



**PIMA COUNTY, ARIZONA
BOARD OF SUPERVISORS POLICY**

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I. Purpose

To establish a consistent, uniform and efficient contracting policy and process that optimizes the prudent expenditure of public funds while protecting the interests of Pima County.

II. Scope

Applicable to all County employees and departments of Pima County, including those legal districts where the County Board of Supervisors serves as the district's Board, and all contractual arrangements or agreements ("contracts") established on behalf of the applicable entities. All such contracts and agreements shall be established consistent with and pursuant to the Pima County Procurement code, Board of Supervisor policies and Procurement procedures.

III. Policy

This Policy applies to all contractual arrangements or agreements, including all non-procurement or Procurement Code-exempt contracts as further described in this Policy. All contractual arrangements or agreements shall be processed through the Procurement Department in accordance with this Policy.

No County Department shall execute any contractual arrangement or agreement except as stated in this Policy unless such authority has been otherwise delegated in writing by the Procurement Director per Pima County Procurement Code Section 11.08.010, or by the Board of Supervisors.

The department engaging or acquiring the material or service is responsible for monitoring, evaluating and assuring the delivery of all contracted performance.

IV. Centralized Contracts Processing and Repository

All contracts requiring the approval of the Procurement Director or Board of Supervisors will be processed through the Procurement Department to assure proper administrative review. The Procurement Department will maintain a comprehensive contract repository system that will provide positive identification and retrieval of the contract documents. This repository and its contents shall be freely accessible as a public record, except where limited pursuant to confidentiality conditions prescribed in Policy D 29.2 (XVIII.).

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V. Contract Development

- A. Wherever possible, all contract document forms will be initiated and developed by Pima County. Standard contract templates approved “as to form” by the County Attorney are available on the Procurement Department intranet website; other contract forms may be developed and approved “as to form” by or through the County Attorney’s office. All contract forms shall be developed and approved as defined by Section VI. of this policy.
- B. All contract documents must be reviewed, modified, executed and administered in accordance with Procurement Department procedures.
- C. All contracts must include, in general as well as specific provisions, all terms and conditions necessary to maximize protection of Pima County’s fiscal, legal, and functional liabilities to the greatest extent possible consistent with the form of contract.

Contracts for the acquisition of goods or services funded by Grant funds may require incorporation of additional terms and conditions to satisfy grant-related or other legal requirements. Departments shall consult with the “Grantor”, assigned legal counsel and the Finance Grants Division to identify and assure inclusion of contract language that specifically assigns satisfaction of those requirements to either County or the Contractor and that optimizes and minimizes all legal, financial and functional liabilities of Pima County.

- D. The Procurement department, when requested, will provide contract drafting support to client departments.
- E. The Procurement Department and those delegated Procurement authority, are authorized to contract for materials and services through the issuance of discrete and finite contracts or purchase orders and “as required” annual contracts or master agreements from which documents such as a purchase order or delivery order may be issued. If consistent with the terms of the solicitation, the response submitted by the Contractor shall constitute a firm and binding offer to provide materials and services pursuant to the terms of the solicitation upon receipt by the County. County shall evidence acceptance through the issuance of a master agreement, contract, purchase order or delivery order issued by an authorized agent of Pima County, which upon issuance shall result in a Contract binding upon both parties without further action.

If specifically allowed under the terms of the solicitation issued by County, contracts under this section may be amended by the issuance of a revision to the master agreement, contract, purchase order or delivery order. The revision shall be effective and binding upon both parties if the Contractor fails to object to the revision within ten (10) days of the date of issuance by County.

Nothing in this section shall be construed to alter the scope of the Procurement Director’s signature authority as set forth elsewhere in this Policy, other Board Policy or Pima County Procurement code. Any contract that exceeds the Procurement Director’s signature authority

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shall be executed by the Board, with any subsequent amendment executed by the Board, subject to the exceptions set forth in Sections XI. and XIII. of this Policy.

In processing contract revisions under this section, the Procurement Director shall adhere to the requirements of Sections XI. and XII. of this Policy.

VI. County Attorney Approval as to Form

- A. All contracts committing the County to \$5,000.00 or more for the duration of the contract and all Intergovernmental Agreements will be approved as to form by the County Attorney before being submitted to the Contractor and to either the Procurement Director or the Board of Supervisors for approval, except as set forth below. Contracts under \$5,000.00, may be executed without County Attorney approval as to form, however, the Procurement Director may, on a case by case basis, request such review and approval.
- B. Notwithstanding the above requirement, contracts for general and professional and architectural and engineering services processed pursuant to Section (V.)(E.) that utilize a form of contract previously approved by the County Attorney, and are valued at between \$5,000 and \$50,000, need not be subsequently approved as to form by the County Attorney.
- C. Contracts for general and professional and architectural and engineering services processed pursuant to Section (V.)(E.) with a value over \$50,000 shall be approved as to form consistent with this section regardless of whether the County Attorney has previously approved the form of contract.
- D. Contracts for materials processed pursuant to Section (V.)(E.), utilizing standard terms and conditions previously approved by the County Attorney, do not need to be individually approved as to form by the County Attorney, regardless of value.

VII. Contract Term

Contracts for materials and services – except for those that are tied to a specific single project – shall have a specific term that does not exceed one year unless there is specific statutory authorization, and the Procurement Director has approved an initial term of more than one year. Unless otherwise provided in the contract, contracts tied to a specific single project will terminate upon project acceptance and final payment by the County and release of retainage, if any. “As required” annual contracts with multi-year terms shall be evaluated for continuation or modification on an annual basis during the term of the contract. Contracts for the acquisition, conveyance or leasing of an interest in real property, the granting of licenses and franchises and other contracts involving real property may be for a term in excess of one year if in compliance with applicable law; provided, however, that if such term exceeds five years the Contract must be submitted to the Board for approval. All Contracts should specify any terms, such as indemnity provisions, that survive termination or expiration of the Contract term.

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VIII. Contract Scope

Each proposed Contract must specifically define the exact materials or services to be provided, and include all monetary and non-monetary commitments of each party. It is the responsibility of the department engaging or acquiring the service or commodity to assure the Contractor’s strict compliance with ALL terms of the Contract.

IX. Monetary Commitments

All Contracts or agreements that involve payment of monies by the County, except “as required” Annual Contracts for general materials and services, must have a specific, or clearly ascertainable and objectively limited, dollar commitment, be it a fixed, budgetary, or “not-to-exceed” amount or an amount determined by application of a specified formula to specified data (that is, amounts such as verifiable operating expenses for a leased facility that are set at the discretion of the County or the Contractor, and closing costs for real estate acquisitions and sales).

X. Central Procurement Administrative Processing and Retention

Except for (i) Contracts originated by central Procurement, and (ii) Contracts that pursuant to this Policy do not require processing by Procurement, all Contracts must be:

1. Approved as to content by the Department Head or Authorized Signer;
2. Submitted by the Department to the County Attorney for legal review and approval “as to form” as required by this Policy;
3. Signed by the Contractor before submission to the Procurement Department; and
4. Executed by either the Procurement Director or the Board of Supervisors, pursuant to Section XI. of this Policy.

Where changes are required, the Contract will be returned to the originating Department Head or Authorized Signer, with appropriate recommendations.

Upon execution by either the Procurement Director or the Board of Supervisors, or as otherwise authorized by this Policy, the Contract shall be scanned to the County’s internet Public Portal by the Procurement Department and notification provided to the originating Department and Vendor.

One hardcopy of the contract or agreement will be retained by Procurement. Electronic, scanned or copied signatures are acceptable for the retained Procurement copy, unless otherwise indicated by the County Attorney. If other arrangements (e.g. additional hardcopies, triplicate ink signed originals, etc.) are required, the originating department must coordinate this with Procurement at time of submission of the Contract for processing.

If at any time the Clerk of the Board receives a contract or agreement for execution by the Board that has not been processed through the Procurement Department, the Clerk’s office should email the Procurement Director seeking direction with respect to the Contract. The Contract should be

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delivered to Procurement for processing before the Board of Supervisors executes the contract unless the Procurement Director indicates otherwise.

XI. Contract Approval

A. Standard Contracts:

Unless otherwise specified in this policy, all Contracts and amendments shall be approved and signed by the Procurement Director, authorized designee or the Board of Supervisors, as set forth below:

- Contracts valued at \$250,000 (revenue or expense) or less per year, except as listed below, may be approved by the Procurement Director, or authorized designee.
- The following Contracts must be approved and executed by the Board:
 - Contracts involving revenues or expenditures of more than \$250,000 per year;
 - Contracts with an initial term of more than five years;
 - Contracts for professional services procured pursuant to BOS Policy D29.6 greater than \$50,000;
 - Intergovernmental Agreements;
 - Grant awards made to the County; and
 - Funding agreements authorized by A.R.S. § 11-254.
- Notwithstanding any provision in this policy to the contrary, the Procurement Director or authorized designee may execute Contracts pursuant to Section (V.)(E.) for the purchase of materials in any amount and any revisions to such contracts, provided that the Board shall make any *award* that exceeds the Procurement Director’s award authority.

B. Grant Awards to Pima County:

All agreements to accept grants awarded to the County shall be executed by the Board of Supervisors. Departments shall comply with BOS Policy D 22.6, which governs all grant awards to Pima County. Grant agreements must be processed through the Procurement Department for approval and signature. Due to various complexities and time requirements however, grant acceptances often necessitate immediate approval in order to take advantage of available funds. Based upon the requirements/restrictions imposed by the grantor it is not always possible to follow standard Contract approval procedures. As such, grant agreements may be expedited by requesting that the Chair of the Board of Supervisors execute the grant acceptance/agreement, to be subsequently ratified by the Board. The

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execution of such agreements shall be obtained following standard contracts processing procedures through the Procurement Department.

C. Design & Construction Contracts:

Design & Construction Contracts for \$250,000 or less shall be awarded and executed by the Procurement Director. Design & Construction Contracts for more than \$250,000 shall be awarded by the Board, based upon the Recommendation for Award presented to the Board of Supervisors at a regularly scheduled Board meeting. The Board award will authorize the execution of the Contract by the Chair of the Board of Supervisors. Ratification of the Contract shall not be required if the elements of the required work and contract award amount are not changed from previous Board approval. The execution of the Contract shall be obtained following standard “signature only” contracts processing procedures through the Procurement Department.

D. Emergency Contracts:

Emergency Contracts for materials and services, excluding design and construction services, shall be acquired in accordance with Procurement Code Section 11.12.060. Emergency contracts for design and construction services shall be acquired in accordance with Arizona Revised Statutes Title 34. The responsible department shall prepare supporting justification of need and provide this with the Contract to the Procurement Department in accordance with standard processing procedures. The Procurement Director shall review the documentation, and determine whether the appropriate basis exists for the emergency procurement. If the Procurement Director determines that the required necessity has been shown, and pursuant to approval by the County Administrator, he may execute the Contract on behalf of Pima County if equal to or less than \$250,000, or equal to or less than \$50,000 if professional services pursuant to Policy D 29.6. Emergency contracts more than \$250,000, or more than \$50,000 for professional services pursuant to D 29.6, shall be executed by the Chair of the Board of Supervisors and subsequently ratified by the Board. If the Procurement Director determines that the emergency procurement is not justified, he will so notify the originating department which may, if appropriate, supply additional information and request reconsideration.

E. Funding Agreements:

As authorized by A.R.S. § 11-254 and BOS Policy E 36.1, the County has developed several programs for awarding County funds to federally tax-exempt non-profit corporations and government agencies, to be used for specified public purposes. Grants or sub-grants and resulting agreements shall follow established internal selection procedures and utilize contract templates developed specifically for that purpose. Funding agreements must be for a specified community/public purpose; the funded agency must be a government agency or federally tax exempt non-profit entity with a tax identification number, registered in Procurement’s vendor database; funding must provide community and economic development benefits; and depending upon the value of award, may be authorized via Board

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Policy D 29.3 or through a standard funding agreement template. An aggregate funding cap will be approved and monitored by Budget Control for these purposes annually.

Funding agreements will be drafted by the funding department and, regardless of the dollar amount involved, must be processed for signature by the Chair after Board action approving the funding and purpose, except that funding amounts less than \$5,000 may be authorized and paid pursuant to Board Policy D29.3.

F. Legal Services Contracts:

The contracting of legal services (e.g. experts and attorneys retained to provide testimony or other professional services relating to pending or anticipated litigation or administrative proceedings) is exempt from the Procurement Code per Section 11.04.020 and is not required to follow the competitive processes outlined in Chapter 11.12.

Though exempt from the Procurement Code, the above types of contractual arrangements or agreements must be processed through the Procurement Department for central review and executed by the Procurement Director or Board of Supervisors per the requirements of this Policy.

Contracting for attorney services shall adhere to the following guidelines:

- a. An applicant for a legal services contract shall not be a current Pima County employee at the time of application and for the duration of any contract.
- b. Pima County Attorneys, Pima County Public Defenders and Pima County Legal Defenders who were employed by the County for less than five (5) consecutive years shall be restricted from applying for an indigent legal defense Contract for one year following retirement or resignation from Pima County employment.
- c. Applicants for indigent legal defense contracts must submit appropriate documentation to enable the County to verify the character, ethics and reputation of the applicant and shall reject the application of any applicant who discloses any criminal charges or criminal complaints, criminal convictions, or the completion of any type of deferred prosecution that constitutes a criminal conviction on the underlying criminal charge within the five year period prior to initial application for an indigent legal defense Contract. A rejected applicant may appeal to the Board of Supervisors.

G. Real Property Agreements:

Real Property Agreements are generally exempt from the competitive requirements of Section 11.04.020 Procurement code. Real Property agreements include but are not limited to:

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- Services related to land titles, appraisals, real property acquisitions, relocation, or property management;
- Contracts and conveyance instruments involving the acquisition or disposition of any *real property interests* (including the use of County property by other entities or individuals); and
- The use by the County of non-County owned property, on either a short term or long term basis; i.e., leases, licenses, easements, permits, etc.

At the determination of the County Attorney, the above types of contractual arrangements or agreements not utilizing a standard form of contract previously approved by the County Attorney or pose a liability concern shall be processed through the Procurement Department for central review and executed by the Procurement Director or Board of Supervisors per the requirements of this Policy.

H. Other Non-Procurement Contracts:

Non-Procurement Contracts are agreements or arrangements that do not involve competitive acquisition of materials, services, equipment or construction and are outside the scope of the Procurement Code. Non-Procurement Contracts may include but are not limited to:

- Intergovernmental agreements (even where there is some exchange of services or funding);
- Revenue contracts;
- Contracts involving the *disposition or conveyance* (rather than acquisition) of materials or services;
- Approval or acceptance of certifications or undertakings by third parties in connection with any regulatory approval process (i.e., development assurances); and
- Issuance by the County of permits related to regulatory requirements of a technical nature (i.e., building, flood control, environmental permits, etc.).

With the exception of Intergovernmental Agreements, grant awards made to County, and funding agreements, the Procurement Director may execute these contracts if they do not obligate the County for more than five years or for an expenditure of more than \$250,000 annually. The Procurement Director may approve Software License Agreements that exceed five years, provided the license agreement does not obligate the County to an expenditure of more than \$250,000 annually in the first five years.

I. Standard Form Permits and Licenses:

Unilateral, standard form permits and licenses that are issued by the County in exchange for payment of a standard fee are not treated as “contracts” subject to approval and processing through the Procurement Department. This includes such things as permits for the temporary

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exclusive use of park facilities; rights of entry for county officials to enter upon the property of another for temporary use or inspection; licensing the use of County data; and building and other development-related technical permits. In addition, the Board may at times delegate signature authority of supplemental documents and instruments necessary to complete or “close” a transaction to other officials or staff at the County (such as deeds, easements, real property closing statements, supplemental site-specific use agreements, final grant agreements, etc.); the scope of this delegation will vary. The form of these permits and licenses, and any requirements or parameters with respect to their use, must be approved by the County Attorney’s Office and Risk Management. Provided that the requirements and parameters are followed and the standard form of permit or license is used, individual documents of these types need not be reviewed by the County Attorney’s Office or Risk Management.

XII. Authorization to Proceed and Retroactive Effective Dates

Authorization to proceed or performance under Contract is not permitted until after the Contract is fully signed and executed. If a department has a particular need to process a Contract with a retroactive start date, the Contract, with accompanying justification supporting its retroactive execution, must be submitted through the Procurement Department following standard Contract processing procedures. The Procurement Director shall review the retroactive request and make a determination whether processing the Contract retroactively is in the best interest of Pima County. Contracts not approved will be returned to the department with instructions to follow Contract procedures to meet these requirements.

XIII. Contract Modifications

All Contract modifications, including but not limited to: scope modifications, time extensions, dollar amount, and/or name, location or contact information changes, shall be executed in the form of a Contract Amendment. Templates for departmental use are available on the Procurement Intranet website.

All amendments to Intergovernmental Agreements, grant awards made to County, and funding agreements must be approved and executed by the Board. Amendments to other types of Contracts involving a total expenditure of no more than \$250,000 per year may be approved and executed by the Procurement Director. Amendments to Contracts involving expenditures in excess of \$250,000 per year (either originally or as a result of the contemplated amendment), must be approved and executed by the Board except as follows:

The Procurement Director may execute an amendment to any Contract initially approved by the Board, other than Intergovernmental Agreements, grant awards made to County, and Funding Agreements, provided the amendment is limited to term extensions permitted in the original Contract, changes to the name, location or contact information of the Contractor and does not alter the scope of the Contract or the monetary commitment of the initial Board award.

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Contract amendments shall be processed according to standard contract processing procedures except that certain changes to construction contracts will be processed in accordance with the Procurement Code Section 11.16.010 C.

XIV. Contract Termination

Any department intending to terminate a contract for convenience or cause must notify the Procurement Department of its intent before termination proceeds. If the Procurement Department determines that cause exists to terminate the contract or if the department intends to terminate for convenience, the Procurement Department shall notify the contractor of the County's intent to terminate the Contract. The Procurement Department shall then draft a document that terminates the contract in accordance with the termination procedures in the Contract and forward that notice document to the authority that executed the original Contract for signature, after approval by the County Attorney's Office. If the contract does not specify termination procedures, the effective date shall be thirty days after the notice of intent to terminate. The termination notice shall become a part of the official contract file.

XV. Administrative Follow-up

For contracts required to be procured by the Procurement department as defined by Pima County Procurement code the Procurement Department will, in cooperation with involved departments, follow up on matters such as certificates of insurance, performance bonds, retentions, expirations, cancellations, renewals, and other contract administration matters not directly related to delivery of the service or commodity to be supplied under the Contract. Contractors and departments must reference the Contract Number on all bonds, insurance certificates, invoices, credits, correspondence and other documents related to the Contract.

XVI. Procedures

Specific procedures that detail a uniform process and consistent standards for development, execution, and monitoring of all contracts to protect and maximize the taxpayers' investment in Pima County government pursuant to this Policy shall be the responsibility of the Procurement Director.

Effective Date: April 1, 2011