

PURCHASING MANUAL



ORANGE COUNTY PURCHASING DEPARTMENT POLICIES AND PROCEDURES

REVISED OCTOBER 13, 2017

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COMMISSIONER BARRY BURTON, PCT #2
COMMISSIONER JOHN GOTHIA, PCT #3
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1. PURCHASING POLICY

A. Purpose

The purpose of this Purchasing Manual is to serve as a source of instruction to all County Departments and employees regarding the Purchasing Policies and Procedures of Orange County, Texas. The adoption of this Purchasing Manual and the approval of any subsequent revisions by Commissioners' Court shall authorize the policies and procedures contained herein for official use in County business.

B. Scope

The scope of this manual includes all departments under the jurisdiction of Commissioners' Court, as well as all purchasing transactions that are paid for directly from County funds under the control of Commissioners' Court.

C. Distribution

This manual will be available to all County Departments and to all County Employees involved in the purchasing process. The Purchasing Department shall post this manual on the Orange County website.

D. Implementation

The Purchasing Agent shall be responsible for implementing and enforcing the policies and procedures set forth in this manual.

- The Purchasing Agent, as head of the Purchasing Department, shall exercise functional authority over the County purchasing process for the purpose of implementing and enforcing these policies and procedures on a countywide basis, as well as in the Purchasing Department for its role in the process.
- Each Elected Official and/or Department Head shall be responsible for implementing and enforcing these policies and procedures within their respective agencies.
- A violation of any of the policies and procedures in this manual may be grounds for disciplinary action. In addition, a violation may result in the County's refusal to pay for any improperly ordered goods or service.
- The Commissioners' Court shall have the authority, in specific cases determined to be exceptional, to waive or override the policies and procedures in this manual and to direct a different handling of each such case.

E. Revisions

This manual is to serve as a permanent and up-to-date guide to County Purchasing Policies and Procedures. As necessary changes are made in policies and procedures, appropriate revisions will be made. The Purchasing Department shall be responsible for accurately maintaining this manual and for posting revisions to the Orange County website.

F. Orange County Purchasing Policies and Procedures

The Orange County Purchasing Policy is to:

- Comply with all Federal and State laws that apply to County purchasing and comply with the policies and procedures outlined in this manual;
- Provide all responsible vendors and contractors with equitable access to servicing the needs of Orange County and its personnel through competitive acquisition of goods and services;
- Seek the best quality, lowest priced goods and services that meet the needs of the County and its personnel;
- Manage County assets and inventory so that replacement costs are minimized and the County can account for all assets; and
- Dispose of all surplus, salvage, seized and abandoned property in a manner that both provides the most benefit to the taxpayers of Orange County and complies with the law.

G. The Purchasing Act

The Purchasing Act, Texas Local Government Code §262.023 reads:

- (a) Before a County may purchase one or more items under a contract that will require an expenditure exceeding \$50,000.00 the Commissioners' Court of the County must
 - (1) comply with the competitive bidding or competitive proposal procedures prescribed by this subchapter.
 - (2) use the reverse auction procedure, as defined by Section 2155.062(d), Government Code, for purchasing; or
 - (3) comply with a method described by Chapter 2269, Government Code.
- (b) The requirements established by Subsection (a) apply only to contracts for which payment will be made from current funds or bond funds or through anticipation notes authorized by Chapter 1431, Government Code, or time warrants. Contracts for which payments will be made through certificates of obligation are governed by The Certificate of Obligation Act of 1971 (Subchapter C, Chapter 217)
 - (b-1) A County that complies with a method described by Chapter 2269, Government Code, as provided by Subsection (a)(3), to enter into a contract for which payment will be made through anticipation notes authorized by Chapter 1431, Government Code, may not issue anticipation notes for the payment of the contract in an amount that exceeds the lesser of:

(1) Twenty percent (20%) of the county's budget for the fiscal year in which the county enters into the contract ; or

(2) \$10 million.

(c) In applying the requirements established by Subsection (a), all separate, sequential, or component purchases of items ordered or purchased, with the intent of avoiding the requirements of this subchapter, from the same supplier by the same county office, department, or institution are treated as if they are part of a single purchase and of a single contract. In applying this provision to the purchase of office supplies, separate purchases of supplies by an individual department are not considered to be part of a single purchase and single contract by the county if a specific intent to avoid the requirements of this subchapter is not present."

The Purchasing Act applies to all departments of Orange County. The Purchasing Department acts as County representative on all matters pertaining to purchasing. The Purchasing Department shall do the purchasing for any Orange County Department and all Elected Officials.

H. Purchasing Department Policies

Selection of Vendors

In the case of formal competitive bids or proposals, informal bids and informal proposals, the evaluation of bids and proposals and the selection of vendors shall be done with a view to obtain the best value for the money spent. Therefore, the vendor selected will be the bidder who submits the lowest and/or best bid. While "lowest" is self-explanatory, "best" is not. "Best" in this context means that which most completely conforms to specifications and is submitted by a responsible bidder.

I. Effective Date

These policies and procedures shall become effective upon approval by Commissioners' Court.

J. Precedents and Interpretation

These policies and procedures shall be construed liberally to accomplish their purpose.

If there is any conflict between the policies and procedures and a County law, or a rule adopted under a County law, the stricter of the two provisions prevails.

The masculine, feminine and neuter genders shall be construed to include the other genders as required. The singular and plural shall be construed to include the other number as required.

Headings and titles at the beginning of the various sections of these policies and procedures have been included only to make it easier to locate the subject matter covered by that section or subsection and are not to be used in construing these policies.

If any provision of these policies and procedures or the application of them to any person or circumstances is held invalid, the validity of the remainder of these policies and procedures and the application of them to other persons and circumstances shall not be affected.

In general, the Purchasing Agent interprets these policies and procedures, but the Commissioners' Court shall resolve any question regarding any interpretation of these policies and procedures when there is a conflict related to an area that is not within the statutory authority of the Purchasing Agent.

K. Grant Funded Purchases

Grants should be administered via a written contractual agreement between Orange County and the party providing the service. All purchases made with grant monies will comply with the terms and conditions of the grant, as well as the County's procedures regarding all purchases. The user department must provide the Purchasing Agent a copy of all procurement requirements and deadlines in the grant document prior to any bid, proposal, purchase order or advertising procedures. The user department must identify the allocated grant monies in the detailed description section when entering a requisition in the Incode System. The user department shall be available for any clarification or additional information required ensuring compliance with the terms and conditions of the grant.

2. GENERAL PURCHASING POLICY AND PROCEDURES

A. General Information

Orange County will not be obligated to purchase goods that are delivered for use on a trial basis.

The following purchasing strategies that are made with the intention of circumventing the Purchasing Act (formal competitive bidding procedures) are in violation of the law (Texas Local Government Code §262.023):

- **Component Purchases** – Purchasing a series of component parts of goods, which normally would be purchased as a whole.
- **Separate Purchases** – Purchasing goods and services in a series of separate purchases, which in normal purchasing practices, would have been a one time purchase.
- **Sequential Purchases** – Purchases made over a period of time that in normal purchasing practices, would be made as one purchase.

Any commitment to acquire goods or services without an authorized purchase order is prohibited. **Anyone obligating an expenditure of funds for goods or services prior to securing a purchase order may be held personally responsible for the payment.** The Purchasing Department acts as County representative on all matters pertaining to purchasing.

The user department must submit an agenda item to Commissioners' Court for approval of any capital outlay item(s) not pre-approved for the current budget year.

Departments must ensure funding is budgeted and available. Departments shall not submit any requisition(s) to the Purchasing Department without sufficient funds. If funds are not available, it will be the responsibility of the user department to reconcile the expenditure(s) with the Orange County Auditor. Any submitted requisition(s) shall indicate that funds are budgeted and available for processing. Requisitions for, which there is not adequate funding will not be processed without the approval of the County Auditor.

Departments should plan purchases in order to keep expedited purchase requisitions to a minimum. The Purchasing Department is committed to processing all purchase requisitions within a reasonable time frame.

Departments must provide the Purchasing Department ample time to process purchase requests:

- Departments should allow a one (1) to three (3) working day cycle time on all purchases requested that are under \$50,000.00; and
- Departments should allow a six (6) to eight (8) week cycle time on all purchases requested that are over \$50,000.00 (but not limited to purchases over \$50,000.00).

Departments must assure that all employees responsible for making department requests for purchases have read and understand the purchasing procedures outlined in this manual.

The Purchasing Department must review all purchase requests to assure they are descriptive and specific but do not prevent competitive bidding of comparable goods.

B. MIS Review of Data Processing Equipment

The Management Information Systems Department (MIS) will review all purchase requests made by departments for software and hardware with respect to data processing equipment. This procedure is to ensure compatibility and standardization.

C. Bidders' Lists

The Purchasing Department maintains a list of vendors who have requested that they be sent notices of solicitations. This bidders' list is categorized by description of goods or services available to Orange County.

As a courtesy to vendors and as a means of encouraging competition, the Purchasing Department will attempt to send a notice of each solicitation to appropriate vendors.

3. BONDING REQUIREMENTS

Orange County Texas will require bonds for any construction, repair or alteration of public works. **No purchase order will be released until vendor provides all required documents to Orange County Purchasing.**

The successful bidder shall be required, at his own expense, to furnish the Orange County Purchasing Agent within ten (10) days of notification of award with certified copies of all bond or bonds as per bid specifications. Failure to furnish bond or bonds will result in bid being declared non-responsive. Non-responsive bids will not be considered for award.

A. Minimum Bid Bonds

Bid bonds will not be required for contracts that are valued at less than \$25,000.00.

Bid bonds will not be required from any bidder or proponent whose rates are subject to regulation by a state agency as per Texas Local Government Code 262.032 (d).

If the Purchasing Agent determines that a bid bond is required for a particular contract, the notice to bidders or request for proposals or offers will state that a bid bond in the amount of 5% of the contract price is required and that it must be executed by a surety company authorized to do business in Texas.

B. Bid Bond

Orange County Texas will require bonds for construction, repair or alteration of public works. A bid bond **MUST** be submitted with any bid over \$25,000.00. The bid bond shall be in the amount of 5% of the bid price and is to be issued by a surety company authorized to do business in Texas.

Bid bonds will not be required from any bidder or proponent whose rates are subject to regulation by a state agency as per Texas Local Government Code 262.032 (d).

No exception will be made. Failure to furnish bid bond or bonds with bid will result in bid being declared non-responsive. Non-responsive bids will not be considered for award.

C. Performance Bonds

Orange County Texas will require performance bonds for construction, repair or alteration of public works. The successful bidder shall be required, at his own expense, to furnish the Orange County Purchasing Agent within ten (10) days of notification of award with certified copies of all bond or bonds as per bid specifications. Failure to furnish bond or bonds will result in bid being declared non-responsive.

For all contracts in excess of \$50,000.00 for the construction, repair or alteration of a public work or the prosecution or completion of any public work, the contractor must execute a performance bond that:

1. Is payable to the county,
2. Is in the full amount of the contract,
3. Is conditioned on faithful performance of the work in accordance with the plans, specifications, and contract documents,
4. Is solely for the protection of the county,
5. Executed by a corporate surety or sureties in accordance with the Insurance Code, and
6. Bond must remain in effect for one year beyond the date of acceptance by Owner.

Any performance bond that is furnished by a contractor in attempted compliance with the requirements of TEX. GOV'T CODE ANN., Ch. 2253 will be construed as in conformity with that chapter in relation to rights created, limitations on the bond and remedies provided. Bond must be executed by a corporate surety in accordance with Section 1, Chapter 87, Acts of 56th Legislature, Regular Session, 1959 (Article 7.19-1, Vernon's Texas Insurance Code) No exception will be made. Failure to furnish performance bond or bonds will result in bid being declared non-responsive. Non-responsive bids will not be considered for award.

D. Payment Bond

Orange County Texas will require payment bonds for construction, repair or alteration of public works. If the Purchasing Agent determines that a payment bond is required for a particular contract, the notice to bidders or request for proposals or offers will state that a payment bond in the full amount of the contract price is required. Said payment bond must be executed by a company authorized to do business in Texas before the contractor commences work and within 10 days after the contract award is sent to the contractor.

Payment bonds will not be required from any bidder or proponent whose rates are subject to regulation by a state agency as per Texas Local Government Code 262.032 (d).

For all contracts in excess of \$25,000.00 for the construction, repair or alteration of a public work or the prosecution or completion of any public work, the contractor must execute a payment bond that:

Payment bond, must be issued by a State approved surety in accordance with Article 7.19-1 Bond of Surety Company; Chapter 7 of the Insurance Code, must also be for not less than one hundred percent (100%) of the contract price

and remain in effect for one year beyond the date of acceptance by the Owner.

1. Is solely for the protection of all claimants supplying labor and material in the performance of work provided in the contract,
2. Is payable to the county for the use of these claimants,
3. Is in the full amount of the contract,
4. Executed by a corporate surety or sureties in accordance with the Insurance Code, and
5. Is in a form approved by the Commissioners' Court.

Payment bonds should be effective from commencement of performance until the end of the fourth month after all items of work, for the project are completed unless releases are obtained from all subcontractors and materials. Any payment bond that is furnished by a contractor in attempted compliance with the requirements of TEX. GOV'T CODE ANN., Ch. 2253 will be construed as in conformity with that chapter in relation to rights created, limitations on the bond and remedies provided. Bond must be executed by a Corporate surety in accordance with Section 1, Chapter 87, Acts of 56th Legislature, Regular Session, 1959 (Article 7.19-1, Vernon's Texas Insurance Code).

No exceptions to bond request will be made. Failure to furnish bid bonds, performance bonds and/or payment bonds will result in bid being declared non-responsive. Non-responsive bids will not be considered for award.

4. SPECIFICATIONS

A. Definition

A “specification” is a concise description of goods or services that an entity seeks to buy, and the requirements the vendor must meet in order to be considered for the award. A specification may include requirements for testing, inspection, or preparing any goods or services for delivery, or preparing or installing them for use. The specification is the total description of the goods or services to be purchased.

Specifications, which shall be the basis of sealed bids or sealed proposals submitted to the Purchasing Agent, shall be written by the user department and must allow for competitive bidding. The Purchasing Agent shall not accept or write bid specifications, which, by design, exclude legitimate competitors. The Purchasing Agent shall not use brand names unless a disclaimer is included opening the specification to competing brands of equal quality. To facilitate specification development, user departments should submit their specifications in electronic format to the Purchasing Department. The primary purpose of any specification is to provide vendors with a firm criterion about a minimum standard acceptable for products, goods and/or services and to provide purchasing personnel with a clear guideline from which to purchase. As a result, the specification should:

- Promote competitive bidding, and
- Provide a means to make an equitable award to the lowest and best bid from a responsible bidder.

An effective specification has the following characteristics:

- Simple – Avoids unnecessary detail, but is complete enough to ensure that purchased goods or services satisfy their intended purpose(s).
- Clear- Uses terminology that is understandable.
- Accurate – Uses units of measure that are compatible with industry standards, identifies all quantities, and describes packing requirements. State dimensions, weight, etc., if these values can satisfy the intended purpose.
- Competitive – Identifies products, goods and/or services that satisfy the intended purpose. Avoid unneeded “extras” that could reduce or eliminate competition and increase costs.

B. Purpose

The purpose of any specification is to provide purchasing personnel with clear guides from which to purchase, and to provide vendors with firm criteria of a minimum standard acceptable for goods or services. A good specification has four (4) characteristics:

- It establishes the minimum acceptability of the goods or services;
- It promotes competitive bidding;
- It contains provision for reasonable test and inspection for acceptability of the goods or services; and
- It provides for an equitable award to the lowest and best bid from a responsible bidder.

C. Preparation

Specifications may be proposed by the user department, or an outside agency. Acceptance of these specifications, other than those for construction projects, will rest with the Purchasing Department for compliance with legal purchasing requirements. The Commissioners' Court may have final authority for approval of specifications. This will ensure proper quality control and avoid the proliferation of conflicting specifications. The Auditor's Office will verify for the Purchasing Agent that the goods and services were considered and approved in the budget process. Any purchases that were not approved in the budget process must be submitted as an agenda item for Commissioners' Court by the user Department for approval. Upon approval the Purchasing Department will process the order.

D. Types of Specifications

There are a number of specification types which will be employed by the Purchasing Department. They include:

Design

A design specification is comprised of a detailed description of goods or services, including such things as details of construction or production, dimensions, chemical composition, physical properties, materials, ingredients and all other details needed for the provider to produce goods and services of minimum acceptability. Design specifications are usually required for construction projects, custom produced goods, and for many services.

Performance

A performance specification is one in which the goods or services are described in terms of required performance. They may include such details as required power, strength of material, test methods, and standards of acceptability and recommended practices. This type specification should be used more often for equipment.

Brand Name

Brand Name or Equal. This type of specification lists goods or services by brand name, model, and other identifying specifics, except that products equal to the characteristics of the named brand are specified as acceptable. Usually the composition of a brand named good or service is provided through labeling, but broader tolerances and less consistency from item to item may be expected as compared with standard goods. Other manufacturers may provide a nearly identical good under their own name. The burden of proof of equality rests with the vendor. Final acceptance rests with Orange County.

Industry Standard

Industry Standard. This is one of the simplest specifications available. All goods made to an industry standard are identical, regardless of manufacturer and will result in acquisition of goods of uniform quality. An example is the UL standard for electrical products.

5. THE REQUISITION PROCESS

A. Definition

A “requisition” is a formal request for a purchase to be made. It is the first step after the need for goods or services is recognized.

The department’s requisition authorizes the Purchasing Department to enter into a contract with a vendor in order to purchase goods or services on the user department’s behalf. The user department may contact the Purchasing Department to obtain cost for goods or services before a requisition is entered. If cost exceeds the original requisition amount approved, the requisition must be re-approved by the user department.

Commissioners’ Court approves all capital outlay items in the fiscal year budget process. All capital outlay requests that are submitted by the user departments during the fiscal year budget process must obtain an official quote from the Purchasing Department.

Departments must ensure funding is budgeted and available. Departments shall not submit any requisition(s) to the Purchasing Department without sufficient funds. Purchasing does not process requisitions for which there is not adequate funding without the approval of the Orange County Auditor. If funds are not available, it will be the responsibility of the user department to reconcile the expenditure(s) with the Orange County Auditor. Any submitted requisition(s) will indicate that funds are budgeted and available for processing. The user department must submit an agenda item to Commissioners’ Court for approval of any capital outlay item(s) not pre-approved for the current budget year. Any commitment to acquire goods or services without an authorized purchase order is prohibited. **Anyone obligating an expenditure of funds for goods or services prior to securing a purchase order may be held personally responsible for the payment.** The Purchasing Department acts as County representative on all matters pertaining to purchasing.

To place an order, enter a requisition in the Incode system, complete the requisition form, and complete departmental approval. It is the department’s responsibility to follow their requisition to make sure it is approved. The form must include:

- Department name;
- Delivery address;
- Accounting code, must be correct for product or service requested;
- Complete description of items requested, including part numbers if available;
- Amount budgeted must be available for goods or service requested;
- Identify grant (if applicable)
- Potential Vendor’s name, address, phone number, and fax number; and
- Dollar value

This requisition is for internal use only and cannot be used by a department to order material. Do not acquire goods or services without an authorized purchase order.

To place an order by Manual Requisition, (will be used only if Incode System is inoperable) complete the requisition form and submit to the Judge's Office. The form must include:

- Department name;
- Signature of department head or representative;
- Delivery address;
- Accounting code, must be correct for product or service requested;
- Complete description of items requested, including part numbers if available;
- Amount budgeted must be available for goods or service requested;
- Identify grant (if applicable)
- Potential vendor's name, address, phone number, and fax number; and
- Dollar value

This form is for internal use only and cannot be used by a department to order materials directly from a vendor. Do not acquire goods or services without an authorized purchase order.

When a requisition is entered in the Incode System (see section (B) below), please allow adequate time for requisition approval and orders to be processed. Failure to allow ample time for ordering and delivery can cause problems for vendors, the Purchasing Department and for the end user.

B. Incode System

Orange County is using an automated requisitioning system referred to as the Incode System. Based on established budget line items, requisitions are entered into the Incode System by the user department. Adequate budget funds must be available in the departmental line items before the Purchasing Department can proceed with the purchase of requested goods and services.

After the Purchasing Department receives the departmental approved requisition, it determines the appropriate purchasing procedures based on the cost of the purchase, the goods and services to be purchased, and the existing contracts for goods and services and other relevant factors. Specific instructions on entering purchase requisitions into the automated Incode System are not covered in this manual. The user department may contact the Purchasing Department for questions or training.

C. Types of Requisitions

The Purchasing Department classifies requisitions according to the type of action and the time required for the purchase. There are three types of requisition:

Routine

Normal (routine) purchases have a cycle time of one to three working days.

Expedited

Purchases where the goods or services are needed sooner than the routine cycle time may be expedited. Expedited purchases do not qualify as emergency purchases and are subject to all applicable bidding requirements. Expedited purchases are for goods or services needed quickly to prevent costly delays, and therefore warrant the additional cost and effort caused by the interruption of the normal work routine. Expedited purchases should only be made when absolutely required. Cycle time for expedited purchase requisitions is one (1) to two (2) working days.

Note: *Cycle time* refers to the time between when a purchase requisition is assigned to a buyer for action and when an actual purchase order is placed with a vendor. Cycle time does not include the time required for delivery, or the time it takes for the requisition approval or the user department to make corrections to budget line item accounts, commodity codes, etc.

D. Emergency

Goods or services may also be purchased because of an emergency condition.

If total cost is under \$50,000.00 the purchase is handled like an expedited purchase requisition.

If total cost is over \$50,000.00 the purchase must be exempted from the requirements of the Purchasing Act by order of Commissioners' Court. The user department should immediately contact the Purchasing Department so that proper action can be initiated.

Purchase of any goods or services needed because of an emergency condition that the Commissioners' Court has ordered exempt, in compliance with the Purchasing Act. Texas Local Government Code §262.024(a)(1) reads, "an item that must be purchased in a case of public calamity if it is necessary to make the purchase promptly to relieve the necessity of the citizens or to preserve the property of the County."

E. Request for Working Purchase Order

Working purchase orders shall be used for the **IMMEDIATE PICK-UP** of items and/or services. Working purchase orders shall be used for the repair or prevention of costly department delays that would cause interruption of the normal work routine of Orange County and will be made only in those limited circumstances when the normal requisition process cannot be handled under routine conditions. The Purchasing Department will determine the appropriateness of each request. **Do Not acquire goods or services without an authorized purchase order. Under no circumstances are items to be picked up by the department before the issuance of a working purchase order number. Anyone obligating an expenditure of funds for goods or services prior to securing a purchase order may be held personally responsible for the payment.**

The user department will contact purchasing for a request for working purchase order number. The user department must furnish a description, estimated cost of the item(s) or services required and vendor name. A requisition must be entered in the Incode System and proper paperwork must be submitted to the Purchasing Department within 24 hours.

Note: Departments are hereby advised that all requests for working purchase orders will indicate that funds are budgeted and available for processing. Balance funds must be monitored by the user department and must be available for use at the time of purchase. Purchasing does not process requisitions for which there is not adequate funding.

Working purchase orders shall not be used in lieu of the regular purchasing procedure or in lieu of a blanket purchase order. Orange County Purchasing Department must place all orders.

Working purchase orders shall be used for a single or aggregate purchase, but only for a single transaction.

Equipment is generally covered by warranty provisions for various periods of time. Care should be taken to assure that full advantage is taken of warranty provisions prior to requesting a working purchase order.

F. After Hours Orders

A requisition must be entered in the Incode System and proper paperwork must be submitted to the Purchasing Department during the next business day.

G. Blanket Orders

Blanket Orders supply items on an “as needed basis”. Each blanket order will be for the current budget year and includes a maximum dollar amount within each departmental budget. Blanket orders will be utilized for items specific to that blanket order as requested by each department. Balance funds must be monitored by the user department and must be available for use at the time of each purchase. Do Not acquire goods or services without an authorized purchase order. The blanket form is available on-line. Complete the form as follows: Type in description, quantity and amount. The form will total automatically. Print form. Obtain authorized signature. Forward completed form and all original paperwork to the Purchasing Department.

6. PROCUREMENT DOCUMENTS

It is important to have a basic understanding of what is meant by “procurement documents.” These documents describe the full contractual relationship between a County and a supplier of goods or services. Procurement documents are:

- Solicitations – These are invitations for bid, requests for quotations and requests for proposal. These documents may result in a binding contract.
- Offers – These are bids, proposals and quotes made by businesses to supply goods or services.
- Contracts – These are the final signed agreements between the government and the supplier to buy/sell. A purchase order is a type of contract.
- Amendments/Change Orders – These are changes to solicitation documents, offers and contracts.

Many other documents are created during the process of making a purchase and are scanned to the system or kept in the purchasing file, but they are not technically “procurement documents.” These other documents include requests (requisitions) by departments for purchases of items; notes to the file to explain why a particular course of action was chosen; original specifications from the requesting department; final specifications; bidders notified of solicitations; excluded parties listing; and copies of advertisements.

7. PROCEDURES FOR PURCHASES UNDER \$50,000.00

A. Policy

For purchases of goods and services totaling less than \$50,000.00 the Purchasing Agent is authorized to select the goods or services to meet the requests of departments. The Purchasing Agent is authorized to select the vendor and to do all actions necessary to conclude a contract for the purchase of the goods and services, including execution of the contract without specific approval of the Commissioners' Court.

B. Considerations

In selecting the goods or services requested by the departments, the Purchasing Agent may consider the following:

- The stated needs of the department and whether the selected goods or services meet those needs;
- Available information about sources and prices of the goods and services;
- The delivery requirements of the vendor and the user department; and
- Any other information that a reasonable and prudent purchasing professional would consider in all circumstances of the purchase; or
- Whenever practical, surplus items from other departments may be transferred to meet departmental needs.

C. Procedures

INFORMAL QUOTES

Informal Quotations used only for purchases of items up to \$5,000.00

- The Purchasing Department shall attempt to solicit quotes. Informal quotations may be obtained by telephone, fax, and email, in person or in writing.
- Orange County encourages competition by contacting as many vendors as possible. Utmost care must be taken, however, to insure that vendors are given exactly the same information and that prices are not disclosed from one vendor to another.
- For all purchases, the Purchasing Agent or designee shall make the determination of the "most responsive bidder".
- For the purpose of this section, "most responsive bidder" shall be the bidder whose offer is determined to be the most advantageous to the County taking into consideration:
- The price, delivery date, results of testing samples, special needs and requirements of Orange County,
- The capability, integrity, and reliability of the bidder to assure good faith performance.

- Any evaluation factors supplied by the requesting department and Purchasing Department to the bidder.

FORMAL QUOTES

Formal Quotation shall be used for purchases of items or services from \$5,001.00 to \$49,999.99. All quotations must be on an Orange County quote form or vendor letterhead/quote form.

Purchases from \$5,001.00 to \$49,999.99:

- Solicit written quotes. Formal quotations may be obtained by fax, email, in person, or in writing.
- Orange County encourages competition by contacting as many vendors as possible. Utmost care must be taken, however, to insure that vendors are given exactly the same information and that prices are not disclosed from one vendor to another.
- For all purchases, the Purchasing Agent or designee shall make the determination of the “most responsive bidder”.
- For the purpose of this section, “most responsive bidder” shall be the bidder whose offer is determined to be the most advantageous to the County taking into consideration:
- The price, delivery date, results of testing samples, special needs and requirements of Orange County,
- The capability, integrity, and reliability of the bidder to assure good faith performance.
- Any evaluation factors supplied by the requesting department and Purchasing Department to the bidder.

The Purchasing Agent has the authority to deviate from the policy for purchases under \$50,000.00 if it is in the best interests of Orange County and will facilitate specific County operations.

Note:

If cumulative purchases to one vendor per department are anticipated to reach or exceed \$50,000.00 in a fiscal year, then formal bidding procedures are required and an annual contract will be established.

8. COMPETITIVE BIDDING FOR PURCHASES EXCEEDING \$50,000.00

A. Definitions

Competitive bidding means letting available vendors compete with each other to provide goods and/or services.

The Texas Supreme Court described it as: “Competitive bidding requires due advertisement, giving opportunity to bid, and contemplates a bidding on the same undertaking upon each of the same material items and services covered by the contract; upon the same thing. It requires that all bidders be placed upon the same plane of equality and that they each bid upon the same terms and conditions involved in all the items and services and parts of the contract, and that the proposal specify as to all bids the same, or substantially similar specifications.”

The term “Formal Competitive Bidding” generally used in public purchasing when the bidding process is in compliance with the Texas Local Government Code §262.023 and requires approval by a governing board, such as Commissioners’ Court.

Sealed Bids will be used for contracts exceeding \$50,000.00 (but will not be limited to contracts exceeding \$50,000.00). The Purchasing Department will solicit bids from vendors in response to the County’s specifications and contractual terms and conditions. The returned, signed, and awarded bid, notice of contract award letter signed by the Purchasing Agent, Purchase Order or Signed Contract will form the contract between Orange County and the successful bidder.

B. Purpose of Competitive Bidding

The first purpose of competitive bidding is to ensure that public monies are spent properly, legally and for public projects only, and that the best possible value is received for the money.

The second purpose is to give those qualified and responsible vendors who desire to do business with Orange County a fair and equitable opportunity to do so. The use of a standard and consistent procurement process provides assurances that tax dollars are being spent properly.

The Texas Supreme Court states, “Its purpose is to stimulate competition, prevent favoritism, and secure the best work and materials at the lowest practicable price for the best interest of the taxpayers and property owners.”

C. Requisition

A requisition submitted by the user Department initiates the competitive bidding process. Descriptions, part number and/or specifications should be submitted with the requisition and must follow the requisition process in Section 5 of this manual.

D. Bidding Notice

After the development of specifications and preparation of the Notice to Bidders, the Purchasing Department will advertise the bid.

As outlined in the Texas Local Government Code §262.025, "A notice of a proposed purchase must be published at least once a week for two consecutive weeks in a newspaper of general circulation in the County, with the first day of publication occurring at least 14 days before the date of the bid opening. If there is no newspaper of general circulation in the county, the notice must be posted in a prominent place in the courthouse for 14 days before the date of the bid opening. Notice published in a newspaper must include"

- (1) A general statement of the proposed purchase;
- (2) The name and telephone number of the purchasing agent; and
- (3) The county website address, if any
- (a) Subsection (a) does not require more than two notices in one newspaper or limit the County from providing additional notice for longer periods or in more locations.
- (b) The notice must include:
 - (1) The specifications describing the item to be purchased or a statement of where the specifications may be obtained;
 - (2) The time and place for receiving and opening bids and the name and position of the county official or employee to whom the bids are to be sent;
 - (3) Whether the bidder should use lump-sum or unit pricing;
 - (4) The method of payment by the County; and
 - (5) The type of bond required by the bidder.
- (6) If any part of the payment for a proposed purchase will be made through time warrants, the notice also must include a statement of the maximum amount of time warrant indebtedness, the rate of interest on the time warrants, and the maximum maturity date of the time warrants.

E. Addendum

The bid opening date on the Notice to Bidders may be extended if an error is discovered, or the nature of the goods and services requires an extension. The Purchasing Agent may amend specifications to clarify the original intent or to correct clerical errors if inquiries about the meaning of the specifications indicate the need for such an amendment; if the changes are so insignificant that they are not likely to matter to the vendor in determining price or ability to respond, if there is no change to the quantity, or delivery requirements; and if the amendment does not change the scope of the specifications. There should be at least forty-eight (48) hours between the date of the amendment and the opening date specified in the notice. All addenda(s) will be posted on the Orange County Purchasing website www.co.orange.tx.us. Vendors are responsible for monitoring the website in order to remain informed on addenda(s).

F. Receipt of Bids

The following procedures will be adhered to when receiving bids:

- All bids will be received in the Purchasing Department and will remain with the Orange County Purchasing Department.
- All bids will be stamped with the time and date received. The date stamp clock in the Purchasing Department will serve as the official time clock for the purpose of identifying the date and time bids were received by Orange County.
- No bids will be received after the opening time on the day of bid opening. All bids received after the opening time will be returned unopened to the bidder with a letter from the Purchasing Agent notifying the bidder that the submitted bid was received after the due date and time.
- After bids are received, a secure place will be provided in the Purchasing Department for holding of the bids until the bid opening date. The bids are to be received sealed and shall remain sealed until opened on the advertised date and time by the Purchasing Agent or designated Purchasing Department employee in a public forum.
- In the event a sealed bid is opened inadvertently, another Purchasing Department employee will witness that the details of the bid, especially the price, were not reviewed and the bid was sealed again immediately, and the occasion documented.

G. Public Opening of Bids

Sealed bids will be opened publicly by the Purchasing Agent or designated Purchasing Department employee as per LGC §262.026 and will be documented. Bid tabulations will be posted on the Orange County Purchasing website www.co.orange.tx.us as soon as possible.

The Purchasing Agent, or a Purchasing representative, will open the bids on the date, time and place specified in the notice. The date specified in the notice may be extended by the Commissioners' Court if an error is discovered in the original specifications. A bid or proposal that has been opened may not be changed for the purpose of correcting an error in the price.

H. Evaluation of Bids

The Purchasing Office will evaluate all bids, with the assistance from the user department, a committee or other designated authority, if applicable. A recommendation on the lowest responsible bid will be made to Commissioners' Court. The Purchasing Department will evaluate bids based on:

- The relative price of the bids, including the cost of repair and maintenance if
- Heavy equipment is the subject of the bid,
and the cost of delivery and hauling if road construction is involved.
- The price, delivery date, results of testing samples, special needs and requirements of Orange County,
- The compliance of goods and services with specifications;
- The responsibility of the Vendor, including the Vendor's financial and practical ability to perform the contract; and
- The Vendor's safety record, if stated in the specifications.

The Purchasing Department will submit tabulation, and award recommendations to Commissioners' Court for inclusion on the Commissioners' Court Agenda for award.

Commissioners' Court shall either approve the recommendation or reject all bids and authorize the Purchasing Agent to re-bid the goods and/or services.

I. Contract Award

The Purchasing Agent shall recommend contract award as per Texas Local Government Code §262.027 to Commissioners' Court in session. The Commissioners' Court shall:

- (1) Award the contract to the responsible bidder(s) who submits the lowest and best bid;
or
- (2) Reject all bids and publish a new notice.

(b) If two responsible bidders submit the lowest and best bid, the Commissioners' Court shall decide between the two by drawing lots in a manner prescribed by the County Judge.

Texas Local Government Code §262.027(c) reads, "A contract may not be awarded to a bidder who is not the lowest dollar bidder meeting specifications unless, before the award, each lower bidder is given notice of the proposed award and is given an opportunity to appear before the Commissioners' Court and present evidence concerning the lower bidder's responsibility."

Texas Local Government Code §262.027(g) reads: "If after the award the successful bidder fails to qualify for required bonds, or is otherwise unable to meet requirements of the award, the Commissioners' Court may award the contract to the next bidder in order of ranking as lowest and best bid."

J. Contract Administration

The user department will be responsible for monitoring and documenting contractor performance/compliance. All documentation of non-compliance must be shared with Purchasing. If, after clarification, the vendor complies with expected performance standards, no further documentation will be required by purchasing. If poor performance or non-compliance with the contract is evidenced, purchasing will be responsible to initiate corrective action with the vendor.

The Purchasing Agent will take all steps related to obtaining compliance with the contract and will consult with the County Attorney and Commissioners' Court before taking any steps toward suspension or termination of the contract.

K. Re-bidding of Annual Contracts

The Purchasing Department monitors the expiration dates of all contracts. Purchasing will contact user departments to determine if annual contracts need to be re-bid or renewed. The user department will advise Purchasing of any additions, deletions, or corrections.

9. **COMPETITIVE PROPOSALS FOR PURCHASES EXCEEDING \$50,000.00**

A. Definitions

Texas Local Government Code §262.030, States competitive proposals may be solicited through a Request for Proposal (RFP).

Formal sealed Requests for Proposals (RFP's) will be used to procure insurance, high technology goods, landscape maintenance, travel management, recycling and special services exceeding \$50,000.00. The RFP will solicit proposals from vendors in response to the County's requirements and contractual terms and conditions. A formal contract must be approved by Commissioners' Court.

"High technology" goods or services means goods or services of a highly technical nature, including:

- Data processing equipment and software and firmware used in conjunction with data processing equipment;
- Telecommunications, radio, and microwave systems;
- Electronic distributed control systems, including building energy management systems; and
- Technical services related to those goods and services.

Formal sealed Requests for Proposals (RFP's) will be used as per LGC §262.030 (d) "to purchase other items when the County official who makes purchases for the County determines, with the consent of the Commissioners' Court, that it is in the best interest of the County to make a request for proposals."

B. Procedures

Competitive proposals shall be accomplished as follows:

Requisition

A requisition must be submitted. The requisition must include the budget line item(s) from which the purchase will be funded before a competitive proposal can be prepared and must follow the requisition process in Section 5 of this manual. Requirements and specifications must be forwarded to the Purchasing Department with the requisition number indicated on the appropriate paperwork. If the RFP is for high technology goods and services, the Management Information Systems (MIS) Department must review.

C. Notice

After the development of requirements and preparation of the Request for Proposal, the Purchasing Department will publish a notice.

As outlined in the Texas Local Government Code §262.025, “A notice of a proposed purchase must be published at least once a week for two consecutive weeks in a newspaper of general circulation in the County, with the first day of publication occurring at least 14 days before the date of the bid opening. If there is no newspaper of general circulation in the county, the notice must be posted in a prominent place in the courthouse for 14 days before the date of the bid opening. Notice published in a newspaper must include”

- (1) A general statement of the proposed purchase;
 - (2) The name and telephone number of the purchasing agent; and
 - (3) The county website address, if any
- (a) Subsection (a) does not require more than two notices in one newspaper or limit the County from providing additional notice for longer periods or in more locations.
- (b) The notice must include:
- (1) The specifications describing the item to be purchased or a statement of where the specifications may be obtained;
 - (2) The time and place for receiving and opening bids and the name and position of the county official or employee to whom the bids are to be sent;
 - (3) Whether the bidder should use lump-sum or unit pricing;
 - (4) The method of payment by the county; and
 - (5) The type of bond required by the bidder.
- (c) If any part of the payment for a proposed purchase will be made through time warrants, the notice also must include a statement of the maximum amount of time warrant indebtedness, the rate of interest on the time warrants, and the maximum maturity date of the time warrants.

As outlined in the Texas Local Government Code §262.025 (b), “The request for proposals must specify the relative importance of price and other evaluation factors.”

D. Receipt of Competitive Proposals

The following procedures will be adhered to when receiving proposals:

- All proposals will be received in the Purchasing Department and will remain with the Orange County Purchasing Department.
- All proposals will be stamped with the time and date received. The date stamp clock in the Purchasing Department will serve as the official time clock for the purpose of identifying the date and time proposals were received by Orange County.

- No proposals will be received after the opening time on the day of proposal opening. All proposals received after the opening time will be returned unopened to the vendor with a letter from the Purchasing Agent notifying the vendor that the submitted proposal was received after the due date and time.
- After proposals are received, a secure place will be provided in the Purchasing Department for holding of the proposals until the proposal opening date. The proposals are to be received sealed and shall remain sealed until opened on the advertised date and time by the Purchasing Agent or designated Purchasing Department employee in a public forum.
- In the event a sealed proposal is opened inadvertently, another Purchasing Department employee will witness that the details of the proposal, especially the price, were not reviewed and the proposal was sealed again immediately, and the occasion documented.

E. Opening of Proposals

Sealed proposals will be opened publicly by the Purchasing Agent or designated Purchasing Department employee as per LGC §262.030 (c) and will be documented.

The Purchasing Agent, or a Purchasing representative, will open the bids on the date, time and place specified in the notice. The date specified in the notice may be extended by the Commissioners' Court if an error is discovered in the original specifications. A bid or proposal that has been opened may not be changed for the purpose of correcting an error in the price.

Proposals will be opened so as to avoid disclosure of contents to competing proponents and will be kept secret during the process of negotiation. All proposals that have been submitted will be available and open for public inspection after the contract is awarded, except for trade secrets and confidential proprietary information contained in the proposals and identified as such if the solicitation provides for this information to be kept secret.

F. Evaluation of Proposals

The Purchasing Department will evaluate all proposals, with the assistance from the user department, a committee or other designated authority, if applicable.

The RFP must specify the relative importance of price and other evaluation factors. When the evaluation factors set forth in the request for proposal states award will be based on specific criteria a committee must be appointed by Commissioners' Court. Each committee member will complete a non-disclosure statement and qualifications evaluation factor form.

G. Negotiations

All negotiations and conversations with proponents must be in coordination with the Purchasing Agent, committee or other designated authority by Orange County. As per LGC §262.030 (b), "The award of the contract shall be made to the responsible offeror whose proposal is determined to be the lowest and best evaluated offer resulting from negotiation, taking into consideration the relative importance of price and other evaluation factors set forth in the request for proposals."

(e) As provided in the request for proposals and under rules adopted by the Commissioners' Court, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award. Offerors must be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submission and before award for the purpose of obtaining best and final offers.

H. Contract Award

The award of the contract shall be made by Commissioners' Court to the responsible proponent whose proposal is determined to be the lowest and best evaluated offer resulting from negotiation, taking into consideration the relative importance of price and other evaluation factors set forth in the RFP.

I. Contract Administration

The user department will be responsible for monitoring and documenting contractor performance/compliance. All documentation of non-compliance must be sent to the Purchasing Department. If, after clarification, the vendor complies with expected performance standards, no further documentation will be required by Purchasing. If poor performance or non-compliance with the contract is evidenced, Purchasing will be responsible to initiate corrective action with the vendor.

The Purchasing Agent will take all steps related to obtain compliance with the contract and will consult with the County Attorney and Commissioners' Court before taking any steps toward suspension or termination of the contract.

10. STATE, COOPERATIVE AND FEDERAL CONTRACT PURCHASES

A. Introduction

The laws describe the authority of local governments to purchase goods and services through the Texas Building and Procurement Commission's Vendors. These laws allow purchasing from vendors with which the State has entered into contracts as a result of competitive bidding procedures.

B. Authority to Purchase from State Purchasing, Cooperative and Federal Contract Purchasing Programs

Texas Local Government Code §271.081 through §271.083 requires the Texas Building and Procurement Commission to establish a local government purchasing program and authorize Orange County to participate in the program.

Texas Local Government Code §271.101 through §271.102 reads; "A local Government may participate in cooperative purchasing program with another local government or a local cooperative organization."

Texas Local Government Code §271.103 reads; "A local government may purchase goods or services available under Federal supply schedules of the United States General Services Administration to the extent permitted by federal law."

Texas Government Code 2155.502 states the County may purchase goods and services from a schedule of multiple award contracts developed by TPASS for the Texas Multiple Award Schedule (TXMAS).

The Interlocal Cooperation Act of the Texas Government Code 791.001 authorizes local governments to contract directly with other governments to increase their efficiency and effectiveness, Texas Government Code, Section 791.025(c) states that a local government that purchases goods and any services reasonably required for the installation, operation, or maintenance of those goods under the Interlocal Cooperation Act satisfies the requirement of the local government to seek competitive bids for the purchase of goods and their services.

National cooperatives such as Houston Area Council of Governments (H-GAC), Texas Association of School Boards (BuyBoard), The County participates in the purchasing programs of various local, state and Cooperative Purchasing Network (TCPN), U.S. Communities, Department of Information Resources (DIR), Federal Supply Schedules (GSA), Texas Multiple Award Schedule (TXMAS), Texas Correctional Industries (TCI), and TIBH Industries.

Under the Cooperative Purchasing Program, local government entities may purchase a variety of Information Technology (IT) products, software, and services from contracts awarded under GSA Federal Supply Schedule 70, Information Technology.

Local Government entities may also purchase alarm and signal systems, facility management systems, firefighting and rescue equipment, law enforcement and security equipment, marine craft and related equipment, special purpose clothing, and related services from contracts awarded under GSA Federal Supply Schedule 84, security and law enforcement.

The Commissioners' Court authorizes the Purchasing Agent to execute all contracts for contract purchases that are procured in compliance, including purchases in excess of \$50,000.00, if funding for the purchase was previously approved by the Commissioners' Court. The Purchasing Agent acts for Orange County in all matters regarding the purchase of goods and services from a vendor under any contract based on any State Purchasing Program. Orange County is responsible for making payment directly to these vendors.

C. Policy

Orange County participates in the purchasing program of the State Purchasing and Texas Building and Procurement Commission for local governments.

D. Official Representative

The Purchasing Agent is designated to act for Orange County at the direction of the Commissioners' Court in all matters pertaining to purchasing, including the purchase of goods and services from the vendor under any contract. Orange County is responsible for making payments directly to the vendor.

E. Procedure

The Purchasing Agent is responsible for submitting requisitions to the Texas Building and Procurement Commission under any contract or sending purchase orders directly to vendors and reports to the commission on actual purchases in compliance with the commission's regulations. The Purchasing Department is responsible for vendor's compliance with all the conditions of delivery and quality of the purchased goods and services. The Purchasing Agent is authorized to sign and deliver all necessary documents for purchases under this program made on behalf of Orange County

11. PROCUREMENT OF PROFESSIONAL SERVICES

A. Introduction

The two principal laws with which the Purchasing Department must comply are the Professional Services Procurement Act and the Purchasing Act. Texas Gov't Code Ann., Title 10, ch. 2254, subch. A and the Texas Local Gov't Code Ann., title 8, 262, subch. C.

There are two kinds of professional services:

- Those professional services specifically defined under the Professional Services Procurement Act; and
- Those “other” professional services that are not specifically defined under either the Professional Services Procurement Act or the County Purchasing Act and which must be obtained in compliance with the County Purchasing Act. The Purchasing Agent must rely on court cases and Attorney General opinions to determine what services are included in these “other” professional services.

B. Purpose

The Purchasing Department may contract for professional services only if funds are budgeted for that purpose or the Commissioners' Court approves the solicitation.

C. Professional Services Procurement Act Definition

Professional services are defined in the Professional Services Procurement Act as:

- Those within the scope of the practice of accounting, architecture, optometry, medicine, land surveying, or professional engineering as defined by the laws of the State of Texas; and/or
- Those performed by any licensed architect, optometrist, physician, surgeon, certified public accountant, land surveyor, or professional engineer in connection with his professional employment or practice.

The Act states that contracts for the procurement of these professional services may not be awarded on the basis of bids. Instead, services must be awarded on the basis of demonstrated competence and qualifications.

D. Procedure

Departments shall forward a requisition to the Purchasing Department when professional services are required. The requisition will identify the following:

1. Scope of work;
2. Qualifications/experience requirements;
2. Project description;
3. Time frames;

4. Budgeted amount and budget line items; and
5. Suggested professionals.

Based on the information provided in the requisition, applicable state laws and all relevant facts, the Purchasing Agent will make a determination as to whether a formal RFQ or an informal procurement process will be implemented. Unless specifically exempted by the Commissioners' Court, all professional services anticipated to cost over \$50,000.00 will be procured using the formal RFQ process.

The County shall rank firms based on their qualifications and then enter into negotiations with the most qualified firm based on a fair and reasonable price. If the County is unable to negotiate a satisfactory contract with the most highly qualified vendor, negotiations will formally end with that person or firm. The next most highly qualified vendor will then be asked to negotiate. Negotiations are continued in this sequence until a contract is finalized. If any contract is entered into with one of the above mentioned professionals on the basis of a competitive bid, it is contrary to state law and is void.

E. Purchasing Act

"Other" Services Defined

As defined in this manual, "other" personal or professional services are those services usually referred to as a professional service, but not specifically defined or covered in the Professional Services Procurement Act. Examples include computer programmers, lawyers, facilitators, etc. Various court opinions have defined these "other" professional services as services requiring technical skill and expertise; labor and skill which are predominantly mental or intellectual, rather than physical or manual; or, a special skill and experience. "Other" personal services have been defined as services that must be performed by a particular person and, by the terms of the contract, no substitutions are allowed.

12. CONSTRUCTION PROCUREMENT

A. Purchasing Statutes

Texas Local Government Code §262.011 (e) states, “The County Purchasing Agent shall supervise all purchases made on competitive bid...”

Texas Local Government Code §271.024 states “...to award a contract for the construction, repair, or renovation of a structure, road, highway, or other improvement or addition to real property on the basis of competitive bids, and if the contract requires the expenditure of more than \$50,000.00...bidding on the contract must be accomplished in the manner provided by this subchapter.”

B. Requisition

Commissioners’ Court must review project and specifications for approval. A requisition must be submitted and will serve as the initial notification that a competitive bid is needed and must follow the requisition process in Section 5 of this manual. A draft copy of the plans and specifications should be submitted to the Purchasing Department with the requisition number indicated on the appropriate paperwork.

C. Bidding Notice

The Purchasing Department will publish the advertisement for bid as per LGC 271.025, which must include the following:

- (1) Description of work;
 - (2) Location at which the bidding documents, plans, specifications, or other data may be examined without charge by all bidders.
 - (3) Time and place for submitting bids and time and place that bids will be opened.
- (b) The advertisement must be published as required by law. The advertisement must be published at least twice in one or more newspapers of general circulation in the county in which the work is to be performed. The second publication must be on or before the 10th day before the first date bids may be submitted.
- (c) The governmental entity must mail a notice containing the information required under Subsection (a) to any organization that:
- (1) Requests in advance that notices for bids be sent to it;
 - (2) Agrees in writing to pay the actual cost of mailing the notice; and
 - (3) Certifies that it circulates notices for bids to the construction trade in general.
- (d) The governmental entity shall mail a notice required under Subsection (c) on or before the date the first newspaper advertisement under this section is published.

D. Bonding Requirements

Orange County Texas will require bonds for any construction, repair or alteration of public works. No purchase order will be released until vendor provides all required documents to Orange County Purchasing.

The successful bidder shall be required, at his own expense, to furnish the Orange County Purchasing Agent within ten (10) days of notification of award with certified copies of all bond or bonds as per bid specifications. Failure to furnish bond or bonds will result in bid being declared non-responsive. Non-responsive bids will not be considered for award.

E. Minimum Bid Bonds

Bid bonds will not be required for contracts that are valued at less than \$25,000.00.

Bid bonds will not be required from any bidder or proponent whose rates are subject to regulation by a state agency as per Texas Local Government Code 262.032 (d).

If the Purchasing Agent determines that a bid bond is required for a particular contract, the notice to bidders or request for proposals or offers will state that a bid bond in the amount of 5% of the contract price is required and that it must be executed by a surety company authorized to do business in Texas.

F. Bid Bond

Orange County Texas will require bonds for construction, repair or alteration of public works. A bid bond **MUST** be submitted with any bid over \$25,000.00. The bid bond shall be in the amount of 5% of the bid price and is to be issued by a surety company authorized to do business in Texas.

Bid bonds will not be required from any bidder or proponent whose rates are subject to regulation by a state agency as per Texas Local Government Code 262.032 (d).

No exception will be made. Failure to furnish bid bond or bonds will result in bid being declared non-responsive. Non-responsive bids will not be considered for award.

G. Performance Bonds

Orange County Texas will require performance bonds for construction, repair or alteration of public works.

For all contracts in excess of \$50,000.00 for the construction, repair or alteration of a public work or the prosecution or completion of any public work, the contractor must execute a performance bond that:

1. Is payable to the county,
2. Is in the full amount of the contract,
3. Is conditioned on faithful performance of the work in accordance with the plans, specifications, and contract documents,
4. Is solely for the protection of the county,
5. Executed by a corporate surety or sureties in accordance with the Insurance Code, and

6. Bond must remain in effect for one year beyond the date of acceptance by Owner. Any performance bond that is furnished by a contractor in attempted compliance with the requirements of TEX. GOV'T CODE ANN., Ch. 2253 will be construed as in conformity with that chapter in relation to rights created, limitations on the bond and remedies provided. Bond must be executed by a corporate surety in accordance with Section 1, Chapter 87, Acts of 56th Legislature, Regular Session, 1959 (Article 7.19-1, Vernon's Texas Insurance Code) No exception will be made. Failure to furnish bid bond or bonds will result in bid being declared non-responsive. Non-responsive bids will not be considered for award.

H. Payment Bond

Orange County Texas will require payment bonds for construction, repair or alteration of public works. If the Purchasing Agent determines that a payment bond is required for a particular contract, the notice to bidders or request for proposals or offers will state that a payment bond in the full amount of the contract price is required. Said payment bond must be executed by a company authorized to do business in Texas before the contractor commences work and within 30 days after the contract award is sent to the contractor.

Payment bonds will not be required from any bidder or proponent whose rates are subject to regulation by a state agency as per Texas Local Government Code 262.032 (d).

For all contracts in excess of \$25,000.00 for the construction, repair or alteration of a public work or the prosecution or completion of any public work, the contractor must execute a payment bond that must be issued by a State approved surety in accordance with Article 7.19-1 Bond of Surety Company; Chapter 7 of the Insurance Code, must also be for not less than one hundred percent (100%) of the contract price and remain in effect for one year beyond the date of acceptance by the Owner.

1. Is solely for the protection of all claimants supplying labor and material in the performance of work provided in the contract,
2. Is payable to the county for the use of these claimants,
3. Is in the full amount of the contract,
4. Executed by a corporate surety or sureties in accordance with the Insurance Code, and
5. Is in a form approved by the Commissioners' Court.

Payment bonds should be effective from commencement of performance until the end of the fourth month after all items of work, for the project are completed unless releases are obtained from all subcontractors and materials. Any payment bond that is furnished by a contractor in attempted compliance with the requirements of TEX. GOV'T CODE ANN., Ch. 2253 will be construed as in conformity with that chapter in relation to rights created, limitations on the bond and remedies provided. Bond must be executed by a corporate surety in accordance with Section 1, Chapter 87, Acts of 56th Legislature, Regular Session, 1959 (Article 7.19-1, Vernon's Texas Insurance Code).

No exception will be made. Failure to furnish payment bond or bonds will result in bid being declared non-responsive. Non-responsive bids will not be considered for award.

I. Receipt of Competitive Bids

The following procedures will be adhered to when receiving bids:

1. The County Purchasing Department will receive all bids.
2. All bids will be stamped with the time and date received. The date stamp clock in the Purchasing Department will serve as the official time clock for the purpose of identifying the date and time bids were received by Orange County.
3. No bids will be received after the opening time on the day of the bid opening. All bids received after the opening time will be returned unopened to the bidder along with notification that the bid was received after the due date and time.
4. After bids are received, the Purchasing Department will provide a secure place for the holding of the bids until the bid opening date. The bids are to be received sealed and shall remain sealed until opened on the advertised date and time by the Purchasing Agent or designated Purchasing Department employee in a public forum.
5. In the event a sealed bid is opened inadvertently, another Purchasing Department employee will witness that the details of the bid, especially the price, were not reviewed and the bid was sealed again immediately, and the occasion documented.

J. Public Opening of Bids

Sealed bids will be opened publicly by the Purchasing Agent or designated Purchasing Department employee as per LGC §262.026 and will be documented. Bid tabulations will be posted on the Orange County Purchasing website www.co.orange.tx.us as soon as possible

The Purchasing Agent or designated Purchasing Department employee will open the bids on the date; time and place specified in the notice and provide a copy to the Commissioners' Court. The Purchasing Agent may extend the date specified in the notice if an error is discovered in the original specifications. A bid that has been opened may not be changed for the purpose of correcting an error in the bid price.

K. Evaluation of Bids

All bids will be evaluated and a recommendation will be made to Commissioners' Court. Purchasing will be responsible for placing the item on the Agenda of the Commissioners' Court.

Evaluation of bids may be based on the following factors:

1. The relative prices of the bids, including the cost of repair and maintenance of heavy equipment if that is the subject of the bid, and the cost of delivery and hauling if road construction equipment;
2. Compliance of goods and services offered with specifications;
3. The responsibility of the vendor, including the vendor's safety record if Commissioners' Court has adopted a definition of safety that is included in the bid; and
4. The past performance of the vendor.
5. As stated in bid specifications

When the lowest priced bid is not the best bid, clear justification for not selecting the lowest bidder must be documented to the Commissioners' Court. This recommendation will be supported by clear and concise documentation from the user department that defines the rationale for awarding to other than the lowest bidder.

L. Contract Award

The Purchasing Agent, Maintenance Supervisor, or designated outside agency will recommend contract award to Commissioners' Court in session. The Court shall as per Texas Local Government Code 262.027.

- (1) Award the contract to the responsive and responsible bidder who submits the lowest and best bid; or
- (2) Reject all bids and publish a new notice.
- (b) If two responsive and responsible bidders submit the lowest and best bid, the Commissioners' Court shall decide between the two by drawing lots in a manner prescribed by the County Judge.
- (c) A contract may not be awarded to a bidder who is not the lowest dollar bidder meeting specifications unless, before the award, each lower bidder is given:
 - (1) notice of the proposed award and
 - (2) an opportunity to appear before the Commissioners' Court and present previously unconsidered evidence concerning the lower bid as best, which may include evidence of the bidder's responsibility."

After award, the Purchasing Agent will return the bid bonds of any contractor that was not awarded a contract.

After an award is made, a contract will be processed, and copies of the contract will be sent to the contractor, the Purchasing Department, the using department(s), and the County Auditor.

M. Contract Administration

The Project Manager, Maintenance Supervisor, or designated outside agency or user department will be responsible for monitoring and documenting contractor performance/compliance and provide Purchasing with copies of this documentation, thereby keeping Purchasing apprised of all performance and compliance issues. Discussions that merely explain the interpretation of the specifications may be dealt with orally by the user department. If poor, in the sole discretion of the user department, performance or non-compliance with the contract is evident; the user department will be responsible to initiate written corrective action with the contractor. Purchasing will be provided an advance copy of any written correspondence directing correction of a discrepancy. The user department will solicit Purchasing to initiate corrective action when the user department cannot resolve any conflict through correspondence.

The occupant department must not provide any instruction or requests for changes directly to the contractor. Only the user department's Project Manager or the Maintenance Supervisor has the authority to give any directions directly to the contractor.

The Project Manager, Maintenance Supervisor or designated outside agency will take all steps related to correcting non-compliance with the contract but must consult with the Commissioners' Court or County Attorney before taking any steps toward suspension or termination of the contract unless emergency, life safety or property damages issues require immediate temporary work stoppage. Before any letters, notices or other communication related to termination or suspension are delivered, the contents of these must be reviewed by the County Attorney and Commissioners' Court as the initial steps toward potential litigation.

13. EXEMPTIONS TO THE COMPETITIVE PROCUREMENT PROCESS

A. Purchasing Act

Many goods and services can be exempted from the competitive procurement process if the Commissioners' Court orders the purchase exempt. Texas Local Government Code §262.024 lists all the circumstances when exemptions are allowable for purchases made out of current funds, bond funds, or through time warrants. The following is a list of these circumstances:

- Goods and services that must be purchased in a case of public calamity, if it is necessary to make the purchase promptly to relieve the necessity of the citizens, or to preserve the property of the County
- Goods and services necessary to preserve or protect the public health and safety of the residents of the County
- Goods and services necessary due to unforeseen damage to public property
- Personal or professional services
- Any individual work performed and paid for by the day, as the work progresses, provided that no individual is compensated under this subsection for more than 20 working days in any three month period
- Any land or right-of-way
- Goods and services that can only be obtained from one source, including
- Goods and services for which competition is precluded because of the existence of patents, copyrights, secret processes, or monopolies
- Films, manuscripts, or books
- Electric power, gas, water, and other utility services
- Captive replacement parts or components for equipment
- An item of food
- Personal property sold at auction by a state licensed auctioneer
- In a going-out-of-business sale held in compliance with Subchapter F, Chapter 17, Business and Commerce Code or
- By a political subdivision of this state, a state agency, or federal government entity
- Any work performed under a contract for community and economic development contract made by a County under §381.004;
- or vehicle and equipment repairs.
- The renewal or extension of a lease or of an equipment maintenance agreement is exempt from the requirement established by Section 262.023 if the Commissioners' Court by order grants the exemption and if:

- The lease or agreement has gone through the competitive bidding procedure within the preceding year
- The renewal or extension does not exceed one year and the renewal or extension is the first renewal or extension of the lease or agreement
- If an item exempted under Subsection (a) (7) is purchased, the Commissioners' Court, after accepting a signed statement from the county official who makes purchases for the county as to the existence of only one source, must enter in its minutes a statement to that effect.

B. Public Finance Act

Texas Local Government Code §271.056 lists all the circumstances when exemptions are available for purchases made out of certificate of obligation funds.

C. Policy

Exemption orders must be processed through the Purchasing Department. In all cases except the acquisitions of interests in land for county roads, bridges, and parks, and all fee simple purchases of real property, the Purchasing Agent will request the exemption order from Commissioners' Court.

D. Emergency

"Emergency" means circumstances in which an immediate response is required to provide for the safety of persons or property.

E. Sole Source Goods and Services

Sole source goods and services require a statement from the vendor that will be submitted for acceptance by Commissioners' Court and must be entered in the minutes of the meeting of Commissioners' Court. The statement shall include the existence of only one source, and specifically noting which type of listed sole source goods or services is being purchased. Sole source is defined as: only one vendor possesses the unique and singularly available capability to meet the requirement of the solicitation. Goods or services for which competition is precluded because of the existence of patents, copyrights, secret process or monopolies.

14. CONSIDERATION OF LOCATION OF BIDDER'S PRINCIPAL PLACE OF BUSINESS

Texas Local Government Code 271.905 (b) reads, "In purchasing under this title any real property or personal property that is not affixed to real property, if a local government receives one or more bids from a bidder whose principal place of business is in the local government and whose bid is within three percent (3%) of the lowest bid price received by the local government from a bidder who is not a resident of the local government, the local government may enter into a contract with:

- (1) the lowest bidder; or
- (2) the bidder whose principal place of business is in the local government if the governing body of the local government determines, in writing, that the local bidder offers the local government the best combination of contract price and additional economic development opportunities for the local government created by the contract award, including the employment of residents of the local government and increased tax revenues to the local government.

(c) This section does not prohibit a local government from rejecting all bids.

15. RENEWAL OF EQUIPMENT LEASES AND MAINTENANCE CONTRACTS

Texas Local Government Code 262.024 (b) reads, “The renewal or extension of a lease or of an equipment maintenance agreement is exempt from the requirement established by Section 262.023 if the Commissioners’ Court by order grants the exemption, and if:

- (1) the lease or agreement has gone through the competitive bidding procedure within the preceding year;
- (2) the renewal or extension does not exceed one year; and
- (3) the renewal or extension is the first renewal or extension of the lease or agreement.

Texas Local Government Code 262.024 (c) reads, “If an item exempted under Subsection (a) (7) is purchased, the Commissioners’ Court, after accepting a signed statement from the county official who makes purchases for the county as to the existence of only one source, must enter in its minutes a statement to that effect.”

16. System for Award Management (SAM)

The Purchasing Department prior to procuring or entering into contract(s) for any goods/services will check the exclusion or debarment record of the vendor using the System for Award Management (SAM) and document by printing out the verification. A copy of the screen print indicating the vendor is not excluded or debarred at the time of the procurement will be included with the paperwork for that purchase and retained with the procurement records. This policy applies to the procurement of all good(s) or services(s) regardless of unit price or quantity. Vendor(s) will be verified before issuing any new purchase order, blanket purchase order, and contract or single time purchase. Vendor(s) will be verified prior to extending, renegotiating a follow-on contract, or entering into a new contract.

Orange County Homeland Security Grant Debarment Policy and Procedure

The Purchasing Department shall verify exclusion or debarment status of all vendors prior to utilizing Homeland Security funds, utilizing the System for Award Management (SAM).

Procedures for Documentation Homeland Security Funds:

Before Homeland Security funds may be spent, the Purchasing Department will:

1. Go to the EPLS Website (<https://.SAM.Gov>).
2. The Purchasing Agent or their agent will search the EPLS system for the vendor.
3. If the vendor is found to be debarred, the vendor may not be used for procurements utilizing Homeland Security Grant Funds.
4. If the vendor is found not to be debarred, print the screen page and retain with the procurement documentation.
5. A copy of the screen print indicating the vendor is not debarred, at the time of the procurement, must be included with the supporting documentation submitted to the Texas Homeland Security State Administrative Agency requesting reimbursement or advance.

Signature: Connie Cassidy
Printed Name: Connie Cassidy

Title: Purchasing Agent

Effective Date: May 4, 2015

Approved in Commissioners' Court

17. CONTRACT WITH PERSON INDEBTED TO COUNTY

Texas Local Government Code §262.0276 states:

- (a) By order adopted and entered in the minutes of the Commissioners' Court and after notice is published in a newspaper of general circulation in the County the Commissioners' Court may adopt rules permitting the County to refuse to enter into a contract or other transaction with a person who owes a debt to the County.
- (b) It is not a violation of this subchapter for a County under rules adopted under Subsection (a), to refuse to award a contract to or enter into a transaction with an apparent low bidder or successful proposer that is indebted to the County.
- (c) In this section, "person" includes an individual, sole proprietorship, corporation, nonprofit corporation, partnership, joint venture, limited liability company, and any other entity that proposes or otherwise seeks to enter into a contract or other transaction with the County requiring approval by the Commissioners' Court.
- (d) In this section, "debt" includes delinquent taxes, fines, fees, and delinquencies arising from written agreements with the County.

18. RECEIPT OF GOODS

A. Policy

Departments must notify the Purchasing Department if goods are not received by the due date or if damaged freight is delivered.

B. Verification of Orders

Department employees receiving shipments should pay particular attention to the delivery ticket, and how it matches the County's purchase order. The person receiving goods must verify that all goods were shipped as stated on the delivery ticket, sign and date on the appropriate receiving documentation, forward to Purchasing Department for processing.

C. Damaged Freight

When a shipment arrives, the user department must inspect the condition of all cartons. If freight is undamaged, the department receiving shipment should sign the freight bill.

If freight is visibly damaged, receiving department must instruct the deliverer to note the damage on the freight bill and sign it.

If there is concealed damage, save the shipping cartons and notify Purchasing of the damages.

Damaged freight must be reported to the freight line within 15 days after delivery. After 15 days, the freight line is no longer liable for the damages. All packing materials and boxes should be kept in the event of damaged freight shipments.

19. MODIFICATIONS OF CONTRACTS OR PURCHASE ORDERS

During the term of a contract or purchase order it may be necessary to make changes. These changes can be minor, administrative such as address or they can be substantial changes that affect the price and delivery. Both parties must agree to any modifications. Terms and conditions in the original contract set forth the situations under which the County may exercise a right to modify the contract without the contractor or vendors consent.

The Purchasing Agent may modify contract or purchase orders, if the changes are within the general scope of the contract including the changes to any of the following: Note: All Construction project modifications must be approved by Commissioners' Court.

- Method of shipment or packing
- Time of delivery
- Method of delivery
- Place of delivery
- Correction of errors of a general administrative nature
- Time extensions allowed by the contract terms and conditions
- Assignments of payment
- Complete cancellation of an order
- Cancellation of certain items of the purchase order
- Changing general description
- Changing vendor's name, vendor number, or address
- Addition of items, if within budget cost
- Changing unit prices
- Increases or decreases in cost as long as the original contract price has not been increased more than 25% unless the change is necessary to comply with a federal or state statute, rule, regulation, or judicial decision enacted, adopted, or rendered after the contract was made. The total contract cost may not be increased unless the cost of the change can be paid from current and available funds. Vendor or contractor has consented in writing to a decrease in cost.

20. PURCHASING AUTHORITY

A. Appointment of the Purchasing Agent

As outlined in the Texas Local Government Code §262.011(a), the Orange County Purchasing Agent is appointed by and accountable to a Board composed of the Judges of the District Courts and the County Judge. The Purchasing Board appoints the Purchasing Agent for Orange County to a two-year term and approves the budget for the Purchasing Department, including the Purchasing Agent's salary.

B. Purchasing Authority of Commissioners' Court

The authority of Texas counties to purchase one or more items under a contract that will require expenditures exceeding \$50,000.00 rests with the Commissioners' Courts. The Commissioners' Courts shall make their awards in compliance with the competitive bidding or competitive proposal procedures prescribed by the County Purchasing Act Texas Local Government Code §262.023.

C. Duties and Authority of the Purchasing Agent

The Purchasing Agent's authority is derived from statutes, delegation of the Commissioners' Court, and direction of the Purchasing Board. The statutory duties of the Purchasing Agent include the following as prescribed by Texas Local Government Code §262.011.

Authority:

The Purchasing Agent shall purchase all supplies, materials, and equipment required or used, and contract for all repairs to property used by the County or a subdivision, officer or employee of the County, except purchases and contracts required by law to be made by competitive bid. **A person other than the Purchasing Agent or designated Purchasing Department employee may not make the purchase of the supplies, materials, or equipment or make the contract for repairs.**

The Purchasing Agent shall supervise all purchases made on competitive bids and shall see that all purchased supplies, materials and equipment are delivered to the proper county officer or department in accordance with the purchase contract.

A purchase made by the Purchasing Agent shall be paid for by an electronic transfer, check, or warrant drawn by the Orange County Auditor on funds in the County treasury in the manner provided by law and the County Treasurer may not honor an electronic transfer, check, or warrant for a purchase **unless the purchase is made by the County Purchasing Agent or on competitive bid as provided by the law, Texas Local Government Code §262.011(f).**

D. Inventory

On July 1 of each year, the County Purchasing Agent shall file with the County Auditor and each member of the Board that appoints the County Purchasing Agent an inventory of all property on hand and belonging to the County and each subdivision, officer, and employee of the County. The County Auditor shall carefully examine the inventory and make an accounting for all property purchased or previously inventoried and not appearing on the inventory as per Texas Local Government Code 262.011 (I). For more detailed information refer to Orange County Inventory and Fixed Asset Policy.

E. Transfer of Assets

Upon approval from the Commissioners' Court, and in accordance with Texas Local Government Code §262.011(j), the Purchasing Agent shall transfer County supplies, materials, and equipment from a subdivision, department, officer, or employee of the County that are not needed or used to another subdivision department, officer, or employee requiring the supplies or materials or the use of the equipment. The Purchasing Agent shall furnish to the Auditor a list of transferred goods. For more detailed information refer to Orange County Inventory and Fixed Asset Policy.

F. Disposition of Surplus or Salvage Property

The Purchasing Agent, acting for Commissioners' Court, shall dispose of surplus, or salvage property, or trade-in for new property following the procedures outlined in Texas Local Government Code §263.152. For more detailed information refer to Orange County Inventory and Fixed Asset Policy.

G. Violation and Penalty

A County officer or employee commits an offense if the officer or employee intentionally or knowingly makes or authorizes separate, sequential or component purchases to avoid the competitive bidding requirements of Texas Local Government Code §262.023. An offense under this subsection is a Class B misdemeanor.

H. Additional Responsibilities of the Purchasing Agent

The Purchasing Agent, by direction of the Purchasing Board, is responsible for the following:

The Purchasing Agent shall prepare bid or proposal specifications for all materials, supplies, and equipment for Commissioners' Court approval, and shall be responsible for subsequent solicitation and evaluation of formal bids and proposals for any item or items under a contract that would require expenditure in excess of \$50,000.00.

21. CODE OF ETHICS

The Orange County Purchasing Department adheres to and endorses the policy statements and code of ethics of the National Institute of Governmental Purchasing.

The National Institute of Governmental Purchasing believes, and it is a condition of membership, that the following ethical principles should govern the conduct of every person employed by a public sector procurement or materials management organization:

- Seeks or accepts a position as head (or employee) only when fully in accord with the professional principles applicable thereto and when confident of possessing the qualifications to serve under those principles to the advantage of the employing organization.
- Believes in the dignity and worth of the service rendered by the organization, and the societal responsibilities assumed as a trusted public servant.
- Is governed by the highest ideals of honor and integrity in all public and personal relationships in order to merit the respect and inspire the confidence of the organization and the public being served.
- Believes that personal aggrandizement or personal profit obtained through misuse of public or personal relationships is dishonest and not tolerable.
- Identifies and eliminates participation of any individual in operational situations where a conflict of interest may be involved.
- Believes that members of the Institute and its staff should at no time, or under any circumstances, accept directly or indirectly, gifts, gratuities, or other things of value from suppliers, which might influence or appear to influence purchasing decisions.
- Keeps the governmental organization informed, through appropriate channels, on problems and progress of applicable operations by emphasizing the importance of the facts.
- Resists encroachment on control of personnel in order to preserve integrity as a professional manager.
- Handles all personnel matters on a merit basis, and in compliance with applicable laws prohibiting discrimination in employment on the basis of politics, religion, color, national origin, disability, gender, age, pregnancy and other protected characteristics.
- Seeks or dispenses no personal favors. Handles each administrative problem objectively and empathetically, without discrimination.
- Subscribes to and supports the professional aims and objectives of NIGP - The Institute for Public Procurement.

22. FEDERAL 2 CFR PART 200

FEDERAL 2 CFR Part 200

Orange County shall comply with all requirements outlined under 2 CFR Part 200 when executing procurements using federal funds, including but not limited to the following:

I. Orange County shall comply with all general procurement requirements as outlined in 2 CRF 200.318.

- a. Orange County shall comply with all applicable state and local laws and regulations, provided that the procurements also conform to applicable Federal law and standards.
- b. Orange County shall maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
- c. Officers, employees, and agents of Orange County shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors or parties to subcontracts.
- d. Orange County shall avoid acquisition of unnecessary or duplicative items. Consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
- e. Officers, employees, and agents of Orange County are encouraged to enter into state and local intergovernmental agreements where appropriate for procurement or use of common or shared goods and services.
- f. Orange County shall use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
- g. Orange County shall use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.
- h. Orange County shall award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance and financial and technical resource.
- i. Orange County shall maintain records sufficient to detail the history of procurement. These records will include, but are not limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection and the basis for the contract price.
- j. Orange County may use time and material type contracts only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and material type contract means a contract whose cost to a non-Federal entity is the sum of:

- i. The actual cost of materials; and
- ii. Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

k. If a time and material contract is necessary, Orange County shall assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

l. Orange County shall be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes and claims.

II. Orange County shall comply with all requirements as outlined in 2 CRF 200.321 regarding inclusive contracting practices with small and minority businesses, women's business enterprises, and labor surplus area firms.

a. Orange County shall take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are given opportunities to compete.

b. Affirmative steps shall include:

- i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- ii. Assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;
- iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;
- iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses and women's business enterprises;
- v. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- vi. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

III. Officers, employees and agents of Orange County shall comply with all requirements as outlined in 2 CRF 200.322 regarding the procurement of recovered materials.

- a. Orange County and its contractors shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that improves energy and resource recovery;
- b. and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

IV. Orange County shall comply with all requirements as outlined in 2 CRF 200.320 regarding the allowable methods for procurement utilizing federal funds and shall also comply with County Purchasing Policy. The allowable purchasing methods and requirements include:

- a. Purchases up to \$3,000 (Micro-Purchases): Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable. To the extent practicable, Orange County shall distribute micro-purchases

equitably among qualified suppliers. Procurements must also comply with all other requirements for competition under Orange County Policy.

- b. Purchases above \$3,000 and below \$50,000 (Small Purchases): Price or rate quotations must be obtained from an adequate number of qualified sources. Procurements must also comply with all other requirements for competition under Orange County Policy.
- c. Purchases of 50,000 or more must comply must comply with all requirements for competition under Orange County Policy and should also include one of the following options:
 - i. Procurement by sealed bids with formal advertising is required. Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction.
 - 1. Should sealed bids be used, they shall ensure an adequate number of suppliers and a detailed invitation for bid that includes the time and place for bid;
 - 2. A firm fixed price contract will be granted to the lowest responsive bidder;
 - 3. Any bid may be rejected if there is a sound documented reason.
 - ii. Procurement by competitive proposals may be used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:
 - 1. Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;
 - 2. Proposals must be solicited from an adequate number of qualified sources;
 - 3. The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;
 - 4. Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
 - 5. The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.
- d. Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:
 - i. The item is available only from a single source;

- ii. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- iii. The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or
- iv. After solicitation of a number of sources, competition is determined inadequate.