

# Design and Construction Procurement Policy Manual





# COUNTY OF ORANGE

## DESIGN AND CONSTRUCTION PROCUREMENT POLICY MANUAL

July 26, 2016

Adopted by the  
Orange County Board of Supervisors

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DESIGN AND CONSTRUCTION PROCUREMENT POLICY MANUAL

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## **SECTION 1 - GENERAL RESPONSIBILITIES**

**DESIGN AND CONSTRUCTION PROCUREMENT POLICY MANUAL****SECTION 1.1 - GENERAL RESPONSIBILITIES****§1.1-101 Policy**

All Architect-Engineer (A-E) service contracts and public works construction contracts, including those not requiring Board of Supervisors approval, shall be solicited and executed by the Director of OC Public Works, Sheriff-Coroner, Director of John Wayne Airport, or those qualified County officials or department designees identified by the Director of OC Public Works to solicit and execute A-E and construction contracts in accordance with this DCPM (Design and Construction Procurement Policy Manual) and applicable law. Unless otherwise specified, all references hereinafter to "Director" shall mean all such designated officials or departments.

**§1.1-102 Scope**

It shall be the duty of the Director to procure all A-E service contracts and public works construction contracts for the County of Orange, its agencies and departments, the Orange County Flood Control District, and any other public entity that elects to adopt this DCPM. All references to the Board of Supervisors shall also apply to the governing body of any public entity that elects to adopt this DCPM. If the Sheriff-Coroner or Director of John Wayne Airport determine it is in the best interests of the County for the Director of OC Public Works to procure a particular contract or type of contract, the Director of OC Public Works shall have the authority to procure such contracts.

**§1.1-103 Delegation of Authority**

State and local law, including Public Contract Code Section 22034, Government Code Section 25502.5, and Orange County Codified Ordinances Section 1-8-11, provide for delegation of authority by the Board of Supervisors to appropriate officials to engage contractors to perform public works design and construction projects within specified dollar limits.

- (1) It is the policy of the Board of Supervisors to delegate authority to the Director to oversee the processes for the selection of architects, engineers, and construction contractors and to enter into design and construction contracts on behalf of the County.
- (2) The employees designated by the Director to procure A-E and construction contracts, such as the Procurement Section, shall be trained under the direction of the County Purchasing Agent and deputized as Deputy Purchasing Agents (DPAs) to act in the County Purchasing Agent's capacity.
- (3) The Director of OC Public Works shall have discretion to delegate authority to other County officials or department designees to procure design and construction contracts in accordance with this DCPM.

**§1.1-104 Specific Duties**

- (1) Except as otherwise provided by law, the Director shall:
  - a. Be responsible for the solicitation and purchase of all A-E service contracts not exceeding \$100,000 or such amount as provided by Government Code Section 25502.5, and public works construction contracts not exceeding \$175,000;
  - b. Be responsible for the solicitation and Board of Supervisors approval of award for all A-E contracts over \$100,000 and solicitation and Board Award of all public works contracts that exceed \$175,000;
  - c. Review the scope of work and specifications written for A-E service contracts and public works construction contracts to ensure that they do not unnecessarily restrict the pool of potential bidders and provide the County with the benefits of open and fair competition;
  - d. Maintain a procurement process which is fair, effective, and efficient;
  - e. Encourage the procurement of "environmentally preferable" products, services, and/or methods in all bids and solicitations, where practical, that are executed by the County in accordance with Public Contract Code Sections 12400 et seq.;

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- f. Verify, on a periodic basis, that the appropriate insurance and bond certificates are received in accordance Public Contract Code Section 7105 and Civil Code Section 9554;
  - g. Identify other governmental agency cooperative agreements, which may be executed by local jurisdictions outside of the County of Orange, that would be beneficial for County use, and where appropriate and as approved by County Counsel, make these agreements available for use on appropriate County project;
  - h. Pursue project delivery methods in accordance with the Public Contract Code and methods available through agreements with other governing entities (for example, via a Joint Powers Authority) in order to obtain cost savings for or limit liability of the County;
  - i. Have the authority to issue Change Orders. Changes shall not exceed the limits as stated in Public Contract Code Section 20142. The Board of Supervisors may also delegate additional Change Order authority to individual officials and their designees when approving specific contracts.
  - j. Have the authority to issue and award Limited Scope Construction Contracts up to the limits specified in Government Code Sections 4525-4529.20 and other applicable statutes; and
  - k. Carry out other duties and responsibilities as directed or delegated by the Board of Supervisors.
- (2) It shall be the sole responsibility of the Director of OC Public Works or his or her designee to:
- a. Maintain the lists of qualified A-E firms and contractors for use in the solicitation of bids and proposals;
  - b. Execute emergency contracts where doing so complies with the requirements of Sections 20395(e) and 22050 of the Public Contract Code;
  - c. Implement and maintain the Design and Construction Procedure Manual consistent with this DCPM to guide the procurement and management of all design and construction contracts; and
  - d. Amend this DCPM to make clerical, ministerial, or other non-substantive edits; and update specifics of provisions relying on cited State code (for example, dollar triggers and limits, statutory restrictions, and statutory authorizations where a specific code section is identified). Amendments due to changes in policy will be made only as directed by the Board of Supervisors.

**§1.1-105 Departmental Responsibilities**

Although the Director has the responsibility to prepare and procure design and construction contracts, the contracting agency or department is responsible for: identifying the scope of the project; budgeting and funding of the project, including and ensuring the project meets any applicable requirements relating to the funding source; providing support to the Director throughout design and construction, inspections, contract compliance, and payment processing; and the department will work with the Director to identify the department's roles and responsibilities for each project.

## **SECTION 2 - ETHICS IN PUBLIC CONTRACTING**



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**SECTION 2.1 - ETHICS IN PUBLIC CONTRACTING - COUNTY EMPLOYEES****§2.1-101 Policy**

Public employment is a public trust. Public employees must discharge their duties impartially to ensure fair, competitive access to government procurement by responsible contractors. Moreover, they shall conduct themselves in such a manner as to foster public confidence in the integrity of the County procurement process. Additional guidelines may be found in the County's Procurement Ethics Manual maintained by the Office of the County Purchasing Agent.

**§2.1-102 Conflicts of Interest Generally**

It is the duty of all County and District employees to ensure fairness and transparency in contracting by complying with State and local laws and regulations pertaining to conflicts of interest in three areas: (1) those governed by Government Code Section 1090; (2) those governed by Government Code Sections 87100 et seq. including regulations promulgated by the Fair Political Practices Commission (FPPC); and (3) those governed by Sections 1-3-21 et seq. of the Orange County Codified Ordinances (Gift Ban Ordinance). These conflict of interest provisions are only briefly described here; any question arising from a potential conflict of interest or ambiguity under any of these provisions should be addressed to County Counsel.

- (1) Government Code Section 1090 provides: "Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity. . . ."
- (2) Government Code Section 87100 prohibits public officials from making or influencing governmental decisions in which they know or reasonably should know they have a financial interest. Section 87103 defines the circumstances under which such an interest may exist. The FPPC promulgates specific ethics regulations reflecting these laws at California Code of Regulations, Title 2, Sections 18940 et seq., including the requirements regarding the annual disclosure of certain financial interests by certain employees via FPPC Form 700.
- (2) The Gift Ban Ordinance prohibits county officers and certain designated employees, as defined therein, from soliciting or accepting gifts from persons or entities doing or seeking business with the County. A county officer or someone who does business with the County who violates the Gift Ban Ordinance is subject to criminal liability, and designated employees are subject to discipline, including termination of employment. A more extensive discussion of the Gift Ban Ordinance is contained in a guide which can be found on the County Counsel intranet site.

**SECTION 2.2 - ETHICS IN PUBLIC CONTRACTING - CONTRACTORS****§2.2-101 Contractor-Specific Conflicts of Interest**

- (1) Upon County Counsel approval, the County shall request client lists, disclosure statements, or any other information it may require to determine if the proposer has a conflict of interest which:
  - a. May be detrimental to the County's interest and, therefore, would cause the County not to enter into a contract; or
  - b. May arise during the performance of the required services and, therefore, would provide reason for termination with cause.
- (2) The County will be the sole judge in determining if such a conflict would preclude the County from entering into a contract or be reason for termination with cause.
- (3) By participating in any solicitation, bidders/proposers agree to furnish the required information as requested and accept the County's decision as final.
- (4) By participating in any solicitation, bidders/proposers agree to refrain from any lobbying of the County staff involved in the solicitation process.

**SECTION 3 - DESIGN:  
ARCHITECT-ENGINEER SERVICE CONTRACTS**

**DESIGN AND CONSTRUCTION PROCUREMENT POLICY MANUAL****ARCHITECT-ENGINEER SERVICE CONTRACTS****SECTION 3.1 - DEFINITION**

- (1) Architect-Engineer (A-E) services as set forth in Government Code Section 4525, subdivisions (d), (e), and (f), include but are not limited to: architectural, landscape architectural, engineering, environmental, land surveying services, and construction project management as well as incidental services that members of these professions may logically or justifiably perform. Environmental services are further defined to mean those services performed in connection with project development and permit processing that facilitates compliance with state and federal environmental laws.
- (2) Services which are considered A-E services may include but are not limited to: investigations; design, plan and specification development; report preparation; cost estimation; shop drawing preparation and review; construction supervision; land survey; CEQA documentation preparation; and other regulatory permit acquisition.
- (3) A-E services may also include other related services, where needed, in support of an A-E project including, but not limited to: archeology, geological and soils engineering, agronomy, limnology, biology, paleontology, construction claims consultants, material testing and inspection, real estate appraisal, and other property acquisition services.
- (4) If the service provided is a specialized service and performed by private architectural, landscape, engineering, environmental, land surveying, or construction project management, the contract should adhere to the procurement requirements set forth in this Section.

**SECTION 3.2 - STATUTE**

Sections 4525 through 4529.5 of the Government Code (Mini-Brooks Act) govern contracts between public entities and private architectural, landscape architectural, engineering, environmental, land surveying, and construction project management firms. These statutes establish a Qualifications-Based Selection (QBS) method that public agencies in California must use to contract for professional services. This method requires that such services be engaged on the basis of demonstrated competence and qualifications for the types of services to be performed and at a fair and reasonable price. Accordingly, public agencies may not utilize competitive bidding for such services, except in the limited instances where the State or local agency head determines that the services needed are more of a technical nature and involve little professional judgment and that requiring bids would be in the public interest (Government Code § 4529). In addition, the procedures adopted to implement the Mini-Brooks Act must assure maximum participation of small business firms as defined in Government Code Section 14837.

**SECTION 3.3 - POLICY****§3.3-101 County Policy Regarding A-E Conflicts of Interest**

The acceptance of bids and execution of contracts with A-E firms are governed by the following restrictions:

- (1) An A-E entity who prepared plans and specifications may not bid on the project as a construction contractor on the same project; and
- (2) Any A-E representing a private sector client with an interest in a County project may not also represent the County on the same project.

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

- (1) Pursuant to Government Code Section 25502.5, approval by the Board of Supervisors is required for all A-E service contracts in excess of \$100,000 annually.

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- (2) Approval by the Board of Supervisors is required for all sole source A-E Service Contracts that exceed a total annual amount of \$50,000 or a two-year consecutive term, regardless of dollar amount.

**§3.3-103 Contractor Name/Ownership Changes**

- (1) Board of Supervisors' approval is required for contractor name changes when control of the contracted entity has changed for Board of Supervisors approved contracts.
- (2) Board of Supervisors' approval is not required for contractor name changes when control of the contracted entity remains unchanged.

**§3.3-104 Incremental Contracting**

Projects shall not be intentionally split to avoid approval by the Board of Supervisors or to bypass selection requirements.

**§3.3-105 Term of Contract**

- (1) If the A-E services to be completed under a given contract are related to a specific project, the contract term shall be based upon a reasonable estimate of time required for the project. This estimate shall be made by County professionals and shall be subject to negotiation with the A-E entity.
- (2) If the A-E services to be completed are not project-specific, the contract term shall not exceed five years unless approved by the Board of Supervisors.

**§3.3-106 Vendor Selection / Sole Source**

- (1) With the exception of sole source service contracts, selection shall be based on the competitive process. Solicitations shall be made as follows:
- a. For projects valued at \$50,000 or less, the County may select a firm from the Countywide Qualified Vendor List (QVL). Potential firms who are qualified, capable, interested, and available to perform the work within the required time frame, prepare a scope of work, and negotiate a task order. In such cases where firms from the existing QVL cannot be utilized, a one-time contract shall be issued. Alternate quotes shall be obtained to ensure the County has validated vendor qualifications and competitive pricing.
  - b. For projects valued at \$25,000 or less, not being selected off a QVL, contract terms and fee schedules may be negotiated with a firm.
- (2) Approval by the Board of Supervisors is required for all sole source contracts that exceed a total annual amount of \$50,000 or a two (2) year consecutive term, regardless of dollar amount. Sole source contracts that exceed \$50,000 may not be renewed without approval by the Board of Supervisors.

**§3.3-107 Consultant Selection Methods**

The method used depends upon the scope of work, the consulting services required, the size of the project or potential projects, the complexity of projects, and the time available for consultant selection. The Director or designee has the discretion to choose which selection method will be utilized. The basic methods are:

- (1) **Request for Qualifications (RFQ):**

The RFQ method is used primarily for preselecting qualification-based professional A-E services when future capacities are necessary from numerous consultants. This is an effort to streamline the process as various undefined project scope of services are required of A-Es of the same discipline.

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The consultant is required to submit a Statement of Qualifications (SOQ) in response to a Request for Qualifications (RFQ). An evaluation panel ranks the responding consultant proposals and develops a short list of qualified consultants. At the discretion of the evaluation panel, these consultants may be invited for interviews to determine the final QVL. The Board of Supervisors will approve the QVL and the Director will use the QVL for various services as required. The QVL is typically renewed at least once every three years to give additional consultants the opportunity to be evaluated and participate. At the time A-E services are required, a contract up to \$100,000 may be issued to a QVL consultant by negotiating fees and scope of work independently upon each contract approval. A contract over \$100,000 will also be awarded to a QVL consultant, negotiating fee and scope independently upon each award, but will require Board of Supervisors approval.

The QVL can be utilized as the first step of the two-step process defined below. An invitation to submit proposals on a specific scope of work can be sent to all vendors within the ranked list and the proposals will be evaluated based on the established criteria set forth in the invitation.

(2) **Request for Qualifications/Request for Proposals (RFQ/RFP):**

The RFQ/RFP method is used for large general consulting contracts when the scope of work is complex or unusual or where innovative approaches to the project may be of value. This method is also used for the development of "on-call" A-E service contracts with an undefined scope, to be utilized on various unspecified future projects. The consultant submits a SOQ in response to a RFQ. Responding consultant proposals are ranked by an evaluation panel, which then prepares a list of qualified consultants. Those consultants are then invited to respond to a Request for Proposal (RFP) issued by the County. Proposals are evaluated based on the criteria outlined in the RFP by an evaluation panel.

(3) **Request for Proposals (RFP):**

The RFP method is used for projects with a defined scope, such as a one-time well defined project, or for repetitive services with a defined scope. In this method, consultants submit a technical proposal and SOQ at the same time. Proposals by all consultants are evaluated based on criteria outlined in the RFP by an evaluation panel. The panel scores the proposals at which point fee negotiations may begin with consultant(s) having the highest evaluation rating. The contract may be awarded to one consultant for project specific services or awarded to multiple consultants to serve as an "on-call" for similar services within the contracts defined/specific scope or project that may be required over the term of the contract. The concurrent selection and award of these contracts will require approval by the Board of Supervisors when exceeding the 3.3-102 thresholds.

**§3.3-108 Competitive Bidding**

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

**§3.3-109 Contract Changes, Amendments, Extensions of A-E Service Contracts**

- (1) The contract and its incorporated scope of work define the contract. Within the limited authority granted by the Board of Supervisors in the monetary categories listed in subsection 3 below, the Director may amend the contract allowing additional work that is related to and is of a similar nature to the original scope, as long as the additional work does not exceed the value of the contract approved by the Board of Supervisors.
- (2) If an increase is warranted, the estimated not to exceed cost will be agreed to in writing before beginning the additional work.
- (3) If a contract has not been approved by the Board of Supervisors, any change that increases the total current contract amount beyond \$100,000 must be approved by the Board of Supervisors.

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- (4) Increases in the contract amount for services within the existing scope of work may be granted by the Director where the amount does not exceed 25 percent of the existing contract price or \$100,000, whichever is less.

**§3.3-110 Amendments Requiring Approval by the Board of Supervisors**

- (1) Amendments to the contract must be used when changes exceed the Director’s authority and must be submitted to the Board of Supervisors for approval.
- (2) Amendments to the contract which require Board of Supervisors approval are warranted when:
  - a. There is a major change in the scope of the project;
  - b. The change causes a major delay; or
  - c. The change makes the fee structure inappropriate.

**§3.3-111 Insurance**

- (1) All Agenda Staff Reports recommending a contract for A-E services shall include a statement by the appropriate agency/department indicating either that:
  - a. Professional liability insurance is required and the County’s professional liability insurance coverage requirements have been met by the A-E firm; or
  - b. Good cause exists to allow the A-E firm to be exempt from the County’s liability insurance requirements, with an explanation justifying the exemption provided in the Agenda Staff Report.

**§3.3-112 State and Federal Grant Projects**

All applicable regulations of applicable State or Federal Regulations will be followed for projects involving State or Federal grants.

**SECTION 4 – CONSTRUCTION:  
PUBLIC WORKS CONTRACTS**

**DESIGN AND CONSTRUCTION PROCUREMENT POLICY MANUAL****PUBLIC WORKS CONTRACTS****SECTION 4.1 - DEFINITION**

- (1) The definition of “public works” is the same as that included in Public Contract Code Section 22002(c) for “public projects”, and, for determination of the necessity of payment of prevailing wages, Labor Code Sections 1720 et seq.:
- a. Public works project means any of the following:
    - i. Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility paid for using public funds; and
    - ii. Painting or repainting of any publicly owned, leased, or operated facility.
  - b. Public Works project does not include maintenance work as defined in Public Contract Code Section 22002(d). For purposes of this section, maintenance work includes all of the following:
    - i. Routine, recurring, and usual work for the preservation or protection of any publicly owned or publicly operated facility for its intended purpose;
    - ii. Minor repainting;
    - iii. Resurfacing of streets and highways at less than one inch;
    - iv. Landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems; and
    - v. Work performed to keep, operate, and maintain publicly owned water, power, or waste disposal systems, including, but not limited to, dams, reservoirs, power plants, and electrical transmission lines of 230,000 volts and higher.

**SECTION 4.2 - PURPOSE AND SCOPE**

The purpose of this section is to provide guidelines for the solicitation and procurement of public works contracts. The scope of this section covers all public works contracts issued by all departments and agencies under the budgetary jurisdiction of the Board of Supervisors.

**SECTION 4.3 - STATUTE**

- (1) Public works contracts shall be issued in accordance with the provisions of the Public Contract Code Sections 22000 et seq., also known as the Uniform Public Construction Cost Accounting Act (the Act), and on forms approved for use by County Counsel.
- (2) The provisions of the Act relative to bidding procedures supersede the procedures contained within the code that would otherwise apply to specific projects or public entities.
- (3) Amendments or revisions to the code sections affecting this policy and resulting procedures may be directly incorporated into this DCPM when enacted by the California Legislature without further action of the Board of Supervisors.

**SECTION 4.4 - OPTIONS FOR AWARD OF CONTRACT****§4.4-101 Contract Methodology**

- (1) On projects with a value of \$45,000 or less, the County may award pursuant to Public Contract Code Section 22032(a) utilizing one of the following methods:



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- a. Public projects valued at \$45,000 or less may be performed by the employees of a public agency by force account, through a negotiated contract, or by purchase order.
- b. For projects valued at \$45,000 or less, the County may select a contractor from the Countywide general contracting master agreements. Potential contractors that are qualified, capable, interested, and available to perform the work within the required time frame, prepare a scope of work, and negotiate a subordinate to the master agreement.
- c. In such cases where force account cannot be used and a vendor from the master agreement cannot be utilized, a one-time Purchase Order shall be issued. The Buyer should obtain alternate quotes to ensure the County has received the most competitive pricing.
- d. For projects valued at \$25,000 or less, not being selected off a master agreement, contract terms and costs may be negotiated with a single contractor.

**§4.4-102 Competitive Bidding**

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

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project without an existing contract on its cost, and performed with the understanding that the contractor will bill the owner according to the cost of labor, materials, and equipment, plus a certain percentage for overhead and profit.

- c. If no bids are received by formal or informal bid procedure, the County may have the work performed by employees of the County by force account or negotiated contract in accordance with Public Contract Code Section 22038(c).
- (5) Public works contracts valued at over \$175,000 shall be let using formal bid procedures as provided by the Public Contract Code. The project, plans, and specifications shall be adopted by the Board of Supervisors and the contract is awarded by the Board of Supervisors. The invitation for bids shall be advertised by the Director and awarded by the Board of Supervisors. The contract shall be executed by the Board of Supervisors unless the authority has been clearly delegated and authorized to others by the Board of Supervisors.

Emergency projects shall be performed in accordance with Public Contract Code Section 22035.

**SECTION 4.5 - DESIGN-BID-BUILD PROJECT DELIVERY METHOD****§4.5-101 Definition**

The Design-Bid-Build method is the most widely-used and well-established project delivery method. This approach splits construction projects into three (3) distinct phases: (1) design, (2) solicitation and (3) construction. During the design phase, the local agency prepares detailed project plans and specifications using its own employees or by hiring outside architects and engineers.

**§4.5-102 Statute**

Public Contract Code Sections 20100 et seq. delineates the requirements and procedures that local officials must follow when awarding public works contracts.

**§4.5-103 Policy**

The County of Orange traditionally utilizes the Design-Bid-Build procurement process for original construction projects resulting in a Fixed-Price Contract, a Fixed-Price Indefinite Quantity Contract, or a Cost Plus Fixed Fee Contract. Refer to "Prequalification Criteria" section of this DCPM for policies regarding the use of prequalification with Design-Bid-Build contract procurement.

**§4.5-104 Changes, Amendments, and Extensions of Construction Contracts**

- (1) The Director may approve contract cost increases limited to:
  - a. \$5,000 per change for contracts up to \$50,000;
  - b. 10 percent of the original contract amount per change for contracts from \$50,000 to \$250,000; and
  - c. \$25,000 per change for contracts in excess of \$250,000, plus 5 percent of the original contract amount in excess of \$250,000 up to a maximum amount approved by the State Legislature in accordance with Public Contract Code Section 20142 (\$210,000 as of year-end 2014).
- (2) Changes in excess of the limits specified above require Board of Supervisors approval.
- (3) Any material change that significantly alters the contract scope of work will require Board of Supervisors approval. Reallocation of funds from one item of work to another with zero net change in the contract amount would only require Board of Supervisors approval where the character of the work in each item is significantly changed from the original scope.
- (4) The Director shall adhere to County procedures for:
  - a. Reviewing change requests;

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- b. Negotiating change order terms with the contractor;
- c. Obtaining legal review and approval of change orders, where appropriate; and
- d. Preparing written documentation on change orders.

**§4.5 -105 California Environmental Quality Act (CEQA)**

Annual contracts are awarded to the lowest responsible bidder based on plans and specifications for typical work. Based on the fact that the County may award an annual contract without having identified the specific tasks that are to be performed, or their potential environmental impacts, the contracting agency must perform a basic CEQA analysis of tasks subsequently ordered under the contract in case they trigger the need for a new CEQA declaration or finding.

## **SECTION 5 - ALTERNATE PROJECT DELIVERY METHODS**

**DESIGN AND CONSTRUCTION PROCUREMENT POLICY MANUAL****ALTERNATE PROJECT DELIVERY METHODS****SECTION 5.1 - DEFINITION**

- (1) Project Delivery Method is defined as a contracting agency's method of procuring design and construction services.
  - a. Project Delivery Method shall include either construction manager method or design sequencing.
  - b. Construction manager means a partnership, corporation, or other legal entity that is able to provide appropriately licensed contracting and engineering services as needed.
  - c. Design sequencing means a method of project delivery that enables the sequencing of design activities to permit each construction phase to commence when the design for that phase is complete, instead of requiring design for the entire project to be completed before commencing construction.
- (2) Alternate Project Delivery Methods shall include Job Order Contract (JOC), Construction Manager at-Risk (CMAR)/Project Manager at-Risk (PMAR), and Design-Build. (Refer to Public Contract Code Section 6950, 6951).

**SECTION 5.2 - POLICY**

It is the policy of the County of Orange to solicit offers in full and open competition and award contracts that are consistent with the nature and requirements of the specifications or services to be procured utilizing the most efficient and effective project delivery methods.

**SECTION 5.3 - PURPOSE AND SCOPE**

The purpose of this section is to provide an overview of the County's options and alternate methods of contracting for construction, architectural, engineering, and construction-related services. The scope of this section covers Architect-Engineering (A-E) service contracts and public works construction contracts.

**SECTION 5.4 - USE OF METHODOLOGIES**

This section establishes the available options and applicable statutory provisions for alternate project delivery methods for utilization by each County department. Alternate project delivery methods involve utilizing qualifications as the primary criteria for selection of construction services as an "alternate" to a price based selection (or low bid/Design-Bid-Build).

**SECTION 5.5 - DESIGN-BUILD PROJECT DELIVERY METHOD****§5.5-101 Definition**

Design-Build (DB) is a qualification-based selection (QBS), through alternate project delivery procurement method in which both the design and construction services for a project are procured through QBS from a single entity known as the design-builder or design-build contractor. In contrast to Design-Bid-Build, Design-Build relies on a single point of responsibility contract and is used to minimize risks for the project owner and to shorten the delivery schedule by overlapping the design phase and construction phase of a project.

**§5.5-102 Statute**

- (1) Chapter 4 (commencing with Section 22160) of the Public Contract Code provides the general authority for DB procurement by local agencies. With Board of Supervisors approval, the County may use DB contracts for public works projects in excess of \$1,000,000, except for projects on the state highway system, and may award such contracts either to the lowest responsible bidder or by best value. Best value means a value determined by objective criteria related to price, features, functions, and life-cycle costs.

**DESIGN AND CONSTRUCTION PROCUREMENT POLICY MANUAL**

- (2) Section 22161(g)(1) defines “project” for the purposes of DB procurement as the construction of a building or buildings and improvements directly related to the construction of a building or buildings, county sanitation wastewater treatment facilities, and park and recreational facilities, but does not include the construction of other infrastructure, including, but not limited to, streets and highways, public rail transit, or water resources facilities and infrastructure. For a county that operates wastewater facilities, solid waste management facilities, or water recycling facilities, “project” also includes those facilities.
- (3) Section 22169 provides that the statutes authorizing DB contracting are repealed as of January 1, 2025.
- (4) An amendment to the Joint Powers Authority (JPA) with the City of Santa Ana approved by the Board of Supervisors on September 30, 2014, allows the JPA to use the DB alternate project delivery method in accordance with the City Charter §422(a)(c) for both vertical and horizontal construction. The County can enter into an agreement with the JPA on specific projects to utilize the methods set forth in the City Charter §422(a)(c) for a specific project. Consultation with County Counsel is recommended prior to pursuing procurement under the JPA.

**§5.5-103 Policy**

- (1) Public Contract Code Section 22162 allows counties to use the DB delivery method for public works projects in excess of \$1,000,000; “project” is defined above.
- (2) On September 30, 2014, the Board of Supervisors approved a restated JPA between the City of Santa Ana and the County “to state that the powers must be exercised consistent with the City’s exercise of similar powers and within County limits. This change will allow projects undertaken by the Authority to benefit from the City’s expanded authority for procurement of alternate delivery methods for public works projects.” Consult with County Counsel prior to pursuing procurement under the JPA.

**§5.5-104 Process**

DB projects must progress in a four-step process: Scope, Prequalification of DB Entities, Requests for Proposal (RFP), and Evaluation of Proposals and Selection of DB Entities:

- (1) Scope

The County prepares a set of documents defining the scope of the project, called bridging documents. Bridging documents may include, but are not limited to, the size, type, and desired design character of the public improvement, performance specifications covering the quality of materials, equipment, and workmanship, preliminary plans or building layouts, or any other information deemed necessary to describe adequately the County's needs. The performance specifications and any plans shall be prepared by a design professional duly licensed and registered in California. The architect or engineer retained by the County to assist in the development of project-specific documents is not eligible to participate in the preparation of a bid with any DB entity for that project.

- (2) Prequalification of DB Entities

When utilizing DB procurement, the County shall prequalify DB entities using a standard questionnaire in accordance with Public Contract Code Section 22164(b).

The questionnaire must require the information listed in Public Contract Code Section 22164(b). Among other things, it must include: identification of the basic scope and needs of the project or contract; the expected cost range; the methodology that will be used to evaluate proposals; the procedure for final selection of the design-build entity; and any other information deemed necessary by the contracting agency to inform interested parties of the contracting opportunity; significant factors that the agency expects to consider in evaluating qualifications, including technical design and construction expertise, acceptable safety record, and all other non price-related factors; and a standard template for request of statements of qualifications requiring the information listed in Public Contract Code Section 22164(b)(3).

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Such information must be provided under penalty of perjury, and some of the information may be exempt from the disclosure requirements of the California Public Records Act.

Bidders must prequalify for the project by meeting minimum requirements as set by the Prequalification questionnaire. Those bidders who are deemed prequalified will be invited to participate in the next step, the request for proposal process.

## (3) Request for Proposal

Based on the bridging documents, County prepares a RFP inviting qualified and interested parties to submit competitive sealed proposals. Pursuant to Public Contract Code Section 22164(d), the RFP must include:

- I. The scope, expected cost range, and other information deemed necessary by the County to inform interested parties of the opportunity;
- II. The methodology that will be used by the County to evaluate proposals, specifically if the contract will be awarded to the lowest bidder, and significant objective factors that the County reasonably expects to consider in evaluating proposals, including cost or price and all non-price-related factors; and
- III. The relative importance of weight assigned to each factor specifically whether evaluation factors other than cost or price are significantly more than, approximately equal to, or less important than cost or price.

If the County reserves the right to hold negotiations with responsive bidders, it must specify as such in the RFP and must include applicable rules and procedures to be observed by the County to ensure that any negotiations are conducted in good faith.

## (4) Evaluation of Proposals and Selection of the DB Entity

Final selection of the DB entity may be based on either a competitive bidding process resulting in lump-sum bids, with the award being made to the lowest responsible bidder, or based upon best value and other criteria. When the best-value method is selected, competitive proposals must be evaluated using only the criteria and selection procedures identified in the RFP and shall progress as specified by Public Contract Code Section 22164(f). At least 10 percent of the total weight of consideration must be given to each of the following: price, technical design, construction experience, life-cycle costs for at least 15 years, skilled labor force availability, and acceptable safety record.

Once the evaluation is complete, the top three responsive bidders are ranked and the award made to the responsible bidder whose proposal is determined and documented to be most advantageous. The award, written decision, and second- and third-ranked entities are then publicly announced.

If the County chooses to reserve the right to hold discussions or negotiations with responsive bidders, such right will be specified in the RFP. Applicable rules and procedures to be observed by the county will be published separately or incorporated into the RFP to ensure that any discussions or negotiations are conducted in good faith.

If the County elects to award a DB project, retention proceeds withheld by the County from the DB entity shall not exceed 5 percent, if a performance and payment bond, issued by an admitted surety insurer, is required in the solicitation of bids per Public Contract Code. For certain types of "horizontal" construction, such as streets, highways, water resources facilities, and other infrastructure, the County may enter into contracts utilizing the JPA with the City of Santa Ana.

**DESIGN AND CONSTRUCTION PROCUREMENT POLICY MANUAL****SECTION 5.6 - CONSTRUCTION MANAGER AT-RISK PROJECT DELIVERY METHOD****§5.6-101 Definition**

- (1) Construction Manager at-Risk (CMAR) is an alternate project delivery method which entails a commitment by the Construction Manager (CM) to deliver the project within a Guaranteed Maximum Price (GMP). The CM acts as a consultant to the County in the development and design phases (“preconstruction services”) and as a general contractor during construction.
- (2) A CMAR contract is a qualification based, competitively procured contract that guarantees the cost of a project and furnishes CM services, including preparation and coordination of bid packages, scheduling, cost control, value engineering, evaluation, preconstruction services, and construction administration. Unlike DB, when utilizing a CMAR contract the County would retain control of the entire design process.

**§5.6-102 Statute**

- (1) SB328 amended Public Contract Code Section 20146 effective January 1, 2014 with a sunset date of January 1, 2018, allowing counties to use CMAR procurement for vertical construction.
- (2) The JPA with the City of Santa Ana, approved by the County Board of Supervisors on September 30, 2014, allows use of the CMAR delivery method in accordance with the City Charter §422(a)(c) for both vertical and horizontal construction. County may enter into an agreement with the JPA for the JPA to enter into such a contract for facilities that will be ultimately owned by the County. That agreement will set forth the responsibilities of the individual members of the JPA including the financial responsibilities for the project. Consultation with County Counsel is recommended prior to pursuing procurement under the JPA.

**§5.6-103 Policy**

CMAR contracts may be used for projects in excess of \$1,000,000 for the construction, alteration, repair, or improvement of any building owned or leased by the County. Like DB contracts, CMAR may be awarded using either lowest responsible bidder or best value methods to an entity carrying appropriate liability insurance and bonding covering the cost of the project.

**§5.6-104 Process**

- (1) On a CMAR project, the County typically retains the CM before or during design. The CM provides a contractor’s perspective during design, assists in value engineering, and performs quality control to reduce common design problems such as coordination and constructability issues. The construction documents are divided into “trade packages” suitable for competitive bidding as separate contracts. The CM selects the trade contractors through procedures established by the County, and is responsible for scheduling, coordinating and completing the project for a GMP.
- (2) The CM is typically paid a fixed sum for its preconstruction services and receives a fee, calculated as a percentage of hard construction cost (e.g. labor, materials), for services during construction. The CM may also provide site services for the project, such as security and sanitation, and may, in some cases, perform portions of the work. If it does so, payment for that work may be in addition to the fee.
- (3) The overall price for construction of the project, either a lump sum or GMP, is usually established late in the design phase or after all trade contracts have been bid. The price should change only if the County modifies the project, regulatory changes increase the cost of the work, or unexpected site conditions appear. As with other contracting methods, the County may prequalify the CM and/or subcontractors or set minimum qualifications requirements (which do not rank but merely qualify the CM and subcontractors). It is important that a CMAR contract clearly identifies the risks the County would shift to the CM, and that the County’s staff is well trained to use the contract to enforce those responsibilities.



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- (4) Selection of the CMAR entity may be by lowest responsible bidder or best value, where “best value” means a value determined by objective criteria related to the experience of the entity and project personnel, project plan, financial strength of the entity, safety record of the entity, and price.

**SECTION 5.7 - PROGRAM MANAGER AT RISK PROJECT DELIVERY METHOD****§5.7-101 Definition**

Program Manager at-Risk (PMAR) involves a single contract with an integrated engineering and construction firm to include Program Management, Engineering Services, and CMAR. The PMAR contractor holds all the engineering and construction sub-contracts under a single master contract, and provides a GMP and schedule, while assuming the risk for the overall infrastructure program.

**§5.7-102 Statute**

PMAR is not specifically discussed in the California Public Contract Code.

**§5.7-103 Policy**

As PMAR is not specifically discussed in the Public Contract Code, the Director shall seek the advice of County Counsel before proceeding with the applicable procurement actions to utilize this alternate project delivery method.

**§5.7-104 Process**

- (1) The PMAR provides advisory services during design development until the design has progressed enough to establish a construction price.
- (2) The PMAR will enter into construction price negotiations with the County to construct the project while the County retains the right to reject the Program Manager’s price and procure the construction by competitive bidding. Any negotiated amount will result in a GMP contract format.
- (3) The PMAR is placed in a legal position identical to that of a contractor entering into a traditional construction contract which provides for the performance of the construction work for an established price. It is important to note the change in relationship between the advisory phase, in which the PMAR has a duty to advance the County’s interests; and the construction phase, in which the PMAR is a contractor and is primarily focused on managing the “at risk” part of its role.

**SECTION 5.8 - CONSTRUCTION MANAGER/GENERAL CONTRACTOR PROJECT DELIVERY METHOD****§5.8 -101 Definition**

Construction Manager/General Contractor method (CM/GC) means an alternate project delivery method using a best value procurement process in which a CM is procured to provide preconstruction services during the design phase of the project and construction services during the construction phase of the project. The execution of the design and the construction of the project may be in sequential or concurrent phases. The CM/GC method attempts to involve the contractor in the design phase to provide an increased measure of flexibility in the procurement of the contractor and the process for establishment of the project’s price.

**§5.8 -102 Statute**

CM/GC is not specifically discussed in the California Public Contract Code.

**§5.8 -103 Policy**

As the CM/GC is not specifically discussed in the Public Contract Code, the Director shall seek the advice of County Counsel before proceeding with the applicable procurement actions to utilize this alternate project delivery method.

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**§5.8 -104 Process**

- (1) Utilizing the CM/GC method, the County will contract with an A-E firm for design services.
- (2) During the design process, the County will contract for the services of a CM/GC through a preconstruction services contract. The CM/GC also acts as the general contractor for the project, and the early procurement during the design phase allows for the CM/GC to provide value engineering, scheduling and constructability reviews, and cost estimating services as the project is being designed.
- (3) The CM/GC is selected based on best value, including qualifications, experience, approach, and fees, but not based on a bid for constructing the project.
- (4) After the design has sufficiently progressed, the owner negotiates a Maximum Allowable Construction Cost (MACC) and Total Contract Cost (TCC) with the CM/GC. Subcontracts are competitively bid.

**SECTION 5.9 – ANNUAL CONTRACTS FOR REPAIR, REMODELING, OR OTHER REPETITIVE WORK****§5.9 -101 Definition**

An annual contract for repair, remodeling, or other repetitive work based on unit prices including, but not limited to, a Job Order Contract (JOC) is a firm fixed price, competitively bid, unit priced, indefinite quantity contract designed to accomplish small to medium projects. These contracts do not include design or contract drawing services.

**§5.9 -102 Statute**

Public Contract Code Section 20128.5 provides the statutory authority for these contracts for repair, remodeling, or other repetitive work only, and may not be used for new construction. Unit-price contracts may only be up to one year in duration. The Board of Supervisors delegates to the Director, the ability to perform projects under contracts, awarded under Public Contract Code Section 20128.5.

**§5.9 -103 Monetary Limits**

These contracts may be awarded up to \$3,000,000 plus an annual Consumer Price Index adjustment (Public Contract Code Section 20128.5).

**§5.9 -104 Process**

- (1) The annual unit-price contracts program is carried out by either developing in house, or contracting out for the professional services for, the development and customization of a Unit Price Book (UPB) and technical specifications for typical work. A UPB includes pre-priced construction tasks that are specifically tailored for the type of work that the County intends to accomplish and includes labor, material and equipment costs. All unit prices incorporate federal labor standards including Davis-Bacon requirements and other Federal and State wage rate requirements. A UPB is work-segment based and incorporates local activity, climate, and geographic features. Technical specifications take into account quality of materials and workmanship, performance specifications, and detailed specifications furnished on a project by project basis.
- (2) Contractors bid on adjustment factors for work performed during normal working hours and non-normal working hours. These adjustment factors will be applied against the prices set forth in the unit price book and are used to price out fixed price work orders by multiplying the adjustment factors by the unit prices and quantities. The contractor with the lowest composite factor will be considered the apparent low bidder.

Once a contract is awarded, the County will conduct a meeting with the contractor to determine the actual work to be done for each project or work order to be performed under the contract. The contractor will be issued a request for task proposal and will be required to develop a proposal for the work required. The contractor will submit its proposal to the County and this proposal will be evaluated. If the contractor's proposed units are found reasonable, a work order may be issued at the agreed-

upon units, which when multiplied by the unit price and appropriate contract adjustment factor will establish the firm fixed price for the work order.

**SECTION 6 - ADDITIONAL GOVERNMENT CODE AND POLICY**

**DESIGN AND CONSTRUCTION PROCUREMENT POLICY MANUAL****ADDITIONAL GOVERNMENT CODE AND POLICY****SECTION 6.1 - PREQUALIFICATION CRITERIA****§6.1-101 Definition**

Public Contract Code Section 20101 authorizes the County to establish procedures to prequalify bidders for the construction of public works projects.

In order to prequalify, contractors are required to complete and submit standard prequalification documents and provide specified supporting documentation verified under penalty of perjury by the contractor as set forth in this DCPM. Only contractors that are prequalified may bid on the project.

Prequalification cannot be used to rank contractors, but only to determine whether they meet minimum project qualification requirements for the specific project.

**§6.1-102 Purposes of Prequalification**

- (1) To ensure that the County obtains qualified contractors who have the proven capability and the experience to complete projects similar to the project being considered.
- (2) To prevent poor project quality and late delivery (going over budget and/or over schedule) due to the lowest bidder contractor's inexperience or ineptitude.

**§6.1-103 Use of Prequalification**

The County will require prequalification of the prime contractors for the following public works construction bid packages:

- (1) Single specific projects identified by Department Heads as suitable for prequalification due to uniqueness or complexity of all or a portion of the project.
- (2) All large projects (estimated construction cost over \$5,000,000). If the Director determines that prequalification is not in the best interests of the County for such a project, then the corresponding request for Board of Supervisors action should recommend proceeding without prequalification and provide a justification.
- (3) Formally bid projects under \$5,000,000 will be prequalified by a streamlined prequalification process, unless the Director determines that prequalification is not in the best interest of the County, then the corresponding request for Board action should recommend proceeding without prequalification and provide supporting justification.

**§6.1-104 Prequalification of Subcontractors**

Nothing in this section shall preclude the County from prequalifying or disqualifying a subcontractor. The Director may qualify subcontractors as determined to be in the best interest of the County. However, the disqualification of a subcontractor by the County does not disqualify an otherwise prequalified prime contractor. If a subcontractor is not qualified, the prime contractor will be given an opportunity to replace that subcontractor with another, which may either be a new subcontractor subject to prequalification, or a subcontractor already prequalified by the County, at the prime contractor's discretion.

**§6.1-105 Methodology for Preparation**

- (1) Contractors seeking prequalification are required to submit to the County completed prequalification documents, which include the Prequalification Questionnaire and all the documents required by the Prequalification Questionnaire.
- (2) Pursuant to Public Contract Code Section 20101, the submitted Prequalification Questionnaire and financial statement are not public records and are not open to public inspection. They shall be kept confidential to the extent permitted by law. However,

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the contents may be disclosed to third parties for purpose of verification or investigation of the statements contained therein or in a hearing. Finally, Section 20101 provides that the names of contractors applying for prequalification status are public records subject to disclosure, and the first page of the Prequalification Questionnaire shall be used for this purpose. Agencies unsure about whether any information is disclosable under the Public Records Act should seek the advice of County Counsel.

- a. Each contractor will be determined as either qualified to bid as to each bid package for which it requested prequalification or not qualified based on the County uniform rating system. No rating other than a positive or negative qualification determination shall be established by this process. The contracting department will evaluate the completed Prequalification Questionnaire and supporting documents to determine whether the contractor is qualified or not qualified to bid on the bid packages identified in the Prequalification Questionnaire.
- b. It is mandatory that contractors who intend to submit a bid for any of the identified bid packages provide a Prequalification Questionnaire and any supporting documents requested and are subsequently determined qualified to construct the work required by the bid packages identified on the Prequalification Questionnaire. The County may not accept any bid from a contractor that has not prequalified by this process.
- c. The County's determination that a contractor is qualified shall apply only to the project(s) identified in the prequalification documents. The Prequalification Questionnaire may request information regarding the contractor's specialized expertise or demonstrated experience pertaining to the individual project as long as such information will not unnecessarily restrict the pool of qualified contractors to unfairly exclude any otherwise qualified prospective bidders.
- d. While it is the intent of this prequalification policy to assist the County in determining bidder responsibility prior to bid and to aid the County in selecting the lowest responsible bidder, the prequalification of a contractor will not preclude the County from post-bid consideration of whether a bidder has the quality, fitness, capacity and experience to satisfactorily perform the proposed work and has demonstrated the requisite trustworthiness. The County may waive minor irregularities and omissions in the information contained in the Prequalification Questionnaire and supporting documents.
- e. The County may modify the prequalification determination assigned to a contractor based on subsequently learned information. Contractors previously deemed qualified then subsequently disqualified will be given notice and an opportunity to be heard consistent with the procedures set forth herein.

**§6.1-106 Prequalification Standards and Notifications**

For a prospective bidder to be determined qualified, the bidder must meet each of the following criteria:

- (1) The Prequalification Questionnaire must be completely filled out and verified under penalty of perjury and all the required supporting documents must be submitted as required by the Prequalification Questionnaire. The completed Prequalification Questionnaire and supporting documents must be submitted to the County as provided for herein and by the deadline established herein.
- (2) A passing score, as determined by the awarding agency and in accordance with recommendations promulgated by the California Department of Industrial Relations, must be achieved.
- (3) The contractor has not provided any false or misleading information in the Prequalification Questionnaire and/or supporting documents.
  - a. All supplemental documents are to be submitted on 8½" by 11" sheets and must be organized and identified in accordance with the requirements of the Prequalification Questionnaire.
  - b. Prequalification Questionnaires must be signed under penalty of perjury in the manner designated at the end of the Prequalification Questionnaire by an individual who has the legal authority to bind the contractor on whose behalf the person is signing.

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- c. If any information provided by a contractor becomes inaccurate, the contractor must immediately notify the County and provide updated accurate information in writing under penalty of perjury.
- d. The completed Prequalification Questionnaire and supporting documents must be submitted to the County before 4:00 P.M. (on a specified date). Late submittals will not be considered by the County. Contractors are encouraged to submit the Prequalification Questionnaire and supporting documents as soon as possible so that they may be notified of omissions of information which can be remedied or of their prequalification determination well in advance of bid advertisement for the project.
- e. Completed Prequalification Questionnaires and supporting documents must be sealed and marked "Confidential" in a suitable envelope and mailed or delivered to the following:

County of Orange  
[DEPARTMENT NAME]  
[ADDRESS]  
[CITY, CA. ZIP]  
Attn.: [NAME], Project Manager

- f. The County will inform contractors, in writing, of the prequalification determination upon receipt and evaluation by the County of the completed Prequalification Questionnaire and supporting documents. If a contractor receives a negative prequalification decision, the County will, in its notification of the decision, advise the contractor of the reasons for that determination.

**§6.1-107 Hearing Procedure**

Where the contractor has made a timely and complete submittal of prequalification documents that result in a determination that the contractor is not qualified, the contractor can contest the department’s decision via administrative hearing.

To petition for a hearing, the contractor must deliver written notice of its desire to contest the department’s decision to County of Orange within seven (7) calendar days of the date of County’s notice of determination. Failure to file a timely notice shall result in the contractor’s waiver of any and all rights to challenge the prequalification determination, whether by administrative process, judicial process, or any other legal process or proceeding.

The contractor may request the County to advise it in writing of the basis for the prequalification determination and any supporting evidence that was received from others or adduced as a result of an investigation by the County.

A Hearing Panel shall be established and consist of three panelists from various County of Orange infrastructure departments, with a maximum of one (1) panelist from the procuring department.

If a contractor contests a negative determination, the Hearing Panel shall render its decision based on the entire administrative record, including the contractor’s written notice and supporting documentation. The contractor may submit on the record, or request to testify before the Hearing Panel, to rebut the department’s determination of non-qualification. Such a hearing is conducted in an informal manner, and all relevant evidence is admissible. The department rendering the initial determination may rebut any evidence proffered by the contractor in writing or through its own testimony. Finally, the Hearing Panel may ask questions of either the contractor or department before making its decision.

If the contractor requests to provide testimony, the hearing shall be conducted so that it is concluded within five (5) business days after the County’s receipt on notice of appeal and no later than 20 business days prior to the last date of receipt of bids on the project. Within three (3) business days after the conclusion of the hearing, the Hearing Panel will render its decision in writing.

The decision of the Hearing Panel shall be the County’s final administrative decision and any judicial review thereof shall be instituted no later than the time period referred to Section 1094.6 of the Code of Civil Procedure.

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**SECTION 6.2 - DETERMINATION OF NON-RESPONSIBILITY****§6.2-101 Definition**

A responsive, responsible bidder is “a bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the public works contract” (Public Contract Code Section 1103). In other words, the term “responsible” in the context of public works bidding is not employed to denote a bidder who is merely generally trustworthy, but also refers to the bidder’s ability to perform in accordance with the requirements of the bid solicitation.

**§6.2-102 Purpose**

Prior to a contract being awarded by the County, the County may determine that a party submitting a bid or proposal is non-responsible for purposes of that contract. In the event that the County determines that a bidder/proposer is non-responsible for a particular contract, said bidder/proposer shall be ineligible for the award of that contract.

**§6.2-103 Procedures**

**It is important that County Counsel be consulted when a department considers a non-responsibility determination.** Because of the particular nature of a non-responsibility finding, the contractor found to be non-responsible is entitled to certain due process protections before a determination of non-responsibility is made.

The County may take into account numerous factors in determining responsibility, including the financial capabilities of the bidder, the bidder’s experience and familiarity with the type of work of the project, the bidder’s work on previous projects (including any prior failure to perform), and the bidder’s resources and facilities. Non-responsibility is determined on a case-by-case basis, so these factors are merely examples enumerated by the courts, and are by no means an exhaustive list. Because prequalification is a method of determining responsibility prior to bid, basic considerations may also include those listed in the standard Prequalification Questionnaire, such as whether:

- (1) Contractor possesses a valid and current California contractor’s license for the project;
- (2) Contractor has sufficient liability insurance and bonding capacity;
- (3) Contractor has current workers’ compensation insurance;
- (4) Contractor can provide a financial statement demonstrating the capacity to perform the project;
- (5) Contractor has had its license revoked in the past, and the reasons for such revocation;
- (6) A surety has completed a project on behalf of the contractor;
- (7) Contractor is barred from bidding or being awarded a contract under California law;
- (8) Contractor has been debarred by another jurisdiction;
- (9) Contractor or any of its owners, officers, or other principals have been convicted of a crime relevant to the contractor’s trustworthiness or ability to perform the contract.

The responsibility of each bidder must be evaluated independently. No consideration can be made of each bidder’s relative responsibility among all bidders, so once a finding has been made of the bidders’ responsibility all such bidders are deemed equally responsible.

**§6.2-104 Notice**

The contractor shall be given written notice, approved 30 days in advance by the Director and County Counsel, and sent via certified mail to the contractor’s last known address (or to the contractor’s attorney if applicable).

- (1) The notice shall include the date, time, and place of the hearing before the Director or designee.



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- (2) The notice must specify the basis for the proposed recommendation of non-responsibility and a summary of any evidence to support such recommendation.
- (3) The notice shall advise the contractor that the parties may agree to submit the matter on the basis of documentary evidence only; otherwise, the contractor is required to confirm with the department that the contractor or its representative intends to attend the hearing, and contractor's failure to appear may result in the contractor waiving all rights to a hearing.

**§6.2-105 Hearing**

The contractor shall be given the opportunity of a hearing at which to contest the County's determination.

- (1) A hearing officer will be designated, who cannot be the same person as the staff who conducted the non-responsibility investigation. It is strongly recommended that the hearing officer be a neutral third party—e.g., not an employee of the County. At the hearing, the burden of proof is on the department and must be established by a preponderance of the evidence. The hearing is conducted in a relatively informal manner, and the formal rules of evidence do not apply. The hearing officer may consider any relevant information presented at the hearing. County Counsel may provide legal advice to the department and hearing officer.
- (2) The County's administrative record will be considered, so it shall contain adequate evidence of the basis of the County's determination as well as evidence that the contractor has been given adequate notice and opportunity to rebut that determination.
- (3) The Director should designate a Project Manager who will investigate information concerning contractor's non-responsibility, and who will present such findings at the hearing.
- (4) The contractor or its representative will then have the opportunity to present evidence, through witnesses and/or submitted documents, rebutting the County's finding of non-responsibility, as well as evidence that it is qualified to perform the work. In the event the evidence or documentation is new or was unavailable to the County when the non-responsive determination was made, information can still be considered.
- (5) Each party will then have the opportunity to rebut evidence previously presented by the other.
- (6) The Director may ask questions, seek clarification, and request additional information from the parties at any time during the hearing. The hearing officer has discretion to continue the hearing to a later time or date as necessary.
- (7) The Director shall close the hearing after the presentation of all evidence; no evidence submitted after the close of the hearing will be considered unless otherwise specified by the hearing officer.

**§6.2-106 Decision**

The Director shall consider evidence proffered by the department and contractor in rendering its decision.

- (1) A Director will present the proposed decision and recommendation to the Board of Supervisors based on the record of the hearing regarding whether the contractor should be found non-responsible.
- (2) The Director shall give notice to the contractor via certified mail of the proposed decision and recommendation, which will also specify the date, time, and place of the Board of Supervisors hearing.
- (3) The final decision as to non-responsibility lies with the Board of Supervisors. The Board may limit any further hearing to the presentation of evidence not previously presented. The Board can modify, deny, or adopt the recommendation of the Director. The Board of Supervisors findings are final, and if a finding of non-responsibility is determined, the contractor is ineligible for award of the contract.

**NOTE:** On awarding the contract to the lowest responsible bidder, the Board of Supervisors must also make the finding that any lower bidders were deemed non-responsible or nonresponsive and are therefore excluded from consideration.

**DESIGN AND CONSTRUCTION PROCUREMENT POLICY MANUAL****SECTION 6.3 - PROTEST & APPEAL****§6.3-101 Policy**

With the exception of John Wayne Airport, which utilizes Airport Commission procedures, any actual or prospective bidder, proposer, or contractor who alleges an error or impropriety in the solicitation or award of a contract may submit a grievance or protest to the awarding department and the following procedures will apply.

**§6.3-102 Procedure**

Immediately upon completion of negotiations with the top-ranked vendor(s), but prior to the filing of an Agenda Staff Report (ASR) for award of contract, the Deputy Purchasing Agent (DPA) shall send a Notice of Intent to Award a Contract to all participating vendors and submit a copy to the Clerk of the Board.

- (1) Vendors will have five (5) business days from the date of the notice in which to file a protest concerning the award of the Contract.
- (2) Protests relating to a proposed contract award which are received after the five (5) business day deadline will not be considered by the County.
- (3) During the five (5) business day period, RFP information, including the final evaluator score sheets with the names of individual evaluators redacted, are subject to public disclosure.
- (4) Upon expiration of the five (5) business day period or proper resolution of a protest/appeal, the department may move forward with the contract award or if necessary, filing the item for approval by the Board of Supervisors.

**§6.3-103 Protest Process**

- (1) In the event of a timely protest, the County shall not proceed with the solicitation or award of the contract until the DPA, or the Director renders a decision on the protest.
- (2) Upon receipt of a timely protest, the DPA will within ten (10) business days of the receipt of the protest, issue a decision in writing which shall state the reasons for the actions taken.
- (3) The County may, after providing written justification to be included in the procurement file, make the determination that an immediate award of the contract is necessary to protect the substantial interests of the County. The award of a contract shall in no way compromise the protester's right to the protest procedures outlined herein.
- (4) If the protester disagrees with the decision of the DPA, the protestor may submit a written appeal to the Office of the Director requesting an appeal to the Procurement Appeals Board, in accordance with the process stated below.

**§6.3-104 Appeal Process**

- (1) If the protester wishes to appeal the decision of the DPA, the protester must submit, within three (3) business days from receipt of the DPA's decision, a written appeal to the Office of the Director.
- (2) Within (15) business days, the Office of the Director will conduct a third-party review of all materials in connection with the grievance, assess the merits of the protest and provide a written determination that shall contain his or her decision.
- (3) The decision of the Director will be final and there shall be no right to any administrative appeals of this decision.

**DESIGN AND CONSTRUCTION PROCUREMENT POLICY MANUAL****SECTION 6.4 - JUSTIFICATION OF VARIANCE FROM ENGINEER'S ESTIMATE****§6.4-101 Definition**

An engineer's estimate is a point in time estimate based on a defined estimation methodology.

**§6.4-102 Purpose**

- (1) The County relies on an engineer's estimate prior to bidding out a project, primarily for budgetary purposes. It is also used to determine which procedures should be used for advertising and awarding the project.
- (2) Bidders use the engineer's estimate range to determine whether the project is within their capacity to perform and/or to ability to obtain bid bonds.
- (3) There is no legal requirement that the County prepare an estimate, nor any prohibition of such a process.

**§6.4-103 Use**

A cost estimate should be prepared for all projects regardless of size and complexity.

- (1) Cost estimates for projects not requiring Board of Supervisors approval may be completed by the contracting department or contracted out.
- (2) Estimates for projects requiring Board of Supervisors approval shall be prepared by an engineer or third-party estimator.
- (3) A certified engineer's estimator should be used for vertical construction.

**§6.4-104 Methodology for Preparation**

- (1) Types of engineer's estimates:
  - a. Unit cost line item (bid history);
  - b. Cost-based estimating;
  - c. Combination;
  - d. Rough Order of Magnitude (Calculations based on industry standards or data such as cost per square foot or cost per acre if and when applicable); and
  - e. Other best practices.
- (2) Methodology/approach should be provided to and reviewed by project staff.
- (3) Engineer's estimates may be provided in-house or contracted out. They should be reviewed and validated by County staff.
- (4) When possible, departments should include a secondary review of their engineer's estimates. This may include other County departments or a contracted professional estimator.
- (5) The final engineer's estimate should be completed in a timely manner to ensure that estimated figures are not adversely affected by market conditions.
- (6) All A-E design agreements should include an engineer's estimate as part of the A-E's Scope of Work.

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**§6.4-105 Bids Above/Below the Engineer's Estimate**

- (1) Because it is a point in time estimate, it is common for the engineer's estimate to deviate from the lowest responsible, responsive bid.
- (2) When the bid is either above/below the engineer's estimate – the bid and the estimate should undergo an additional level of review. This review shall be performed by a qualified County staff member or by contract with a third party. These reviews and justifications shall depend on the value of the project as follows:
  - a. If a project is below \$100,000, the threshold for explaining the difference is 20 percent.
  - b. If a project is above \$100,000, but less than \$1,000,000, the threshold is 10 percent.
  - c. If a project is greater than \$1,000,000, the threshold is 7.5 percent.
- (3) This review and justification should be discussed in the background of the ASR.

**§6.4-106 Release of the Engineer's Estimate**

The engineer's estimate will be released when the ASR for the award is released. It will be included in the body of the ASR in a table which includes all of the bids with the engineer's estimate included in the ranked list from lowest to highest. In the ASR, it should be stated, that, "The lowest responsive and responsible bid submitted by XXX for this Project is approximately XX% above/below the Engineer's Estimate of \$XXX." An explanation of any deviation over 20 percent, 10 percent or 7.5 percent as indicated by the preceding subsection must be included (e.g., identifying changed economic conditions such as price of fuel, cost of supplies, rental prices, or the competitive bidding environment).

**SECTION 6.5 – OPERATIONS & MAINTENANCE FUTURE COSTS****§6.5-101 Applicability**

This policy applies to all public works new construction and major renovation projects requiring Board of Supervisors approval to advertise or award.

**§6.5-102 Definition**

Operations and Maintenance (O&M): The recurring, day-to-day, periodic, or scheduled work required to preserve, control deterioration and provide for the basic operation of a facility. This type of maintenance is routine and is based on frequency schedules, responding to service requests, or through periodic inspection and correction efforts. O&M is typically funded through operational budgets.

**§6.5-103 Policy**

- (1) Departments shall ensure that O&M costs for new facilities have been considered and include O&M staff during the planning and design phases of renovation and new construction projects. Project operating and maintenance impact estimates shall include the following:
  - a. The effect of infrastructure replacement and upgrades required for the facility in the year(s) of occurrence; and
  - b. Projections and funding plans for direct costs to County departments for maintenance, internal services and utilities.
- (2) These O&M costs shall be included in all public works renovation and new construction project ASR's or as part of the attachments to the ASR. The ASR and/or ASR attachments should also indicate if any of the following were conducted:
  - a. Industry standards and other locality approaches were considered prior to initiation of infrastructure replacement or upgrades;
  - b. Any County attempts at Value Engineering;

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- c. Any Total Life Cycle Cost Analysis conducted; and/or
- d. Development of an O&M manual was included in the Statement of Work of the project.

**§6.5-104 Sample ASR Language for Ongoing Maintenance Costs**

- (1) The subject project will require an additional annual maintenance cost of approximately \$ XXX for a period of X years. The above mentioned costs are based on a life cycle cost analysis conducted by staff as shown in Attachment X. Life cycle cost is the sum of all recurring and one-time (non-recurring) costs over the full life span of this asset. It includes total project costs, operating costs, maintenance and upgrade costs, and remaining (residual or salvage) value at the end of ownership or its useful life.
- (2) No new operations and maintenance costs are anticipated as a result of this project.
- (3) This project is anticipated to reduce annual operations and maintenance costs by approximately \$XXX for a period of X years [If appropriate, include language referencing a life cycle cost analysis as in the first bullet above].

**SECTION 6.6 - REGULATORY PERMIT APPROVALS****§6.6-101 Applicability**

This policy applies to all public works construction projects requiring Board of Supervisors approval to advertise or award.

**§6.6-102 Definition**

Any application, plan, permit, letter, report, agreement, waiver, memorandum of understanding or other document requiring approval by an Authority Having Jurisdiction (AHJ) over the project in any capacity. Examples may include Building & Grading Permits, Construction General Permits, Biological Opinions, Waste Excavation Permits, Construction Quality Assurance Plans, Geotechnical Reports, Environmental Impact Reports, Mitigation Monitoring Plans, or Development Agreements.

**§6.6-103 Policy**

- (1) Departments shall ensure that all necessary Regulatory Permit Approvals from all AHJs are secured prior to approval of the advertisement by the Director. If an approval has not been secured by the date that the related ASR is due to the County Executive Officer, the ASR is to be delayed.
- (2) In certain cases, a determination may be made to proceed with the advertisement without a regulatory approval, such as when delaying advertisement may jeopardize funding. In these cases, departments shall indicate in the ASR that not all Regulatory Permit Approvals have been secured. The ASR background shall also indicate the following:
  - a. Which Regulatory Permit Approvals have not been secured;
  - b. Why they have not been secured;
  - c. When they are likely to be secured;
  - d. Why the Director recommends proceeding with advertisement prior to approval; and
  - e. What the likely risks are of proceeding without approval. At a minimum, cost, scope, and schedule should be addressed.

**SECTION 6.7 - EMERGENCY PROCUREMENT**

Emergency procurement shall be conducted in accordance with Public Contract Code Section 22050.

**DESIGN AND CONSTRUCTION PROCUREMENT POLICY MANUAL****SECTION 6.8 CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

- (1) The majority of public works projects will require compliance with the California Environmental Quality Act (CEQA) and any projects involving federal funding may additionally require compliance with the National Environmental Policy Act (NEPA). Such requirements must be complied with before approval of the project.
- (2) For projects that do not require approval by the Board of Supervisors:
  - a. The Director shall ensure that he or she has received a memorandum from the OC Public Works/Development Services Division documenting that the requirements of CEQA have been complied with;
  - b. If a negative declaration or mitigated negative declaration has been prepared, the declaration must be signed by the Director or designee; or
  - c. If OC Public Works/Development Services Division determines that the project is statutorily or categorically exempt, then it shall provide to the Director a memorandum specifying the exemption and the facts supporting its determination.
  - d. The Director shall file the appropriate Notice of Determination or Notice of Exemption, as applicable.

**SECTION 6.9 - BONDS**

- (1) Public Contract Code Section 20129 requires bidder's security and performance bonds.
- (2) All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security in an amount not less than 5 percent of the bid: cash; a cashier's check made payable to the County; a certified check made payable to the County; or a bidder's bond executed by an admitted surety insurer, made payable to the County.
- (3) Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the county beyond 60 days from the time the award is made.
- (4) The person to whom the contract is awarded shall execute a bond to be approved by County Counsel and CEO/Risk Management for the faithful performance of the contract.
- (5) Civil Code § 9554, the labor and materials payment bond must be for at least 100 percent of the total amount of the public works contract.
- (6) Faithful-performance bonds and labor-and-materials bonds shall be submitted on the forms approved by County Counsel and shall be subject to approval by CEO/Risk Management and County Counsel.

**SECTION 6.10 - CONTRACT AWARD AND NOTICE TO PROCEED**

- (1) Contracts are awarded by the Board of Supervisors and signed by the Chair of the Board of Supervisors unless the authority has been clearly delegated and authorized to others by the Board of Supervisors.
- (2) Upon approval of the contractor's bonds and insurance after award of the contract and on satisfaction of any other prerequisites to the contractor's performance, a Notice to Proceed will be issued which begins the performance period of the contract.

**SECTION 6.11 - PAYMENTS**

- (1) The contracting agency/department prepares and processes all documents necessary for preparation and issuance of payments to the contractor in accordance with the terms established in the contract documents.
  - a. Projects less than \$5,000 will be paid in full upon acceptable completion of the work and receipt of an invoice from the contractor and approved by the contracting agency/department.

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- b. Projects from \$5,000 to \$75,000 may be paid by progress payments or by payment upon completion of the work as established in the contract documents. The contracting agency/department will prepare and process payment(s) up to 95 percent of the actual value of the work completed. Not less than 5 percent shall be withheld until the work is complete in accordance with Public Contract Code Section 9203.
  - c. Projects of \$75,000 or more will be paid by progress payments. The contracting agency/department will prepare and process payments up to 95 percent of the actual value of the work completed. Not less than 5 percent shall be withheld until the work is complete in accordance with Public Contract Code Section 9203.
- (2) If after 50 percent of the project has been completed and the contracting agency/department finds that satisfactory progress is being made, it may make any of the remaining progress payments in full for actual work completed in accordance with Public Contract Code Section 9203.
  - (3) Complete shall mean acceptance, as evidenced by a notice of completion, beneficial occupancy accompanied by cessation of labor, a cessation of labor for 100 continuous days or more due to factors beyond the control of the contractor, or a cessation of labor for 30 continuous days following the filing of a notice of completion or a notice of cessation in accordance with Public Contract Code Section 7107.
  - (4) The contracting agency/department may, at its option, withhold amounts greater than those shown above. The contracting agency/department may also, at its option, withhold amounts for up to 30 days in accordance with "Stop Notice Rules" corresponding to work in dispute pending resolution of the dispute in accordance with Public Contract Code Section 7107.
  - (5) All funds, including withheld funds, will be paid in accordance with the time frames specified in accordance with Public Contract Code Section 7107.
  - (6) The contractor may substitute securities for funds withheld in accordance with the Public Contract Code Section 22300.
  - (7) Escrow agreements for security deposit in lieu of retention should be approved by County Counsel.

**SECTION 6.12 - LIQUIDATED DAMAGES CLAUSE FOR USE IN PUBLIC WORKS CONTRACTS**

Sample Language: "In accordance with Government Code Section 53069.85, contractor agrees to forfeit and pay to County the sum of (\$ XXX ) per day for each calendar day work is delayed beyond the time allowed, and such sum shall be deducted from any payments due to or to become due to contractor. Contractor will be granted an extension of time and will not be assessed liquidated damages for unforeseeable delays beyond the control of and without the fault or negligence of contractor including delays caused by County."

Changes to the standard Liquidated Damages provision may be made upon County Counsel approval.

**SECTION 6.13 - LOBBYING**

Capital projects published in RFPs, RFQs, and bid advertisements should avoid using "no lobbying" verbiage as standard language. Board of Supervisors approval must be obtained before placing any lobbying limitation clause in these documents. Capital projects that are greater than \$25,000,000 and involve special circumstances because of the complexity and scope of work may insert the "no lobbying" clause after Board of Supervisors approval is obtained. This approval can be obtained via subcommittee, consent agenda, or formal Board of Supervisors agenda action. Procurement staff, or a County Counsel representative, can assist if further information is needed.

**SECTION 6.14 - CONTACT PROTOCOL FOR COUNTY EMPLOYEES**

Procurement documents including RFQs, RFPs, and construction contracts will include language that prohibits contacting County staff by outside interested parties during an active, ongoing procurement process. Architects, engineers, or independent contractors are not allowed to receive information concerning any bid details of the specific procurement process except with the designated Procurement staff member who is managing the procurement process. This prohibition extends to the firm's employees, representatives, agents, lobbyists, attorneys, sub-consultants, or anyone else acting on the behalf of the interested party. Contacts that are prohibited include those with members of the evaluation panel, the County Executive Officer, and other County staff.

**DESIGN AND CONSTRUCTION PROCUREMENT POLICY MANUAL****SECTION 6.15 - NOTICE OF COMPLETION**

The contracting agency/department will file a notice of completion for all public works projects of \$5,000 or more; these notices do not need to be approved by the Board of Supervisors. Notices of completion will be recorded in the Clerk/Recorder's Office within 10 days of project completion, in accordance Civil Code Section 3093.

**SECTION 6.16 - GENERAL REQUIREMENTS**

- (1) Projects are not to be intentionally split in order to avoid informal or formal bidding or to avoid approval by the Board of Supervisors per Public Contract Code Section 22033.
- (2) All contractors performing public works projects shall be properly licensed in accordance with the requirements of the State of California Contractor's License Board.
- (3) All contractors performing public works projects shall pay prevailing wages in accordance with the California Labor Code Section 1720.

**SECTION 6.17 - CUSTODIAN OF DOCUMENTS**

All standardized Design and Construction Services documents shall be the sole documents utilized for purposes of County business. The Director shall be the custodian of these documents and provide the appropriate updates and controls and shall be authorized to modify, add or delete document as necessary.

**SECTION 6.18 – COMPLIANCE REVIEW**

The Director may elect to secure an independent team to perform annual compliance reviews of Design and Construction Services procurement records and processes. Upon completion of the review, the Director and/or designated procurement staff shall meet with the independent compliance review team to discuss the findings and recommendations for corrective action. A final written report will be submitted to the Director and/or designated procurement staff.