue prior to the anticipated issuance date of these documents. Therefore, an Agency/Department must wait until after informing the Board of the RFP or RFGA to issue the document. If an Agency/Department is not able to present the report prior to issuance, it is required to do so at the first Board meeting following the issuance of the RFP or RFGA. The purpose of the report is to keep the Board informed of what is being solicited in the County. The information that should be contained in the report is outlined in the Administrative Guidelines.

(B) Formal Competitive Procurement

(1) Goods and Related Services and Non-Professional Services



Goods and related services and non-professional services are acquired by the Procurement Department. This policy requires competitive procurement of goods and related services and non-professional services, with exemptions for certain goods, services, and classes of procurement, and an approval process for case-by-case exceptions. It is the policy of the Board of Supervisors that the County shall procure goods and related services and non-professional services on a competitive basis.

### (2) Professional Services

As with all County contracting, Agencies/Departments are required to engage in competitive procurement for the acquisition of professional services, unless another method of procurement is required for that particular type of service. If an Agency/Department determines an exemption or exception applies, then the Agency/Department is required to comply with the policy set forth in Section 5.6.5.1(D) below.

### (3) Grant Applications

Board review and approval are required for competitive grant applications and any resulting contracts that have a total value of over \$250,000. If the Board is not available to approve a grant application or an agreement, the County Executive has authority to approve such applications and agreements, and the Agency/Department is required to bring the subject contract to the next Board meeting for Board action. If the application has a value of \$250,000 or less, the County Executive has the authority to review and approve the grant applications and execute the resulting grant agreements, following review and approval by County Counsel as to form and legality.

### (C) Informal Competitive Procurement



(1) Goods and Related Services and Non-Professional Services

Procurement of up to a total contract value of \$100,000 in goods and related services and non-professional services where the procurement is made in accordance with the policies and procedures set forth by the Director of Procurement and provided that the Director of Procurement determines that the price or cost to the County is fair and reasonable.

(2) Professional Services

This process may be used to procure professional services with a contract value of no more than \$100,000 per budget unit per fiscal year, unless a particular method of procurement is required for that type of service. The term for the contracts resulting from the solicitation must not exceed five years. A contract with cumulative totals exceeding \$300,000 which began with an informal competitive procurement process will be subject to formal competitive procurement. Also, if the cumulative total for a Professional Services contract will exceed \$300,000 within a 5 year period and each year did not exceed more than \$100,000 per budget unit per fiscal year and the Director of Procurement executed the original contract and any amendments to the contract, the Agency/Department is required to obtain approval from the Board. Agencies/Departments utilizing this process must send the solicitation document to a minimum of 3 vendors. The solicitation document for this process is not required to be posted or made public.

(D) Non-Competitive Procurement

(1) Exemptions to Competitive Procurement

There are limited exemptions to competitive procurement. If an Agency/Department determines that an exemption applies, the Agency/Department



must obtain prior approval of the exemption. If the exemption is for a Board contract or contract pursuant to a delegation, the Agency/Department must submit written justification to the OCCM demonstrating that an exemption applies. If the exemption 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 exemption applies. If an exemption is approved, the Agency/Department can proceed with awarding the contract or engaging in a process to select a contractor. If an exemption is approved by the OCCM, Agencies/Departments will not be required to ask the Board to approve the exemption, but must attach the OCCM approval to any legislative file submitted to the Board requesting approval of a contract based on such exemption.

Where a request for an exemption to competitive procurement is denied, the procurement shall be conducted through the use of the appropriate process.

The following are exemptions to competitive procurement:

- (a) Utility Services: The item or service to be procured is from a utility company where service connections are allowed only in geo- graphically-defined service territories or where the work involves a utility system and only the utility company itself is allowed to perform the work.
- (b) Educational Services: Procurement of educational services from a nonprofit institution. "Educational services" are services for instruction or training to employees or clients; "educational services" do not include consulting services for evaluation or non-instructional activities.
- (c) Intergovernmental Agreements: Agreements exclusively with the State of California, the federal government, or other governmental entities within



the State of California. All parties to these agreements must be governmental entities. These agreements are categorically exempt and do not require pre-approval by OCCM or Procurement.

- (d) Standard Commercial Off-the-Shelf Software Packages (COTS) or Hardware Products, Maintenance, Installation Assistance and Training: Procurement of software or hardware products, which may include maintenance, installation assistance and training, that are ready-made, available for sale to the government and to the general public, and designed to be easily integrated into existing systems without the need for extensive customization. COTS software can either be installed on the County computers or delivered over the internet as software. Hardware products are self-contained appliances that include pre-installed software and that are minimally configurable, and may include maintenance and/or associated installation assistance and training. Installation assistance may be on-site or remotely provided and is of limited duration not to exceed 40 hours or 5 working days.
- (e) Equipment/Hardware Services: Maintenance Services Agreements provided by the equipment/hardware manufacturer or dealers/distributors as a result of a Life Cycle Cost Purchase determination or which are not available from a satisfactory alternate source as determined by the Director of Procurement.
- (f) Software, Software Licenses and Maintenance Services: Where the County has procured software, including operating systems, for its use, procurement of the continuing maintenance and upgrades of the software, and renewal of software licenses, from the developer or manufacturer.
- (g) Newspapers and Publications Services: Notices and publication services used to post notices required by law, or the purchase of newspapers or publications sold by one vendor.





- (h) No cost memoranda of understanding (MOUs) or revenue agreements that are "non-exclusive." "Non-exclusive" means that County participation in the MOU or revenue agreement does not prevent the County from entering into similar agreements on similar terms and that sufficient County resources are available to meet demand from others who may be interested.
- (i) Limited Extensions During Pending Protest: Extension of existing contracts where the goods and/or services provided under the existing contract are the subject of an ongoing procurement and the results of that procurement have been protested in accordance with Board Policy Protest Procedures.
- (j) Open Source, Freeware, and Maintenance Services: Where contract licensing agreements have been reviewed and approved by County Counsel, the County's Information Technology Governance Council, and the Director of Procurement.
- (k) Contracts with law firms, expert witnesses, consultants and investigators hired by the County through its County Counsel's Office to assist in legal matters.
- (l) Contracts with (i) retirees or previous employees performing duties similar to those performed during the time the individual was a County employee, (ii) individuals to temporarily cover vacant positions, and (iii) individuals hired according to the merit system process, which is a competitive process, but is governed under County Ordinance Sec. A25-34, relating to the Personnel Department - Merit System Rules, as opposed to the Procurement process.
- (m) Pilot Program and Product Demonstration Agreements: The County Executive, or designee, may enter into pilot project and product demonstration agreements with County vendors or prospective County



vendors for the purpose of testing and evaluating technology, products, and services provided that such agreements: (1) are for a period not to exceed twelve months from the initiation of the pilot project or demonstration, unless an extension beyond one year is approved by the Board of Supervisors; (2) do not grant any exclusive rights to the vendor, nor provide any in-kind, or advertising commitments by the County; (3) provide for appropriate indemnification of the County; (4) provide for County ownership of any data generated during the testing and observation period; (5) are terminable at will by the County; (6) do not exceed \$50,000 for the term of the agreement, including any and all amendments thereto, not to exceed one year in total (unless an extension beyond one year is approved by the Board of Supervisors); and (7) are in adherence with section 5.2.5.2(D) - Contractor Conflict of Interest - of this chapter and any other applicable conflict of interest rules.

Each pilot project or product demonstration must be established by an agreement that shall be subject to review and approval by County Counsel as to form and legality prior to execution. In the event that the County seeks to procure a similar technology, product or service as the one that is part of the pilot project or project demonstration through the County's competitive procurement process, relevant information regarding the pilot project or project demonstration and the technology, product, or services tested will be made available to all competing proposers/bidders.

Pilot project and product demonstration agreements may not serve as a basis for any non-competitive purchase and may not serve as the sole basis of the public interest justification of any single or sole source approval relating to the relevant agreement.

Agreements that qualify under this exemption are required to seek pre-approval from the OCCM prior to execution.



An off-agenda report of all executed pilot project and product demonstration agreements will be provided to the Board on an annual basis. This exemption shall expire thirty-six months after its enactment on March 19, 2019, unless extended by the Board.

- (n) Non-exclusive contracts for health or behavioral health call coverage, primary care, specialty care, or telehealth services provided by individual physicians or physician practices where the contracted services will be provided by no more than 6 full-time equivalent physicians or advanced practice providers provided at any of the County's health, behavioral health, or custodial facilities. "Nonexclusive" for the purpose of this exemption means that County participation in the agreement does not prevent the County from entering into similar agreements on similar terms with other individuals or practices. If a contract for physician services is executed pursuant to this provision, that contract may contain an option for the County to extend, at its sole discretion and in writing, the contract beyond the original expiration date for a period of up to six (6) months and to make payment for such services during the pendency of negotiation of a new contract. This option may be exercised only in unusual circumstances where a new contract or contract amendment is being negotiated between the parties and the parties are unable to execute the new contract or amendment in a timely manner before the original contract's expiration date.

(2) Exceptions to Competitive Procurement

The competitive procurement requirements of this policy may not apply if, under the particular circumstances of the procurement, an exception is warranted. If an Agency/Department determines that an exception applies, the 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 the OCCM



demonstrating that an exception applies. 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 applies. If an exception is approved, the Agency/Department can proceed with awarding the contract or engaging in a process to select a contractor. 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.

*Board-initiated exceptions:* If a Board member initiates an action whereby an exception to competitive procurement is likely to occur (e.g., through a Budget Inventory Item or Board Referral identifying a particular vendor), the Board member shall request Board approval of the use of the exception to competitive procurement at the same time as the request for approval of the related item. Board members are encouraged to use the forms and guidelines provided by the OCCM in bringing forward such requests. Board approval of such an exception is a sufficient basis for use of the exception in the contracting process by an Agency/Department, the Procurement Director, and the OCCM.

Where a request for an exception to competitive procurement is denied, the procurement shall be conducted through the use of the appropriate process.

The following examples are illustrative of circumstances that may be considered in authorizing case-by-case exceptions to this policy.

- (a) Sole Source and Single Source procurements are used in the procurement of products or services. They should only be utilized when justified and necessary to meet the County's needs and when the procurement needs



warrant award on a sole source or single source basis. Sole source and single source requests must be supported by evidence that due diligence has been performed in an objective market analysis to arrive at the determination. Although the sole source and single source procurements are exceptions to competitive procurement, Agencies/Departments must still aim to make the process as competitive as is practicable under the circumstances.

- (i) Sole Source: A Sole Source Procurement is a sourcing method used to procure a product or service without competition when it has been determined that there is only one source for the required product or service that is capable of meeting the requirements of the acquisition as defined in the Scope of Work or specifications.

Sound procurement practice requires that a Sole Source procurement occur if it has been determined that there is only one source for the required product or service and not as an attempt to contract with a favored service provider or for a favored product.

- (ii) Single Source: A Single Source Procurement is a sourcing method used to procure a product or service from one source, without soliciting competition, even though there are other vendors that can provide the product or service. The County must determine and establish that a situation exists that makes the application of all requirements of competitive sealed bidding or competitive sealed proposals impracticable or contrary to the public interest. Costs associated with a competitive bidding process is not sufficient to justify a single source.

Agencies/Departments must show through documentation that the selection of the source was based on an objective basis and justifiable reason, and the source selected is the most advantageous for the County to fulfill a given requirement as defined in the Scope of Work or specifications



and the competitive bidding or competitive proposal process would be contrary to the public interest or would adversely impact the County.

(b) Competition is precluded because of the existence of patent rights, copyrights, secret processes, control of the basic raw material(s) or similar circumstances, and there is no equivalent item or service.

(c) Absolute Compatibility Related to Goods:

(i) The procurement is for replacement 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 as the part or component to be replaced;

(ii) The procurement is for replacement parts or components for equipment, and the replacement parts or components would compromise the safety or reliability of the product, or would void or invalidate a manufacturer's warranty or guarantee; or

(iii) The procurement is for upgrades, enhancements or additions to hardware or for enhancements or additions to software, and no information or data is available to ensure that equipment or software from different manufacturers or developers will be as compatible as equipment or software from the original manufacturer(s) or developer(s).

(E) Accessing Competitively Established Government Contracts

The County may access competitively established contracts ("piggyback") from other government entities when it is deemed to be in the best interest of the County, provided the contracts to be accessed were established by another governmental entity as a result of a full and open competitive procurement process and meet the scope and/or specifications of the



County's business requirements. The County may not access such a contract for a period longer than the term established in the accessed contract.

Approvals to access these contracts are within the discretion of the Director of Procurement, or designee. In the event a Department wishes to access a competitively established contract, it shall file an Accessing Governmental Contract Transmittal and Checklist to the Procurement Department for review and approval. The applicable signature authority for all resulting contracts shall apply as designated by County Ordinance or Policy for goods and related services, professional services, and nonprofessional services. Each competitively established government contract shall be subject to review and approval by County Counsel prior to the County accessing it for use.

### **5.6.5.2 Local Preference Policy**

In a formal solicitation of goods or services, the County shall give Local Businesses the preference described below.

"Local Business" means a lawful business with a physical address and meaningful "production capability" located within the boundary of the County of Santa Clara. The term "production capability" means sales, marketing, manufacturing, servicing, provision of services, or research and development capability that substantially and directly enhances the firm's or bidder's ability to perform the proposed contract. Agencies/Departments should work with County Counsel to determine whether the business has meaningful production capability within the County. Post Office box numbers, residential addresses, a local sales office without any support and/or a local subcontractor hired by the contractor may not be used as the sole basis for establishing status as a "Local Business."



In the procurement of goods or services using an Invitation to Bid or another solicitation method in which price is the determining factor for award of the contract, five percent (5%) shall be subtracted from a bid submitted by a responsive and responsible Local Business in determining the lowest responsive responsible bidder. If application of the 5% results in a Local Business bid being lower than the non-local business bid, the contract award shall be made to the Local Business at the Local Business' original bid price. If after applying the 5% discount, two or more competing vendors have bid the same price, local businesses shall be given preference.

In the procurement of goods or services in which best value is the determining basis for award of the contract – for example, a Request for Proposals – five percent (5%) of the total points awardable will be added to the Local Business score.

When a contract for goods or services, as defined in this policy, is presented to the Board for approval, the accompanying transmittal document shall include a statement as to whether the proposed vendor is a Local Business, and whether the application of the local preference policy was a decisive factor in the award of the proposed contract. The local preference policy may only be applied based on the entity submitting a bid or proposal and not a subcontractor or business partner.

This Local Business preference shall not apply to the following:

- (1) Public works contracts;
- (2) Where such a preference is precluded by local, state or federal law or regulation;
- (3) Contracts funded in whole or in part by a donation or gift to the County where the special conditions attached to the donation or gift prohibits or





conflicts with this preference policy. The donation or gift must be approved or accepted by the Board in accordance with County policy; or

- (4) Contracts exempt from solicitation requirements in accordance with Board policy, state law and/or the County of Santa Clara Ordinance Code.

### **5.6.5.3 Protest Process**

It is the policy of the County that contractors have a process in which they can submit a protest to an award of a contract to another contractor or to otherwise challenge any steps taken during a solicitation process that the contractor believes constitutes an abuse of process by County officials or evaluation team members, misconduct or impropriety by County officials or evaluation team members, or abuse of discretion by County officials or evaluation team members.

The protest process should be made known to the vendors as part of the solicitation process.

The decision resulting from the established protest process shall be the final decision of the County.

### **5.6.5.4 California Public Records Act**

Under the California Public Records Act (CPRA), the County must give the public access to information in its possession, subject to certain exemptions. If information relating to the solicitation and/or contracting process is requested, including documents received from contractors, Agencies/Departments are required to contact County Counsel immediately and prior to responding to the CPRA, in accordance with Ordinance Code Division A17.



### **5.6.6 Applicable Legal Authority**

The legal authority that applies to this section includes, but is not limited to the following:

California Government Code Sections 6250 – 6276; 25508

County of Santa Clara Ordinance Code Division A17

### **Related Policies**

None.

### **Related Forms and Information**

- Memorandum re: Countywide Contracting Updates -  
[url]/sites/policies/FormsrelatedtoPolicies/Countywide-Contracting-Updates-20216.pdf
- Procurement Administrative Guidelines:  
<https://sccconnect.sharepoint.com/sites/prc/countywidecontracting/GeneralPolicies/SitePages/Procurement%20Policies.aspx>
- 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



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

### History

Date	Changes Made
9/1/2020	Policy Amended (Section 5.6.5.1). <a href="#">View legislative file.</a>
8/27/2019	Policy Amended. <a href="#">View legislative file.</a>
5/7/2019	Policy Amended. <a href="#">View legislative file.</a>
3/19/2019	Policy Amended. <a href="#">View legislative file.</a>
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)