

<b>MENDOCINO COUNTY POLICY NO. 1</b>		<b>PURCHASING, LEASING, and CONTRACTING POLICY</b>
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## **Chapter 1      PURPOSE AND POLICY STATEMENT**

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### **1.1      Introduction**

The purpose of this County Purchasing, Leasing, and Contracting Policy is to set forth how activities associated with purchasing supplies and equipment, leasing personal and real property, and contracting for services are to be conducted in Mendocino County. This policy applies to all County officials and employees.

The policy will provide guidelines for underlying principles of procurement to (1) promote open and free competition for County purchases and contracts; (2) promote financially feasible procurement for the County; (3) assure adherence to local, state, and federal laws and regulations, including Government Code and Public Contract Code, as they relate to procurement and Public Works projects; and (4) promote ethically professional relationships with vendors and contractors.

Mendocino County's procurement program is intended to (1) increase its buying power; (2) utilize pre-bid contracts and/or cooperative agreements where feasible; and (3) improve vendor relations by providing a central point of contact for departments/elected offices and vendors alike.

### **1.2      Authorities**

This policy indicates who has authority (Department Heads/Elected Officials, Purchasing Agent, Auditor-Controller/Treasurer-Tax Collector, Chief Executive Officer, or the Board of Supervisors) to carry out each of the described tasks. Specified authorities for Department Heads/Elected Officials, Purchasing Agent, Auditor-Controller/Treasurer-Tax Collector, and Chief Executive Officer include their designee or subordinate to whom they have formally delegated authority.

When express authority is not delegated to the Department Heads/Elected Officials, the Purchasing Agent, Auditor-Controller/Treasurer-Tax Collector, Chief Executive Officer, or Board of Supervisors retains sole authority for that activity. All purchases subject to this policy are contingent upon the Board of Supervisors adopting the budget each fiscal year and the availability of funds.

#### **1.2.1      Sources of Authority**

Public agencies, such as the County, have only those powers granted to them by the legislature with regard to acquiring and disposing of personal and real property or contracting for services. County employees have only that purchasing and contracting authority expressly delegated to them by the Board of Supervisors or the Purchasing Agent and may be held personally liable for a transaction undertaken without such express delegation.

Except as otherwise provided by law or by action of the Board of Supervisors, all purchases of materials, supplies, furnishings, or equipment required by any department/elected office shall be made on behalf of the County by or under the direction of the Purchasing Agent in accordance with this policy. Mendocino County Code, section 2.32.020, designates the Chief Executive Officer as the County's

Purchasing Agent.

### 1.2.2 Priorities in Case of Conflict

Throughout this policy, reference will be made to federal laws, state laws, and County ordinances, resolutions, or minute orders. Should this policy conflict with any law, ordinance, or other official government action, governance is determined in the following descending order of priority: federal law; state law; County ordinance; resolution; minute order; County policy.

### 1.2.3 Procuring Goods and/or Services under a Federal Award

When procuring goods and/or services under a Federal Emergency Management Agency (FEMA) or other federal award, the Federal procurement rules found in 2 C.F.R. Part 200 must be followed. The County must follow whichever policy (Federal, State, Local, or other) is more stringent, while also complying with all aspects of the less stringent requirements that are not contained in the stricter rule.

## 1.3 Definitions

As used herein the following definitions shall apply:

### 1.3.1 "Aggregate Cost"

Aggregate Cost shall mean the maximum amount contractually obligated to any one County contractor, including reimbursement for travel and expenses, across all contracts for similar services within a single fiscal year.

### 1.3.2 "Agreement" and "Contract"

The Civil Code defines a contract as "an agreement to do or not to do a certain thing" (Civil Code, section 1549). A contract gives rise to an obligation or legal duty, enforceable in an action at law (Civil Code, sections 1427 & 1428). It sets forth terms, conditions, and a description of the work to be performed or things to be purchased.

A legally valid contract has four elements. "It is essential to the existence of a contract that there should be: (1) parties capable of contracting; (2) their consent; (3) a lawful object; and (4) a sufficient cause or consideration" (Civil Code, section 1550).

Contracts may be titled "contract," "agreement," "grant agreement," "memorandum [or letter] of understanding (MOU or LOU)," or something similar. No matter what the document is called, if it includes the essential elements set forth in section 1550 of the Civil Code, it is a contract, and if the proper procedures to enter into a contract have been followed, it constitutes a legally binding obligation of the County.

Unless otherwise specifically authorized by this policy, **all** County contracts regardless of compensation amount must be in writing and signed on behalf of the County by the Board of Supervisors or by a County agent or officer who has been delegated authority in writing by the Board of Supervisors. Oral contracts for either goods or services are not permitted.

### **1.3.3 — “Consumer Price Index” or “CPI”**

~~Consumer Price Index (CPI) shall mean the California Consumer Price Index, which is calculated by the California Department of Finance as a population-weighted average of local area CPIs published by the Bureau of Labor Statistics. Specifically, the data for “All Urban Consumers” in the San Francisco-Oakland-Hayward geographical area is referenced in this policy.~~

### **1.3.41.3.3 “County Official”**

County Official shall include the elected officials in charge of County offices, appointed department heads, agency directors, division directors, and assistant or deputy agency or department heads.

### **1.3.51.3.4 “Department”**

The term Department shall include all County agencies, branches, departments, divisions, and elected offices.

### **1.3.61.3.5 “Executive Office Liaison”**

Executive Office Liaison shall mean the Chief Executive Officer, Deputy Chief Executive Officer, or other County staff person assigned to a department/elected office to facilitate communication between the Executive Office and the department/elected office.

### **1.3.71.3.6 “Family”**

The term Family shall include the spouse, registered domestic partner, or dependent of a County employee.

### **1.3.81.3.7 “Formal Procurement”**

Formal procurement shall mean issuance of a publicly advertised document, such as a Request for ~~Proposal~~, Proposals (or Qualifications), a Request for Bids, or a Request for Quotes, that solicits responses from prospective vendors or contractors who are willing to provide a certain good or service to the County. Formal procurement is initiated by the department requiring the good or service and must follow procedures established by the Purchasing Division. Vendor/contractor responses are evaluated based on weighted criteria, such as cost, implementation, relevant experience, and references. A formal process may require prospective vendors or contractors to submit sealed responses.

### **1.3.91.3.8 “Informal Procurement”**

Informal procurement shall mean solicitation of at least two bids ~~or~~, quotes, proposals, or statements of qualification for a particular good or service, as appropriate, in writing or by phone. Informal procurement is less rigorous than formal procurement. It does not include a requirement to advertise publicly and does not require sealed responses.

### **1.3.101.3.9 "Personal Property"**

Personal property is any property that is not land, buildings, or fixtures – such as equipment, tools, copying machines, and furniture.

### **1.3.111.3.10 "Purchasing Agent"**

Purchasing Agent shall have the same meaning as specified in Chapter 2.32 of the Mendocino County Code, which designates the Chief Executive Officer as the County's Purchasing Agent. Purchasing Agent shall include their designee or subordinate to whom they have formally delegated authority.

### **1.3.121.3.11 "Purchasing Division"**

Purchasing Division shall include the Purchasing Agent and any County unit, division, or staff person designated by the Purchasing Agent to oversee all processes and procedures related to purchasing goods and contracting for services Countywide.

### **1.3.131.3.12 "Real Property"**

Real property includes land, buildings, space within buildings, and other structures attached to the land (such as mini-storage units), parking lots, parking lot spaces, easements, and any fixtures. In general terms, a fixture is any tangible item that is securely attached to a building.

## **1.4 Policy Limitations**

Agreements for legal brief printing, legal notices, insurance services, subscriptions to publications, advertising the activities or programs of the County, or any items addressed in Mendocino County Policy 18 are not covered by this policy. Additionally, court-ordered expenditures and purchases from the Inmate Welfare Fund are not covered by this policy. Questions about acquisitions not covered in this policy should be directed to the Purchasing Division or County Counsel. Other limitations on this policy are specified in the following subsections.

### **1.4.1 Independent Statutory Authority**

Certain contracts are governed by state or federal law; those provisions of law prevail over this policy. Further, some statutes specify that certain types of expenses constitute charges against the County Treasury, which might not require a prior delegation by the Board. Such charges are outside of the scope of this policy. Claims under those statutes should be evaluated pursuant to processes and procedures created by statute and case law, and/or any additional policies or processes propounded by the Auditor-Controller/Treasurer-Tax Collector and/or Board of Supervisors.

Examples of expenses that fall within the Independent Statutory Authority designation, and therefore are not bound by this policy, include, but are not limited to, the procurement of goods or services related to:

- a. Investigation or prosecution of crimes conducted by the Sheriff's Office or the District Attorney (Gov. Code section 29601)
- b. Indigent defense (Penal Code section 987.2)
- c. Support of jail inmates (Gov. Code section 29602)
- d. Conduct of any election (Elections Code sections 13001; 14100). In addition to purchase of supplies and equipment, this authority allows the Registrar of Voters to sign short-term licenses or agreements for space to be used as a polling place where the space is to be used for fewer than twenty days.

#### **1.4.2 Public Works Contracts**

The Public Contract Code defines the term "public works project" as a project for the construction, improvement, demolition, alteration, renovation, or repair of publicly owned, leased, or operated buildings and structures. Examples of public works projects include road construction and projects including, but not limited to, the following:

- a. installation of fixtures such as HVAC systems or permanent wiring.
- b. removal of asbestos from a building (because it involves demolition).
- c. painting, except for minor repainting.
- d. installation of an alarm system (because the work alters a building).

Public works projects are generally only undertaken by either the Facilities Division or the Department of Transportation. Any department or division preparing a scope of work that appears to include modifications or repair of County buildings or property should first contact the Purchasing Agent to discuss the scope.

While not subject to this Policy 1 generally, public works contracts must still be routed for review and signature consistent with Section 6.6 of this Policy 1 and any procedures adopted by the Purchasing Agent.

#### **1.4.3 Elections Materials and Polling Places**

Pursuant to Election Codes 13001 and 14100, the Registrar of Voters may directly authorize payment, rather than Purchase Order, for postage, delivery/courier services, and printed paper goods (such as ballots, ballot inserts, and envelopes) needed for the conduct of any election. The Registrar of Voters may also directly authorize payment for the items (such as extension cords, writing supplies, posters, and flags) necessary to maintain the individual precinct supply kits. In addition, the Registrar of Voters may sign short-term licenses or agreements for space to be used as a polling place where the space is to be used for fewer than twenty days.

### **1.5 Policy Accountability**

If a department purchases goods or services contrary to this policy, said purchases or contracts are void, of no effect, and do not obligate the County. A department making an unauthorized purchase may be required to appear before the Board of Supervisors to obtain retroactive approval of such expenditure. Willful failure of a County employee to comply with this policy could result in the County employee being held personally liable as well as disciplinary action, including termination, pursuant to applicable policies. In addition to disciplinary action, criminal prosecution could also be warranted in some cases.

## **1.6 Required Training**

All County Officials and employees involved in purchasing and/or leasing must attend one training seminar, to be conducted by the Purchasing Division, within sixty (60) days after being assigned to such a role and at least annually thereafter. All applicable County Officials and employees must sign in to this training to document attendance. Following completion of the training, each County Official and employee shall execute an acknowledgment of having received this training and having received a copy of this Policy 1. The Purchasing Division shall keep a copy of all such acknowledgement forms.

## **1.7 Policy Review**

This policy shall be reviewed by the Purchasing Division every two years, and the Purchasing Agent shall report to the Board of Supervisors every two years on the Policy's effectiveness and provide recommended changes to the Board of Supervisors for its consideration.

## Chapter 2      **VENDOR RELATIONS AND ETHICS**

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### **2.1      Vendor Relations**

The County's vendor relations reflect the public image of the County organization. Also, it is to the County's advantage to maintain and promote good relations with suppliers. All County Officials and County employees are responsible for promoting fairness, integrity, courtesy, and goodwill in vendor relations.

Direct contact with vendors may be made for purchases authorized under the delegated purchasing authority described in this policy and to obtain technical information and cost estimates.

The Purchasing Agent may serve as an intermediary between County departments and vendors, interviewing vendors, arranging interviews with department staff, or obtaining prices, catalogs, samples, equipment demonstrations and general information on commodities.

### **2.2      Ethical Standards for Purchasing Activities; Prohibitions**

It is the policy of the County of Mendocino to promote integrity and guard against misconduct or even the appearance of impropriety by prescribing certain essential standards of conduct for County employees.

In addition to complying with the County's Conflict of Interest Code, County Officials and employees must discharge their duties impartially so as to assure fair competitive access to government procurement by responsible suppliers and contractors and to foster public confidence in the integrity of the County procurement system.

County Officials and employees must not solicit, demand, accept, or agree to accept from another person a gratuity or an offer of employment in connection with any decision, approval, recommendation, or preparation of any part of a program requirement, specification, standard, or contract.

The County shall not directly purchase goods from County employees or Family of employees. In addition, the County shall not directly contract with County employees without complying with Policy 28 as it exists or may be amended or replaced.

County Officials and employees must not participate directly or indirectly in procurement when the employee or officer knows:

- a. the employee or any member of the employee's Family has a financial interest pertaining to the procurement;
- b. a business or organization in which the employee has financial interests pertaining to the procurement;
- c. any other person, business, or organization with which the employee is negotiating or has an arrangement concerning prospective employment is involved in the procurement; or
- d. the Purchasing Agent informs the employee that his/her recusal is required because, in the Purchasing Agent's opinion, the particular facts and circumstances of the procurement create a risk of a perception of a conflict of interest.

All County employees that have been delegated purchasing authorities under this policy will be required to take the County's ethics training.

## Chapter 3 REQUIREMENTS FOR CERTAIN ACQUISITIONS

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### 3.1 Provision of Goods and Services by the Departments of Health Services and Social Services

Goods and services provided directly to, or on behalf of, recipients of County Health Services and Social Services programs shall meet the following conditions, as well as any conditions adopted by the Directors of the Departments of Health Services and Social Services:

- a. Federal, State and/or County law or regulation authorizes the provision of goods or services.
- b. The provision of the goods and services conforms to Federal, State, and/or County policies, procedures, and relevant licensing requirements.
- c. A case management plan documents the recipient's need for the good or services.
- d. If a vendor voucher is used for the purchase, the vendor is pre-approved by the Director of Health Services or the Director of Social Services, as applicable, and the Purchasing Agent.
- e. Vendor vouchers must not exceed \$500 per purchase unless authorized by the State or Federal government.

### 3.2 Information Technology (IT) Acquisitions

#### 3.2.1 Purpose

To ensure countywide consistency, security, and efficiency in technology acquisitions, this section establishes the oversight requirements for the procurement of information technology (IT) hardware, software, and services.

#### 3.2.2 Applicability

This policy section applies to all County departments, offices, and agencies except the Sheriff's Office, which operates a distinct Information Systems Division with independent Information Technology procurement authority, pursuant to Section 3.2.5 below.

#### 3.2.3 General Requirements

County departments **must** coordinate all technology-related procurements with the County Information Technology Division prior to issuing solicitations, executing purchases, or entering into contracts.

Covered items include, but are not limited to:

- a. Computers, laptops, tablets, mobile devices
- b. Servers, storage systems, and network infrastructure
- c. Software (on-premise or cloud-based)
- d. Software-as-a-Service (SaaS) subscriptions
- e. Professional IT services (e.g., implementation, integration, or technical consulting)

The State may mandate use of specific software platforms for certain County programs or when the County delivers certain services. In these cases, no other software platforms will be considered.

### **3.2.4 County IT Division Review**

The County IT Division shall review proposed IT acquisitions for:

- a. Compliance with countywide technology standards
- b. Security and privacy considerations
- c. Compatibility with existing systems and infrastructure
- d. Opportunities for shared use or cost savings

### **3.2.5 Sheriff's Office Exception**

The Sheriff's Office maintains an independent Information Services (IS) Division that manages its own technology operations.

As such:

- a. The Sheriff's Office is exempt from the review and approval requirements outlined in Section 3.2.4 above.
- b. Technology acquisitions made by the Sheriff's Office are governed by its internal IT policies and acquisition procedures.
- c. The Sheriff's IS Division shall consult with the County IT Division on interoperability, countywide initiatives, and opportunities for shared use or cost savings.

## Chapter 4 COMPETITIVE PROCUREMENT

### 4.1 Solicitation Requirements – Goods and Services

It is the policy of the County of Mendocino to solicit competitive bids and proposals for its procurement requirements in order to make prudent use of public monies. Additionally, As used in this Policy, the term competitive procurement includes both soliciting of bids or quotes for purchases of goods, and soliciting proposals or qualifications for contracts for personal and professional services (together, these may be referred to as "bids" or "proposals"). The term competitive procurement is not limited to procurement of goods and services at the lowest cost, and includes qualification-based procurement such as those required by Government Code section 4526 et seq.

Mendocino County Code section 2.32.060 further requires that the Purchasing Agent report purchases of any individual item with a cost of more than \$10,000 to the Board of Supervisors when:

- a competitive bidding process was not utilized to purchase the item; or
- a competitive bidding process was utilized but the accepted bid or response was not the lowest.

Therefore, County Officials shall first engage in a competitive procurement process that adheres to the following solicitation guidelines when making all purchases of supplies, materials, and equipment, and when executing all agreements for personal and professional services:

- ~~a.—~~Purchases of related items and contracts for personal and professional services with an annual cost of less than \$10,000 do not require solicitation of bids or quotes.
- ~~b.a.~~Purchases of proposals. However, if a Department purchases related items and contracts for personal and professional services or for holds the same service contract with an annual cost of less than \$10,000 or for more, up to and including \$50,000, than three consecutive years, the Department must utilize a competitive procurement process competitively procure the good/service prior to purchasing the goods or renewing the service contract for the fourth year. An Informal Procurement process may be utilized for these purchases/contracts.
- ~~b.~~ Purchases of related items and contracts for personal and professional services with an annual cost of \$10,000 or more, up to and including \$50,000, must utilize a competitive procurement process. An Informal Procurement process may be utilized for these purchases/contracts provided the purchase/contract has not been in place for more than three consecutive years. If a Department purchases related items or holds the same service contract with an annual cost between \$10,000 and \$50,000 for more than three consecutive years, the Department must competitively procure the good/service through a Formal Procurement process prior to purchasing the goods or renewing the service contract for the fourth year.
- c. Purchases of related items and contracts for personal and professional services with an annual cost greater than \$50,000 must utilize a Formal Procurement process.
- d. Departments **must** follow all Executive Office and Purchasing Division procedures related to documenting the department's competitive procurement efforts.

"Contract splitting," which is dividing work across multiple contracts or across multiple years

so as to avoid competitive procurement requirements or change the signatory authority, is prohibited.

## 4.2 Exemptions from Competitive Bidding Requirements - Goods and Services

Certain purchases of goods and contracts for services may qualify for an exemption to the County's competitive bidding requirements. All requests for consideration of an exemption must be approved by the Purchasing Division. Procedures for documenting exemptions may differ for goods versus services; departments are required to follow whichever procedure is most appropriate. Questions about exemptions from procurement requirements may be directed to the Purchasing Division.

### 4.2.1 Sole Source Procurement

Competitive bidding is not required for goods or services that are feasibly only available from one source. Procurement by this method must be documented in the procurement record and include an explanation of: (1) the unique nature of the requirement; (2) the basis upon which the department determined that there is only one known vendor able to meet the need; and (3) the basis upon which the department determined the cost to be reasonable.

### 4.2.2 Single Source Procurement

Competitive bidding is not required for goods or services that meet certain conditions for single source procurement. A single source procurement is one in which two or more vendors can supply the goods or services, but the department selects one vendor over the others for reasons such as ~~expertise or previous experience~~; the vendor offers a specialized service; the item being acquired is compatible or interchangeable with existing County equipment; or the product or service is necessary for project continuity. The vendor may also have previous experience or historical knowledge related to the product or service, but this alone would not qualify for this type of exemption. Procurement by this method must be documented in the procurement record and include an explanation of: (1) the circumstances leading to the selection of the vendor, including the alternatives considered; (2) the department's rationale for selecting the specific vendor; and (3) the basis upon which the department determined the cost to be reasonable.

### ~~4.2.3—Extension of Existing Agreements~~

~~The Purchasing Division, if it determines that it is a cost advantage and in the best interest of the County, may approve extensions of existing contracts for services for additional periods of time without requiring competitive bids. To qualify under this criterion, the cost for the service contract must not be increased by more than the annual percentage change published in the most recent Consumer Price Index. When evaluating whether a contract qualifies for this type of exemption, the Purchasing Division may consider the rate of pay, the cost per deliverable (e.g., cost per completed phase, cost per service provided, cost per report, plan, recommendation, or other similar finished product), or the total cost of the contract per applicable time period, whichever is most appropriate.~~

~~The Purchasing Agent will annually report to the Board of Supervisors all contracts determined to be exempt from competitive bidding requirements under this allowance when the contracts have been in place for three or more consecutive years.~~

#### **4.2.44.2.3 Cooperative Purchases**

Subject to the conditions and requirements described below, the County may "piggyback" or use other agencies' competitively awarded contracts for the same or similar products or services. The competitive bidding requirements of this section shall be deemed fulfilled when materials, supplies, equipment, and services have been competitively bid and awarded by another awarding authority that is a governmental agency, an entity constituted for a governmental purpose, or a cooperative purchasing consortium. In addition to the foregoing, the following requirements must be met:

- a. Permission has been explicitly granted by both the awarding authority and the vendor, if required.
- b. A copy of the bid solicitation, award, and executed contract has been obtained.
- c. Unless otherwise approved by the Board of Supervisors, the County's award will be in accordance with all the terms and conditions, prices, time frames, and other criteria established in the bid solicitation issued by the awarding authority.

Services that solely provide for labor or installations are not eligible for this exemption.

#### **4.2.54.2.4 Specific Service Exemptions**

Contracts for the following specific personal and professional services contracts are exempt from competitive procurement requirements:

- a. Contracts that are for temporary or limited-duration appointments established outside the standard civil service classification structure to address a proposed time-limited employment need.
- b. Contracts solely for the purpose of obtaining expert witnesses for litigation.
- c. Contracts for legal services.

#### **4.2.64.2.5 Other Exemptions**

The Purchasing Division may authorize, on a case-by-case basis, additional exemptions from competitive procurement when it determines it is in the best interest of the County. Some circumstances where this type of exemption may be authorized include, but are not limited to:

- a. The procurement is related to a local emergency as declared by the Board of Supervisors.
- b. There is an urgency to prevent loss of life or damage to County property.
- c. The services are provided by another government agency that is not County

government or a County Agency.

#### **4.3 Requirements for Goods or Services Purchased with State/Federal Funds**

State/Federal funding sources, including grant awards, often specify procurement requirements when funds are used to purchase goods and/or contract for services. If the State/Federal funding source's procurement requirements are more stringent than the County's requirements as outlined in this Chapter, the State/Federal funding source requirements supersede the County's requirements. However, departments must still follow any County requirement where the State/Federal requirement is less stringent than the County's requirement, or when the County's requirement is not addressed in State/Federal guidelines.

#### **4.4 Negotiating Contracts or Purchases Not Subject to Competitive Bidding**

With regard to those contracts or purchases not subject to the competitive bidding process, the burden of arriving at the best terms (e.g., price, quantity, quality, warranty, delivery, setup, training, etc.) is placed on the party charged with the negotiation process. For the purchase of goods or equipment, that person is either the County Official or the Purchasing Agent. For service contracts, that person is the County Official whose department initiates and/or maintains the contract. Departments should contact the Purchasing Division if there are questions about the negotiation process.

In every case, the department must maintain documentation showing that the County's choice of contractor or vendor was fair and reasonable.

If the contract includes the purchase of equipment or some other item of personal property, the County shall insist that the vendor not waive or limit available warranties.

#### **4.5 Local Vendor Preference**

The County of Mendocino has established a local vendor preference. All Informal and Formal Procurements for contracts will be evaluated with a 5% preference for local vendors. The vendor must claim local vendor preference to be considered. Please note the following exceptions:

- a. Those contracts which State Law, or other law or regulation, precludes this local preference.
- b. Public Works construction projects.

A "local" vendor will be approved as such when (1) it conducts business in an office with a physical location within the County of Mendocino, and (2) business has been conducted in such a manner for not less than six (6) months prior to being able to receive the preference. Said vendor must provide a business address and information demonstrating how many years the business has been at that location.

## Chapter 5      **ACQUISITIONS OF PERSONAL PROPERTY (MATERIALS, SUPPLIES, EQUIPMENT)**

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### 5.1      **Introduction**

This Chapter addresses the purchase of materials, supplies, furnishings, equipment, and any other kind of "personal property" (property which is movable – not permanently affixed to a building or to the ground), including charges for incidental services such as fabrication, delivery, set-up, installation, testing, or training. However, charges for ongoing equipment maintenance services are separate from the purchase price and can be paid only if a maintenance (personal and professional service) contract is executed in accordance with Chapter 6 of this policy.

The County will make every effort to incorporate the Sustainable Practices Policy (County Policy No. 44) while abiding by this policy.

Regardless of the method of purchase, "invoice splitting," or dividing an order into multiple invoices to avoid surpassing an established limit, is prohibited.

### 5.2      **Purchasing Agent/Purchasing Division's Role**

Except as otherwise provided by law or by action of the Board of Supervisors, the Purchasing Agent is the sole representative of the County in negotiating with vendors and preparing purchase orders or formal contracts for purchases of personal property required by any department. County Officials may only make direct purchases from vendors when given specific authority by the Purchasing Agent to make such purchases. All other purchases must go through the Purchasing Division and be accompanied by the appropriate written or electronic documentation. In all cases, County Officials must follow established processes pre-approved by the Purchasing Agent (see Sections 5.3 through 5.13).

### 5.3      **Limitations on Items that May Be Purchased**

In general terms, the County (acting through a County Official, the Purchasing Agent, or the Board of Supervisors) may purchase only those items necessary to carry out the authorized activities of the County, using funds that have been appropriated for that purpose. The Auditor-Controller/Treasurer-Tax Collector will not reimburse purchases of items not specifically authorized by law unless the purchase is ratified by formal Board of Supervisor action upon a finding that the purchase was necessary and appropriate.

Before requesting or making a purchase, County staff shall ensure that State law, a County ordinance or resolution, applicable grant conditions, or this policy authorize that purchase. If the purchase is not already specifically authorized, advance approval by the Purchasing Agent must be obtained; if not, the employee making the purchase could be held *personally* liable for paying the vendor's charges.

Approval for purchase of the following items has been delegated to the Purchasing Agent. Departments/elected officials must submit to the Purchasing Agent a written request, with a justification for the purchase, and receive written approval from the Purchasing Agent (who may consult with and require the approval of the Auditor-Controller/Treasurer-Tax Collector) in advance of any purchase of the following:

- Promotional items (T-shirts, hats, banners, table decorations, etc.)
  - Promotional items do not include clothing issued by a department to employees for use during work hours.
- Plaques or other mementos to employees, volunteers, community leaders or other non-employees, which shall be of nominal value pursuant to Government Code section 26206

The Board of Supervisors may, upon a department's request, adopt a resolution allowing for purchases of the above items without Purchasing Agent approval. The department proposing the resolution should specify the type of item to be purchased and the maximum to be spent.

Departments are not authorized to pay for events such as department picnics, banquets, or award ceremonies for County employees; prior approval by the Board of Supervisors is required.

## 5.4 Direct Purchase Programs

The Purchasing Agent has the authority to approve certain direct purchase programs that allow departments to purchase from vendors without going through the Purchasing Division. Requests to participate in these programs are made individually by each County Official. Approval is granted when a department's participation is deemed to be beneficial not just to the department but also to the County as a whole.

When approving direct purchase authorities for departments, the Purchasing Agent may consult with and require the co-approval of the Auditor-Controller/Treasure-Tax Collector, especially when establishing not-to-exceed limits, including limits for individual items, individual transactions, total transactions in a 30-day period, and/or fiscal year spend amounts. These limits are set individually for each department.

To avoid conflicts of interest, direct purchase from County employees is prohibited. Departments are to make their purchases from recognized, responsible vendors only. See Chapter 2 regarding Vendor Relations and Ethics.

Purchases may only be made during the authorized employee's normal business working hours unless otherwise authorized by the employee's supervisor and may not be combined with personal activities in any manner. Claims for direct purchases will be audited by the Auditor-Controller/Treasurer-Tax Collector and the Purchasing Agent. Misuse of direct purchasing privileges may result in the revocation of the privileges by the Purchasing Agent.

If the Purchasing Agent denies a department's request for program participation, the requesting department may request the Board of Supervisors approve its participation based on a determination that the department's current purchasing processes are inadequate.

### 5.4.1 Limitations

Direct purchase programs may not be used to purchase the following items:

- a. Items with an individual cost of \$2,000. Purchases of these items must be requested via the Requisition Process (see Section 5.5).
- b. Fixed assets. Purchases of fixed assets must be requested via the Requisition Process (see Section 5.5).

#### **5.4.2 Blanket Purchase Orders (BPOs)**

Blanket purchase orders (BPOs) are issued to selected vendors the County has contracted with to supply specific items needed by the County, which can be bought in quantity. These items (such as office supplies, paper products, etc.) are supplied at specified contract prices and are usually discounted substantially or offered to the County at specified discount rates based on manufacturers' suggested retail prices.

When a BPO has been issued by the Purchasing Agent, County Officials may order directly from that vendor without going through the Purchasing Division when the total order does not exceed the maximum dollar limit specified on the BPO.

When a BPO is issued to a specific department and not the County as a whole, the department must track and report quarterly spend to the Purchasing Division. When a department anticipates that fiscal year spend or invoice totals will exceed the limits defined in the BPO, the department must notify the Purchasing Division and request an increase to the BPO. All increase requests must be submitted in writing and with justification. The increase request must be approved by the Purchasing Agent before the department can make purchases that will exceed the limits defined in the original BPO.

The Purchasing Division will advise departments when BPO numbers have been issued and will provide updated information concerning their use.

#### **5.4.3 Direct Purchase Authority (DPA)**

When there is no BPO covering specific items the department needs to purchase, the Purchasing Agent may authorize a Direct Purchase Authority (DPA) for the department. When a department has been authorized to make specific types of purchases by DPA, the department may make routine purchases directly from the vendor without going through the Purchasing Division, so long as the total cost of the order is less than the maximum dollar limit specified on the DPA (including tax, delivery, and set-up charges). Departments must track each DPA and report quarterly spend to the Purchasing Division.

#### **5.4.4 Procurement Cards**

The Purchasing Agent may authorize departments to make certain direct purchases with a County-approved procurement (credit) card. Authorization for use of a procurement card includes a monetary limit for each transaction (which includes sales tax and handling/freight) as well as a monthly not-to-exceed limit. Card holders must agree to abide by the Procurement Card Guidelines established by the Purchasing Division and sign a Procurement Card Acknowledgement and Agreement Form.

### **5.5 Requisition Forms and Purchase Orders**

When a department is unable to make purchases from a vendor through any of the direct purchase options authorized by the Purchasing Agent (Section 5.4), the department must submit a requisition form to request the Purchasing Division make the purchase.

Requisition forms are available through the County's financial management system (Munis) and are submitted and approved electronically via workflow. If/when a requisition is approved, the Purchasing Division will generate a Purchase Order and arrange for invoice payment. A Purchase Order must be issued prior to the department/elected official placing the order. The purchase order constitutes a legal contract between the County and the vendor.

## **5.6 Purchases of Goods Utilizing State/Federal Funds**

Departments may make purchases of goods and/or equipment with State/Federal funds, including grant awards, using any of the acquisition methods available to the department (see Sections 5.4 and 5.5). It is the responsibility of the department making the purchase to ensure that all guidelines established by the State or Federal Agency/Department that issued the funds to the County have been followed. These guidelines may include special competitive procurement requirements, which the department must honor while also following the relevant County requirements outlined in Chapter 4 of this policy.

## **5.7 Advance Payments**

Advance payments for purchases of goods are generally discouraged (i.e., payments are made to vendors only after the department has received the goods and has processed the invoice). However, some vendors (notably book publishers) will not deliver their goods unless payment is made in advance. To avoid requiring County employees to pay for goods and then seek reimbursement after delivery, the following authority is delegated to County Officials and to the Auditor-Controller/Treasurer-Tax Collector. Except as allowed by this Section 5.7, advance payments for the purchase of goods must be approved by the Purchasing Agent, who may at his or her discretion seek approval of the advance payment by the Board of Supervisors.

Upon written request of the County Official, the Auditor-Controller/Treasurer-Tax Collector may process an advance payment for goods, without Purchasing Agent pre-approval, under the following conditions:

- a. The cost of the goods, including tax, shipping and set-up is \$2,000 or less;
- b. The acquisition or use of the goods is normal and customary for the department; and
- c. The County Official has not split the purchase in order to keep the total purchase price below the allowed maximum.

This Section 5.7 does not authorize advance payments for fixed assets, for personal and professional services contracts, or for public works construction projects.

## **5.8 Purchasing Fixed Assets**

A fixed asset is defined as any one item with an acquisition cost of \$10,000 or more ("acquisition cost" includes freight, tax, and all costs to place it in service) and a useful life of more than one year. (NOTE: All purchases related to facility construction and/or maintenance projects are exempted from this fixed asset section.)

When a department needs to purchase a fixed asset, the department must first seek approval from the Board of Supervisors. Once approved, the department must request that the Purchasing Division purchase the fixed asset. All requests for purchases of fixed assets must

be made via the Requisition Process (see Section 5.5). When submitting a requisition for a fixed asset, departments must supply the requisition number and all backup paperwork (price, quotes obtained, vendor information, etc.) to the Purchasing Division.

## **5.9 Purchasing Computer-Related Equipment or Supplies**

All purchases of computer-related goods as defined in Section 3.2 of this policy must be reviewed and approved by the County's IT Division prior to purchase, pursuant to Section 3.2.4. Departments must follow all documentation procedures established by the IT Division, Purchasing Division, Executive Office, and Auditor-Controller/Treasurer-Tax Collector. Procedures for purchasing computer-related equipment and supplies may vary depending on the method of purchase (i.e., Blanket Purchase Order, Direct Purchase Authority, Procurement Card, or Requisition/Purchase Order – see Sections 5.4 and 5.5).

Any computer-related hardware with a cost of \$10,000 or more and with a useful life of over one year qualifies as a fixed asset. Fixed asset computer equipment orders must follow the guidelines for purchasing fixed assets outlined in Section 5.8 of this policy.

## **5.10 Emergency Purchases**

An “emergency” exists when an item must be purchased in order to ensure the continued operation of the elected office, department, or election, or when necessary for the preservation of life or property.

During regular working hours, any purchase of goods or services required to alleviate an emergency must follow existing policy/procedure. If departments need to make emergency purchases outside of normal business hours, the department must communicate the circumstances requiring the purchase to the Purchasing Division the next business day. The department will be required to document the facts constituting the emergency and to complete any procedural step that did not conform to existing policy/procedure.

If a department needs to purchase a fixed asset (any single item over \$10,000 and having a useful life exceeding one year) during an emergency as defined above, the department must have prior approval from the Purchasing Agent and be retroactively approved by the Board of Supervisors.

## **5.11 Purchases from Petty Cash Accounts**

The County Board of Supervisors has authorized the Auditor-Controller to establish petty cash (imprest cash fund) accounts for individual departments (Gov. Code section 29321.1; BOS Reso. No. 07-088). The purpose of having a petty cash account available to departments is to allow the department the flexibility to make small dollar purchases when the department has an urgent need that prevents the department from utilizing the regular claim process.

The Auditor-Controller/Treasurer-Tax Collector creates a petty cash fund by signing a written statement setting forth (1) the need for the fund, (2) the office, department, service, or institution for which the fund is available, and (3) the amount of the fund (Gov. Code sections 29321; 29321.1). The Auditor-Controller/Treasurer-Tax Collector must render a written report to the Board of Supervisors at the end of each fiscal year identifying all petty cash accounts, the amount of those accounts, and the official using the fund (Gov. Code section 29321.1).

Once the fund has been authorized and the money provided to the department, expenditures from a petty cash account **must** still comply with all laws and County policies. The responsible County Official is required to maintain receipts for all purchases made from the petty cash account (Gov. Code section 29327). Petty cash accounts shall only be replenished after the Auditor-Controller/Treasurer-Tax Collector has reviewed the receipts and approved corresponding expenditures in the same manner as other county purchases (Gov. Code section 29328).

It is a violation of state law to use petty cash funds for any personal purpose, including cashing personal checks or giving loans to employees. Misuse of petty cash may result in disciplinary action, removal from office, civil liability, and/or prosecution.

### **5.12 Purchases of Goods through State or Multi-Agency Purchase Programs**

The Purchasing Division is authorized to purchase supplies and equipment as needed for and on behalf of the County from the State of California Department of General Services, Office of Procurement, or other governmental or multi-agency programs which comply with bidding and purchasing procedures required by law, for those supplies or equipment. This includes purchases from a cooperative purchasing program, surplus property program, and other similar programs administered by the State of California Department of General Services, as well as programs of the California Multiple Award Schedule, and California State Association of Counties ("CSAC").

When purchases are made through one of these programs, the County's formal and informal bid procedures need not be followed as the program's sponsoring governmental entity will have complied with bidding and purchasing procedures required by law.

### **5.13 Incidental Services**

Sometimes, when a vendor is providing goods, the vendor will also be providing one or more incidental services (such as fabrication, delivery, set-up, installation, testing, support, or incidental training) with the goods. The total dollar value of all such services included in the purchase order must not exceed the dollar value of the goods purchased. So long as the dollar value of the goods exceeds the dollar value of incidental services, or if there is no additional charge for the incidental services, a Purchase Order may be used to purchase the incidental services along with the goods. Notwithstanding the above, standard warranty and support for IT hardware and software purchases shall not contribute to the dollar value of incidental services and may still be procured using a Purchase Order.

If the charge for all the incidental services exceeds the dollar value of the goods, the department must process a separate personal services agreement for the incidental services. In some circumstances, a public works agreement may be needed where the dollar value of installation services exceeds the dollar value of the goods.

If the incidental services will be provided at a County worksite, a hold harmless addendum, on a form approved by County Counsel, must be signed by the vendor and County Official and attached to the Purchase Order.

## Chapter 6      **CONTRACTS FOR PERSONAL AND PROFESSIONAL SERVICES**

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### 6.1      **Introduction**

Personal and professional services contracts are contracts that engage the time and effort of the contracting party with the primary purpose of performing specific functions or tasks rather than furnishing a tangible end product. Personal and professional services contracts are distinct from contracts for public works projects as defined by the Public Contracts Code (see Section 1.4.2).

The County's Board of Supervisors has statutory authority to enter into personal and professional services contracts on behalf of the County. Pursuant to Government Code section 25502.3, the Board of Supervisors may delegate signatory authority to the Purchasing Agent to enter into contracts that meet specific criteria and monetary thresholds. The Board of Supervisors has delegated such authority to the Purchasing Agent in section 2.32.030 of the County Code. Government Code section 31000, however, limits the power of the Board of Supervisors, and therefore any authority delegated to the Purchasing Agent, to execution of personal and professional services contracts for specific special services, and then only with persons/entities specially trained, experienced, and competent to perform such services. Whether services are "special" requires a consideration of factors such as the nature of the services, the qualifications of the person/entity furnishing them, and the availability of the services from public sources. Services may be special because of the specialized skill or expertise of the person/entity furnishing them.

The types of personal and professional services for which the County may contract include, but are not limited to, financial, economic, accounting, engineering, environmental, land surveying, construction project management, legal, medical, therapeutic, administrative, architectural, landscape architectural, training, airport or building security, and laundry or linen services (Government Code sections 4526; 31000). The County may also contract for provision of certain services related to claims adjustment (Government Code section 31000.8), for site maintenance/custodial services only if the site is remote from County employee resources and it would be more cost effective for the work to be done by contract (Government Code section 31000), and for temporary workers for a period of 90 days or less if the Board of Supervisors makes certain findings (Government Code section 31000.4).

### 6.2      **Agreements Not Addressed by this Chapter**

This chapter does not address contracts that involve:

- a. the purchase of goods, including fixed assets (see Chapter 5).
- b. the remodeling or modification of County-owned or leased premises (see Section 1.4.2).
- c. the installation or maintenance of security or alarm systems (see Section 1.4.2).
- d. the maintenance, cleaning, or repair of buildings (see Section 1.4.2).
- e. the rental of equipment, vehicles, or other personal property (see Chapter 8).
- f. the rental of land, buildings, or space within buildings, including short-term rentals for staff to conduct meetings, trainings, or seminars (see Chapter 9).

## **6.3 Preliminary Considerations**

### **6.3.1 Name/Legal Status of Contractor**

The first step in the contract drafting process is determining the legal status/name of the contractor who will be providing the service. A potential contractor can be an individual person, a person doing business under a "fictitious name," a corporation, a limited liability company ("LLC"), a partnership, or some other legal entity. If the potential contractor is a corporation or an LLC, the department should check the status of the contractor on the California Secretary of State's online business website to confirm that the contractor is qualified to do business in the State of California. The department must then determine if the person with whom it is negotiating has the legal authority to sign the agreement.

### **6.3.2 Independent Contractor Status Versus Employee Status**

Article 1.5 of Chapter 2 of Division 3 of the Labor Code (Section 2775 *et seq.*; "Article 1.5") contains various tests to determine whether workers are employees or independent contractors for the purposes of the Labor Code, the Unemployment Insurance Code, and the wage orders of the Industrial Welfare Commission. Under these tests, independent contractors not meeting certain criteria may be classified as County employees, which has tax implications and would entitle the contractor to certain benefits.

Departments should take care to ensure consultants/contractors qualify as independent contractors during the contract negotiation process. Independent contractors who are sole proprietors are typically the greatest cause for concern. If a department has questions about the independent contractor versus employee tests, it should reach out to the Office of County Counsel for assistance.

### **6.3.3 Contract Templates: County Boilerplate versus Non-Boilerplate**

The Office of County Counsel maintains and publishes a boilerplate contract template that contains pre-approved terms and conditions, required exhibits, and the necessary signature blocks for approvers. It is formatted in a way that allows for efficient review, tracking, and entry into the County's financial system. While not exclusively required, departments are encouraged to utilize this standard boilerplate template whenever possible. Use of a non-boilerplate template may require extended negotiations between the County and contractor and may therefore involve additional review time.

### **6.3.4 Risk Implications**

The County assumes a certain amount of risk for each personal and professional services contract it executes. When negotiating contracts, it is important for County Officials to consider that the length of time a contract is in place or the amount of compensation involved may not always reflect the County's actual risk. For example, an agreement to remove hazardous waste from a particular area might be of limited duration and be for a relatively small amount of compensation. The ramifications if there is a breach, however, could be significant. Departments should consider the

potential risk associated with any contract it submits for review. Any department's concern about potential risk considerations should be cleared with the Risk Manager and County Counsel before proceeding.

## 6.4 General Requirements for All Contracts

County Officials are ultimately responsible for all the terms of contracts initiated and/or maintained by their department. Every contract drafted and submitted for review and approval on behalf of the County must adhere to the following guidelines:

- a. The contract must:
  - i. be for personal and/or professional services that are reasonably necessary to complete the duly authorized functions of a department.
  - ii. be primarily for personal and/or professional services rather than the purchase of goods (although the contract may also provide for incidental purchases, such as the purchase of training materials).
  - iii. specify all services to be rendered by the contractor for that particular project.
  - iv. comply with all applicable local, state, and federal laws and regulations.
- b. Total compensation under the contract must be available in the County Official's budget.

## 6.5 Authority to Execute

Per California Government Code, Section 31000, the County's Board of Supervisors is authorized to contract for personal and professional services on behalf of the County, any County Official or Department, and any District or Court in the County. Under Mendocino County Code Section 2.32.030, the Board of Supervisors has delegated authority to execute certain personal and professional services contracts to the Purchasing Agent. This Board policy further delegates authority to execute certain personal and professional contracts to County Officials. There are, however, a number of conditions that must be met before this delegated authority can be exercised. It is important that the department correctly identify who will sign the agreement on behalf of the County; an agreement signed by a person lacking authority to sign will be void or voidable.

"Contract splitting," which is dividing work across multiple contracts or across multiple years so as to avoid competitive procurement requirements or change the signatory authority, is prohibited.

### 6.5.1 Total Contracted Amount and Aggregate Cost

Authority to execute personal and professional services agreements as outlined in the following sections is based, in part, on the total contracted amount. However, when a contractor holds multiple contracts Countywide, each of which commits the contractor to perform similar services, the Aggregate Cost per fiscal year of all the contracts is also considered. For example, if multiple County departments contract with the same agency to provide security guard services, or if various County programs contract with the same consultant for program review, evaluation, or other consulting services, the Aggregate Cost is a consideration. In these circumstances, the Purchasing Agent may require an individual contract to be approved by the signatory authority appropriate to the Aggregate Cost rather than the contract's

individual cost. The Purchasing Division will notify the department of any such requirement when the contract is submitted for approval.

~~“Contract splitting,” which is dividing work across multiple contracts so as to avoid competitive procurement requirements or change the signatory authority, is prohibited.~~

### 6.5.2 Authority of the Board of Supervisors

The Mendocino County Board of Supervisors is the sole authority to execute some personal and professional services contracts. Board approval of these types of contracts is required by specific statute, ordinance, or policy. Examples of contracts requiring Board approval include, but are not limited to:

- a. legal services (Gov. Code sections 25203; 31000; 31001. Approval requires a two-thirds vote of the Board of Supervisors if the attorney services are for litigation. See also Government Code section 31000.6 – Board authorization for attorney services when County Counsel has a conflict of interest).
- b. services through a temporary help firm (Gov. Code section 31000.4).
- c. services from a recently retired employee (Gov. Code section 7522.56).
- d. management of workers’ compensation claims (Gov. Code section 31000.8).
- e. maintenance or custodial services (Gov. Code section 31000).

Additionally, the Board of Supervisors is the sole authority to execute contracts not specifically delegated in this policy to the Purchasing Agent or County Officials.

### 6.5.3 Authority of the Purchasing Agent

The Purchasing Agent is authorized to sign, on behalf of the County, personal and professional services agreements (except those contract types that specifically require approval by the Board of Supervisors) when the criteria outlined in Section 6.4 and all of the following additional criteria are met:

- a. The contract to be executed must be for a one-time service or for duration of three years or less.
- b. Total compensation, including reimbursable costs, over the term of the contract must not exceed the amount stated in Mendocino County Code section 2.32.030.

When contracted services are anticipated to repeat on an annual basis, the Purchasing Agent shall, whenever possible, enter into multi-year agreements (which may require the contract to be executed by the Board of Supervisors based on the compensation amount or term length). The Purchasing Agent is authorized, however, to execute single-year contracts for ongoing services when the Purchasing Agent determines it is in the best interest of the County (e.g., the contractor requires execution of a single-year contract).

Notwithstanding the limitations listed above, the Purchasing Agent may receive a separate, project-specific delegation by Board resolution or other Board action that

delegates authority to sign certain contracts not otherwise within the Purchasing Agent's authority to sign.

#### 6.5.4 Authority of County Officials

County Officials are authorized to sign, on behalf of the County, personal and professional services agreements (except those contract types that specifically require approval by the Board of Supervisors or the Purchasing Agent) when the criteria outlined in Section 6.4 and all of the following additional criteria are met:

- a. The contract to be executed must be for a one-time service or for duration of three years or less.
- b. Total compensation over the term of the contract must not exceed \$25,000, including reimbursable costs.

County Officials shall not enter into one-year agreements for services that are anticipated to repeat on an annual basis. If a Department reasonably anticipates that the same contractor will be used for similar services in a subsequent year, the Department shall enter into a multi-year agreement (which may require the contract to be executed by the Purchasing Agent or Board of Supervisors based on the compensation amount or term length).

Additionally, County Officials are not delegated authority under this section if any of the following is true:

- a. The contract includes the maintenance, cleaning, or repair of equipment. These contracts may only be executed by the Purchasing Agent (Mendocino County Code section 2.32.030) or the Board of Supervisors.
- b. The contract includes purchase of a fixed asset (see Sections 6.7.7 and 5.8).

If a proposed contract does not comply with the requirements of this section, then no contracting authority is delegated. Unless the County Official has independent statutory authority (see Section 1.4.1) or has received a separate, project-specific delegation by Board resolution or other Board action, the agreement may only be approved and executed by the Purchasing Agent or Board of Supervisors as appropriate.

#### 6.5.5 Authority to Execute Amendments

Generally, any proposed amendment to the terms of an existing agreement must be approved by the same official or body who/that originally had the responsibility for approving the agreement. For example, if an agreement originally required the signature of the Chair of the Board of Supervisors, any amendment to that agreement must also be approved by the Board and signed by the Chair.

There are, however, two exceptions to this general rule:

- a. The Board of Supervisors may delegate authority to the Purchasing Agent or County Officials to sign amendments for certain agreements. This type of delegation may be specified in the original agreement when approved by the Board of Supervisors, or the Board may delegate signatory authority for

certain amendments through Board resolution or other Board action. Departments are responsible for requesting/obtaining this type of delegation from the Board; delegation requests should be reasonable and specific (e.g., for amendments that do not increase the maximum contracted amount, or for amendments that do not increase the contracted amount more than a specific percentage or dollar amount). Departments/Elected Offices must provide written documentation of the Board resolution or other Board action delegating such authority when submitting a proposed amendment for review.

- b. When a proposed amendment increases the compensation beyond the established limits of the original agreement signer's authority, or otherwise alters the terms of the original agreement in a way that requires a different signatory authority, the amendment must be executed by the signatory whose authority is most appropriate to the increased compensation and/or revised terms.

## **6.6 Review, Routing, and Approval Requirements**

### **6.6.1 Initiating Contracts and Amendments**

Requests for contracts and amendments are initiated by the department that requires the service. The County Official of the requesting department is responsible for the administration of the contract once it is signed.

### **6.6.2 Budgetary Compliance/Review**

All contracts/amendments must be reviewed for budgetary compliance by Executive Office staff and approved by the department's Executive Office Liaison. Budget Authority for each contract must be available within the department's budget for the fiscal year the contract pertains to. If funding is not available within the appropriate budget, the department will need to provide documentation of the source of funding and when the budget will be adjusted to incorporate the additional funds.

### **6.6.3 County Counsel Review**

All contracts/amendments must be reviewed and signed for approval as to form by County Counsel. Approval of a contract by County Counsel only means that it has been determined that the essential clauses are included and that the contract is legally enforceable. County Counsel approval as to form does not mean that the contract contains all clauses which may be advisable, that the language clearly expresses the intent of the parties, or that the best deal has been negotiated. These aspects of contract negotiation and execution are the responsibility of the department that originates and/or maintains the contract.

### **6.6.4 Risk Review**

The County's Risk Manager must review and approve all contracts/amendments. The Risk Manager's review includes review of the insurance (including workers' compensation) and indemnity provisions contained within each contract/amendment to determine if the provisions are sufficient to protect the

County from incurring losses attributable to the actions or responsibilities of others.

Note that the Risk Manager, in consultation with the Purchasing Agent, may establish a shortened review process for contracts drafted on the County's standard boilerplate template as that template contains insurance provisions pre-approved by the Risk Manager and indemnity provisions pre-approved by the Risk Manager and County Counsel (see Section 6.3.3).

### **6.6.5 Indemnification Requirements**

All contracts to be executed on behalf of the County must contain an indemnification provision approved by the Risk Manager and County Counsel. The Risk Manager and County Counsel have pre-approved the indemnification provision contained within the County's standard boilerplate contract template. It is a unilateral provision that indemnifies the County for its entire loss arising out of the performance of the agreement, regardless of whether the County's negligence contributed to the loss. However, if the loss was caused by the sole negligence of the County (rather than the concurrent negligence of both the County and the consultant), state law prohibits indemnification, so the provision specifically excludes sole negligence of the County. Any change to the pre-approved unilateral indemnification provision in the County's standard boilerplate template, and any indemnification provision within a non-boilerplate contract template, must be reviewed and approved by the Risk Manager and County Counsel.

### **6.6.6 Insurance Requirements**

The County's standard boilerplate contract template specifies the types and amounts of insurance coverage required for contractors providing personal and professional services for the County. The Risk Manager may waive this coverage or reduce the County's standard limits of coverage when he or she determines that the risk of loss is outweighed by the County's need to secure the services of that particular contractor. Similarly, the Risk Manager may require a contractor to have insurance coverage higher than the County's standard provision if he or she determines that the County's risk of loss warrants such an increase. The Risk Manager may also modify the language of the standard insurance provisions under the same circumstances.

When deemed necessary, the Risk Manager will require coverage endorsements to be attached to the Commercial General Liability Insurance policy, or require the policy to be amended to include coverage for auto and non-owned auto, broad-form contractual, broad-form property damage, contractor's protective, products/completed operations, XCU (explosion, collapse, under-ground), host liquor, personal injury, or fire-legal liability.

Each County Official and the department's contract administrator is expected to be familiar with the County's insurance coverage requirements in order to successfully encourage contractors/consultants to accept these provisions in their agreements. Additionally, departments are required to:

- a. obtain the appropriate proof of insurance before the contract/amendment is submitted for review and approval.

- b. ensure that contractors maintain required insurance throughout the life of the contract.

### **6.6.7 Information Technology (IT) Approval/Review**

Contracts for IT-related services as outlined in Section 3.2 of this policy must be reviewed and approved by the County's IT Division. Departments must follow any additional documentation or tracking procedures established by IT, the Purchasing Agent, the Executive Office, and the Auditor-Controller/Treasurer-Tax Collector for these types of contracts.

## **6.7 Additional Considerations**

### **6.7.1 Agreements Utilizing Federal/State Funds**

Certain federal/state funding sources, including grant awards, may require the County to include specific provisions in agreements that utilize the funding source. State or federal law may also require the County to include specific provisions in an agreement. It is the responsibility of the department to make sure those specific provisions are included.

Departments should also determine if the grant award or funding source has special competitive procurement requirements. Departments are responsible for honoring any such requirements while also following the relevant County requirements outlined in Chapter 4 of this policy.

### **6.7.2 Auto-Renew Clauses**

Agreements with auto-renew clauses are generally discouraged. Departments may, however, request consideration of agreements with auto-renew clauses if there are advantages to the County (e.g., contractors may offer cost savings if the County contracts for multiple years of service provision). Any agreement with an auto-renew clause that potentially extends the agreement beyond three years must be approved by the Board of Supervisors. Departments should specify the details of the auto-renew requirement, including any requested annual increase percentage (such as a not-to-exceed maximum of 5% increase in cost per year), in the Board Agenda Summary when requesting approval. Once approved, departments must follow any additional tracking procedures instituted by the Purchasing Agent, the Executive Office, and the Auditor-Controller/Treasurer-Tax Collector when requesting payment of invoices or quotes for auto-renew agreements.

Occasionally, contractors may request the County process renewal agreements or amendments each year the agreement is in place rather than only submitting an invoice or quote for payment. The Purchasing Agent, or County Official, may sign these agreements/amendments provided (1) the agreements/amendments have followed the routing requirements outlined in Section 6.6 of this policy, and (2) the Board has delegated signatory authority to the Purchasing Agent or County Official through Board resolution or other Board action.

The Purchasing Agent will annually report to the Board of Supervisors all agreements with auto-renew clauses when the agreements have been in place for three or more

consecutive years.

### **6.7.3 Agreements Without a Term End Date**

Agreements without a clearly defined term end date are generally discouraged. Any agreement absent a clearly defined term end date must contain language allowing the County to terminate the contract (1) without establishing the contractor is in default (termination for convenience clause), and (2) if the Board of Supervisors does not appropriate funds for the contract in a given fiscal year (non-appropriation clause). All such contracts must be approved by the Board of Supervisors. Upon approval, the department is responsible for tracking the agreement, ensuring funding for the agreement has been appropriated each fiscal year, and following any additional administrative or financial procedures established by the Purchasing Agent, Executive Office, and Auditor-Controller/Treasurer-Tax Collector.

The Purchasing Agent will annually report to the Board of Supervisors all agreements without a term end date when the agreements have been in place for three or more consecutive years.

### **6.7.4 Retroactive Agreements and Amendments**

The County cannot compensate a consultant or contractor: (1) for services rendered if there is no written personal services agreement signed on behalf of the County by the Board of Supervisors or by a signatory who has been delegated authority by the Board of Supervisors; (2) if the agreement does not specifically delineate and define the services to be rendered; or (3) if some or all of the services have been rendered outside of the effective dates of the agreement. If any of these defects exist, a personal services agreement must be drafted or an existing agreement must be amended and the agreement (or amendment) must be ratified.

The Purchasing Agent is hereby authorized to ratify retroactive agreements or amendments that are otherwise within the Purchasing Agent's delegated authority to sign. The Purchasing Agent may, however, at his or her discretion, require Board of Supervisors approval for certain retroactive agreements or amendments that are within his or her delegated authority.

Any retroactive agreement/amendment not specifically delegated to the Purchasing Agent in this subsection, or any retroactive agreement/amendment the Purchasing Agent declines to sign, must be submitted to the Board of Supervisors for ratification. Except in the case of agreements with the state or federal governments, a department that submits a retroactive agreement or amendment to the Board of Supervisors must briefly explain in the Board Agenda Summary why the agreement or amendment could not have been presented before its effective date.

Note: no personal services agreement (whether retroactive or not) can be ratified if beyond the powers of the Board of Supervisors, or when the parties have not reached agreement as to the terms and conditions of the services which were provided.

### **6.7.5 Cash Advances**

Advance payment of contract amounts by the County is discouraged because of the potential for the contractor's default after receipt of the advance payment, but before the service is performed. Contracts authorizing advance payments must be approved by either the Board of Supervisors or the Purchasing Agent as outlined in this section. County Officials may not authorize advance payments.

If paying cash advances is appropriate, the Purchasing Agent may authorize an advance payment of not more than 25% of the total reimbursable amount of contracts within the Purchasing Agent's delegated authority to sign (see Section 6.5.3). Any cash advance over 25% of the total contracted amount, or any contract outside the Purchasing Agent's authority to sign with a cash advance stipulation of any amount, must be approved by the Board of Supervisors. When the best interests of the County would be served by doing so, the Board of Supervisors may authorize that all services be paid in advance.

All contracts requesting a cash advance must contain a clause stating that the contracting party warrants the cash advance will be used only toward providing the contractual service to the County. Once a cash advance has been paid, each subsequent payment must be based on actual services rendered.

The Purchasing Agent, Risk Manager, or the Auditor-Controller/Treasurer-Tax Collector may condition the advance on the provision of performance and fidelity bonds naming the County as loss payee, which condition must be reflected in the language of the contract.

### **6.7.6 Local Emergencies as Proclaimed by the Board of Supervisors**

The Board of Supervisors may, whenever it has proclaimed a local emergency, direct the Purchasing Agent to engage independent contractors to perform services related to the local emergency for the County or its officers, with or without the furnishing of materials (Gov. Code section 25502.7; MCC section 2.32.040). Individualized limits on aggregate costs and maximum contract size will vary for each emergency and may exceed the amount delegated to the Purchasing Agent in Section 6.5.3 of this policy. Such limits may be contained in the formal declaration of emergency or such subsequent resolutions or actions as the Board of Supervisors may adopt.

The Purchasing Agent will follow competitive bidding requirements as defined in Chapter 4 of this policy to the extent that such is feasible under emergency circumstances. Where applicable and feasible, the County shall utilize such additional competitive purchasing requirements as may be required to ensure eligibility for State or Federal reimbursement, including but not limited to 2 C.F.R. sections 200 et seq.

### **6.7.7 Contracts that Include Purchases of Fixed Assets**

Departments are required to use a requisition form and purchase order as established in Section 5.8 of this policy to purchase fixed assets. In the event a vendor/contractor requires a separate contract for purchase of a fixed asset,

departments must work with the Purchasing Division to ensure that either a separate purchase order is completed, or that any additional procedures related to tracking fixed assets are followed. Only the Purchasing Agent or the Board of Supervisors are authorized to execute a contract of this type.

#### **6.7.8 Procurement Cards**

Procurement cards may be used to make payments for certain services, such as registering for trainings or conferences. Questions about using a procurement card to pay for services should be directed to the Purchasing Division.

## **Chapter 7      REVENUE CONTRACTS**

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### **7.1      General Authority Limits for All Revenue Agreements**

Signature authority limits for all revenue contracts whereby the County receives funds for services rendered are the same as those listed in Section 6.5 of this policy.

### **7.2      Special Circumstances**

#### **7.2.1      Routine Renewal Agreements Drafted by the State of California or the Federal Government**

Notwithstanding the limitations set forth in Section 7.1 (and Section 6.5), the Purchasing Agent and County Officials also have the authority to sign those routine renewal agreements (which may be called a "memorandum of understanding," a "protocol," an "order for services," or a "letter agreement"), which are drafted by the State of California or the federal government, for on-going payments to the County to provide continuous (not intermittent) state or federal services or programs, so long as: (1) the agreement is for payment to the County for on-going services and the Board of Supervisors has, in a previous year, approved the program; (2) the term of the renewal agreement, including all authorized extensions or options, will not exceed 60 consecutive months; and (3) the anticipated funding for the agreement has been appropriated each fiscal year. Because these state or federal services renewal agreements use the state or federal government's contract formats, the County Official should carefully review the agreement provisions to be sure they are not detrimental to the County and that the department is able to comply with all the terms.

#### **7.2.2      Revenue Agreements from Grant Awards or Other State/Federal Funding Sources**

Mendocino County Policy 25 outlines requirements for all grant applications and resulting grant awards (contracts). When routing these types of revenue agreements for approval, departments must ensure all requirements specified in Policy 25 as well as this Policy 1 are followed.

Additionally, certain revenue agreements, particularly those resulting from grant awards or those issued by the State or Federal Governments, may require approval by a specific signatory authority or require a Board resolution authorizing a specific signatory authority. In these cases, the department is responsible for obtaining Board approval and ensuring the relevant sections of this policy (which may be more or less stringent) are followed.

### **7.3      Review, Routing, and Approval Requirements**

Review and routing requirements for all revenue contracts are the same as those listed in Section 6.6 of this policy.

## **Chapter 8      MAINTENANCE RENTALS AND LEASES OF EQUIPMENT AND OTHER PERSONAL PROPERTY**

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### **8.1      Authority to Execute**

Government Code Section 25501 and Mendocino County Code Section 2.32.030 authorize the Purchasing Agent to negotiate and execute all equipment service contracts and lease/lease purchase agreements of personal property on behalf of the County. All leases extending beyond the current fiscal year must contain a non-appropriation clause that allows the County to terminate the lease should funding for the equipment terminate or decrease.

### **8.2      Additional Considerations**

When the cost of the lease, including any aggregate amount(s), exceeds the limit stated in Mendocino County Code section 2.32.030, the Board of Supervisors must sign.

### **8.3      Review, Routing and Approval Requirements**

Contracts subject to this Chapter must be routed for review and signature consistent with Section 6.6 of this Policy 1 and any procedures adopted by the Purchasing Agent.

## Chapter 9 REAL PROPERTY

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### 9.1 Leases of Real Property Where the County is the Tenant (Lessee)

#### 9.1.1 Authority to Execute and Procedural Requirements

County Code Section 2.32.030(D) authorizes the County's Purchasing Agent to negotiate and execute all leases and licenses of real property where the County is the lessee or licensee, subject to Government Code section 25350.51. Pursuant to section 25350.51 of the Government Code, the Purchasing Agent is authorized to sign leases and licenses for real property for use by the County when all the following conditions are met:

- a. The total term of the lease, permit, or license, including any extensions or options to renew, does not exceed five years.
- b. The rental amount does not exceed \$10,000 per month.
- c. A notice of intention to consummate the lease, permit, or license is posted in a public place for five working days prior to consummation of the lease, permit, or license, which notice shall describe the property proposed to be leased, permitted, or licensed; the terms of the lease, permit, or license; and that the Purchasing Agent is the County officer authorized to execute the lease, permit, or license.

Any lease, permit, or license of real property which does not meet the requirements outlined above must be signed by the Board of Supervisors.

#### 9.1.2 Additional Requirements

The following conditions must be met for all leases of real property where the County is the lessee:

- a. Prior to considering leasing real property for its needs, departments must contact the Purchasing Agent to determine whether existing County-owned facilities could serve the department's needs.
- b. Funding for any department's proposed lease for space must be appropriated by the Board of Supervisors.
- c. The lease or license must follow the routing requirements stated in Section 6.6.
- d. The lease must require the landlord to remove any asbestos, mold, or other contaminants from the premises prior to the date that County occupancy begins, or in accordance with a schedule approved by the Purchasing Agent. The Board of Supervisors authorizes the Purchasing Agent to waive these provisions under certain circumstances including, but not limited to, storage leases, land leases, and communications equipment shelter leases.
- e. The lease must also require the landlord to comply with laws and regulations requiring access for persons with disabilities. If the premises need to be modified in order to be accessible to persons with disabilities, the lease must require the modifications to be completed before County occupancy, unless the County's ADA Coordinator and the Purchasing Agent give prior approval to include language in the lease to allow the landlord to make the

modifications in accordance with a specific schedule of improvements. The Board of Supervisors authorizes the Purchasing Agent and County's ADA Coordinator to waive these provisions under certain circumstances including, but not limited to, storage leases, land leases, and communications equipment shelter leases.

- f. If the premises to be leased are within the incorporated territory of a city, the Board of Supervisors or the Purchasing Agent, if the intended lease is within the Purchasing Agent's authority to execute, must give 60 days' written notice to the city clerk of the city where the premises are located of the County's intent to lease (Government Code section 25351).

### 9.1.3 Renewals

For a lease or license approved by the Board of Supervisors, the Purchasing Agent may exercise options to extend the lease/license when the lease/license, as approved by the Board of Supervisors, includes options to extend the lease term or when the Board specifically delegated such authority to the Purchasing Agent.

### 9.1.4 Event Rentals

County Officials may enter into rental contracts to use facilities to conduct meetings, trainings, and seminars or to take part in health fairs, parades, or public programs to disseminate information or provide services to the public, so long as the department does not spend more than \$3,000 per fiscal year and each event is no more than 14 days. All amounts must be budgeted in the respective Department's budget. Purchasing Agent approval is required when departmental costs for these types of rentals exceed \$3,000 per fiscal year; or for any rental/participation fee which includes costs for anything other than space use or participation (such as food or decorations).

## 9.2 Leases of Real Property Where the County is the Landlord (Lessor)

### 9.2.1 Authority to Execute

The Government Code prescribes how the County may lease or license its real property. The County may either follow the provisions stated in Government Code sections 25526-25535, inclusive, or, pursuant to Government Code section 25537, adopt an alternative procedure that allows execution of certain leases or licenses to be delegated to a county officer. Section 2.32.110 of County Code has adopted such an alternative procedure. In addition, certain leases may be entered into pursuant to other authorities, including but not limited to Government Code ~~section~~sections 25536 and 26227, but these leases must still be approved by the Board of Supervisors.

## 9.3 Retroactive Leases

A department that submits to the Board of Supervisors for approval a lease, the term of which has already commenced (i.e., a "retroactive" lease), must explain in the Agenda Summary why the lease could not have been presented to the Board of Supervisors before its effective date.

#### **9.4 Review, Routing, and Approval Requirements**

Contracts subject to this Chapter must be routed for review and signature consistent with Section 6.6 of this Policy 1 and any procedures adopted by the Purchasing Agent.