



ADMINISTRATIVE MEMORANDUM
COUNTY OF SAN MATEO

NUMBER: B-1

SUBJECT: Soliciting, Selecting, and Developing Agreements with Providers of Goods and Services

RESPONSIBLE DEPARTMENT: Human Resources Department, Procurement Division

APPROVED: _____

John L. Maltbie, County Manager

DATE:

11.29.17

I. PURPOSE

This Administrative Memorandum rescinds and replaces Administrative Memorandum B-1 dated April 27, 2015. The revisions incorporate recent changes to the San Mateo County Code of Ordinances and also update and clarify County-wide procurement and contracting standards. Primary modifications include: defining procurement methodologies; eliminating requirements for evaluative procurements if price-based bid requests can be used; establishing certain categorical exemptions from competitive procurement requirements; providing guidance regarding emergency procurement and approval authority; clarifying the role of the County Procurement Manager; providing for the establishment of County-wide procurement procedures; and bringing County procurement into alignment with public sector best practices and current California legal requirements.

For requirements regarding contracts for construction and public works, see Administrative Memorandum B-21, "Selection of Construction Contractors."

II. GENERAL PROVISIONS FOR ALL SOLICITATIONS

The goals of the County's procurement policies are to deploy the County's resources wisely, to obtain the best quality products and services, and to maintain the public trust by conducting County business with integrity, fairness, and transparency.

A. Competitive Solicitations

Competitive procurement is the County's preferred method of procurement unless competition is infeasible due to an emergency, restricted availability of goods or services, or other extenuating circumstances that justify waivers of competitive requirements as described in this Administrative Memorandum.

B. Competitive Solicitation Types

Pursuant to a competitive solicitation, contracts may be awarded based on price alone or on price and other relevant factors, which taken together are deemed to provide the best overall value to the County.

C. Solicitation Process

1. Departments are required to follow contract solicitation procedures that have been ratified by the Procurement Manager and distributed by the Contract Compliance Committee to promote the goals of the County's procurement policies and to ensure compliance with applicable laws and regulations, unless superseded by requirements of the Public Contract Code or other applicable law or regulation.
2. Procurements exceeding \$100,000 may not be split into several smaller solicitations to circumvent procurement requirements.
3. Where possible, efforts should be made to solicit proposals from small businesses, and women and/or minority-owned businesses.
4. Prior to and during the procurement process, no party competing for or expected to compete for award of a contract may be provided information that is not provided to other competing parties.
5. No party, nor any spouse, relative, affiliate, or subsidiary of the party, may submit a bid or proposal or be awarded a contract if they have assisted in the development and management of procurement documents, or have provided plans, specifications, designs, evaluation criteria, or have otherwise influenced factors that may affect the County's selection of a contractor.

D. Coordination and Compliance with Other County Departments

1. In the event the Information Services Department (ISD) establishes standards and specifications for technology-related goods and services, departments are responsible for verifying that their solicitations conform to such standards and specifications, or alternatively, that the solicitations have been reviewed by ISD prior to release.
2. Departments are responsible for obtaining modifications and waivers of insurance requirements from the County's Risk Management division.
3. Projects involving work on real property must be reviewed by Real Property Services if the property is leased, or the Department of Public works if property is owned.

E. Minimum Content for all Solicitations

All solicitations, regardless of value, subject matter, or type of procurement, must include all information necessary to enable interested parties to describe how they would provide the requested goods and services and propose a price. In addition, at a minimum, solicitations over \$5000 must include:

1. The County's objectives in issuing the solicitation.
2. A description of expected tasks and deliverables.
3. An estimated budget or budget range.

4. All relevant information known to the County that would reasonably be considered likely to affect the contractor's performance or price.
5. A description of the process and timeline for reviewing responses and awarding a contract.
6. All criteria other than price that will be considered in awarding a contract. Criteria not stated in the solicitation may not be considered. If an award will be based on best value rather than lowest price, the solicitation must describe the method by which offers will be evaluated.
7. A pricing form or clear instructions on how pricing information is to be provided, so that competing offers may be easily compared.

F. Solicitations for Contracts Expected to be \$100,000 or Less

1. An informal solicitation may be conducted for goods and services expected to cost \$100,000 or less. "Informal solicitation" means a solicitation that does not require public notice or sealed responses but that may be conducted by requesting prices or proposals via e-mail.
2. Informal solicitations must be sent to a sufficient number of potential providers to ensure that at least three quotes or proposals are received, unless a waiver of competitive requirements is otherwise permitted as described in this memorandum. If three quotes or proposals are not received, the solicitation record must detail the efforts made to obtain at least three. Alternatively, solicitations may be publicized by posting on the website designated for publicizing County contracting opportunities, which will satisfy the requirement to obtain three quotes. Prior to the due date and time for response submission, proposals or quotes from a responding party may not be shared with other competing parties.

G. Solicitations for Contracts Expected to Exceed \$100,000

1. Unless a waiver of competitive requirements is allowed as described in this memorandum, if a contract is expected to exceed \$100,000, a formal solicitation must be issued. "Formal solicitation" means a solicitation that is publicly advertised and requires sealed responses. Formal solicitations must use standard County templates.
2. Formal solicitations include price-based procurements, such as Invitations for Bids (IFBs), and best-value procurements, such as Requests for Proposals (RFPs).
3. RFPs for contracts expected to exceed \$500,000 must be reviewed by County Counsel prior to release. RFPs for contracts expected to be \$500,000 or less may be sent for County Counsel review at the department's discretion or the request of County Counsel.
4. In addition to the minimum content for all solicitations described in this memorandum, formal solicitations must also include:
 - i. A statement regarding the County's right to reject all submissions and not to enter into any contract.
 - ii. A statement that the submissions are public records, and a description of the process that will be followed if copies are requested as public records.
 - iii. The method by which protests may be filed regarding the solicitation.

- iv. A complete scope of work, describing the County's business, functional, and technical requirements.
- v. A form, sheet, or matrix for pricing to ensure that all interested parties are proposing prices in the same manner.
- vi. Outcome or performance measures that will be used to evaluate a contractor's performance.
- vii. If an award will be based on best value, all relevant factors that will be considered in making the award and the relative importance of each. Relative importance may be indicated by assigning values or "weights" to the chosen factors. The factors must include:
 - Experience of either the firm or the staff to be assigned to the project, or both, and a description of their experience with similar projects;
 - The proposed methodology for meeting the County's needs, and if appropriate, the work plan and timeline for completing tasks and providing deliverables; and
 - Price, which must be worth at least 25% of the overall evaluation.

H. Approval and Award

1. Contracts may only be awarded to "responsive" and "responsible" contractors as those terms are defined below:
 - i. Bids or proposals are responsive if they meet requirements of the solicitation documents and comply with instructions and procedures set forth in the documents. Minor irregularities may be waived if they cannot have affected the outcome of the solicitation.
 - ii. Bidders or proposers are responsible if they are trustworthy and possess the skills, resources, fitness, capacity, and experience to satisfactorily perform, and have not been barred from government contracts for prior misconduct.
2. Price-based solicitations of any amount must be awarded to the responsive and responsible bidder offering the lowest price.
3. Contracts for \$100,000 or less must be approved and signed by the Department Head or designee of the department conducting the procurement, or by the Procurement Manager if the solicitation was conducted by the Procurement division, and if the standard County contract is modified or not used, by the County Counsel's Office.
4. Contracts exceeding \$100,000
 - i. Must include one or two quality or outcome performance measures in the cover memorandum submitted to the Board of Supervisors as well as a statement that the department conducting the procurement has verified the price as fair and reasonable.
 - ii. If resulting from a best-value procurement, must be reviewed and approved by the County Counsel's Office prior to submission to the Clerk of the Board for Board of Supervisors approval.

- iii. If resulting from a price-based competition for services, must be submitted to the Board of Supervisors for approval.
5. Contract and solicitation documents will be reviewed periodically by the Procurement Manager or his/her designee, the Contract Compliance Committee, and the Controller's Office Internal Audit Division to insure compliance with the County's solicitation and contracting policies and procedures. Departments that fail to follow such policies and procedures, including record-keeping requirements, may be required to conduct their solicitations through the Procurement Division.

I. Tie Bids

In the case of tie bids, or in a best-value procurement, when the combination of price, quality, and terms are substantially equal, preference may be given to San Mateo County-based providers unless prohibited by applicable law or regulation. To qualify as a local business, the business must have a fixed location, not a post office box, within the geographical boundaries of San Mateo County. If no business is based in San Mateo County, ties may be broken by coin toss, witnessed by at least three people.

J. Procurement Record

Departments must maintain written records for each procurement, following procedures established by the Procurement Manager. The record must include a copy of the solicitation and all amendments issued, the name of the departmental individual responsible for the solicitation, all bids or proposals received, any modified or final offers, the reasons for final contract award, i.e. lowest price or other factors, verification that the price is fair and reasonable if award is not price-based, and any other documents required by County policy. In a best-value procurement, if the lowest-priced provider is not selected, the record must include specific reasons explaining how the County is better served by selection of the higher-priced provider.

III. GENERAL PROVISIONS FOR ALL CONTRACTS

A. Term of Contracts

1. The standard base period for County contracts is no more than three years. Contracts may include a provision allowing the County to exercise an option to extend the contract period for up to two years on agreed-upon terms set forth in the contract.
2. The County's Procurement Manager, or his/her designee, must approve all contracts with a base period exceeding three years, regardless of the total contract amount. However, no such approval is required in the following circumstances:
 - i. A contract for a specified project may have a term related to the time required to complete the project, which may be greater or less than three years and which must be stated in the contract.
 - ii. A contract for the maintenance and support of IT-related systems, applications, and other items that will become part of the County's IT infrastructure may exceed the standard three year base period. The contract term must be related to the expected useful life of the system, and should include maintenance and support unless those services may be purchased more economically separately.

B. Standard Contract Documents

1. Departments are required to use the standard County templates for all contracts regardless of dollar amount. County Counsel must approve all template modifications or substitutions and Risk Management must approve all modifications of liability and insurance requirements.
2. All contracts, including those for physicians and for Behavioral Health and Recovery Services, must include all of the following terms in sufficient detail to be understood by someone not affiliated with the department.
 - i. The names of parties to the contract
 - ii. The term of the contract
 - iii. The contract value, and if applicable, rates upon which payment will be based
 - iv. Payment process
 - v. Contract number that will be recorded in the County's accounting system
 - vi. A detailed scope of work that includes all tasks to be performed by each party
 - vii. For project-specific contracts, a description of deliverables and a schedule for project completion, including due dates of deliverables, or a description of how such a schedule will be developed. On-call or requirements type contracts provide this information and specific scopes of work in task orders or purchase orders.

C. Contract Amendments

The requirements described in this memorandum also apply to contract amendments. If an amendment causes a contract's total payment amount to exceed \$100,000, all requirements for contracts exceeding \$100,000, including the requirement for approval by the Board of Supervisors, must be met.

D. Contract Administration

The department that conducted the procurement or amendment is responsible for administration of the resulting contract or contract amendment, which includes taking all necessary actions to facilitate payment to the contractor, obtaining signed W-9 forms from new contractors, distributing executed copies of agreements to contractors and the Controller, monitoring contractor performance and payment, ensuring full compliance with the terms and conditions of the contract, and completing annual contract performance reviews.

E. Contracts Awarded by Other Entities

Subject to the approval of the Procurement Manager or his/her designee and compliance with applicable County requirements, contracts awarded by public agencies subject to a competitive process similar to the County of San Mateo's may be used, provided that the procurement has been or will be conducted in compliance with local law governing a public agency that is a party to the agreement, and the local law requires competitive procurement and public notice of the procurement.

IV. WAIVERS OF COMPETITIVE REQUIREMENTS

A. Emergencies

1. An emergency is defined as a sudden, unexpected occurrence posing a clear and imminent danger that will not permit delay that might result from a competitive procurement but requires immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services. Potential loss of funds, fiscal year closing, failure to plan, model changes, and similar inconveniences are not “emergencies” for the purposes of this Administrative Memorandum nor justification for non-competitive procurement.
2. Competitive procurement requirements may be waived in the case of emergencies as follows:
 - i. Under \$5,000 - by the department director or the director’s designee, or with the director’s or designee’s approval, by the County employee confronted with the emergency.
 - ii. \$5,000 - \$100,000 - by the department director or director’s designee or County Procurement Manager.
 - iii. Exceeding \$100,000 - by the County Manager or designee or by resolution of the Board of Supervisors, which may be provided retroactively.
3. If the County expects to seek Federal or State reimbursement for emergency expenditures, Federal or State procurement rules may supersede County rules and the procurement must be conducted in accordance with the applicable rules.
4. Once an emergency has passed, procurements undertaken to address the consequences of the emergency must comply with standard County procurement procedures.

B. Non-Emergency - Specific Exemptions

Competitive procurement requirements may be waived for the following specific goods and services:

1. Expert witnesses, legal defense, legal advice, or other legal services.
2. Agreements with other public entities, including governments, universities, schools, or other organizations acting as governmental agencies.
3. Agreements with third parties that were developed by another public entity when that third party was selected by the other public entity.
4. Development, administration, or use of licensing or proficiency testing examinations.
5. Items for testing or experiments to determine the suitability of the items for future use.
6. Maintenance agreements for \$100,000 or less per year, provided by the original seller, for equipment under documented warranty.
7. Public entertainment for County-sponsored fairs and expositions.
8. Conference or meeting facilities, including room accommodations for conference attendees, not to exceed \$50,000.

9. Subscriptions, regardless of media format. This includes access to pre-existing proprietary research data, but does not include performance of services such as consulting, advice, and research.
10. Memberships in professional organizations.
11. Personnel training for \$100,000 or less using pre-existing training courses that do not require development of training or other personal or consulting services.
12. Utility services obtained from a utility or a direct access provider.
13. Educational services from a not-for-profit organization.
14. Community service agreements with not-for-profit organizations that provide job training or transitional employment, when the agreements are for non-public works services.
15. Physician and urgent medical services.
16. In-patient hospital psychiatric services.
17. Subject to the restrictions on contracting requirements stated elsewhere in this memorandum, goods or services required for the well-being of a child for whom the County has responsibility, or which are required pursuant to a court order.
18. Child Welfare Services or Behavioral Health and Recovery Services with any qualified provider, including long-term locked facilities without specialized treatment programs; housing and related support services; and individual private mental-health services.
19. Services required for specific clients placed in out-of-county facilities by other agencies.
20. Mental health services in a school placement made by a school district and parents through the individualized education program.

C. Non-Emergency - General Exemptions

The following goods and services do not require competitive procurement:

1. They are proprietary or are only available from a single source; or
2. They are a continuation of an ongoing service or project; or
3. They are required at a specific location and there is no economically feasible alternative within a reasonable distance; or
4. They have unique performance factors; or
5. They are additions to, must conform to, or will become part of existing products or equipment, such as replacement parts; or
6. They are offered at a substantial discount below current market conditions and prices, taking into account both the initial purchase price as well as ongoing expenses.

D. Approval of non-competitive contracts for \$5,000 or less

Department heads or their designees may waive competition.

E. Approval of non-competitive contracts exceeding \$5,000

1. Waiver of competitive requirements must be justified in a written document that is kept as part of the procurement record. Either a specific exemption must be identified, or a justification of the waiver must be provided, which includes at a minimum, the following:
 - i. The salient and unique factors that are unavailable from any other source; and
 - ii. The reasons those factors are required; and
 - iii. Substitutes or other products or sources that were considered and rejected and why; and
 - iv. A statement that the price has been verified as fair and reasonable.
2. The following reasons are not sufficient to waive competitive requirements:
 - i. Personal preference;
 - ii. Specification of an item or service beyond minimum requirements of actual need;
 - iii. Past use of a provider or supplier;
 - iv. Failure to plan, impending loss of funds, or fiscal year close;
 - v. Desire to save time for a non-emergency procurement.
3. Limitations on waivers of competitive requirements

Departments may not waive competitive requirements if the total cost of the original and any additional agreements with the same supplier or service provider, within the same fiscal year, will exceed \$100,000.

F. Approval of non-competitive contracts exceeding \$100,000

In addition to the foregoing, waiver of the competitive process for contracts exceeding \$100,000 also requires a resolution approved by the Board of Supervisors. Approval may be granted for one of the reasons stated in this memorandum or when it is otherwise determined to be in the best interest of the County. The resolution authorizing execution of the contract must also include a waiver of the competitive process. The specific reasons the waiver is in the best interest of the County must be stated in the recitals of the resolution, and the actual approval of the waiver of the competitive process should be stated in the "Now Therefore It Is Hereby Determined and Ordered" section of the resolution.

V. WAIVER OF CONTRACT PROCESS FOR TRANSACTIONS

A. Payment of invoices without executing a contract

Whether a provider of goods or services is selected competitively or not, departments may pay an invoice without executing a contract if:

1. The cost is over \$5000 but it is for a subscription or membership; or
2. The cost for a one time service or purchase of goods, within a specific "P" level budget unit, is for \$5000 or less; and
3. The total cost of the original and any additional purchases from the same provider, within the same fiscal year, and within the same "P" level budget unit remains less than \$5000; and it

- i. Is a service considered low-risk, such as the repair of a machine; or
- ii. Is to respond to an emergency; or
- iii. Is urgently required for the well-being of a child; or
- iv. Could not be anticipated in advance.

B. Prohibitions on waiver of contract requirement

The requirement for a contract may not be waived under any of the following conditions:

1. Other County Administrative Memos or policies supersede Administrative Memo B-1 in this regard;
2. A contract is required by State or Federal law;
3. A contract is required as a condition of revenue or grant funding;
4. The service requires any type of clearance or authorization of the provider such as fingerprinting or a background check;
5. The service involves children, unless it is urgently required for the well-being of a child or is specified by court order;
6. The service provider is required to maintain a license by a state licensing agency.

VI. OVERVIEW OF REVIEWING/APPROVING AUTHORITIES

A. Board of Supervisors

1. Approves contracts exceeding \$100,000 resulting from best-value procurements, and contracts for professional services resulting from IFBs.
2. Approves waiver of competitive process for any contract when such waiver is in the best interest of the County, and for all contracts \$100,000 and above.
3. Approves waiver or modification of jury service pay and living wage requirements for contracts exceeding \$100,000.
4. Approves agreements in which the County provides services in exchange for financial or other consideration from a third party when such agreements exceed \$100,000.

B. Department Head or Designee

1. Approves contracts for \$100,000 or less resulting from best-value procurement.
2. Approves waiver of competitive process for reasons specified in this memorandum when the contract is for \$100,000 or less.
3. Approves agreements in which the County provides services in exchange for financial or other consideration from a third party when such agreements are for \$100,000 or less.

C. Contract Compliance Committee and Procurement Manager

1. Conducts periodic reviews of solicitations and contracts.
2. Procurement Manager, develops, promulgates, and enforces procurement and contract management policies and procedures.

3. Procurement Manager and County Counsel develop and promulgate solicitation and contract templates.
4. Procurement Manager approves contract extensions over three years regardless of contract amount.
5. Procurement Manager approves contracts for multi-department use when \$100,000 or less resulting from best-value procurement
6. Procurement Manager approves contracts resulting from price-based competition.

D. Risk Management

Approves modifications to liability and insurance requirements.

E. Information Services Department

Reviews solicitations and contracts involving IT related goods and services or affecting the County phone and data network for compliance with County IT standards that may be established.

F. County Counsel

1. Reviews all contracts exceeding \$100,000 derived from best-value procurement
2. Reviews all contracts that either modify or do not use County templates
3. Reviews amendments to contracts that:
 - i. Bring the contract amount in excess of \$100,000, or
 - ii. Modify any standard contract template language
4. Reviews all RFPs for work anticipated to exceed \$500,000, and may review any other RFPs at the department's or Contract Compliance Committee's request

G. Real Property Services

Reviews solicitations and contracts involving the acquisition or disposition of real property, loans, or grants controlled by the County for the acquisition, disposition, or improvement of real property, use by County staff of real property owned or leased by others, use by others of County-owned or leased real property.

H. Department of Public Works

1. Reviews solicitations and contracts involving work on County-owned or County-leased facilities.
2. Reviews and administers certain public construction contracts per Administrative Memorandum B-21, "Selection of Construction Contractors."