

**IMPROVING THE
COUNTY OF ORANGE GOVERNMENT'S
MULTI-BILLION DOLLAR
CONTRACTING OPERATIONS**



GRAND JURY 2013-2014

SUMMARY

The County of Orange has a population of 3,010,232¹ and its Board of Supervisors controls a budget of approximately \$5.39 billion. The County currently conducts more than \$3 billion in business-related actions through contracting and procurement undertakings. This is accomplished through the utilization of over 3,400 contracts with both private sector providers and vendors, or adopted funding from public sector sources. In County government, more than one-half of the budgets for agencies or departments are planned for the procurement of goods, and/or services provided by vendors and contractors, not-for-profit organizations, and governmental agencies.

The 2013-2014 County of Orange Grand Jury has recognized that the Contracting/Procurement System (CPS) of County government has shown improvement in its methods over the past two decades. The County Purchasing Agent, assigned to the County Executive Office, has modified the County Contract Policy Manual, and improved the monitoring of existing training for Deputy Procurement Agents. All the same, the County's decentralized CPS remains substantially unchanged for the last 15 years.

As with any complex institution or business, there is room for continuing improvement in certain operational facets. Within this Report, the 2013-2014 Grand Jury has determined that certain critical needs require additional attention. The areas of focus for modification as part of the Contracting and Procurement System are as follows: (1) agencies and departments within the existing decentralized CPS, (2) CPS personnel training protocols, and (3) the importance of the current County Contract Policy Manual and its impact on CPS.

REASON FOR STUDY

Contracting and Purchasing as Key Government Components

The County of Orange Board of Supervisors has the principal responsibility to approve contracts for the County. As a prime illustration of the County's business volume, from December 2012 to December 2013 the Board made determinations impacting County finances on approximately 1,200 contract matters representing 55% of its Agenda items.

The County does business with large and small firms, and individual entrepreneurs. The originating County government agencies and departments are directly responsible for more than

¹ United States Census Bureau as of 2010

3,463 current agreements and purchasing documents and with an approximate sum of \$3.074 billion under their CPS jurisdiction. These agencies/departments are supported by County sources such as tax and fee revenues, as well as second party funding from the State of California, or the Federal Government. Sums paid or allocated to vendors and service suppliers are incorporated into the overall amount. These contracts include funding for the procurement of goods and human services, major construction projects, and service delivery that is not performed by public employees whether by choice or necessity.

During 2013 it came to the Grand Jury's attention that there were certain instances of contract award or amendment decisions that initiated alarm by members of the Board of Supervisors, news media, competitors of selected contract awardees, and the general public. The most prominent of these events involved Community Resources, Dana Point Harbor, Health Services, and John Wayne Airport. It was these and other occurrences that prompted the interest of the Grand Jury.

The adverse comments included a) improper involvement by potential respondents in Request For Proposals (RFP) or Invitation For Bids (IFB) preparation, b) warning signs that proposal evaluations were mishandled or possibly implemented inappropriately, and finally, c) allegations of cronyism and undue influence. Many of the doubts appeared to have merit and the Grand Jury commenced an undertaking to investigate contributing factors that had long lasting or significant negative impacts to County business.

Any undesirable publicity, whether factual or not, must be averted. Given the sums of money involved, it is vital to cultivate and maintain the greatest level of public confidence and trust. This applies to the public having faith in its public servants, and by extension, the contract management teams that are entrusted with the oversight of implementation procedures.

Review Rationale

Contracting and procurement are integral components to revenue and service developments in the County of Orange. The County has sought to improve its CPS efforts and its executives have been active in refining government services. This is in no small part due to the enactment of Best Practices measures instituted by County management as well as implementation of recommendations issued by a previous Grand Jury.

As with most professions, *well-trained personnel* are the crucial factor in producing and implementing the most effective methodology possible. The intent of the training is to fully acquaint staff with regulations, protocols, and techniques that provide to the general public those services that enrich lives, upgrade property values, and promote higher standards.

BACKGROUND AND FACTS

County government is comprised of 25 separate agencies and/or departments that provide a wide range of services and/or facilities to the citizens of the County including animal control, beaches, child support, facility planning and construction, juvenile detention, law enforcement, parks, services for the aging and veterans, voter registration and elections, property tax bills, public health, sanitation, public libraries, and more.

The Procurement Process

Six of the 25 County government agencies/departments are authorized to prepare, solicit, and negotiate public works contracts. A public works contract is principally an agreement financed with government funds for improvements to the County's infrastructure. The County entities authorized to perform this type of work are as follows:

1. Dana Point Harbor
2. John Wayne Airport
3. OC Community Resources
4. OC Public Works
5. Sheriff-Coroner
6. Waste and Recycling

In addition, the Grand Jury learned that five of the 25 County Departments do not administer "Master Agreements." A Master Agreement is a contract developed by a given County agency/department and thereafter approved by the Board of Supervisors.

Within the County government system another agency/department can avail itself of the services or commodities via a service agency agreement supported by a Master Agreement and have the acquisition costs applied to its budget. *The net effect is greater efficacy.*

In this report, the Grand Jury verified the extent to which Master Agreements are utilized and the amount of funding involved. Following approval action by the Board of Supervisors, administrative oversight is undertaken by the initiating agency/department.

The 1997-1998 Grand Jury conducted an investigation and issued a report regarding the County government's procurement efforts entitled, *Study of the County of Orange Procurement System*. That report detailed recommendations which are listed in *Appendix A* on page 21. That Grand Jury's purpose was to determine if the County of Orange government (a) had a comprehensive, uniform, methodical approach to procurement basics, (b) if the approach was documented in written policies and procedures, (c) if trained staff and appropriate infrastructure are in place to implement those policies and procedures, and (d) if there is exceptional provision for oversight to test for compliance with the policies and procedures. The overall findings were negative, yet

much of the current County administration and its CPS outcomes were generally supportive of the findings and recommendations of that Grand Jury.

The result of the 1997-1998 Grand Jury report was that six of the ten recommendations issued were implemented. Two of four remaining recommendations are currently in progress, and the final two are not expected to be implemented due to alternative approaches being taken.

Using County of Orange parlance, the words “procurement” and “contracting” are used interchangeably. *Purchasing* typically deals with the acquisition of standard, commercial items, and “off the shelf” supplies, and services. In simplistic terms, purchasing can be thought of as the means for acquiring operating supplies and services that County employees will use in doing their jobs. *Contracting* generally involves more specialized subject matter expressed in a made-to-order statement of work for services or a detailed specification for supplies and equipment. Contracting, then, is a way to engage others to perform a County job or mission. Individual contracts, oftentimes referred to as “agreements,” normally involve relatively large expenditures of money when compared to purchase orders.

As a subset of both purchasing and contracting, *Contract Management* is a proactive management technique utilized to ensure that the vendor/contractor and the County comply with the terms of the purchase order or contract. The vendors and contractors deliver services of the appropriate quality, in the proper quantity, on time, and at the agreed upon price. The County agrees to make timely payments to vendors and contractors.

A listing of Master Agreements that were approved during Fiscal Year 2013-2014 is shown in Table 1 on page 6. The agreement annual sums, or aggregate sums for multi-year agreements are shown.

Table1

COUNTY OF ORANGE GOVERNMENT CONTRACTING SYSTEMS
LIST OF MASTER AGREEMENTS AND DOLLAR VALUES

	AGENCY / DEPARTMENT	Number of Master Agreements	Contract Value
1	Health Care	225	\$1,057,370,267
2	County Executive Office - - Procurement Office and the Office of Information Technology	414	\$821,017,509
3	OC Community Resources	505	\$354,271,717
4	John Wayne Airport	222	\$329,894,600
5	OC Public Works	575	\$166,017,509
6	Waste and Recycling	146	\$154,502,050
7	Sheriff-Coroner	599	\$93,952,132
8	Social Services	258	\$44,992,284
9	Auditor-Controller	15	\$14,504,720
10	District Attorney	109	\$11,693,801
11	Probation	142	\$6,997,506
12	Clerk-Recorder	25	\$4,707,699
13	Registrar of Voters	37	\$3,685,900
14	Dana Point Harbor	13	\$3,244,666
15	Assessor	29	\$2,745,679
16	Child Support Services	63	\$2,607,878
17	Treasurer-Tax Collector	65	\$2,004,310
18	Public Defender	6	\$265,208
19	Human Resources	13	\$120,540
20	County Counsel	2	\$19,734
21	Internal Audit	0	\$0
22	Clerk of the Board of Supervisors	0	\$0
23	Office of Independent Review	0	\$0
24	Office of Performance Audit	0	\$0
25	Public Guardian	0	\$0
	TOTAL	3,463	\$3,074,615,709

As of May, 2014

Impacts of Bankruptcy

In 1994 the County of Orange investment pool collapsed, thereby losing \$1.6 billion from its \$7.5 billion portfolio. As a result it led to the County filing for protection under Chapter 9 of the United States Bankruptcy Code. The County of Orange was the largest governmental entity to file for bankruptcy at that time. The City of Bridgeport, Connecticut had filed for bankruptcy in 1991, but a federal bankruptcy judge disallowed its petition.²

The money in the County investment pool came from a broad spectrum of sources, including cities, school districts, water and sewer authorities, and pension funds.³ Many of the creditors, especially the school districts, were demanding payment, and because interest rates had not remained low as the County had anticipated, there were insufficient funds to make the payments.

At the time, there was considerable apprehension that it would take years for the County of Orange to recover, and that many small businesses and some cities would fail because of the County's fiscal collapse. The bankruptcy negatively affected housing values and business decision-making for new development. In the public sector, highway and infrastructure projects were stalled. The final plan that led the County out of bankruptcy called for elimination of 3,400 County jobs and a 41% reduction of the General Fund budget.

Perhaps the longest lasting effect of the bankruptcy was decentralization of specialized functions within County government. The most prominent of those decentralized functions were contracting and procurement, human resources, and information technology.

Various County executives, including the County Executive Office concur that the County would be better served with reestablishment of centralized services in key units. For instance, currently underway is centralization of the departmental human resources operations. With regard to contracting and procurement, a very recent advancement is the increase in the number of Deputy Procurement Agents (DPA) performing contracting and purchasing tasks. Within the past 10 years there has been a 15% increase in DPA personnel working on various facets of contracting/procurement assignments.

Current DPA staffing levels per agency/department are listed in Table 2 on page 8.

² Judson, George, *Bridgeport Bankruptcy Plea Focuses on Solvency Dispute*, July 24, 1991.

³ Long, Heather, the Patriot-News, Central PA., *Bankruptcy: What is the real aftermath for a city?* May 19, 2010.

Table 2

NUMBER OF DEPUTY PURCHASING AGENTS WITHIN COUNTY GOVERNMENT		Deputy Purchasing Agents
1	Assessor	4
2	Auditor-Controller	7
3	County Executive Office - Information Technology	8
	Procurement	17
	Real Estate	1
	Administration	2
4	Child Support	4
5	Clerk of the Board	1
6	Clerk-Recorder	2
7	OC Community Resources	18
8	County Counsel	3
9	Dana Point Harbor	1
10	District Attorney	7
11	Health Care	29
12	Human Resources	9
13	Internal Audit	2
14	John Wayne Airport	5
15	Office of Independent Review	0
16	Office of Performance Audit	0
17	Probation	14
18	Public Defender	4
19	Public Administrator / Public Guardian	4
20	OC Public Works	33
21	Registrar of Voters	4
22	Sheriff-Coroner	13
23	Social Services	22
24	Treasurer-Tax Collector	3
25	Waste and Recycling	19
26	Law Library	1
GRAND TOTAL		237

As of May, 2014

METHOD OF STUDY

The Grand Jury conducted confidential interviews with 10 agency/department units of County government. This included top-level Executives, Managers, and Subject Matter Experts (SME) on staff.

Staff Interviews

County agency and department staff interviewed represent both the greatest number of Master Agreements administered as well as the highest amount of contract dollar value. The interviewed agencies/departments were as follows:

1. Auditor-Controller
2. County Executive Office
3. OC Community Resources
4. District Attorney
5. Health Care
6. John Wayne Airport
7. OC Public Works
8. Social Services
9. Sheriff-Coroner
10. Waste and Recycling

In addition to the list of aforementioned interviewees, a fact-finding discussion took place with the Internal Audit Department (IAD), which is not active in contracting efforts. Rather the Department carefully reviews the endeavors of other County agencies and departments. The purpose of IAD is to report audit findings to the Board of Supervisors in order to ensure that the Board receives trustworthy advisory services involving the Board's business and financial decision-making. The Grand Jury deemed it appropriate to fully acquaint itself with IAD's core activities, audit plans conducted on behalf of the Board of Supervisors, standards and practices on audits, and pertinent audit reports.

The Grand Jury study also included a written survey circulated to County departments that were not formally interviewed. Consisting of 24 questions, the survey mirrored the contents of the interview discussions conducted in the course of this Report. An abstract of the survey is provided in *Appendix B* on page 24. A 100% response rate to the survey was achieved.

Documents and Publications Reviewed

Numerous relevant documents and publications were reviewed and served to additionally inform and bring the Grand Jury up-to-date on topics addressed in this report.

These items included:

1. The 1997-1998 County of Orange Grand Jury's report entitled, *Study of the County of Orange Procurement System*.
2. Typical County Requests For Proposals (RFP), and Invitation For Bids (IFB) solicitation documents, supplemented by actual Evaluation Scoring forms.
3. Selected Board of Supervisors approved agreements and contracts.
4. County-wide accounting system entitled *County Accounting Personnel System (CAPS)* .
5. County of Orange Contract Policy Manual, adopted by the Board of Supervisors in August 1998.
6. County of Orange Contract Policy Manual, as revised and adopted by the Board of Supervisors in July 2012.
7. County of Orange Request For Proposals Evaluation Rules of Procedures, March 2010.
8. County of Orange Procurement Ethics Guide, (2011).
9. Memorandum of Understanding for the County of Orange Purchasing Alliance.
10. The Request For Proposals Procedure published by the County of Orange Social Services Agency, (2013).
11. *A Guide to Best Practices For Contract Administration* - General Services Agency (GSA) Office of Federal Procurement Policy, October, 1994.
12. Model Procurement Code, American Bar Association, 2000.
13. Minnesota State Auditor, Government Information Division Office: *Best Practices Review Contracting and Procurement in the Public Sector*, November, 2005.
14. Business Basics, *Centralization versus Decentralization*, February 2013.

Research

Finally, the Grand Jury's research included (a) the County of Orange Board of Supervisors meeting agendas, meeting minutes, and supporting Agenda Staff Reports (ASR) and related addenda, (b) County ordinances and regulations, (c) pertinent federal and state statutes and related funding requisites, and (d) newspaper articles and website materials.

ANALYSIS

The Case For Centralization

There are significant managerial differences between a centralized and a decentralized procurement system. In a centralized structure the decision-making and administrative authority

is focused on a pre-determined agency or department. Oversight is conducted by individuals within the top tier of management. This tier of management is the one that determines policy and makes all of the crucial decisions. A decentralized system delegates authority throughout the jurisdiction and to several levels of management within that jurisdiction.⁴

The decision to centralize or decentralize, willingly or otherwise, is one of the most challenging endeavors to be undertaken. While centralized planning and implementation creates a more efficient information distribution and record keeping processes, it can seem cumbersome to the first line personnel or site manager. *Maintaining the balance between centralized and decentralized activities necessitates a joint understanding of the contracting or purchasing practice from start to finish.*

Within a decentralized jurisdiction, such as the County of Orange, it is important that all agencies/departments operate under the same rules so that inconsistencies do not create future problems. This would enable the decision-making officials, in this case the County Board of Supervisors, to focus attention on the most crucial matters for its consideration.

Requirements upheld by one agency or department and not by another could lead to inconsistently applied procedural steps. To address the issue, County government should engage in a shared Contracting/Procurement System.

In a centralized jurisdiction the CPS staff of a department in need of the service or product would contact the County Purchasing Agent with both sides collaborating on the specifications for solicitation of proposals or bids to be drafted. Both departments play a role in the project and contract management. Working together, the departments ensure that the services contracted or goods purchased are meeting specified terms and conditions in terms of the schedule, budget, and end-user satisfaction.

The department CPS staff would then conduct the solicitation. Both departments will be involved in the bids/proposals evaluation process and the client department will make a final recommendation of the selected vendor to the purchasing official.

Overall, there are advantages and disadvantages to centralization and de-centralization that are to be considered.

⁴ Business Basics, *Centralization versus Decentralization*, February 2013

A pertinent sampling regarding centralized systems is as follows:

Advantages – Centralized

a) greater top-management control, b) increased efficiency, c) simpler information sharing system, and d) stronger representation and buying power.

Disadvantages – Centralized

a) less responsiveness to clientele, b) reduced amount of empowerment, c) greater risk of interdepartmental conflict, and d) lower morale away from the central headquarters.

A significant argument in favor of centralized procurement lies in the economies of scale. Volume purchases and service acquisition makes it possible to obtain significant reductions in the price of goods or to receive better services at lower costs. This is confirmed by the fact that most procurement jurisdictions report savings even as they compete in the general marketplace. Greater savings will be realized if there is a single large contract within a centralized procurement body. Such a contract gives the acquiring jurisdiction access to a wider market with fewer fluctuations in costs as a large number of orders can be processed simultaneously.

The increased purchasing power of the procurement officer allows the supply base to be streamlined and overhead costs to be reduced. It also allows the proactive purchaser to seek changes in the supplier's organization and production methods, further reducing costs.

Centralized efforts are justified by the need to establish technical standards for information technology systems and computer software applications within the government sector. Similarly, environmental standards for the inclusion in technical specifications and contracts with suppliers are established. It is more difficult to achieve these objectives if the government's purchasing system is highly fragmented, particularly in the absence of a public procurement office with limited formal as well as informal powers.

Potential non-cost benefits which support centralized purchasing groups include better service to the public sector resulting from a more expert and responsive staff. Greater attention can be paid to contract management and problem resolution (e.g., defective items, below specification services, poor after sale maintenance, etc.) which adds value for the client and which are easier to deliver in a more centralized system.

Personnel can typically be easier to manage in a centralized system. They can be organized more efficiently, with fewer people in need of training as there are fewer agencies requiring highly skilled and experienced procurement specialists. Performance management of staff can be handled through a common system.

The increased professionalism that well-trained DPAs can bring to centralized procurement will enhance the economic benefits for the County and should reduce the chances of error undermining these effects. A dedicated procurement team is more likely to be able to deliver increased benefits consistently even during sustained periods of budget stringency.

Finally, centralized purchasing systems provide greater transparency such as proper recording and reporting of transactions, effective management controls, and an audit trail open to public scrutiny. Purchases can more easily be checked for evidence of financial incompetence and corruption. In addition, the employees of a single agency can more easily be trained and encouraged to use efficient control and reporting procedures. Lines of responsibility are more easily established and sound financial practices more easily maintained.

Some advantages and disadvantages of decentralized systems are as follows:

Advantages – Decentralized

Better adaptation to client and patron desires, faster decision making, more empowerment of workers and greater opportunity to gain valuable experience and develop.

Disadvantages – Decentralized

Diminished efficiency, complex distribution system, less top-management oversight and control, weakened department image.

Decentralization can result in contradictory policies and procedures. Too much emphasis on localized ways of making decisions may end up blurring the bigger picture. Further down the corporate ladder, employees seem to lose sight of the organizational vision. A highly decentralized organization can be the battleground for unhealthy competition between local managers leading to lack of co-operation and coordination. As a result, interdependent functions may suffer. Resolving interdepartmental conflicts is difficult when authority has been delegated. In addition, there is costly duplication of work (activities, processes and outcomes) that may impact economies of scale.

While decentralization promotes the jurisdiction's spread of standards and best practices, different managers perceive them differently. In case of imminent circumstances that require adoption of organization-wide standards, the diffusion of authority and independent opinions and actions pose a major hindrance. Therefore, implementation of uniform organization-wide consistent policies can be problematic.

Decentralization often gives rise to an employee population composed mainly of generalists and very few specialists. External specialist consultants may sometimes need to be utilized, which adds to the cost of operations. Most disadvantages of decentralization can be overcome by controlling the degree of authority delegated to the lower levels of the organization.

The Grand Jury has concluded that centralization works well if it is managed well. In the case of the County of Orange, recent executive level decision-making has supported the probability that decentralized functions may be strategically restructured into a broadly centralized mode in order to maximize efficacy in contracting and procurement personnel and efforts.

County Contract Policy Manual – Revision

The County of Orange's government has modified its Contract Policy Manual significantly since its predecessor was adopted in August 1998. At this time it has become a much more complete reference document for experienced CPS personnel. The Manual is structured as a reference document and contains additional protocols when compared to its predecessor.

Despite recent improvements, the Contract Policy Manual lacks training and instructive scope. The 2012 County Contract Policy Manual is not a thorough training instrument for educating County contracting and procurement personnel. A comprehensive training handbook is inclusive of assorted training courses with broadened curricula, proficiencies development for all contracting/procurement personnel, sample standard documents, added seminars and workshops, and complete training calendar integration.

A complete training curriculum is characteristic of an appropriate enrichment undertaking for staff members whose job responsibilities involve contracting and procurement. What is now critically needed is the publication of a revised Manual that will provide an intensified training component. A comprehensive, functioning contract manual normally includes the following:

County Contract Policy Manual

Comprehensive contracting and purchasing measures,
Legal and legislative information,
County, State, and Federal procedural requirements,
Best practices approaches,
Practical methodologies to bolster the CPS,
Undertakings to improve staff capabilities,
Enhancement of expertise, and personal growth potential.

Deputy Procurement Agent Training

The personnel within various departments have differing payroll titles and levels of contracting experience and expertise. They also have attended initial, qualifying training and are required to attend a prescribed ten hours of Deputy Procurement Agent (DPA) annual training.

In the Grand Jury's view the proposed DPA training modifications to the Manual would be of significant value to CPS entry-level personnel as well as the individuals whose assignments have been upgraded over time. It would also have the advantage of supporting personnel transfer and promotional opportunities within agencies and departments. All of the foregoing would be advantageous to optimizing the proficiency of the County Contracting/Procurement System workforce while employing key elements of successful contracting and procurement.⁵

The County's established Deputy Procurement Agent (DPA) training and certification program is an approach that introduces the DPA to the job and supports contract and procurement management. Agencies and departments have a DPA training program qualifying personnel participation given that DPAs come from the ranks of various payroll titles such as a) Administrative Managers, b) Real Property Agents, c) Buyers, d) Procurement Contract Specialists, and in some cases, e) staff assistant personnel. The training does not communicate to staff the opportunity to avail themselves of on-going educational and career aspects of contracting endeavors, and procedural and legislative updates.

Although some agencies/departments may not scrutinize attendance closely, DPAs are still required to attend a basic, 10 hours per year. This approach, which relies heavily upon on-the-job training, lacks important aspects needed to require and provide to personnel, the critical needs of DPA positions within a specialized work environment. It also does not speak to the personal advancement potential for promotions. Deputy Procurement Agents are expected to keep pace with changes in contracting and procurement by completing this annual refresher course in DPA training. The training does not focus upon procurement ethics training, refresher DPA training, and Procurement Integrity goals.

Courses in service contracting and preparing statements of work would be very helpful for DPAs who handle complex contracts and service contracts. It would help them in the preparation of a successful contract/procurement administration plan. Such advancement potential will support a more proficient and productive brand of employees. The County, within its agencies and departments, does not have a comprehensively trained team of contracting officials providing instruction to subordinate staff.

⁵ Minnesota State Auditor, Government Information Division Office, *Best Practices Review Contracting and Procurement in the Public Sector*, November 2005

There are several training components lacking in DPA training. They are as follows:

DPA Training Issues

1. Complexity of a variety of agreements and scope of work
2. Fiscal, political or social importance of the agreement
3. Risk Assessment for quality assurance
4. Mutually beneficial contractor relationships
5. Thorough documentation in all CPS venues

The County Purchasing Office currently does not conduct tutorial classes designed to instruct managers and supervisors thus ensuring that DPA members are made aware of the beneficial aspects of dedicated oversight and intense preparation.

The training of DPAs in the County is a key element to providing a well-qualified and skilled personnel. Employee training and development is an organizational activity in human resource management aimed at impacting the employees with skills aimed at bettering the performance of both the individual and the organization.

Impacting staff with the skills necessary to get the job done will boost job morale and fewer mistakes will be made. Due to the mistakes that could occur, untrained personnel may be more costly in the long run than even the wages paid. Employee development gives the workforce a good chance to realize personal potential and eventually work at the highest possible level. When a manager realizes the potential in a staff member, and then sends that employee to class to improve expertise and skills, the well-trained staff will be more willing to work at the optimum level of ability.

Although several County agencies and departments do not consider employee training an important function of contracting and procurement, this is not the case because there are many benefits accrued to the County, the organization, and most importantly, the individual employee.

FINDINGS

In accordance with California Penal Code Sections 933 and 933.05, the 2013-2014 County of Orange Grand Jury requires responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its examination of the Agencies and Departments within County of Orange government, the 2013-2014 Grand Jury has reached 6 principal findings, as follows:

- F.1.** County government does not have an identified re-centralization strategy of its contracting assignments in order to pro-actively reduce the fragmentation, inconsistency, and inequality that currently exist. Several County executives and senior managers have noted a need is indicated for a substantial reorganization of intra-agency contracting/procurement responsibilities and personnel assignments.
- F.2.** The County Contract Policy Manual, as adopted in 2012, performed an admirable job in response to the critique published by the 1997-1998 Orange County Grand Jury. A majority of the recommendations were implemented and have continued to be helpful in attainment of long-range goals.
- F.3.** The 2012 County Contract Policy Manual is a helpful guide that has value as a reference tool; however the Manual is not a comprehensive document inclusive of specialized training courses, complete planning calendars, an extensive catalogue of procedural standards, and occupational proficiencies.
- F.4.** The Contract Policy Manual lacks a summary for development of all contracting and procurement personnel, with broadened curricula, sample standard documents, and added seminars and workshops.
- F.5.** Contracting and/or Procurement staff members expressly engaged in contracting are not given focused and thorough training designed to present topics in project management, contract administration, and risk assessment. In addition, there is an absence of objectives designed to enhance personal expertise, productivity, and effectiveness.
- F.6.** There are County departments that assign staff members to perform contracting or procurement tasks that are unrelated to their regular roles. Such fragmented assignments present negative impacts to accuracy and productivity as a result.

RECOMMENDATIONS

In accordance with California Penal Code Sections 933 and 933.05, the 2013-2014 County of Orange Grand Jury requires responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation, the 2013-2014 Grand Jury presents the following 4 recommendations.

- R.1.** The Board of Supervisors and County Executive Officer should adopt a re-centralization strategy and a corresponding implementation schedule for the contracting functions of a majority of County Agencies and Departments. The goal of said strategy will be to ensure that the contracting/procurement procedures and decision-making will be a collaborative and constructive process in an effort to provide for consistency, thoroughness, and transparency with the County Purchasing Agent. **(F.1.)**
- R.2.** The County Executive Officer, utilizing the services of the County Purchasing Agent, should revise and expand the County Contract Policy Manual. The revision should include: a) Procurement Guidelines; b) RFP and IFB methodology; c) Rules of Procedures and Evaluation; d) Procurement Ethics Guide (comprehensive version); e) Risk Assessment; f) Contract Management; and g) Best Practices for Contracting and Procurement. **(F.2., F.3. and F.4.)**
- R.3.** The County Executive Officer should implement expanded training curricula and workshops for Deputy Purchasing Agents and other subject matter experts performing contracting and procurement assignments pursuant to the County Contract Policy Manual. This would include increased training frequencies of longer duration, and staff membership councils that are comprised of peer level conferences and collaboration at least quarterly. **(F.5.)**
- R.4.** The County Executive Officer as well as department heads should ensure that County staff members, who act as the department's Purchasing Agent, should focus primarily, if not exclusively, on procurement and contracting responsibilities as their principal work assignment. **(F.6.)**

REQUIRED RESPONSES AND INSTRUCTIONS

The California Penal Code §933 requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made no later than 90 days after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made within 60 days to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code Section §933.05 (a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

(a) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:

(1) The respondent agrees with the finding

(2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.

(b) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:

(1) The recommendation has been implemented, with a summary regarding the implemented action.

(2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision making aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code section §933.05 are required from:

Responses Required:

Responses to Recommendation **R.1.** and **R.4.** are required from the County Board of Supervisors.

Response to Finding **F.1.** is required from the County Board of Supervisors.

Responses Requested:

Responses to Recommendations **R.2.**, **R.3.** and **R.4.** are requested from the County Executive Officer.

Responses to Findings **F.1.** and **F.2.** are requested from the County Executive Officer.

Responses to Findings **F.3.**, **F.4.**, **F.5.** and **F.6.** are requested from:

CEO – County Purchasing Agent

CEO – Information Technology Office

Health Care

OC Community Resources

OC Public Works

APPENDIX A

The original, published list of Recommendations by the 1997-1998 Grand Jury reads as follows:

STUDY OF THE COUNTY OF ORANGE PROCUREMENT SYSTEM GRAND JURY REPORT 1997-1998

RECOMMENDATIONS

1. The Board of Supervisors and the County Executive Officer immediately cease the current approach to the selection of architect/engineer and consultant contractors. Instead, require the source selection decision to be made consistent with the appropriate general criteria in the *County Regulation* and the project-specific criteria in the instant request for proposals. Further, require the rationale for the ultimate source selection decision to be publicly documented.
2. The Board of Supervisors and the County Executive Officer, concurrent with Recommendation 1, adopt policies substantially in conformance with the following provisions of the *Model Procurement Code*:
 - a. It shall be a breach of ethical standards for a person to be retained or to retain a person or solicit or secure a County contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agents for the purpose of securing business.
 - b. Every person, before being awarded a County contract, shall represent in writing that such person has not retained anyone in violation of the above. Failure to do so constitutes a breach of ethical standards.
3. The Board of Supervisors and the County Executive Officer give top priority to replacing the existing fragmented County procurement system with a cohesive and integrated system based on the *Model Procurement Code* with provisions for the following:
 - a. Compliance with the federal Common Rule and state grant procurement requirements (Appendix 1).
 - b. Issuance of implementing regulations by a designated group responsible to the chief administrative officer of the County.
 - c. Authority for County contracting agencies to issue strictly supplemental procedures, if deemed necessary and appropriate.
 - d. Comprehensive implementing regulations complete with coverage of the topics listed in Table 5, and the following:
 - i. A requirement that personnel serving in or selected to contracting positions possess established position experience, education, and training prerequisites.

- ii. Establishment of both a Contracting Council and a Purchasing Council comprised of representatives of the CEO/Procurement Office and the Deputy Purchasing Agents and key personnel of the contracting agencies, respectively, chartered to address matters of common concern.
 - iii. The requirement that all contracts be entered into EPS, and that EPS is to be used as a primary means to track and manage contracts.
 - iv. A systematic approach to contract administration: to ensure contractor conformance with the terms, conditions, and specifications of the contract and to ensure adequate and timely follow-up of all purchases and the evaluation and documentation of overall contractor performance on the contract.
 - v. The requirement that orders for supplies or services be in writing except those authorized to be made by petty cash and County purchase card.
 - vi. A proactive means to ensure timely payment of vendor and contractor invoices in accordance with purchase order and contract terms and conditions.
 - vii. Documentation of contract files.
 - viii. Types of contracts and their application.
 - ix. Subcontracting considerations.
 - x. Full and open competition in the selection of architect/engineer and consultant contractors.
 - xi. Prohibition against the payment of contingent fees to lobbyists to influence the award of County contracts and the requirement for an affirmative certification thereto.
4. The Board of Supervisors and the County Executive Officer designate the County Purchasing Agent as the Chief Procurement Officer of County of Orange ("CEO/Procurement").
 - a. Place the Chief Procurement Officer in the County organization structure reporting directly to the CEO and officially assign that person to perform, along with assistant CEOs, before-the-fact reviews of AITs of all procurement transactions.
 - b. Include in the Chief Procurement Officer's duties the requirement to conduct annual compliance reviews of all aspects of procurement transactions of Deputy Purchasing Agents and County contracting agencies.
5. The County Executive Officer create a Procurement Policy working group reporting to the CEO (in that official's capacity of County Chief Administrative Officer) to develop and
 - a. administer the new and improved County procurement system, comprised of the County Procurement Code and implementing regulations. Designate the Chief Procurement Officer of the County to chair the group, with membership to include representatives from the ranks of the Purchasing Council, the Contracting Council, and knowledgeable members of the public.

6. The County Executive Officer establish standards and provide suitable training for County employees who perform the principal contracting functions.
7. The County Executive Officer encourage use of the *Commerce Business Daily* for the advertisement of specialized County procurement requirements.
8. The Internal Auditor participate with the Chief Procurement Officer in the annual compliance reviews of procurement activities.
9. The Auditor-Controller use EPS to track contracts. In collaboration with the Chief Procurement Officer, institute a proactive approach to ensure the timely payment of purchase orders and contracts in accordance with their terms and applicable statutory requirements.
10. The Office of the Public Defender cease the practice of using oral (not written) orders to acquire the services of expert witnesses.

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APPENDIX B

A synopsis of the *County of Orange Contracting – Survey of Agency Policies and Procedures* as distributed to County government agencies/departments whose staff was not formally interviewed during the 2013-2014 Grand Jury Report information gathering process.

- 1) Is the County's Contract Policy Manual consistently utilized within your Department?
"Yes" or "No." If "No" why not?
- 2) What is the number of budgeted items per category of personnel assigned to prepare contract documents, administer solicitations and conduct negotiations?
Identify by Payroll title.
- 3) How many of the personnel listed above are fully trained, and have attained the designation of "Deputy Procurement Office?"
- 4) In addition to the office of County Counsel, what type of legal advice is obtained in the preparation of bid/proposal solicitation documents and the process of contract negotiations?
- 5) What experience, in terms of category and years, is required for the assignment?
- 6) What type of training does staff receive? How many hours per year?
- 7) Who decides if an IFB or a RFP is to be utilized?
- 8) Prior to the commencement of the solicitation process how are "interested parties," and the "general public" notified of the availability of an IFB or RFP?
- 9) Evaluation Panels are normally comprised of what sort of members, e.g., County staff and/or private sector experts? At what ratio?
- 10) How many Evaluation Panelists are typically engaged per project?
- 11) By what method are Panel members instructed on evaluation procedures?
- 12) How is the weighting of percentages assigned to the various rating factors for any individual project?
- 13) What type of rating procedures is normally employed?
- 14) Are Evaluation Panelists instructed on the requirement for confidentiality during their deliberative proceedings and thereafter, pending Board of Supervisors final action? Is a written Confidentiality Statement utilized? "Yes" or "No."
- 15) What procedures are established that are designed to ensure that all submitted bid/proposal documents are kept confidential until presented to the Board of Supervisors?
- 16) What measures are in place to restrict the efforts of non-participants from seeking to improperly influence the decision-making process?
- 17) What are the penalties/sanctions for the contractor's non-performance or poor performance?
- 18) What safeguards are in place to ensure that services, products, or other deliverables provided conform to the specifications or statement-of-work identified in the contract?
- 19) Who on your staff monitors contract compliance by the service provider/vendor?
- 20) What is the frequency of contract compliance inspection and documentation?
- 21) If the contract requires revenue to be submitted to the County, what are the prescribed verification and auditing procedures?

Improving The County of Orange Government's Multi-Billion Dollar Contracting Operations

- 22) In the case of payment by the County to vendors, are the payments issued as a result of an invoice? "Yes" or "No."
- 23) What is the internal method of verification that payments are properly supported?
- 24) What is your agency's record of the number of contracts that have been terminated "for cause" within the last ten years?
- 25) Has your agency conducted debarment proceedings of a contracted entity? "Yes" or "No." If "Yes," how many?
- 26) List the number and type of Master Agreements administered by your agency/department. Include the cost to the County or the revenue received by the County.

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