

# County Purchasing Requires Insurance for All Vendors Fresno County Civil Grand Jury Report No. 5

June 23, 2022

## PURCHASING POLICIES AND PROCEDURES WITHIN PUBLIC WORKS AND PLANNING, AND INTERNAL SERVICES

### INTRODUCTION

California Penal Code 925 gives the Grand Jury the responsibility of investigating and reporting on County government.

An investigation by the 2021-2022 Fresno County Civil Grand Jury (Grand Jury) found that purchasing policies and procedures within the County of Fresno (County) are generally well conceived, written and enforced.

However, the Grand Jury learned that mandatory insurance requirements can discourage some small, local or out-of-state vendors from seeking contracts with Fresno County.

**GLOSSARY** (the following definitions were used by the Grand Jury for this investigation)

**Attachment E:** The County mandates minimum insurance coverage for any person or company who intends to work for the County under a public contract. (See Appendix 1) (<https://www.co.fresno.ca.us/home/showpublisheddocument/41600>)

**Consulting contract:** An agreement between a private professional engineering or architectural company and Fresno County that specifies services, duration, and rate of compensation, to supplement the skills and capacity of the County staff. The terms and scope of work of the agreement range from simple to very complex.

**On-call contract:** An agreement with a company with a particular construction discipline (e.g.: electrical, mechanical, environmental, structural engineering, etc.) to be available to perform the required service, usually for routine requirements. On-call contracts allow the County to mobilize professional services quickly and easily under pre-negotiated terms and conditions, when services are required due to an urgent matter, or because the County is unable to provide or perform those services internally. The contracts are not funded when awarded, have no guaranteed work, and are intended to engage professionals on short notice.

**Public Purchase:** Any expenditure of publicly sourced funds spent to support a County Department, Agency, or Special District.

**Risk Management:** The forecasting and evaluation of financial risks together with the identification of procedures to avoid or minimize their negative impact.

### HISTORY

The 2021-2022 Grand Jury received a citizen complaint that led to an investigation and publication of the report: *CONFLICT-OF-INTEREST WITHIN COUNTY CONTRACTING UNDERMINES PUBLIC TRUST*.

(<https://www.fresno.courts.ca.gov/sites/default/files/fresno/default/2022-04/REPORT%201.pdf>)

In the course of its investigation, the Grand Jury reviewed the County purchasing function and decided to issue a report on that as well.

In its review of the County purchasing policies and procedures, the Grand Jury learned that the County mandatory insurance requirements (Attachment E; Appendix 1) for contractors could limit the number of qualified companies willing to offer their services to the County.

## **METHODOLOGY**

During its investigation, the Grand Jury inquired about and reviewed the County's primary purchasing offices (Departments of Internal Services and Public Works and Planning), (see Appendix 2), purchasing policies, training, processes and enforcement within the County. The Grand Jury researched relevant California laws, California Attorney General Opinions, the Fresno County Charter, policies of other California counties, and guidelines governing ethics and standards of several professional associations.

## **DISCUSSION: COUNTY PURCHASING-GENERALLY**

The Grand Jury reviewed the information available to guide County employees regarding purchasing for the County of Fresno including:

- Purchasing Manual (11/3/2020);
- Purchasing 101, A Microsoft PowerPoint presentation that explains the County purchasing process;
- Purchasing Process-at-a-glance (4/8/2021)(See Appendix 3)(Document provided by the County);
- County of Fresno Regulations and Procedures for the Implementation of the California Environmental Quality Act, PWP (2/24/2015); and
- An expansive volume of policies, procedures and County ordinances (all available to the public on various County web pages) that was provided by the Department of Public Works and Planning (5/18/2021).

The Grand Jury found the processes and procedures utilized by Fresno County were substantial and demonstrated many "best practices" for Governmental purchasing. For example, the County segregates the three principal functions (requisitioning, ordering, certify of completion/approval for payment) of the purchasing process and does not allow them to overlap. Each of these functions is performed independently by different individuals.

## **DISCUSSION: MANDATORY INSURANCE**

Amongst the many aspects of County purchasing, the Grand Jury learned of the County's mandatory insurance requirements for all County contractors. These requirements are contained in Attachment E (detailed in Appendix 1). The basic requirements are:

- **Commercial General Liability**: \$2 million (per occurrence) and \$4 million (annual aggregate) for commercial general liability;
- **Automobile Liability**: \$1 million per accident to cover bodily injury and property damage in automobile liability;
- **Professional Liability**: \$1 million (per occurrence)) and \$3 million (annual aggregate) for professional liability; and
- **Worker's Compensation**: A policy as required by the California Labor Code.

According to Attachment E, any contractor wishing to work for the county, regardless of expected risk of loss, must show proof of the mandatory liability insurance limits. The Grand Jury was also told that many on-call contracts are small with commensurately small price tags. These factors can make an on-call contract cost prohibitive for many small and local businesses.

The Grand Jury learned that the County currently has an appeal process to the County Board of Supervisors. However, this appeal process can be time consuming and prohibitive for purchasing requirements where contractors have limited time to make bids.

The Grand Jury learned that the professional liability insurance requirement was an impediment that would have prevented one prospective contractor from offering a bid on a software development requirement. The contractor was concerned that the cyber liability for them would be cost prohibitive for developing the framework for a data retrieval system. County officials told the Grand Jury the contract would make the contractor liable for future “hacks and data breaches” even though the data would be stored on a cloud environment developed and maintained by others. The Grand Jury was told that the professional liability requirement was significantly abated and the contractor successfully competed for the contract.

Other concerns were noted where an out-of-state contractor would be compelled to obtain automobile and worker’s compensation insurance, even though it would be wholly unnecessary.

The Grand Jury learned that the Office of Risk Management was discussing with County Counsel and the principal County purchasing officials, a procedure that would put more flexibility in the hands of County purchasing agents. County officials are discussing the development of a matrix of liability in relation to the size, complexity and difficulty of the requirement.

## **FINDINGS**

- F1.** The Departments of Internal Services and Public Works and Planning are meeting the needs and requirements for the County with the maximum efficiency and minimum disruption to County programs while maintaining maximum integrity in the purchasing process.
- F2.** County risk management officials have listened to the concerns of contractors about the mandatory insurance minimums and have taken prompt action to provide needed flexibility in a difficult situation.
- F3.** County risk management works with County purchasing agents to tailor insurance minimums to the needs of the job requirements, the County and the contracting community.
- F4.** The County risk managers, in cooperation with County purchasing managers are developing a matrix for general liability and professional liability insurance requirements, to determine what limits of liability are appropriate for each contract.
- F5.** The County purchasing process operates commendably in the best interest of Fresno County, its citizens, and the contracting community to ensure the broadest possible pool of potential contractors from which to choose.

## **RECOMMENDATIONS**

- R1.** The Fresno County Board of Supervisors should encourage the continued development of a risk management matrix for mandatory liability insurance requirements and utilize the risk matrix to determine what limits of liability are adequate for each contract. (Not later than November 2023) (See F3 and F4, and R1 and R2)
- R2.** Purchasing Managers should be given the flexibility to abate all or part of the mandatory insurance requirements, in consultation with County Risk Management, to maximize the participation of local and small businesses. (Not later than November 2023) (See F2, F3 and F4)

## **REQUEST FOR RESPONSES**

Pursuant to California Penal Code, Section 933(c), the Fresno County Grand Jury requests responses to each of the specific findings and recommendations. It is required that responses from governing bodies of public agencies are due within 90 days of the receipt of this report and 60 days for elected county officers or agency heads.

The Fresno Grand Jury requests responses as follows:

- Fresno County Board of Supervisors and County Administrative Officer (CAO) (F3 and F4, and R1 and R2).

## **DISCLAIMER**

Reports issued by the Grand Jury do not identify individuals interviewed. Penal Code Section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Grand Jury.

## APPENDIX 1

### Attachment E: Insurance

# INSURANCE REQUIREMENTS

Below are the County of Fresno standard insurance requirements. They do not have to be submitted with the application, but your organization should be able to provide such documentation within 30 days of an executed contract if you are selected for an award.

Without limiting the County's right to obtain indemnification from contractor or any third parties, contractor, at its sole expense, shall maintain in full force and effect, the following insurance policies or a program of self- insurance, including but not limited to, an insurance pooling arrangement or Joint Powers Agreement (JPA) throughout the term of the Agreement:

- A. Commercial General Liability: Commercial General Liability Insurance with limits of not less than Two Million Dollars (\$2,000,000.00) per occurrence and an annual aggregate of Four Million Dollars (\$4,000,000.00). This policy shall be issued on a per occurrence basis. County may require specific coverage including completed operations, product liability, contractual liability, Explosion-Collapse- Underground, fire legal liability or any other liability insurance deemed necessary because of the nature of the contract.
- B. Automobile Liability: Comprehensive Automobile Liability Insurance with limits of not less than One Million Dollars (\$1,000,000.00) per accident for bodily injury and for property damages. Coverage should include any auto used in connection with this Agreement.
- C. Professional Liability: If Contractor employs licensed professional staff, (e.g., Ph.D., R.N., L.C.S.W., M.F.C.C.) in providing services, Professional Liability Insurance with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence, Three Million Dollars (\$3,000,000.00) annual aggregate.

This coverage shall be issued on a per claim basis. Contractor agrees that it shall maintain, at its sole expense, in full force and effect for a period of three years following the termination of this Agreement, one or more policies of professional liability insurance with limits of coverage as specified herein.

- D. Worker's Compensation: A policy of Worker's Compensation insurance as may be required by the California Labor Code.

#### Additional Requirements Relating to Insurance:

Contractor shall obtain endorsements to the Commercial General Liability insurance naming the County of Fresno, its officers, agents, and employees, individually and collectively, as additional insured, but only insofar as the operations under this Agreement are concerned. Such coverage for additional insured shall apply as primary insurance and any other insurance, or self-insurance, maintained by County, its officers, agents and employees shall be excess only and not contributing with insurance provided under Contractor's policies herein. This insurance shall not be cancelled or changed without a minimum of thirty (30) days advance written notice given to County.

Contractor hereby waives its right to recover from County, its officers, agents, and employees any amounts paid by the policy of worker's compensation insurance required by this Agreement. Contractor is solely responsible to obtain any endorsement to such policy that may be necessary to accomplish such waiver of subrogation, but Contractor's waiver of subrogation under this paragraph is effective whether or not Contractor obtains such an endorsement.

Within thirty (30) days from the date Contractor executes this Agreement, Contractor shall provide certificates of insurance and endorsement as stated above for all of the foregoing policies, as required herein, to the **County of Fresno, Department of Public Health Attn: Susanna Alvarez, 1221 Fulton Street, Fresno CA 93721**. stating that such insurance coverage have been obtained and are in full force; that the County of Fresno, its officers, agents and employees will not be responsible for any premiums on the policies; that such Commercial General Liability insurance names the County of Fresno, its officers, agents and employees, individually and collectively, as additional insured, but only insofar as the operations under this Agreement are concerned; that such coverage for additional insured shall apply as primary insurance and any other insurance, or self-insurance, maintained by County, its officers, agents and employees, shall be excess only and not contributing with insurance provided under Contractor's policies herein; and that this insurance shall not be cancelled or changed without a minimum of thirty (30) days advance, written notice given to County.

In the event Contractor fails to keep in effect at all times insurance coverage as herein provided, the County may, in addition to other remedies it may have, suspend or terminate this Agreement upon the occurrence of such event. All policies shall be with admitted insurers licensed to do business in the State of California. Insurance purchased shall be purchased from companies possessing a current A.M. Best, Inc. rating of A FSC VII or better.

## **APPENDIX #2 REFERENCES**

### **Department of Internal Services (ISD)**

Assists County departments with the tools and facilities needed to accomplish their goals, by ensuring that other County departments have the necessary services to accomplish their own business missions and objectives. The Department is divided into five divisions:

Facility Services;

Fleet Services;

Information Technology;

Purchasing Services; and

Security.

These services range from real estate leasing to graphic design; from networking solutions to facility maintenance; from mail services to printing solutions; from security management to vehicle acquisition; and from computer support to fleet maintenance.

**Department of Public Works and Planning (PWP)** - is a multi-disciplinary department of over 400 employees providing public services in the areas of: public infrastructure/building design and construction, road maintenance, housing and community development, building permitting and inspections, land use planning, natural resource conservation, landfill and recycling, water and sewer services, park services, geographic information systems services, and tourism. The Department is organized into seven divisions:

- Community Development;
- Construction Management;
- Design;
- Development Services and Capital Projects;
- Resources (Household Hazardous Waste, Landfill, Parks and Recreation, Recycling and Solid Waste Disposal, and Special Districts);
- Road Maintenance and Operations; and
- Water and Natural Resources.

### **CALIFORNIA STATUTES**

#### **CALIFORNIA PENAL CODE 925**

The grand jury shall investigate and report on the operations, accounts, and records of the officers, departments, or functions of the county including those operations, accounts, and records of any special legislative district or other district in the county created pursuant to state law for which the officers of the county are serving in their ex officio capacity as officers of the districts. The investigations may be conducted on some selective basis each year, but the grand jury shall not duplicate any examination of financial statements which has been performed by or for the board of supervisors pursuant to Section 25250 of the Government Code; this provision shall not be construed to limit the power of the grand jury to investigate and report on the operations, accounts, and records of the officers, departments, or functions of the county. The grand jury may enter into a joint contract with the board of supervisors to employ the services of an expert as provided for in Section 926.

# APPENDIX 3

*Document provided to the Grand Jury by the County*

## PROCUREMENT PROCESS – AT-A-GLANCE (TYPES OF PURCHASING)

Type of Purchase	Bidding Threshold	Bidding Requirement (check eServices for existing contract)	Bid Required	Purchase Order, LPO, Contract Required	Board Approval Required
Goods, Materials, Supplies, Equipment	< \$2,500 * *Includes taxes & delivery	No bidding required. Get written quote from vendor.	No	LPO, P-Card	No
	> \$2,500 - \$20,000 * *Includes taxes & delivery	3 bids required or Before bidding, talk to Purchasing about: Req w/ 3 Quotes or Informal Quote, Suspension or Sole Source form	Maybe	PO [Contact Purchasing]	No
	> \$20,000	Before bidding talk to Purchasing about: RFQ/RFP Formal-Competitive Bid Process	Yes	PO, Contract [Contact Purchasing]	No
Services	< \$2,500 * *Includes taxes & delivery	No bidding required. Get written quote from vendor.	No	LPO	No
	> \$2,500 - \$199,999 * *Includes taxes & delivery	3 bids required Talk to Purchasing about: Req w/ 3 Quotes or RFQ/RFP Formal-Competitive Bid	Maybe	PO, Contract [Contact Purchasing]	No
	> \$200,000	Talk to Purchasing about: Formal-Competitive Bid Process (RFQ/RFP)	Yes	Contract [Contact Purchasing]	Yes

**PURCHASE ORDER (PO) PROCESS:** (> \$2,500)

Please provide Purchasing (hard copy & email) with the following:

- 1) Completed and signed Purchasing Requisition (PD-001) \* with at least 3 Quotes  
OR Sole Source form (PD-047) \* -- only one vendor of product or service, include quote/invoice with req  
OR Suspension of Competition form (PD-048) \* -- more than one vendor w/ product or service, but one vendor has unique quality or capability offering an advantage to the County, include quote/invoice
- 2) Include the vendor's current email address on the PD-01
- 3) Department sets up new vendor number or amends vendor information from W-9 and CA 590 or CA 589 in PeopleSoft
- 4) Purchasing will email the PO to the vendor and the department's PO inbox when complete.
- 5) Timeframe for completing PO process depends of various factors. Please plan ahead with completed, current supporting documents and/or valid quotes.

**Blanket Purchase Orders** – if \$15,000 or over (including tax and delivery) provide signed PD-048 with Requisition.

**Fixed Asset** – Any single item \$5,000 or over, including tax and delivery, must have Program Code.

\* see Purchasing eServices under COUNTYWIDE FORMS tab

**FORMAL BID PROCESS:** (RFQ or RFP or RFSQ or LOI)

Please provide Purchasing (hard copy & email) with the following:

- 1) Completed and signed Purchasing Requisition (PD-001) \* note the estimated annual total dollar amount and preferred length of contract
- 2) Projected length of new contract in years
- 3) Current contract # & expiration date (if available)
- 4) Vendor List Form \*\* & any applicable docs
- 5) RFQ - Request for Quotation \*\* Bid Specifications, Annual Usage, Requirements, Scope of Work, Delivery Requirements, Quotation Schedule (in Word) OR  
RFP - Request for Proposal \*\* Overview, Scope of Work, Scope of Work Proposal Requirements, Cost Proposal, Award Criteria, Evaluation Tool (in Word) OR  
LOI - Letter of Interest \*\* Pre-bid form released to determine bidder interest/availability in specific service or product OR  
RFSQ - Request for Statement of Qualifications \*\* Pre-bid form released to qualify vendor capability for specific service or product usually resulting in master agreement.

Also consider:

- Local Vendor Preference required in RFQ's (not RFP's)
- Prevailing Wage requirement for SERVICES on County property
- Utilizing other Agency or Cooperative Agreements/Contracts
- Requirements for utilizing Federal funds for contract

\*\* see Purchasing section in eServices

SEE NEXT PAGE

## General Purchasing Question?

Each Purchasing team member is assigned different departments and/or divisions. Please keep in mind that the buyer on this list will not necessarily be processing the work sent over by your department. However, they should be your first point of contact with any process questions.

<i>Gary Cornuelle</i>	<i>Dept. of Social Services, Clerk to the Board, CAO Office</i>
<i>Carolyn Flores</i>	<i>Dept. of Public Health</i>
<i>Bryan Hernandez</i>	<i>Dept. of Behavioral Health, Facilities</i>
<i>Yvette Jamison</i>	<i>Sheriff/Coroner</i>
<i>Erin Jones</i>	<i>Public Defender, District Attorney, Human Resources</i>
<i>Louann Jones</i>	<i>Library, IT</i>
<i>Chanvathei (Chan) Lonh</i>	<i>Child Support, Assessor/Recorder, Probation</i>
<i>Crystal Nino</i>	<i>Ag Dept., County Counsel, Security</i>
<i>Debbie Scharnick</i>	<i>Fleet, Auditor</i>
<i>Heather Stevens</i>	<i>Graphics, Elections, Public Works</i>

**Contact Purchasing to schedule training for:**

- **Purchasing 101**
- **RFPs and RFQs**
- **RFI Process**

PURCHASING CONTACTS			
<b>Purchasing Manager:</b>		<b>Purchasing Technicians:</b>	
Gary Cornuelle	600-7114	gcornuelle@fresnocountyca.gov	Yvette Jamison 07116 jamisy@fresnocountyca.gov
<b>Purchasing Analysts:</b>			Erin Jones 07120 ejones@fresnocountyca.gov
Carolyn Flores	07112	cflores@fresnocountyca.gov	Chanvathei (Chan) Lonh 07119 clonh@fresnocountyca.gov
Bryan Hernandez	07117	bhernandez@fresnocountyca.gov	Crystal Nino 07113 cnino@fresnocountyca.gov
Louann Jones	07118	ljones@fresnocountyca.gov	Debbie Scharnick 07111 dscharnick@fresnocountyca.gov
<b>Main Line:</b>			Heather Stevens 07115 heastevens@fresnocountyca.gov
Susan Terry	600-7110 or 07121	sterry@fresnocountyca.gov	<b>Surplus &amp; Cal-Card:</b>
			Crystal Nino (Coordinates Surplus) 07113 cnino@fresnocountyca.gov
			Heather Stevens (Coordinates Cal-Card) 07115 heastevens@fresnocountyca.gov