

## Design and Construction Procurement Policy Manual

### AMENDMENT NO. 1

*Approved by the Board of Supervisors on September 25, 2018*

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##### §1.1-104 Specific Duties

- (1) Except as otherwise provided by law, the Director shall:
  - a. Be empowered to solicit, award and execute on behalf of the County all A-E service contracts not exceeding ~~\$100,000~~ \$200,000 annual aggregate value, or such amount as provided by [Government Code Section 25502.5](#), and public works construction contracts not exceeding ~~\$175,000~~ \$200,000 aggregate value, or in such amount as authorized by Public Contract Code Sections [22032](#) or [22034](#) as applicable;<sup>1</sup>
  - b. Be responsible for the solicitation and, upon Board of Supervisors approval, the execution of all A-E contracts over ~~\$100,000~~ \$200,000 annual aggregate value and all public works construction contracts that exceed ~~\$175,000~~ \$200,000 in aggregate value;

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##### §3.3-102 Board of Supervisors Approval

- (1) “In Counties having a population of 200,000 or more, the Board may authorize the purchasing agent to engage independent contractors to perform services for the County or County officers, with or without the furnishing of material, when the annual aggregate cost does not exceed ~~one~~ two hundred thousand dollars (~~\$100,000~~\$200,000).” [Government Code Section 25502.5\(a\)](#).
  - a. Board of Supervisor approval is required when the aggregate cost exceeds ~~\$100,000~~ \$200,000.

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##### §3.3-105 Firm Selection Methods

###### (1) Request for Qualifications:

The Request for Qualifications (RFQ) method is used primarily for establishing capacity contracts through a qualification-based selection of professional A-E services when future services are necessary from numerous firms for an undefined project scope of services as required by A-Es of

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<sup>1</sup> The \$200,000 annual aggregate limit for service contracts, set forth in Government Code Section 25502.5(a) and referenced throughout AMENDMENT NO. 1 (§§1.1-104, 3.3-102, 3.3-105, 3.3-106, 3.3-108 inclusively) is not effective until the effective date of an amendment to Orange County Codified Ordinances Section 1-4-13, subsection (i), to increase the annual aggregate limit for such service contracts.

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the same or similar discipline. A RFQ will be advertised and firms will submit a Statement of Qualifications (SOQ).

a. Establishment of the Qualified Vendor List and On-Call Contracts

The firm is required to submit a SOQ in response to a RFQ. A minimum score is established as a pass point for respondents to qualify for inclusion in the Qualified Vendor List (QVL). An evaluation panel scores the respondents SOQs with all responsive SOQs meeting the minimum pass point will be included in the QVL. The highest scored respondents may, at the discretion of the evaluation panel and based on the County needs, be invited for interviews for determining which firms will be recommended for on-call contracts with specific dollar amounts. The Director may use the QVL for various services as required. The QVL is typically solicited at least once every three to five years to give additional firms an opportunity to participate. At the time A -E services are required:

- i. For contracts up to an annual aggregate cost of ~~\$100,000~~ \$200,000, a contract may be issued to a QVL firm by negotiating the fee and scope of work, or a task order may be issued against an existing on-call contract awarded from a RFQ.
- ii. For services with an annual aggregate cost of over ~~\$100,000~~ \$200,000 a task order may be issued against an existing on-call contract awarded from a RFQ.
- iii. Contracts over an annual aggregate cost of ~~\$100,000~~ \$200,000 per year may also be awarded to a QVL firm, by negotiated contract, however, Board of Supervisors approval will be required.

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#### **§3.3-106 Competitive Bidding**

If the services needed are of a technical nature, are well defined, and involve only limited professional judgment, the Invitation for Bid (IFB) process is allowed. Examples of where the IFB process may be appropriate include, but are not limited to: drafting of as-built or record drawings, drafting of standard plans, certain laboratory testing, and certain survey services. All awards resulting in a contractor receiving more than ~~\$100,000~~ \$200,000 per year in aggregate of non-Board approved contracts will require Board of Supervisors approval.

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##### **§3.3-108 A-E Service Contract Changes, Amendments, Extensions**

- (3) If an A-E service contract has not been approved by the Board of Supervisors, any change to the amount of that Contract that increases the aggregate dollar amount of non-Board awarded contracts with an A-E firm beyond ~~\$100,000~~ \$200,000 must be approved by the Board of Supervisors.
- (4) Subject to restrictions set forth in Paragraph (3) above, increases in the A-E service contract cost or amount for services within a contract's existing scope of work may be granted by the Director or Director's designee without Board of Supervisor's approval where the increased amount does not exceed 25 percent of the existing contract price or ~~\$100,000~~ \$200,000, whichever is less.

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##### **§4.4-101 Contract Methodology**

- (1) On projects with a total value of ~~\$45,000–\$60,000~~ or less, the County may complete the work pursuant to [Public Contract Code Section 22032\(a\)](#) utilizing one of the following methods:
  - a. Performance by the employees of a public agency by force account, through a negotiated contract, or by purchase order.
  - b. Selection of a contractor from a County-wide general contracting master agreement. Potential contractors that are qualified, capable, interested, and available to perform the work within the required time frame, may prepare a scope of work, and negotiate a subordinate to the master agreement.
  - c. In such cases where force account cannot be used and a contractor from the master agreement cannot be utilized, a one-time contract may be awarded to a qualified contractor capable of performing the work. Alternate quotes shall also be obtained to ensure the County has validated contractor qualifications and competitive pricing.

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##### **§4.4-102 Competitive Bidding**

- (1) Public works contracts with a value of ~~\$175,000~~ \$200,000 or less may be procured by using bid by informal procedures as set forth in [Public Contract Code Section 22032](#).

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- (2) Unless the product or service is proprietary, all contracts ~~exceeding~~ with a value of between \$45,000 \$60,000 and ~~with a value of \$175,000~~ \$200,000 or less, or those amounts provided by Public Contract Code Section 22032, shall be selected using the following informal bidding procedures:
- a. The Director shall maintain a list of qualified contractors, identified according to categories of work. Minimum criteria for development and maintenance of the contractors list shall be determined by the Director.
  - b. All contractors on the list for the category of work being bid or all construction trade journals specified in [Public Contract Code Section 22036](#), or both, shall be mailed or emailed a notice inviting informal bids unless the product or service is proprietary.
  - c. All mailing of notices to contractors and construction trade journals pursuant to this section shall be completed not less than ten (10) calendar days before bids are due.
  - d. The notice inviting informal bids shall describe the project in general terms and how to obtain more detailed information about the project, and state the time and place for the submission of bids.
  - e. As provided by [Public Contract Code Section 22034\(d\)](#), if all bids received are in excess of ~~\$175,000~~ \$200,000, the Board of Supervisors may, by adoption of a resolution by a four-fifths vote, award the contract, at ~~\$187,500~~ \$212,500 or less, to the lowest responsible bidder, if it determines the cost estimate of the agency or department was reasonable.
- (3) The Director shall approve plans, specifications, working details for its public works projects, and shall issue contracts for all public works contracts with a value of ~~\$175,000~~ \$200,000 or less.
- (4) In regard to public works contracts with a value of more than ~~\$45,000~~ \$60,000, which are not Construction Manager at Risk or Design-Build contracts, the County must award each contract to the lowest responsive, responsible bidder, except under one of the following circumstances:
- a. The County may award the contract to the bidder of its choice if the two lowest bids are equal.
  - b. The County may reject any bids presented and then:
    - i. Abandon the advertised contract or re-advertise for bids in the manner described in the Act; or

- ii. Declare, with four-fifths approval of the Board of Supervisors, that the work can be performed more economically by employees of the County, and have the project performed by force account which is work ordered on a construction project without an existing contract on its cost, and performed with the understanding that the contractor will bill the owner according to the cost of labor, materials, and equipment, plus a certain percentage for overhead and profit. ~~employees of the County, and have the project performed by force account which is work ordered on a construction project without an existing contract on its cost, and performed with the understanding that the contractor will bill the owner according to the cost of labor, materials, and equipment, plus a certain percentage for overhead and profit~~
  - c. If no bids are received by formal or informal bid procedure, the County may have the work performed by employees of the County by force account or negotiated contract in accordance with [Public Contract Code Section 22038\(c\)](#).
- (5) Public works contracts valued at over ~~\$175,000~~ \$200,000 shall be solicited using formal bid procedures as provided by the Public Contract Code. The project, plans, and specifications shall be adopted by the Board of Supervisors, unless delegated. The invitation for bids shall be authorized by the Board of Supervisors, unless delegated, and advertised by the Director. The contract shall be awarded by the Board of Supervisors. The approved contract shall be executed by the Board of Supervisors unless the authority has been clearly delegated and authorized to others by the Board of Supervisors.

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**§5.5-102 Statute**

- (4) ~~Design-Build authority is limited to vertical projects.~~ Pursuant to [Public Contract Code Section 22162.6](#), in addition to those projects permitted to be delivered by DB under [Public Contract Code Section 22161\(g\)\(1\)](#), DB contracts may also be used to deliver the following types of projects in Orange County:
- a. [Flood protection improvements](#)
  - b. [Harbor and beach improvements](#)
  - c. [Bikeway improvements](#)

The County is limited to no more than one (1) DB project per year valued in excess of \$5,000,000 of the types listed in Subsections (a-c) above. Section 22162.6(c).

- (5) Pursuant to [Public Contract Code Section 22162.6](#), in addition to the requirements set forth in [Section 22164](#), for a project authorized under Section (4) above, the county shall be responsible for the performance of, and county employees in Orange County Public Works may perform, project development services, including performance specifications, preliminary engineering, procurement services and the preparation of project reports, and construction inspection services, excluding specialty bridge inspectors. The county shall also be the responsible agency for, and county employees in Orange County Public Works may perform, the preparation of documents that may include, but need not be limited to, the size, type, and desired design character of the

project, performance specifications covering quality of materials, equipment, and workmanship, preliminary plans, and any other information deemed necessary to describe adequately the needs of the County of Orange.

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**§5.6-102 Statute**

- (1) SB328 (2013) amended Public Contract Code Section 20146, allowing counties to use CMAR procurement for vertical construction. SB 914 (2018) expanded existing statute to allow counties, as well as other public entities for which the members of a county's board of supervisors make up the membership of the governing legislative body (e.g., the Orange County Flood Control District), to use CMAR to deliver horizontal projects, in addition to vertical projects, subject to some limitations.
  
- (2) PCC 20146  
~~A County, with approval of the Board of Supervisors, may utilize construction manager at-risk construction contracts for the erection, construction, alteration, repair, or improvement of any building owned or leased by the County. A construction manager at-risk construction contract may be used only for projects in the County in excess of one million dollars (\$1,000,000) and may be awarded using either the lowest responsible bidder or best value method to a construction manager at-risk entity that possess or that obtains sufficient bonding to cover the contract amount for construction services and risk and liability insurance as may be required by the County. PCC 20146 Any payment or performance bond written for the purposes of this section shall be written using a bond form developed by the County. A county, with approval of the board of supervisors, or a public entity, with approval of its governing body, may utilize construction manager at-risk construction contracts for the erection, construction, alteration, repair, or improvement of any infrastructure, excluding roads, and including, but not limited to, buildings, utility improvements associated with buildings, flood control and underground utility improvements, and bridges, owned or leased by the county. A construction manager at-risk construction contract may be used only for projects in the county in excess of one million dollars (\$1,000,000) and may be awarded using either the lowest responsible bidder or best value method to a construction manager at-risk entity that possesses or that obtains sufficient bonding to cover the contract amount for construction services and risk and liability insurance as may be required by the county or public entity. Any payment or performance bond written for the purposes of this section shall be written using a bond form developed by the county or public entity - PCC 20146. Any payment or payment or performance bond written for the purposes of this section shall be written using a bond from developed by the County.~~
  
- (3) ~~CMAR authority is limited to vertical projects by law. CMAR may not be used to construct roads. PCC 20146(a).~~
  
- (4) The authority to use CMAR terminates by operation of law on January 1, 2023. Section 20146(h).

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**§5.7 -103 Policy**

- (2) The Director may extend the term of a Job Order Contract for a period of six (6) months for the

sole purpose of completing any work or project ordered by task order prior to the expiration of the original term of the Job Order Contract where work has already commenced on that work or project. No task orders may be issued against a Job Order Contract after expiration of the original term of the contract, except that work already ordered by task order prior to expiration of the original term of the JOC contract may be modified by supplemental task order so long as (a) the modification does not substantially alter the character of the work already in progress, (b) the changes ordered in all supplemental task orders do not result in an increase in cost of more than ~~25%~~ 50% in aggregate above that of the original task order, and (c) the supplemental task order does not extend the time to perform the contemplated work beyond six (6) months past the expiration of the original term of the JOC contract.

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### **§5.7 -104 Process**

- (1) The annual unit-price contracts program is carried out by either developing in house, or contracting out for the professional services for, the development and customization of a Unit Price Book (UPB) and technical specifications for typical work. A UPB includes pre-priced construction tasks that are specifically tailored for the type of work that the County intends to accomplish and includes labor, material and equipment costs. All unit prices incorporate federal labor standards including Davis-Bacon requirements and other Federal and State wage rate requirements, if applicable. A UPB is work-segment based and incorporates local activity, climate, and geographic features. Technical specifications take into account quality of materials and workmanship, performance specifications, and detailed specifications furnished on a project by project basis.