

CHAPTER 5

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Exhibit A – “I Agree” Software Policy

CHAPTER 5

PURCHASING PROCEDURES

501. General Statement. This chapter establishes the policies and procedures for purchasing supplies, equipment and services by the County, any special district governed by the Board of Supervisors and other local government entities having purchase agreements with the County.

502. Purchasing Division Responsibilities. It is the Purchasing Division's responsibility to evaluate proposed purchases in order to bid or negotiate *requisitions* and contracts on behalf of the County. The Assistant County Administrative Officer for the General Services Division of the County Administrative Office is also the County's Purchasing Agent, and, as such, has specific responsibilities as addressed in County Ordinance Code, Chapter 2.38. In addition to these duties, the Purchasing Agent is responsible for *salvage or surplus personal property* disposition, vehicle registration and licensing, contracting for telephone and vending machine installation, soliciting *quotation requests* and negotiating pricing for frequently used *goods* and *services*. The Purchasing Agent also oversees the procedures for specified services, including purchasing or renting all materials, supplies, furnishings, equipment and other personal property for the County, engaging independent contractors to perform various services, and contracting with consultants for special and scientific data and services, provided that it does not conflict with the duty of any County officer. The Purchasing Agent oversees the Purchasing Division function that includes a Division Director, Purchasing Manager, Supervising Buyer and a team of Buyers which act under the direction and authority of the Purchasing Agent.

503. Definitions. Italicized words within this chapter are defined in this section:

- .1 *Shall, must* and *will* mean that the procedure is mandatory.
- .2 *Should* mean that the procedure is recommended.
- .3 *May* means that the procedure is optional.
- .4 *Agreement-at-a-Glance.* Form which must be completed and submitted to the Board of Supervisors as a quick review of all provisions to any agreement or addendum to any agreement which will be brought to the Board for approval.
- .5 *Best Value.* The Best Value method of procurement incorporates cost, quality and other specified requirements to achieve a resulting award that is fair, efficient, competitive, and meets all of the procurement objectives.
- .6 *Bid.* A vendor's formal price offered for items requested on a *quotation request*.
- .7 *Blanket Purchase Order.* A *purchase order* issued to a vendor for items or services for a specified period of time, but not exceeding the end of the current fiscal year, when it is determined to be in the best interest of the County. After its acceptance by the vendor, purchases may be made against it periodically as required without calling for new *purchase orders* up to the dollar amount of the blanket purchase order.
- .8 *Change Order.* A written modification to a *purchase order* or *blanket purchase order* by the County directing the vendor to change the contract amount, requirements or time.

- .9 *Claim for Payment.* The form used by the Auditor-Controller-County Clerk's Office to process payments.
- .10 *Contractual Services.* Labor, material, or specialized services contracted for a department, except for professional services and advertising.
- .11 *Fast Track Bidding.* The bid process used by departments to gather quotations from vendors for one-time purchases of *goods* or *services* under \$30,000 and not tied to a *price agreement*.
- .12 *Fixed Asset.* Any single item costing \$5,000 or more, including tax and shipping. These items must have a fixed asset account established with the County Administrative Office before submitting a *requisition*.
- .13 *Goods.* Also referred to as Personal Property. Items such as, supplies, material, livestock, furnishings, equipment, vehicles and material objects other than real estate or buildings.
- .14 *P-Card (Purchasing Card).* A County bank card, similar to a credit card which can be used to purchase *goods* or *services* in accordance with County policy.
- .15 *Price Agreement.* An agreement established between a vendor and the County to provide *goods* or *services* at a competitively awarded price and with specified requirements.
- .16 *Professional Services.* The services of attorneys, physicians, architects, engineers, accountants, consultants or other individuals formally certified as a member of a trade association of an organized profession that certifies successful completion of its requirements.
- .17 *Public Works Services.* Services for the erection, construction, alteration, installation, repair or improvement of any public structure, building, road or other public improvement of any kind paid for in whole or in part out of public funds. Additional examples of public works include projects related to fences, runways, excavations, quarry repairs and alterations, bunkers, tunnels, power lines, conveyors, towers and water tanks (Public Contract code §101).
- .18 *Purchase Order.* A legally binding document issued by the Purchasing Division that specifies the *goods* or *services* ordered from a vendor for an indicated price.
- .19 *Purchasing System.* The web-based procurement system used by the County to enter *requisitions*, process *requisitions* and for vendors to register and submit quotations online.
- .20 *Quotation Request.* The document used by the Purchasing Division to solicit competitive bids from vendors.
- .21 *Quote Sheet.* The form used by a department to document vendor quotations when using the *Fast Track Bidding* process.
- .22 *Request for Proposal (RFP).* A document used to solicit proposals for *professional services* over \$100,000.
- .23 *Request for Qualification (RFQ).* The process used to solicit qualified consultants for a project which may lead to an *RFP* process.

- .24 *Requisition*. The document submitted by the using department through the *purchasing system* to request a *good* or *service*.
- .25 *Salvage or Surplus Property*. Personal property and material that is no longer useful to the County department.
- .26 *Services*. In this manual, *services* shall refer to all services other than *public works* or *professional services*. These are services offered by individuals without such generally recognized specialized knowledge whose primary product is labor. Examples of this type of service are auto repair, office equipment repair, pest control, printing and towing.
- .27 *Sole Source Acquisition (Exception to Bid)*. When in the best interest of the County, a procurement process in which a *good* or *service* is procured from a single source without competition. A sole source situation exists when only one brand will meet the requirements and there's only one source of supply for that brand.

504. Requisitions. Requisitions are the documents submitted by the requesting department through the *purchasing system* to request a *good* or *service* from a vendor. It is the department's responsibility to ensure funding is available and that the expense key has been established prior to submitting the requisition. Before a *purchase order* can be issued from a requisition, any accompanying vendor terms and conditions or agreements must be reviewed and approved through County Counsel and any required insurance obligations must be satisfied.

505. Vendor Terms and Conditions. It is the responsibility of the requisitioning department to identify any accompanying vendor terms and conditions or vendor purchase agreements and have these documents reviewed by County Counsel prior to the issuance of a *purchase order* or performing a *P-Card* transaction. The Purchasing Agent may execute the agreement upon approval as to form by County Counsel. For software license agreements, refer to section 540 and Exhibit A of this manual to determine if the "I Agree" policy is an option. The Purchasing Division will work with County Counsel in obtaining approval of vendor terms and conditions for all *price agreements* and when conducting a competitive bid process; however, if County Counsel cannot approve the terms and conditions, it is the responsibility of the requesting department to submit the documents to the Board of Supervisors for approval stating the terms County Counsel finds unacceptable and request the Board approve the terms and conditions as presented.

506. Insurance Requirements. Vendors are required to carry insurance in the amounts and coverages established by the County Risk Manager. The Standard Insurance Provision states the minimum coverages and dollar amounts required by the County. The Risk Manager also has the authority to approve variances of coverages and dollar amounts when deemed appropriate. The department shall not begin services until the vendor's insurance certificate and any endorsements have been reviewed and conform to County requirements. The Insurance Responsibility Matrix found on CountyNet contains each department's responsibility for requesting and verifying insurance from vendors for the various types of contracts.

507. Fixed Asset. Any single item, or *good*, costing \$5,000 or more, including tax and shipping, must have a fixed asset account established with the County Administrative Office before submitting a *requisition*. Fixed Assets cannot be purchased with a P-Card.

508. Purchase of Goods and Services. The one-time purchase of *goods* or *services* costing \$5,000 or more requires a competitive bid process unless the purchase is already tied to a *price agreement*. The competitive process for items between \$5,000 and \$30,000 will be performed by the requesting

department using the *Fast Track Bidding* process. For purchases over \$30,000, the Purchasing Division will conduct the bid process and the requesting department will provide the specifications. The department is encouraged to utilize *P-Cards* whenever possible but must comply with County policy and procedures when doing so (see section 519).

Multiple low-dollar purchases of *goods* or *services* from a single vendor not exceeding \$30,000 per fiscal year are considered low-cost and do not require a bid. However, any one transaction of \$5,000 or more is not considered low-cost and that transaction will require a competitive process as described above. The department is encouraged to use *P-Cards* for these low-dollar purchases but must track these purchases not to exceed \$30,000 from a single vendor in one fiscal year (see section 519). If the department anticipates these purchases to exceed \$30,000 in one fiscal year, the department shall submit specifications to the Purchasing Division to conduct a bid process. Departments shall use vendors with an established *price agreement* whenever possible for these multiple purchases.

The purchase of any service over \$100,000, regardless of the type of service or whether it has been competitively bid, requires the department to seek the Board of Supervisor's approval.

.1 Sole Source Acquisition (Exception to Bid) for Goods and Services. If the competitive process cannot be used to procure *goods* or *services* or the department feels that such a process would not be appropriate or in the County's best interest, a sole source acquisition will be performed. The Purchasing Agent has the authority to approve sole source acquisitions up to \$30,000 for a single item or *service*, \$100,000 per acquisition of multiple items of which no one item is over \$30,000 and *blanket purchase orders* up to \$100,000. The Board of Supervisors must approve any sole source acquisition exceeding these limits.

509. Public Works Services (Construction, Maintenance and Repair). A Public Works agreement is an agreement for the erection, construction, alteration, repair or improvement of any public structure, building, road or other public improvement of any kind paid for in whole or in part out of public funds. (Public Contract code §101).

Competitive bidding is not required for public works projects with an estimated labor cost of less than \$6,500. The Purchasing Agent or department may purchase materials and supplies used for the project without the formality of advertising, obtaining bids, letting contracts and preparing specifications if the estimated cost of these materials and supplies does not exceed \$3,500. (Public Contract Code §20122 and §20131) Any public works project with an estimated cost between \$10,000 and \$100,000 requires the adoption of plans and specifications by the Board of Supervisors and a formal bid to be performed by the Purchasing Division. The Purchasing Division will place an advertisement in an adjudicated newspaper for 10 days at the department's expense. Bonding is required on any public works project over \$10,000.

If the cost for labor and materials of the complete project will exceed \$499, a current contractor's license in the correct classification is required and when labor is estimated at \$1,000 or more, prevailing wage applies.

It is a misdemeanor to split the project into two or more smaller projects of lesser dollar amounts to avoid complying with these requirements.

.1 Emergency Public Works / Construction Projects. An emergency situation exists when an incident occurs that requires immediate action be taken to preserve life, health or property. The department shall contact the Purchasing Agent and County Counsel for concurrence that an emergency situation exists. The Purchasing Agent shall be contacted for concurrence immediately, regardless of whether the situation occurs during regular business hours or not. Once the department receives

concurrency that there is an emergency situation, the department shall take appropriate action and make any purchase of goods and/or services deemed necessary to mitigate the emergency. The price quoted by the contractor shall be in accordance with Public Contract Code 20134 (a) and 22050 which limits the labor cost to actual cost plus fifteen percent. Contractor shall also be notified that the County requires a performance and payment bond for emergency projects. If the aggregate cost of such an emergency public works project exceeds \$6,500 in labor or \$10,000 in total cost and there is not sufficient time to follow the normal bidding process, a resolution must be prepared for approval by the Board of Supervisors at the next scheduled Board meeting. County Counsel will prepare the resolution with the assistance of the department in furnishing the scope of work and other necessary details. The Purchasing Division will complete the emergency documentation that will be supplied to the state.

510. Professional Services. Professional services are technical or unique functions performed by independent contractors or consultants who specialize in the services required. While not limited to individuals holding professional licenses, the services are considered professional and the contract may run to partnerships, firms, or corporations as well as to individuals. Examples of professional services are those services performed by architects, attorneys, dentists, engineers, foresters, graphic designers, physicians and professors,

There are several Counsel approved boilerplate agreements available for departments to use when contracting for professional services. The Board of Supervisors has authorized the Purchasing Agent to execute the following agreements up to the indicated dollar amounts:

- Technical Development Service Agreement (TDSA) – up to \$100,000
- Speaker / Trainer Service Agreement (STSA) – up to \$10,000
- Personal / Professional Service Agreement (PPSA) – up to \$100,000
- Personal / Professional Service Agreement (PPSA) – with Work Authorization Form – \$100,000
- Engineering Service Agreement (ESA) – up to \$100,000

The department shall work with the vendor in developing the scope of work and shall modify the Schedule as necessary. However, the terms and conditions are not to be altered in any way as County Counsel has developed these to be in the best interest of the County. If the consultant does not wish to agree to the boilerplate terms and conditions as presented and the department does not have another qualified consultant available, the department must work with County Counsel and the consultant in establishing a separate service agreement that both parties will agree to and it will require the Board of Supervisor's approval. The department can also take the original agreement to the Board, noting the consultant's terms that County Counsel cannot approve, and request the Board to approve the agreement.

In addition to the required signatures of the consultant, County Counsel, Department Representative and the Purchasing Division, the Technology Services Division Chief within the ITS Department will review all technology-related agreements for bandwidth impacts, firewall modifications, interaction with other existing systems, security, servers, software development and support services. If the agreement is \$50,000 or more, the Technology Services Division Chief's signature is required. If the agreement is under \$50,000, the Technology Services Division Chief will review, but his/her signature is not required.

Department will not begin services with the consultant until the Purchasing Agent has signed and dated the agreement or the agreement will be considered retroactive. Retroactive agreements for professional services can be approved by the Purchasing Agent up to \$30,000 when it can be justified to the Purchasing Agent that the required service was necessary prior to obtaining all of the appropriate signatures or it shall require separate Board of Supervisor's approval and will not be signed by the

Purchasing Agent. Any retroactive professional service agreement over \$30,000 requires Board of Supervisor's approval and execution by the Chairman.

Professional service agreements utilizing these boilerplates may be established for a term agreed upon by all parties but may not exceed the Purchasing Agent's authority of \$100,000.

The consultant must maintain insurance coverages in the required amounts stated in the Schedule throughout the term of the agreement. Department shall not begin services with the consultant until these coverages are reviewed and conform to County requirements. If the insurance policy will expire before the services have been completed by the consultant, it is the responsibility of the department to ensure the consultant renew the insurance policy before it lapses.

Department shall not break any project into segments in order to avoid issuing the contract by means of a competitive process. If evidence of such activity is present, the Purchasing Agent cannot sign the agreement and the department will be required to seek Board of Supervisors' approval.

Department may establish multiple professional service agreements with the same vendor; however, each agreement must be established for a separate project with a different scope of work.

.1 TDSA - Technical Development Service Agreement. This agreement has been specifically drafted for the hiring of consultants providing computer technology/automation professional services and is to be used when the department has only a general idea of the service that is required of the consultant. Consultant works at an hourly rate until the specific service is identified and then completes the service required under the Work Authorization Form. The TDSA is intended to be used for independent contractors only and may not be used to hire contract employees.

The total amount which may be expended under this agreement may not exceed \$100,000, including expenses. Any TDSA exceeding \$30,000 requires a competitive award process as described in section 510.5 of this manual.

.2 STSA – Speaker / Trainer Service Agreements. This agreement is used when the department desires to hire a consultant to speak on a specific topic or provide specified training services and the total dollar amount of the agreement does not exceed \$10,000. The basic difference between the STSA and the PPSA is that insurance is not required of the consultant under the STSA.

A single agreement may be used to cover multiple engagements with the same consultant; however, the total cost shall not exceed \$10,000, including fees and expenses for the entire agreement period. If the amount of the anticipated fees and expenses will be greater than \$10,000 or insurance is deemed necessary by County Counsel, the department shall use the PPSA as described in section 510.4 of this manual. No competitive process is required to select a qualified consultant under the STSA.

.3 ESA – Engineering Service Agreement. This agreement has been specifically drafted for the hiring of consultants providing design services, testing and inspection services specific to construction projects.

The department may submit an ESA to the Purchasing Agent for approval in an amount not to exceed \$100,000 per project for any contractor agreeing to the terms and conditions of the ESA without conducting a formal competitive process. The award of the project defined under the ESA shall be based on the availability of the contractor to perform the project within the specified time frame and the qualifications of the contractor for the specific project as determined by the Purchasing Agent. For

agreements exceeding \$100,000, the department shall obtain approval and signature from the Board of Supervisors.

The agreement may be executed to span the entire period of the awarded project.

.4 PPSA – Personal / Professional Service Agreement. This agreement can be used for most types of professional services. It is used when the department has a specific project or predetermined specific services for a consultant to perform, either for a fixed fee or at an hourly rate not exceeding a specified amount. It is intended to be used for independent contractors and may not be used for contract employees. The total amount which may be expended under this agreement may not exceed \$100,000, including expenses. Any PPSA exceeding \$30,000 requires a competitive award process as described in section 510.5 of this manual.

If the specific services to be provided at the time the agreement is executed have not been determined and the services do not involve computer technology/automation, the department shall use the PPSA-With Work Authorization Form. The PPSA-With Work Authorization Form allows the department to use the consultant's services on an "as needed" basis. When the department determines the scope of services required, a Work Authorization Form must be completed detailing the services to be provided and the cost of the services based on the hourly rate(s) indicated in the agreement. If the specific services have not been determined at the time the agreement is executed and computer technology/automation is involved, the department shall use the TDSA boilerplate. See section 510.1 of this manual for more detail on the TDSA boilerplate.

.5 Dollar Thresholds and Required Competition for Professional Services:

a. Professional Services up to \$30,000. Agreements up to \$30,000 do not require competitive bidding and the requesting department may select a qualified vendor to provide the services.

b. Professional Services \$30,001 - \$100,000. Agreements over \$30,000 but less than \$100,000 require the department perform a competitive process among qualified consultants to make an award. The Purchasing Division must review and approve the process proposed by the department prior to the department's issuance of the opportunity to the potential consultants. If a competitive process cannot be performed or the department finds that such a process would not be in the County's best interest, the department may submit written justification to the Purchasing Agent requesting concurrence that an exception to the competitive process be made. With the Purchasing Agent's concurrence, the department may enter into the agreement without a competitive process and the Purchasing Agent may execute the agreement on behalf of the County.

c. Professional Services over \$100,000 – RFP. For professional services over \$100,000, the department must perform a *Request for Proposal (RFP)* process to establish a contract with the consultant. Refer to section 511 of this manual for more information on the *RFP* process.

State or Federal funding agencies may require other specialized procurement procedures that must be integrated into the County's procedures. When the funding agency requires a significant deviation from the County's procedure, it is the requesting department's responsibility to properly and adequately notify the County Administrative Office and other affected departments.

511. Request for Proposal (RFP). Professional service contracts over \$100,000 are established by means of a Request for Proposal (RFP) process and require the Board of Supervisor's approval.

Department shall use the approved RFP template, available on CountyNet, and shall only modify the template within the areas clearly identified to describe the scope of work, requirements of the professional services being requested, and the evaluation criteria. The RFP must be reviewed for legal form, insurance requirements and other items deemed necessary by County Counsel. The Purchasing Agent and County Administrative Office may review the RFP for general compliance with County procedures and policies, but this review does not diminish the department's responsibility for issuance, adequacy and compliance with policies and legal requirements. The County Administrative Office must approve the funding for the anticipated RFP and the Technology Services Division Chief within the ITS Department will review all technology-related agreements for bandwidth impacts, firewall modifications, interaction with other existing systems, security, servers, software development and support services.

The department shall appoint a facilitator for the RFP that has satisfactorily met the level of training required by the Purchasing Agent.

Once County Counsel has approved the RFP for distribution, the department shall electronically upload the RFP on the RFP Notification Form found on CountyNet which will place the RFP on the County's website and where it shall remain for a recommended 30 days unless the department has an urgent need for the service which would not allow the RFP posting to run the full 30 days. If justified, the Purchasing Division will grant approval of the reduced posting period. Vendors may download the RFP from the website after providing their contact information. In addition to the RFP notification on the County's website, the department shall also make every reasonable effort to ensure that all known vendors, local and non-local, are aware of and have an opportunity to respond to the RFP.

The department shall not accept or consider any proposal that was received after the date and time of closing. The department shall return such a response to the proposer unopened. No participant on the evaluation committee shall have a conflict of interest with any of the proposers, and all members must sign the 'Evaluation/Review Committee Member Acknowledgment' form prior to proposal review.

The evaluation committee makes one written recommendation of award to the department head determined by the results of the combined scoring of all evaluation criteria. Local vendors shall be given a local vendor preference in the RFP scoring. If one or more of the proposers is a local vendor as defined in section 531 of this manual, these proposers shall be entitled to a local vendor preference provided they achieved a score of at least 70 percent of all points possible during the initial scoring phase by the evaluation committee and they were included in the short list of proposers for further consideration by the committee, if the committee elected to create a short list of finalists. These local vendors shall have their final evaluation score increased by 5% for purposes of determining the evaluation committee's final selection for recommendation of award.

The department shall submit a recommendation of award to the Board of Supervisors. If approved, the Chairman will sign the contract and the services with the awarded proposer may begin.

Contracts established by means of the RFP process can reasonably extend over a five year term due to the thorough and diligent actions used in this open, fair and competitive process. The department should work with Counsel to make the final determination as to the term of the contract based on the length of time the service is needed by the department, the future availability of other qualified providers and if the fees to perform these services are anticipated to increase or decrease over time.

.1 RFP Sole Source Approval. If an RFP process cannot be performed or the department finds that such a process would not be appropriate or in the County's best interest, the department shall seek *sole source* approval by the Board of Supervisors. The department shall complete the Sole Source Board Letter-Documentation of Research form and submit it along with a copy of the Board letter to the

Purchasing Division 10 days prior to the anticipated agenda date for concurrence that a *sole source* situation exists.

.2 *RFP Exemptions.* If a department feels it is appropriate for a particular service to be categorically exempt from all or part of the RFP process, the department shall request the Board of Supervisor's approval to dispense with the RFP process. The department shall state in the Board letter the reasons justifying the exemption and, if approved by the Board, the exemption from an RFP process for this specific service will remain in effect through the remainder of the fiscal year. The department must seek Board approval of this exemption each fiscal year that contracts for these specific services shall be established.

Each time the department brings a contract before the Board for approval citing this exemption, the department must categorize this contract as "Sole Source" in the header of the Board letter and must state in the Board letter the date on which the Board granted the exemption. The department shall forward the Board letter to the Purchasing Division for concurrence at least 10 days prior to the anticipated agenda date, but is not required to complete the "Sole Source Board Letter-Documentation of Research" form. The Purchasing Division will concur, but requires the letter simply to add the agreement to the list of *sole source* Board requests that are reviewed by the County Administrative Office during agenda review.

512. Request for Qualification (RFQ). An RFQ is the process used to solicit qualified consultants for a project. RFQ's should not be used in order to simply save time or shortcut the normal *RFP* process except in certain limited situations, and such use must be approved in advance by County Counsel. Prior approval by County Counsel is not required if an RFQ will be used merely to gather the information necessary to prepare a more complete *RFP* that will then be used to select a consultant to provide the required services. Contact County Counsel if further clarification is needed. RFQ's should be posted on the County's website and are uploaded to the website the same way *RFP*'s are uploaded.

513. Request for Information (RFI). An RFI is a written request submitted to vendors during the project planning phase when the specifications and requirements necessary to complete the project are not clearly identified and more details or clarification are necessary from specialists in order to solicit a proposal. It also can be submitted to determine the capabilities of the various suppliers; however, the RFI will indicate that this request is for information gathering purposes only and an award will not follow.

514. Price Agreements. The Purchasing Division competitively bids and negotiates price agreements for standard commodities and services that are routinely required by departments. A price agreement is established to capture total countywide usage on *goods* and *services* and attempts to provide the best price available which meets the departments' defined specifications. Departments can typically find suppliers that will offer lower prices than listed on our price agreements if they search, but the overall savings on price agreements are based on averages across product lines that represent total County purchases. Also, awarded vendors of price agreements conform to any County insurance requirements and other imposed requirements which may add cost to any vendor's original quote. The intent of price agreements is to provide quick access to common *goods* and *services* at competitive prices without the need to do extensive searching by the department, which consumes valuable labor hours and ultimately adds to the overall purchase cost. Departments shall use these price agreements unless they have provided a detailed justification to the Purchasing Agent specifying why a particular agreement will not meet the department's needs. The Purchasing Agent shall review the justification for concurrence.

515. "Terms and Conditions" Agreements. "Terms and Conditions" agreements are vendor agreements which have been established and are routinely used by departments but do not have pricing associated with them, such as memberships and software license agreements. These agreements are County Counsel approved and "held" in the Purchasing Division to prevent departments from requesting County Counsel

to review identical terms and conditions repeatedly. Departments using these agreements each year are required to ensure that the vendor is still using the same agreement without changes.

516. Purchase Orders. A legally binding document issued by the Purchasing Division that specifies the *goods* or *services* ordered from a vendor for an indicated price. Purchase orders are issued for one-time purchases and also for blanket requests when a department will be making purchases periodically against it throughout the fiscal year. Purchase orders are prepared and processed by the Purchasing Division based on the information provided on the *requisitions* and other attached documentation submitted by departments through the *purchasing system*. If a vendor agreement of any type is required by the vendor, it is the requisitioning department's responsibility to have the agreement reviewed by County Counsel unless the Purchasing Division will be performing a competitive bid process for the purchase. In this situation, the Purchasing Division will work with County Counsel in the review.

County purchase orders contain County Counsel approved terms and conditions. By acting upon a purchase order, the vendor has agreed to abide by the stated terms and conditions unless the vendor has indicated prior to accepting the purchase order of any exception and County Counsel has approved of this exception and it is clearly noted in the purchase order.

The Purchasing Division transmits the completed purchase order to the Auditor-Controller-County Clerk for encumbrance against the department's budget. After the purchase order is encumbered, it is transmitted to the vendor. Departments are to compare the listed *goods* or *services* on the purchase order with the original *requisition* to verify that the correct goods or services have been solicited. Departments may view and print a copy of the purchase order via the *purchasing system*.

.1 Payments Against Purchase Orders. Vendors will be instructed to submit invoices directly to the requisitioning department for verification of correct pricing and delivery.

a. *Partial Delivery.* If a vendor makes a partial delivery of items or services, partial payment against the purchase order may be made.

b. *Bulk Items.* Bulk item shipments, such as sand, rock, road oil and printed forms, can exceed the ordered quantity on a one-time purchase order by up to 10% without requiring special approval by the Purchasing Division. The actual quantity accepted should be noted on the department's copy of the purchase order. When the quantity accepted exceeds 10% of the quantity ordered, the department must submit a request to increase the encumbrance amount via the Auditor-Controller-County Clerk's online encumbrance system which will initiate a *change order*.

c. *Freight Payments.* The Auditor-Controller-County Clerk may initiate freight payment up to \$50.00 against purchase orders indicating a shipping point of FOB-Origin without obtaining prior approval from the department if sufficient funds are available.

517. Blanket Purchase Orders. A blanket purchase order is a purchase order issued to a vendor for routine *goods* or *services* when it is anticipated that multiple purchases will be made with that vendor over a specified period of time; however, the blanket purchase order cannot extend beyond the end of the current fiscal year. After its acceptance by the vendor, purchases may be made against it periodically as required without calling for new purchase orders.

The Purchasing Division transmits the completed blanket purchase order to the Auditor-Controller-County Clerk for encumbrance against the department's budget. After the blanket purchase order is encumbered, it is transmitted to the vendor. Departments may view and print a copy of the blanket purchase order via the *purchasing system* and begin making purchases with that vendor.

.1 *Blanket Purchases Not Tied to a Price Agreement.* The department shall make every effort to use the County's *P-Card* in place of blanket purchase orders for annual purchases of *goods* or *services* that will not exceed \$30,000 in one fiscal year and when the purchases are not tied to a *price agreement*. See section 519 of this manual for more detail on *P-Cards*. Transactions of \$5,000 or more require a bid process if not tied to a *price agreement*.

.2 *Blanket Purchases Tied to a Price Agreement.* The department shall make every effort to use the County's *P-Card* in place of a blanket purchase order for purchases of *goods* or *services* that are tied to a *price agreement* if the vendor will agree to abide by the terms and pricing of the established *price agreement* when using the card. See section 519 of this manual for more detail on *P-Cards*. Multiple purchases can be made from a vendor with an active *price agreement* in place with no dollar restrictions per transaction up to the limit of the blanket purchase order; however, a single item costing \$5,000 or more will require a *fixed asset* account to be established and the purchase of this item must be on a separate *purchase order*. Certain contractor services, such as electrical and HVAC services, require a bid when the estimate of the services exceeds \$6,500, even though the vendor has an established *price agreement*. If it applies, this restriction will be stated in the *price agreement* under the Scope of Work: Requirements and Limitations section.

.3 *Payments Against Blanket Purchase Orders.* Requests for payment of invoices for *goods* or *services* received under a blanket purchase order are transmitted on a *Claim for Payment*. The department is to verify the purchases as accurate, list the invoices on the *Claim for Payment* in numerical order, and attach the invoices as listed. Once signed by an authorized departmental representative, the claim should be forwarded to the Auditor-Controller-County Clerk for processing.

The County will not be liable for the payment of any purchases that are above the amount established on the blanket purchase order. Therefore, departments shall not make purchases that will exceed the dollar amount stated on the blanket purchase order.

518. Change Orders. A change order is a written modification to a *purchase order* or *blanket purchase order* by the County directing the vendor to change the contract amount, requirements or time.

Increases to *blanket purchase orders* require review by the Purchasing Division before the department may make a purchase that exceeds the original dollar amount on the *blanket purchase order*. The new total dollar amount may move the purchase into a new category that would require a competitive process, *sole source* documentation or Board approval. Changes to the specifications, locations of services, or other terms not related to the dollar amount, also require review by the Purchasing Division. Once approved, a change order will be generated notifying the vendor of the changes to the *blanket purchase order*.

All *blanket purchase order* cancellations should be entered in the Auditor-Controller-County Clerk's online encumbrance system, which will automatically forward the request for cancellation.

519. Purchasing Cards (P-Cards). The objective of using the County's *P-Card* program is to streamline small dollar purchases, reduce overhead costs and time delays in processing one-time *purchase orders* and *blanket purchase orders*, and their associated *change orders*, and to reduce the printing and distribution of purchase order documents and warrant payments to suppliers.

Except as prohibited by Section 519.4 and as encouraged in identified categories within sections 508 and 517 of this manual, a P-Card may be used to make authorized purchases at any establishment that accepts credit cards. The merchant is responsible for obtaining authorization for the transaction. Those transactions exceeding the single, daily or monthly transaction limit or are for non-qualified purchases will be declined.

Department heads are ultimately responsible for the proper use of P-Cards issued to employees and for ensuring compliance with the policies and procedures described in this section, and they will assume all financial responsibility for misuse of the P-Card. Because the P-Card represents public funds, cardholders must be continually reminded that their purchases represent the County's interests and reputation for ethical and prudent business dealings. Each transaction is a matter of public record accessible to scrutiny from all members of the public and the media. As written policies cannot be established to cover every eventuality of P-Card use, all department heads and cardholders must use their best judgment when expending public funds and should contact the Purchasing Division prior to using the P-Card for the purchase if they are uncertain whether the P-Card is a viable option.

As all County procurement is conducted through competition to the maximum possible extent, P-Card purchases shall adhere to the following:

- Cardholders are encouraged to obtain more than one quote whenever possible, regardless of the dollar amount, unless the purchase is placed against an existing *price agreement*.
- Cardholders shall follow the Fast Track Bidding process for each purchase over \$4,999 not tied to a *price agreement*. For auditing purposes, the cardholder shall keep an electronic record of the Fast Track Quote Sheet and all supplier written quotes by attaching copies of advertisements, a screen print or advertised price from an internet site, or other images containing price quotes to the transaction in the AuditorNet Purchasing Card application. No additional quotes are required if the purchase is placed against an existing *price agreement* or if the commodity is proprietary in nature. If proprietary, a statement concerning the nature of the purchase shall be attached to the transaction.
- No single item may be procured over \$4,999, including tax and shipping.
- Departments shall notify the Purchasing Division if repetitive purchases for a *good* or *service* may exceed \$30,000 department-wide from the same supplier in one fiscal year. The Purchasing Division will review the *good* or *service* for a possible competitive process and establishment of a *price agreement*.
- The Purchasing Division will regularly review department and countywide P-Card spending patterns to identify the purchase of repetitive *goods* and *services* that should be competitively bid.

.1 Price Agreement Purchases Utilizing P-Card. If there is an existing *price agreement* for the needed *good* or *service*, use of the P-Card as a payment vehicle against the *price agreement* is encouraged and authorized if: 1) the transaction total is under the transaction limit, 2) no single item exceeds \$4,999 including tax and shipping, and 3) the vendor's acceptance of the County's P-Card is contained in the County's *price agreement*.

.2 Use of P-Card for Services. The P-Card cannot be used for *professional services*. The P-Card can be used for *public works/construction* projects and *services* which fall under the transaction limit of the P-Card; however, all County policies related to these types of services must be followed. Refer to sections 508 and 509 of this manual for more information.

Before a cardholder uses the P-Card to pay for a service that is not already tied to a *price agreement*, the cardholder must verify that any required insurance is established with the correct coverages and dollar limitations before the vendor begins the service. For those services which require a contractor's license,

the cardholder shall verify the license as current and in the correct classification and that prevailing wage has been quoted on labor estimated at \$1,000 or more.

.3 *Use of P-Card for Taxable Goods from Out-of-State Merchants.* California sales tax must be applied to all P-Card purchases of taxable items from out-of-state merchants. If the out-of-state merchant does not include sales tax on the invoice of an item or items that are normally taxed, the cardholder must make the correction in the Auditor's Purchasing Card Application when certifying their card account.

.4 *P-Card Restrictions.* Although a card may be accepted at the merchant's facility, *P-Cards* shall not be used for:

- Items for personal consumption
- *Professional services*
- Fuel
- *Fixed assets*
- Cash advances
- Meals, unless prior approval has been granted by the Purchasing Agent for County-related training/events
- Travel and/or lodging
- Any item for employee appreciation or socials without prior authorization from the Board of Supervisors
- Additional restrictions implemented by the cardholder's department head

In an effort to assist the department from preventing inadvertent P-Card violations, the Purchasing Division will place merchant code restrictions through US Bank on P-Cards blocking transactions from merchants which appear to provide goods or services that may be restricted. However, these merchant codes are broad and the method of assignment of a merchant code by the institution is not well defined. These code restrictions are valuable but will not block all unauthorized transactions. The department head is ultimately responsible to conduct P-Card transactions within County policy.

.5 *P-Card Dollar Limitations.* Single transactions cannot exceed the single transaction limit that is established by the department or \$9,999, whichever is less. Single items over \$4,999, including tax and shipping, shall not be purchased by means of the P-Card and will require the department to submit a *requisition*. Monthly purchases cannot exceed \$10,000 and annual purchases cannot exceed \$50,000 without special approval from the Purchasing Agent. With the encouragement of the Purchasing Division to use P-Cards as the method of payment in place of low-dollar *purchase orders* and *blanket purchase orders*, the department should notify the Purchasing Division of the cardholders that will likely exceed the monthly and/or annual limits and recommend a maximum limit on those cards. All other cards reaching the monthly limit will be frozen until the next billing cycle and those reaching the annual limit will be frozen until the next fiscal year. These restrictions are per card and employees that have been issued more than one P-Card for multiple budget units will follow the restrictions and limitations of each card separately.

.6 *Card Misuse.* Employees who misuse their cards may lose all card privileges. Any misuse found by the Auditor-Controller-County Clerk will be reported to the department head and the Purchasing Agent for appropriate action. The Purchasing Division will also conduct ongoing reviews of possible misuse. Misuse is defined as:

- Purchasing multiple items over several days to avoid the competitive bid process
- Splitting items to circumvent the *fixed asset* dollar amount

- Splitting transactions to circumvent the card transaction limit
- Use of the card by any individual other than the cardholder
- Purchasing any item or service as outlined in section 519.4

.7 Request a New P-Card. Department will request a new P-Card through the Purchasing Card Application in AuditorNet for each employee authorized by the department head to be issued a card. US Bank will mail the card to the Purchasing Division with a unique account number that is specific to the department and the cardholder.

a. P-Card Class and Test. Before the P-Card will be released to the cardholder, the cardholder must view the P-Card instructional video offered by the Purchasing Division through CountyNet and must pass the P-Card test with a score of at least 80%. The test is offered immediately following the instructional video. Once the cardholder has passed the P-Card test, the card will be released to the cardholder for use. This P-Card instructional video must be viewed and the test passed by each cardholder when the card is originally issued and when the replacement for an expired card is issued by US Bank approximately every three years. Those individuals authorized by the department head to issue P-Cards to employees, defined as PCRequestors within the Auditor-Controller-County Clerk's Purchasing Card Application, and those individuals authorized to approve P-Card transactions of the department's cardholders, defined as PCApprovers, must also view the instructional video and pass the test. This is to ensure the PCRequestor and PCApprover understand the authority being given to the cardholder.

.8 Card Cancellation. When a cardholder leaves County employment or the department head rescinds the employee's authorization for a P-Card account, the department shall cancel the card through the Purchasing Card Application in AuditorNet. The department shall promptly destroy the card. The department is responsible for any charges incurred after an employee leaves county employment or has the P-Card canceled.

.9 Lost or Stolen Cards. Cardholder shall promptly report a lost or stolen card directly to US Bank. The card will be cancelled immediately and US Bank will issue a new card under the cardholder's name and mail the card to the Purchasing Division for distribution to the cardholder. Any unauthorized charges incurred prior to notifying US Bank are the responsibility of the department, not to exceed \$50 in accordance with the US Bank Purchasing Card Agreement.

.10 Requests for Temporary Lift of Restrictions. If the department would like to request a lift of restriction on a specific P-Card for a purchase that is typically restricted from P-Card use, as stated in section 519.4 of this manual, the department shall make the request within the Auditor-Controller-County Clerk's Purchasing Card Application. The department shall provide justification for the purchase, the merchant involved and the dollar amount of the transaction. The request is forwarded to the Purchasing Agent to either approve or decline the request.

.11 P-Card Use During a Declared Emergency. During a declared emergency by the Board of Supervisors, the P-Card transaction limits for all cardholders participating in the emergency shall be increased to \$25,000 per transaction with a \$100,000 total limit and restrictions shall be lifted to allow these cardholders the ability to make necessary purchases as required to continue operations. Once the initial emergency is declared over by the board of Supervisors, all dollar limits and restrictions will revert to their original settings. In addition, select individuals, as determined by the Logistics Chief or Emergency Operations Center Director, will be authorized to use pre-issued emergency P-Cards with no dollar limitations or restrictions to pay for expenses incurred due to the emergency. Normal bidding procedures may be waived to accommodate necessary purchases in which the time required to bid would not be in the best interest of the County.

.12 Fire Department Emergency Response Deployment Expenses. When deployed out-of-County responding to another agency's request for emergency assistance or deployed within the County in a remote area for an emergency incident, Chief Officers and those so designated by the Fire Chief are authorized to be issued P-Cards. In this instance, the P-Card may be used to procure food, lodging, and small parts and services related to the mechanical failure of vehicles or equipment. Compliance with all other established policies and procedures governing the use of P-Cards is required. The Fire Chief shall be responsible for ensuring reimbursement by an employee violating the policies and procedures within 30 days.

.13 Supporting Documentation. Each cardholder is required to certify that the items charged on their P-Card account are accurate and have been billed at the correct price with the correct sales tax. All charges must be supported with a sales draft that contains sufficient description to properly identify the *goods* or *services* purchased. All supporting documentation including detailed sales drafts, invoices and quotes shall be scanned and attached to the transaction on the Auditor's Purchasing Card Application. A written log of purchases by telephone must be maintained as these purchases typically do not provide supporting documentation. The log should contain cardholder name, card number, order date, items purchased, amount charged and date of goods received. These logs are to be maintained by the department for three years from the date of purchase for audit purposes and are considered public documents.

.14 P-Card Payments / Certification. At the close of each billing cycle, each cardholder will receive notification from the Auditor-Controller-County Clerk's office that their card account will require review and certification. After the cardholder has certified the charges as correct, an individual within the department that has been assigned the role of PCApprover or PCRequester as defined by the Auditor-Controller-County Clerk's system will approve the transactions. Any P-Card which has not been certified within forty-five days from the statement date will be temporarily suspended until certification has been processed.

520. Claim for Payment. A Claim for Payment is a form used by the Auditor-Controller-County Clerk's Office to process payments. Claims for Payment are submitted to the Auditor-Controller-County Clerk electronically. The department creates and approves the claim prior to submitting it to the Auditor-Controller-County Clerk. A copy of the intranet claim and invoice or other documentation is then sent to the Auditor-Controller-County Clerk for payment processing. Invoices should be original. In the event that a copy of an original must be used, it must be marked "Use as Original". A copy of the invoice should be provided for remittance to the vendor if necessary. If the invoice has a perforated remittance, no copy is needed. Claims for Payment must be used to process all payments on County contracts, purchase orders and blanket purchase orders. Business invoices must be submitted to support claims or the claimant must sign the claim.

The Auditor-Controller-County Clerk will return to the department any claims it determines to be in error or out of compliance with County policy.

Charges that can be paid on a Miscellaneous Claim for Payment without a *purchase order* or agreement are:

- A. Payments that have been authorized by the Board, including emergency payments and departmental specific charges for which the Board has authorized payment upon departmental approval
- B. Reimbursement of Revolving, Cash Difference and Petty Cash Funds
- C. Bank charges on County bank accounts

- D. Government Code refunds
- E. Memberships and registration fees
- F. Employee reimbursements (See Chapter 3) and payments authorized under section 317
- G. Subscriptions, books and training materials, technical publications, postage, etc
- H. Payment of assessed liens, penalty or other assessments, permit fees and other payments made to regulatory bodies or other governmental agencies, including court costs
- I. Utilities, insurance, title-related payments and notary bonds
- J. Legal notices, classified ads and other advertisements, with reference to price agreement as applicable
- K. Interpreter services, with reference to price agreement as applicable
- L. Medical service payments in cases where a purchase order or agreement is not feasible (EMS, Public Health, California Children Services, Sheriff-Coroner, Mental Health and KMC)
- M. Animal Control payments to veterinarians in cases where a purchase order or agreement is not feasible
- N. Board of Trade event-related activities, including catering
- O. DHS supportive payments for welfare program participants
- P. Interlibrary loan charges
- Q. Emergency towing charges
- R. Expert testimony, subpoena compliance, witness fees and witness lodging under California Witness Protection Program
- S. Court ordered fees or costs, including reimbursement of legal costs ordered by the court
- T. Mediation, arbitration and administrative hearing costs, including retirement
- U. Live Scan fingerprints from the Department of Justice, accident photos, reproduction of litigation documents, process services, etc.
- V. Payments mandated by law or authorized under government code, county ordinance or Board direction for which the Miscellaneous Claim process is the most feasible method of payment, as determined by the Auditor-Controller

521. Advance Payment. Expenditures that require advance payment, such as postage, post office box rental, magazine and text subscriptions, membership dues, and training and technical materials on media, may be made by *P-Card* or by processing a *Claim for Payment*.

522. Revolving Funds. Departments can request approval from the Auditor-Controller-County Clerk to establish a revolving fund for a stated dollar limit in order to pay for specified services and/or material which are considered a legal charge against the County and are in compliance with Government Code §29320. Written authorization from the Auditor-Controller-County Clerk is required. Reimbursement is the same as for petty cash revolving funds.

523. Petty Cash Revolving Funds. To establish a petty cash revolving fund, the department head must obtain authorization by submitting a request via memorandum to the Purchasing Agent, certifying compliance with the purchasing procedures as outlined in this chapter, Ordinance Code §§2.38.070-.150 and Government Code §25500. The department must also submit a request to the Auditor-Controller-County Clerk specifying the amount of the fund. Petty cash revolving funds will not be established for less than \$100.

.1 Unauthorized Use. Accepting IOUs in any form, splitting invoices or receipts and cashing checks or negotiable instruments is prohibited. Medicine, membership or registration fees, parking fees, printing services, training, *goods* or *services* for employee socialization, travel or transportation expenses, gasoline, or furniture of any kind cannot be purchased through a petty cash fund.

.2 *Purchase Limits.* Purchases can be made up to \$500. Purchases over \$500 must be made by *purchase order, P-Card* or by *Claim for Payment* when appropriate.

.3 *Reimbursement.* A receipt, invoice or a petty cash voucher that states the vendor's name, what was purchased and where the purchase was made must support all purchases from the petty cash fund. Departments must submit an electronic *Claim for Payment* through AuditorNet including the supporting expense documentation as frequently as needed to maintain an adequate cash balance in the fund. Claims for less than \$50 will not be accepted, except that all funds are to be reimbursed at the end of the fiscal year regardless of the amount reimbursable. Unless the size of the departmental structure prohibits, the custodian signature and the authorized signature on the *Claim for Payment* should not be the same. If the claim is approved for payment, the warrant will be payable to the department head. If any portion of the claim is not approved, the claim will be returned to the department for further review. If a claim is rejected for payment, the employee who authorized the purchase is responsible for reimbursing the petty cash fund.

.4 *Accounting Documents.* The Auditor-Controller-County Clerk will provide samples of the petty cash vouchers, petty cash log and a prepared *Claim for Payment* upon department request. Departments should maintain a log of any petty cash transactions that are not in a checking account. Distributions from the fund should match to receipts, invoices and petty cash vouchers. Departments should retain a copy of receipts and invoices, petty cash vouchers, *Claims for Payment* and the petty cash log for auditing purposes.

524. Piggyback Purchases. Based on Resolution #2001-017 which was adopted by the Board of Supervisors in January 2001, the Purchasing Division has been granted authority to "piggyback" on any other governmental agency's contract, whether federal, state or local, for the purchase of any *good* on behalf of the County when the other governmental agency has used an appropriate competitive bid process to select the vendor with whom it has contracted. This resolution is specific to *goods* and not to *services*. The Purchasing Agent will determine whether it is advantageous to the County to contract by this method on a case-by-case basis. While this resolution allows for the use of the contract, it does not globally approve the terms and conditions of the contract. County Counsel's approval is required before the Purchasing Agent can enter into any contract with a vendor, including those awarded through "piggybacking" on another governmental agency's competitively bid contract.

525. Purchase of Used Equipment. Any purchase of used equipment requires an estimate from an independent third party unless a competitive bid process of similar used equipment is performed and the bid contains defined minimum specifications as part of the bid.

526. Group Purchasing Organization (GPO). Departments may obtain authorization to participate in a Group Purchasing Organization (GPO) and to use the member vendors affiliated with these organizations. The authorization to participate in such a GPO must first be granted by the Board of Supervisors upon request by the department. Once authorization has been granted, an *RFP* process will be utilized by the department to select a GPO to recommend to the Board of Supervisors for approval. A resolution identifying the selected GPO must be written by the department, with assistance from County Counsel.

If the Purchasing Agent concurs that the awarded GPO utilizes a competitive selection process which is comparable to the RFP process used by the County, the department may contract with the GPO participating vendor most qualified to provide the *goods, services* or *professional services* required, though the department shall still negotiate for the best pricing and County Counsel must review and approve any required agreements. If a local vendor, in addition to GPO participating vendors, can provide the *good, service* or *professional service* required of the department and the purchase will exceed

\$100,000 annually, the department must give these local vendors an opportunity to participate and a competitive bid process shall be conducted.

527. Joint Powers Authority. Authorization to purchase goods or services through a Joint Powers Authority (JPA) must be approved by the Board of Supervisors on an annual basis. Upon concurrence by the County Administrative Office and review and approval by County Counsel, the department shall make a request for the Board to authorize purchases through the JPA up to a specified not-to-exceed amount for each fiscal year.

The department shall ensure that procurement practices observed by the JPA do not contradict any of the County's procurement policies as outlined in this Chapter. Additionally, departments shall compare pricing among other sources, including local vendors, and ensure that JPA purchases are cost-effective. If the Purchasing Agent concurs that purchases made through the JPA are of a competitive selection process comparable to the bidding processes used by the County, the department shall have the option of purchasing through the JPA after the County Administrative Office has approved the requested purchase(s) for available funding.

These JPA agreements must be reviewed by County Counsel and approved for continued participation by the Board of Supervisors at a minimum of every ten years.

528. California Multiple Award Schedules (CMAS) and General Services Administration (GSA) Vendors. Departments may participate in CMAS and GSA agreements as outlined in each section below.

.1 California Multiple Award Schedules (CMAS). The authorization to participate in CMAS agreements is given to all County departments with the understanding that a *Best Value* process will be administered by the Purchasing Division to select among the CMAS participating vendors when no known local vendor can provide the *goods* or *services* required. The requesting department will provide all specifications to the Purchasing Division for this *Best Value* process.

.2 General Service Administration (GSA). The authorization to participate in GSA agreements is open to specific departments who have been authorized to use a 'GSA' number issued to a Federal government agency, e.g. County Fire Department may use the Cal Forestry GSA number to purchase items for firefighting.

GSA allows any County department, under certain circumstances, to use its GSA agreements with vendors to purchase specific items for intended use in 'Disaster Recovery' or 'Homeland Security' needs. The requesting department will submit complete specifications to the Purchasing Division and the Purchasing Division will perform a *Best Value* process to select among the GSA participating vendors for the following:

- a. *Cooperative Purchasing.* The purchase of Information Technology (IT) products, services, and support equipment, as well as law enforcement, security, facilities management, fire, rescue, clothing, marine craft and emergency/disaster response products and services from Federal Supply Schedules for 'Homeland Security' needs
- b. *Disaster Recovery Purchasing.* The purchase of products and services under GSA Schedule Contracts only to facilitate recovery from a major disaster

529. Rentals and Leases – Personal Property. If the total dollar amount of a proposed personal property lease, capital lease or operating lease exceeds \$30,000, County Administrative Office approval is required. All personal property leases over \$30,000 shall be competitively bid. If a bidding process is not

an option, the proposed lease is considered a *sole source* lease, which requires the Board of Supervisor's approval. The Purchasing Division is responsible for negotiating personal property rental/lease agreements on behalf of the County in an amount up to \$500,000, signing the personal property rental/lease agreement and issuing *purchase orders* authorizing the lease of personal property.

The department is required to send a copy of the lease amortization schedule to the Auditor-Controller-County Clerk's office for all equipment purchased by capital lease. See section 407.5 of the County Policy & Procedure Manual for more information.

Booth and/or space rentals for job fairs, marketing of services, etc. may be procured by means of a Miscellaneous Claim or *P-Card*. If a vendor agreement is required, the Purchasing Agent may execute the agreement upon approval as to form by County Counsel. If County Counsel finds that the agreement requires the County to assume any unusual or unreasonable risk or liability and will not approve the agreement as required by the vendor, the requesting department must submit the agreement to the Board of Supervisors for approval.

530. County Contracts. Unless a department receives prior approval from the Board of Supervisors, only the Board and the Purchasing Agent have the authority to enter into contracts on behalf of the County. However, the requesting department has several responsibilities in preparation of the contract's approval and monitoring of the awarded contract:

- The department head is responsible for the content of contracts handled by the department. The department head must be able to explain and defend the business terms and conditions in the contract, especially those that impose unreasonable and unusual liability on the County.
- The department head is responsible for planning and negotiating business terms, conditions and substantive content of all contracts for specialized services provided to or managed by the department, e.g. agreements of sale, software license agreements, and *professional service* agreements.
- The department shall forward the contract and any supplemental terms and conditions to County Counsel for review as to form on statutory compliance, adequacy and accuracy of terms and enforceability of all contracts. Terms and conditions must be favorable to the County and must protect the County's interests. If approved by County Counsel, the department may move forward in obtaining authorization of the contract. If County Counsel finds that the contract requires the County to assume any unusual or unreasonable risk or liability or cannot for any other reason approve the agreement as required by the vendor, the department must submit the contract to the Board of Supervisors noting the areas of concern identified by County Counsel, and request Board approval.
- On technology related contracts, the department shall forward the contract to the Technology Services Division Chief responsible for technology review within the ITS Department. This individual is charged with the responsibility of reviewing the contract for bandwidth impacts, firewall modifications, interaction with other existing systems, security issues, servers, software development and support services that may affect the department or the County. If the contract is \$50,000 or more, the Technology Services Division Chief's signature is required. If the contract is under \$50,000, the Technology Services Division Chief will review to remain informed of technology that is being utilized within the County, but his/her signature is not required, nor does the department need to wait on this review. However, if there is an area of concern, the department will be notified as soon as possible.
- Once the contract has been awarded, the department head is also responsible for ensuring that the contractor is performing and complying with the terms and conditions of the contract prior to

issuing any payments. A process for monitoring contracts for compliance must be established by the department.

.1 Retroactive Approval of Board Contracts. The department must formally notify the Board of Supervisors of each contract that will be brought to the Board for approval after the contract's effective date. The notification shall be placed on the Board's agenda prior to the effective date of the contract and prior to the initiation of services required by the contract. The item may be placed on the agenda as a consent item.

If an agreement is not executed within six months of notifying the Board of Supervisors of the anticipated retroactive agreement, a status report must be placed on the Board's agenda. The item may be placed on the agenda as a consent item.

.2 Retroactive Approval of Board Agreements – Other Government Entities. Agreements with other government entities that are routinely presented to the Board for approval retroactively are to be consolidated in one annual Board notification of the anticipated retroactive approval, with each contract listed within the text of the Board letter and in the departmental subagenda language.

.3 Agreement-at-a-Glance. Any agreement or addendum to an agreement taken to the Board of Supervisors for approval requires completion of the *Agreement-at-a-Glance* form. This document is to be placed in the agenda packet positioned behind the Board letter and in front of the proposed agreement or addendum. This document allows for quick review of the agreement's provisions by all parties.

.4 Agenda Procedures for Contracts Containing Objectionable Provisions. The following procedures shall be followed by all departments placing a contract related item on the Board of Supervisors' Agenda for approval when County Counsel will not approve the contract as to form.

A. If the reason County Counsel will not approve the contract as to form relates to any one of the provisions listed in items 1 through 7 in subsection .4 below, the matter must be a non-consent item on the agenda.

B. If the reason County Counsel will not approve the contract relates to any of the provisions contained in items 8 through 13 in subsection D. below, the matter may be placed on the consent agenda. However, if County Counsel has notified the department that the contract exposes the County to unusual risk or potential liability, the matter must be placed on the non-consent agenda so that County Counsel may specifically bring this issue to the attention of the Board of Supervisors.

C. In either case, the department shall explain in its Board letter which provision(s) County Counsel has found objectionable and what efforts the department has made with the vendor to negotiate a revision to the provision(s) that would make it acceptable to the County. The department shall also include in the Board letter an explanation regarding the amount of risk and potential liability the County will likely be exposed to by entering into the contract, and why, in the department's opinion it is still in the best interest of the County to proceed with the contract. In addition, the Board letter must include a statement indicating County Counsel's opinion regarding the risk and potential liability of the County associated with the contract.

D. The list of contract provisions referenced in subsections A. and B. above are as follows:

1. Indemnification. Vendor refuses to indemnify the County or requires that the contract contain an indemnification provision that cannot be approved by County Counsel.

2. Insurance. The insurance provision deviates from the County standard insurance clause and requirements and cannot be approved by the County Risk Manager.
3. Waiver of warranties.
4. Limitations on liability.
5. Termination of contract. The contract either does not contain a termination provision or the termination provision cannot be approved by County Counsel.
6. Unilateral modification of contract terms. Appears most frequently in software purchase contracts and KMC provider agreements.
7. Automatic cost of living increases, with no caps.
8. Remedies.
 - a. Governing law, if not California.
 - b. Venue, if not Kern County.
 - c. Binding arbitration.
 - d. Waiver of jury trial.
 - e. Attorney's fees awarded to prevailing party in litigation.
9. Interest on late payments by County.
10. Assignment and subletting.
 - a. Non-property contracts. County wants right to consent to assignment by contracting party.
 - b. Property contracts. Where County is lessor, County wants right to consent to assignment and subletting. Where County is lessee, County wants right to assign and sublet, in particular to other County departments.
11. Confidentiality. The California Public Records Act limits enforceability of confidentiality clauses.
12. Legally required provisions. When a particular provision(s) is required by State statute or federal requirements to be included in a contract and provision(s) conflicts with County policy or is otherwise considered non-standard by County Counsel.
13. Non-negotiable agreements with State and federal agencies or sole source vendor.
 - a. State and federal agencies. State or federal agency will not negotiate or deviate from its standard contract.

b. Sole source. Vendors will not negotiate or deviate from its standard contract, and the County has no other source of supply that will properly meet the needs of the County.

E. Notwithstanding the foregoing, all contracts with maximum dollar amounts of \$50,000 or less may be placed on the consent agenda no matter what provision County Counsel has found to be objectionable. However, if County Counsel feels that the circumstances associated with the contract create a greater than normal level of risk or potential liability on the part of the County, the item shall be placed on the non-consent agenda so that it may be discussed with the Board of Supervisors. The department's Board letter shall contain the same information as indicated in subsection C. above.

531. Local Vendor Preference. The Board of Supervisors has approved and supports a local vendor preference which applies to all competitive bids for equipment, materials, supplies and *contractual services* in which the *contractual services* are procured using a bid solicitation process based solely on price. No consideration shall be given to any other factors such as qualifications, references or experience in determining contract award, provided the vendor whose price is determined to be the lowest has met all the bid specifications and requirements. The preference does not apply to *public works/construction* projects which must be awarded to the low responsive, responsible bidder to specification per Public Contract Code. A preference will apply to *professional service* contracts awarded by means of the *RFP* process as described in section 511 of this manual.

Local Vendor shall mean any business which:

1. Has had a fixed office or distribution point located in and having a street address within the county for at least six months immediately prior to the issuance of the request for competitive bids by the purchasing agent;
2. Employs at least one full-time or two part-time employees whose primary residence is located within Kern County, or if the business has no employees, shall be at least fifty percent owned by one or more persons whose primary residence(s) is located within Kern County; and
3. Will credit all sales taxes generated pursuant to the contract awarded as a result of the application of this local vendor preference to its business location in Kern County.

If the low bidder is not a local vendor, any local vendor that submitted a bid that is within five percent of the low bid shall have the option of submitting a new bid within 48 hours (not including weekends and holidays) of the time indicated in the bid documents of the bid opening. Such new bids must be in an amount less than or equal to the low bid announced by the Purchasing Agent. If the Purchasing Agent receives any new bids from local vendors who have the option of submitting new bids within said forty-eight (48) hour period, the Purchasing Agent shall award the contract to the local vendor submitting the lowest bid. If no new bids are received, the contract shall be awarded to the original low bidder as announced by the Purchasing Agent. If more than one new bid is received from local vendors, and there is a tie for the low bid, the contract shall be awarded to the local vendor whose original bid was the lowest.

For telephone or facsimile quotes, it is the responsibility of the buyer to determine the low bidder and to implement the local vendor preference.

Departments using the *Fast Track Bidding* Process must be aware of the local vendor preference when making a recommendation of award to the Purchasing Division. If the local vendor preference applies,

the department shall notify the Purchasing Division of the situation and the Purchasing Division will make contact with the local vendor(s). The department shall submit a *requisition* with the attached *quote sheet* and the Purchasing Division will complete the bid process and make the award.

532. Other Than Low Bid. If the Purchasing Division or the requisitioning department elects to purchase an item from a vendor who is not the low bidder, and the single item has a cost of \$1,000 or more, the purchase requires Board of Supervisor's approval per County Ordinance Code 2.38.151.

533. Confirming Orders. A confirming order is a purchase made by an individual without having authorized approval to make that purchase. As a general rule, only the Board of Supervisors and the Purchasing Agent have authority to obligate the County. Any employee who orders *goods* or *services* without following the established procedures for payment has exceeded his/her authority. The Purchasing Division with written justification from the department may approve confirming orders up to \$30,000, including tax and shipping. Confirming orders over \$30,000 shall be placed on the Board of Supervisor's agenda by the department for approval.

534. Emergency Purchases. An emergency situation exists when an incident occurs that requires immediate action be taken to preserve life, health or property. If the emergency purchase will require *public works/construction* services, refer to the procedures in section 509.1 of this manual. For emergency purchases other than *public works/construction*, the department shall contact the Purchasing Agent immediately for verification that an emergency situation exists, regardless of whether this occurs during regular business hours or not. Once approved, the department shall proceed with acquiring the *goods* or *services* required to mitigate the emergency and shall notify the Purchasing Division of the steps it has taken as soon as possible following the emergency. The Purchasing Division will provide instructions on how to issue payment to the vendor responding to the emergency.

535. Vending Machines and Public Telephones. The Purchasing Division is responsible for negotiating and executing licenses and agreements for placement and operation of vending machines and public telephones in County owned and leased buildings. All proceeds are credited to the General Fund through the Purchasing Division, unless otherwise authorized by the Purchasing Agent. The exception to this policy is that Kern Medical Center shall maintain the agreements for vending machines in their facilities and retain any proceeds.

536. Surplus Property Disposal. Per Government Code §25504, the Purchasing Agent has the sole responsibility to dispose of surplus County-owned property or *salvage*. Surplus property or reclaimed property may be disposed of by means of auction, surplus bid, equipment trade-in, recycling or donation as described in section 537 of this manual.

In an attempt to save funding and maximize County assets to the end of their useful life, any department that has surplus property in usable condition should contact the Purchasing Division by email describing the surplus property, attaching photographs if possible. The Purchasing Division will distribute this email to each department for possible transfer. If there is no response from other County departments, the department with the surplus property shall use the Inventory Adjustment Request (IAR) process for disposal.

If trade-in is a viable option for surplus equipment, either the trade-in equipment will be identified and become part of the competitive bid process for the new equipment or an independent third party shall determine the value of the equipment before it is negotiated in trade for newly awarded equipment. The department shall enter an IAR into the Auditor-Controller-County Clerk's Capital Asset Program and shall attach a copy of the IAR to the requisition for purchase of the new equipment. The Purchasing

Division will take appropriate action to ensure pick-up of the trade-in equipment once the new equipment is delivered.

.1 Inventory Adjustment Request (IAR). For all forms of disposal of surplus property or transfer among departments, an IAR must be completed on AuditorNet for approval. There are four levels of review and approval before the IAR is complete: Department Head, Purchasing, Auditor, and back to the originating requestor for verification. Once all approvals have been completed, the transfer among departments may take place, or, for surplus disposal, instructions will be provided on the Auction Authorization Form for the department to follow. A copy of the County-issued IAR and the Auction Authorization Form shall be signed by an authorized employee of the auction company at the time of transfer and retained by the department.

If the surplus equipment is beyond economical repair but has parts that can be used to replace defective parts on like equipment still in service, it may be more economical to keep the equipment in order to cannibalize (*salvage*) its parts. The department may request authorization to delete the equipment from inventory and use its parts on other equipment.

To send a vehicle or vehicles to auction, the department must first clear the title to any vehicle it wishes to send to auction. This includes vehicles that may be sold for scrap. After the title has cleared, the department shall submit an IAR and shall place no more than four vehicles on any one IAR. After the department has received IAR approval, the department shall remove the vehicle license plates and return them directly to the Department of Motor Vehicles (DMV). The department will then contact General Services to arrange for delivery or pick-up of the vehicle. Upon notification from the contracted auction company that the vehicle is in its possession, the Purchasing Division will sign the vehicle title to release liability and will forward title to the auction company. If a title is not on file, it is the responsibility of the department to obtain a duplicate title from the DMV.

.2 Proceeds. All proceeds are subject to auction service fees negotiated by the Purchasing Division. If the department auctioning the item is a General Fund department, the remainder of the proceeds is returned to the General Fund. If the department is a Non-General Fund department, a 10 percent handling fee will be retained in General Services and the net of the proceeds will go back to the department.

Items acquired through special purpose or grant funds or for which proceeds must be returned to the transferring department will be credited to that department, provided that prior notification to the Purchasing Division has been made.

All proceeds obtained through a recycling program, such as recycled oil, will go back to the department. Auction proceeds from surplus equipment that is replaced by new equipment acquired through a debt financing shall be applied to the outstanding debt by crediting the net auction proceeds to the fund and budget unit from which the replacement equipment was purchased.

537. Surplus Property Donation: In an attempt to save funding and maximize County assets to the end of their useful life, any department that has surplus property in usable condition should contact the Purchasing Division by email describing the surplus property, attaching photographs if possible. The Purchasing Division will distribute this email to each department for possible transfer. If there is no response from other County departments, the department with the surplus property may proceed with the donation process.

.1 Surplus Non-Computer Equipment Donation. If there is no response from other County departments of the need for the surplus non-computer equipment, the department shall prepare a Board

letter including a detailed description of the items to be donated, the recipient agency, a request that the Board approve the intent to donate and a request that the Clerk of the Board prepare and publish a Notice of Intent.

If the Board approves the intent to donate by a 4/5 vote, the Clerk of the Board will prepare the Notice of Intent and publish it in an adjudicated newspaper within 10 days of the approval. The department requesting the donation will pay for the publication. The department shall put this request back on its subagenda two weeks after the original Board date or at the next available Board meeting following the two-week period of time. If approved again by a 4/5 vote, the Board will authorize the department and the Purchasing Division to complete the donation and transfer ownership of the items.

.2 Surplus Computer Equipment Donation. Surplus computer equipment may be donated to school districts and those non-profit organizations with a 501(c)(3) status that are organized for the care, teaching or training of children or that provide health and human services. If there is no response from other County departments of the need for the surplus computer equipment, the department donating the equipment shall notify the non-profit organization to submit a request for the equipment to the Purchasing Division on the organization's letterhead. The Purchasing Division will notify the department that the donation has been approved and separate Board of Supervisors' approval is not required. The department will have an authorized employee from the organization sign the "Certification of Receipt of Surplus Computer Equipment" and will return a copy of this form to the Purchasing Division.

The donation must be conditioned on the following: computers will be loaded with operating system software only (all electronic files deleted and licensed software removed), inventory and identification tags must be removed, and the County will not guarantee the current or future working condition nor provide technical assistance with the set-up or operation of the equipment.

538. Protest Procedures for Request for Bid/Quotation. Any bidder or contractor who is allegedly aggrieved in connection with the solicitation or award of a contract or purchase order may protest. Bidders are to be advised that protests of the process, terms, conditions or any other aspect of the solicitation must be made prior to the bid due date. Bidders may not protest the contents of the specifications of the bid nor the award based on the use of the local vendor preference policy. Bidders may also not protest the selection of a consultant through the use of an *RFP* process. If a contractor wishes to appeal an award made for professional services between \$30,001 and \$100,000, such appeal must be made in writing to the Purchasing Agent for final decision.

Protests must be submitted to the attention of the purchasing agent no later than five working days after the Purchasing Division has submitted notification of the non-award to the aggrieved party. All protests must include the protestor's contact information, signature of the protestor or protestor's representative, solicitation or contract number, a detailed statement of the legal and/or factual grounds of the protest and all documentation supporting the protestor's position at the time of the initial protest and the form of relief requested.

The Purchasing Agent will respond in writing within five working days to the protestor. If the protestor wishes to appeal the decision rendered by the Purchasing Agent, such appeal must be made in writing to the Board of Supervisors within five working days of the Purchasing Agent's response. Protestors must contact the Clerk of the Board to be scheduled on the Board's agenda for the very next available meeting. All information submitted to the Board must be presented to the Purchasing Agent five working days prior to the Board meeting.

539. Demonstration of Equipment / Software by Vendors. Departments may request a demonstration of equipment or software from a vendor. This evaluation process is not in lieu of a competitive bid process.

Prior to arranging any type of demonstration, the department shall complete a Notification of Demonstration form found on CountyNet and shall submit this form to the vendor and the Purchasing Division. The form advises the vendor that the demonstration of goods or equipment may not remain with the department for more than 30 days and that a competitive bid process will be conducted prior to the department procuring the equipment or software. The demonstration and evaluation by the department does not give the department the authority to bypass the competitive bid process.

540. "I Agree" Software Policy. Department heads and designees are authorized to click "I Agree" to download and purchase software and software maintenance through the internet and to purchase off-the-shelf software with shrink-wrap licenses subject to the conditions stated in Exhibit A, which contains the full policy.

“I AGREE” SOFTWARE POLICY

Department Heads and their designated representatives are hereby authorized by the Board of Supervisors to click “I Agree” to download and purchase software and software maintenance through the Internet, or purchase off the shelf software with shrink-wrap licenses, on their own authority and without review of the software license or maintenance agreement by County Counsel and Information Technology Services (ITS), under the specific conditions provided for below. Shrink-wrap licenses under this policy are considered to be those licenses that do not require a signature and for which the user confirms agreement to the license terms by opening the software packaging, by using the software, or by not returning the product to the manufacturer once it has been opened.

1. Prior to purchasing software and maintenance from the Internet or using software with a shrink-wrap license, departments are expected to review the terms and conditions of the agreement(s). Department heads or their designees who have been assigned County purchasing cards are authorized to make purchases up to \$9,999, or the single purchase limit on their departmental purchasing card, whichever is less, without having the agreement(s) reviewed and approved by County Counsel and ITS, if the associated “click-on” or shrink-wrap agreement does not contain any of the prohibited terms and conditions indicated below and the product is not mission critical. This policy allows department heads or their designees to purchase multiple seats/copies of a software license and maintenance up to the \$9,999 limit. Additionally, the Purchasing Agent may, upon the request of a department and receipt of a Department Head Certification, purchase software licenses and maintenance without obtaining approval by County Counsel and ITS where the cost exceeds the purchase limit of a departmental purchasing card provided that: (a) the cost does not exceed \$24,999, (b) the product is not mission critical, and (c) the agreement(s) does not contain any of the prohibited provisions identified in section 2 below.

2. A department head or their designee may not agree to a license or maintenance agreement, regardless of whether the product is mission critical or not, if it contains any of the following provisions:

- Requirement for the agreement to be confidential between the County and the vendor
- Language allowing the vendor to unilaterally modify the agreement
- Multi-year agreement requiring annual subscription/license fees or automatic renewals with no ability for the County to terminate the agreement prior to each new annual period
- Requirement for the County to indemnify the vendor for anything other than the County’s own acts
- Limitations or disclaimer of the vendor’s liability for gross negligence or intentional acts
- Any type of on-site services are included
- Language granting vendor the right to access any County server without prior written approval of an authorized County representative and ITS

If a product is mission critical, the license and maintenance agreement must be reviewed by County Counsel and ITS prior to downloading or use by the department. In this context, mission critical is intended to mean any use of a product whereby over a period of time the department becomes dependent upon it to perform a function that is critical to its mission and does not have any easily obtainable alternative means of accomplishing that portion of its mission. As a result, the use of such a product creates a potential risk to the County or the department because the department may be required to discontinue use on short notice without sufficient time to replace the product or develop another method to adequately perform that particular task.

Should a department have questions concerning the terms and conditions in any “I Agree” or shrink-wrap license or maintenance agreement, they should seek guidance from County Counsel and ITS.

3. If any software license, maintenance agreement or other document subject to this policy requires a signature by a County representative, it must be submitted by the department to the Purchasing Agent for signature along with a copy of the Department Head Certification relating to that document. Unless otherwise authorized by the Board of Supervisors or state statute, departments are not authorized to execute agreements on behalf of the County.

4. When a department wants to “demo” a software product, if the vendor insists on having a “demo” or “trial” license, such license is subject to this full policy. In the event there is a “demo” or “trial” license, a department should make special note of any provisions that require the license to be purchased if not returned or destroyed within a specified period of time, although such provisions do not prohibit a software “demo.”

5. Any software patches, anti-virus updates and other such maintenance releases that require clicking on an “I Agree” to obtain them are hereby authorized for those products for which the department already has a valid license and maintenance agreement as applicable. Requirements of Section 6 below do not apply to patches, updates, or maintenance releases for valid software licenses or maintenance agreements that are already documented in the department’s permanent software licensing file.

6. In accordance with the County’s Software Licensing policy, each department is required to print and file a copy of each distinctly different “I Agree” document to which it agrees. The Department Head must sign a certification, in the form attached to this policy, indicating the department’s approval of the purchase and certifying its assessment of the risks. The main risk factors a Department Head must consider are:

- Financial liability if the product functions incorrectly or a third party incurs damages from the County’s correct use of the product
- Loss of ability to use the product due to injunctive process or other restrictions such as a threat of an infringement lawsuit

The license and maintenance agreement documents, and the Department Head certification, must be filed in the permanent departmental software license file along with all other signed license agreements, shrink-wrap licenses, and proof of purchase. The departmental software license file shall be audited by the Auditor/Controller during each department’s bi-annual audit for compliance with this policy.