

# CITIZENS' ECONOMY AND EFFICIENCY COMMISSION



of Los Angeles County

June 9, 1993

Honorable Edmund Edelman  
Los Angeles County Board of Supervisors  
500 W. Temple  
Room 821, Hahn Hall of Administration  
Los Angeles, CA 90012

Dear Chairman Edelman,

On April 9, 1992, the Board of Supervisors of Los Angeles County asked the Economy and Efficiency Commission to "review and report" on County Proposition A contracting guidelines. The Chief Administrative Office (CAO) presented to your Board on December 23, 1992, a set of recommendations. Action was taken by your Board on January 28, 1993 and implementing instructions issued by the CAO on February 1, 1993.

The attached review specifically addresses the above actions, together with their impact on the contract evaluation process, while our 1987 Commission Report dealt with general recommendations on contracting policy. Nevertheless, when in the course of our investigation policy issues arose, the Commission attempted to identify them and to make appropriate recommendations within the framework of the Board's direction. In addition, our Commission has taken this opportunity to contribute to the process of evaluating both contractor and County management performance.

The Commission appreciates the opportunity to provide a review which will assist the County in achieving a more efficient and effective contracting process and looks forward to providing future assistance.

Sincerely,

Gunther Buerk  
Chairperson

C: Each Supervisor  
Each Economy and Efficiency Commissioner  
Harry Hufford, Chief Administrative Officer  
DeWitt Clinton, County Counsel  
Allan Sasaki, Acting Auditor Controller  
Bruce J. Staniforth, Executive Director

**Chair**

Gunther W. Buerk

**Vice-Chair**

Betty Trotter

**Commissioners**

George S. Ackerman  
Fred P. Balderrama  
Richards D. Barger  
Judith Brennan  
Marshal J.M. Chuang  
Jack Drown  
David W. Farrar  
John A. FitzRandolph  
Louise Frankel  
Dr. Alfred J. Freitag  
Jonathan S. Fuhrman  
Dr. Mike R. Gomez  
Chun Y. Lee  
Carole Ojeda-Kimbrough  
Roman Padilia  
Robert H. Philiposian  
Daniel M. Shapiro  
Randolph B. Stockwell  
Efrem Zimbalist, III

**Executive Director**

Bruce J. Staniforth

**Assistant to the Director**

Peter C. White

Kenneth Hahn Hall of Administration, Room 163  
500 West Temple Street, Los Angeles, CA 90012  
(213) 974-1491 \* (213) 620-1437 FAX

## A REVIEW OF THE ACTIONS TAKEN ON PROPOSITION A CONTRACTING REQUIREMENTS

### EXECUTIVE OVERVIEW

The Economy and Efficiency Commission, responding to an April 9, 1992 request by the Board of Supervisors, has reviewed the recent actions taken to develop and implement more efficient procedures to analyze and introduce Proposition A contracts (Appendix A). This review identifies several opportunities for improvement and recommends a number of actions that will result in a more effective approach to contract management.

In a June 1992 article in the *Government Finance Review* entitled "Reducing Service Delivery Costs Through Public/Private Partnerships," the then Los Angeles County Chief Administrative Officer (CAO), Richard Dixon, states:

From the beginning, contracting was approached with an eye to avoiding the administrative burden-excessive regulations, policies, procedures and directives that permeates so much of public purchasing programs and the civil service system. The County sought to encourage creative thinking through management incentives and a decentralized approach.

The actions taken recently lack this approach since they impose requirements and place administrative burdens upon departments and contractors without any clear identification of the objectives to be achieved or clear understanding of how the data requested is to be used.

The above article further asserts that the contracting program has resulted in savings of over \$250 million since its inception and accounts for an estimated annual savings of \$53.1 million. These savings justify an additional investigation that is wider in scope than that provided in the present review.

As illustrated in the discussion on contracting for the GAIN program held during the May 18, 1993 Board meeting, the current contract evaluation process lacks a coherent approach, is not clearly understood by labor and management of the County or by contractors, and is subject to question by some Board Members.

A reemphasis of the Board's desire to measure the efficiency and effectiveness of a program based upon an accepted cost analysis methodology is particularly necessary at this point in the development of contracting policy. County staff, contractors and consumers of County services have a right to expect a fair and objective evaluation of any

contracting option. They also have a right to provide input to the formulation of this policy and to the processes that will affect their lives and livelihood. Once the Board establishes clear program objectives and approves the criteria, the parties involved will become better informed and able to understand the decision making process.

In the past some Board members have indicated concern over their inability to understand the cost differences between competing proposals. This has included an inability to clearly identify the costs of having a County department render the service, leaving unanswered the question as to whether a County department could provide the proposed service level at the same or lower cost as the contractor.

The review undertaken by this Commission has made numerous recommendations to improve the existing contracting process. It should be reemphasized that these recommendations are to be viewed as responding to only part of the issue. A more comprehensive review of the contracting program is required to insure that all of the requirements of the process have been integrated and that the objectives of the program are clearly identified and achieved.

The listing which follows presents, in summary form, a statement on each recommendation made in this review.

Recommendations

**HEALTH BENEFITS FOR CONTRACT EMPLOYEES**

1. Issue instructions clarifying that it is not now a requirement for contractors to provide health benefits.
2. Analyze the economic, organizational, and individual impacts of mandating health benefits.

**STANDARD FORMAT FOR COST SAVINGS ANALYSIS**

3. Clearly explain any revisions to the contracting process.
4. Revise the *Countywide Contracting Manual* to reflect any changes to the contracting process.
5. Insure that all contracting instructions provide opportunity for suggestions.
6. Review the current contract evaluation procedures.
7. Require a statement in the *Countywide Contracting Manual* on qualitative impacts.
8. Revise the approved "Comparison of Estimated Avoidable Costs to the Cost of Contracting" Form.

9. Rescind approval of the "Contract Employee Wages & Benefits" Form.

**EVALUATION OF SERVICES PROPOSED FOR CONTRACTING**

10. Develop further a process for analyzing cost savings opportunities in contracting.

11. Clarify analytic requirements in renewing or modifying a contract.

12. Develop, where possible, public and/or private sector comparative performance data.

13. Report on the CAO review of contracting opportunities in "main mission activities" of departments.

**REPORT TO THE BOARD ON PROPOSITION A CONTRACTS**

14. Insure that the annual report evaluates the performance of the contract and the department.

15. Consider formation or use of advisory bodies to develop Statements of Service Quality.

16. Revise the approved "Report on How Proposition A Contracts are Being Carried Out" Form.

**PERFORMANCE BASED PAY EVALUATION GUIDELINES**

17. Clarify that Performance Evaluations are based on measurable objectives defined within the contract.

18. Revise the *Countywide Contracting Manual* to reflect performance-based objective accomplishments.

19. Revise the "Department Head Performance Agreement and Evaluation" Form.

**COST EFFECTIVE CONTRACTING**

Refer to Recommendations #6, #7, and #10.

**COMMUNITY IMPACT/ CONTRACTING POLICY**

20. Study the economic role of the County as an employer and buyer of goods and services in the region.

21. Direct that the economic role of the County be reviewed annually.



MINUTES OF THE BOARD OF SUPERVISORS  
COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

Larry J. Monteilh, Executive Officer  
Clerk of the Board of Supervisors  
383 Hall of Administration  
Los Angeles, California 90012

All Department/District Heads  
and Presiding Judges

At its meeting held April 9, 1992, the Board took the following action:

14

The following matter was called up for consideration:

Supervisor Molina's recommendation to instruct the Chief Administrative Officer and the Auditor-Controller to revise the Proposition A contracting guidelines, to require that all new and renewed contracts mandate the provision of basic health benefits at a level equivalent to those provided to County employees in comparable positions; also instruct the Auditor-Controller to develop a standard format that each Department shall use to summarize the cost savings analysis for Proposed Proposition A contracts, identifying the actual personnel costs, supply costs and indirect costs that will be avoided through contracting, including a comparison with the direct and any indirect costs, such as contract monitoring, employee retraining, etc., that will be incurred by contracting; and instruct each Department/District Head to present its cost savings analysis and an evaluation that details why equivalent cost savings cannot be achieved with better County management practices, more efficient use of County personnel, technological improvements, or other means to reduce the cost of service proposed to be contracted.

Interested persons addressed the Board.

(Continued on Page 2)

Syn. 14 (Continued)

After discussion, Supervisor Antonovich made a motion, seconded by Supervisor Dana, that the Board:

- Delete from consideration the requirement of "equivalent" health benefits and instead require insurance coverage;
- Refer Supervisor Molina's recommendations to the Los Angeles County Citizens Economy and Efficiency Commission to study the impact on minority-and-women-owned firms; and
- As a Board policy, require that health benefits be applied to all County contracts, not just Proposition A contracts.

Said motion failed to carry by the following vote: Ayes: Supervisors Antonovich and Dana; Noes: Supervisors Molina Hahn and Edelman.

Supervisor Molina made a motion, seconded by Supervisor Edelman, that the Board take the following actions:

1. Instruct the Chief Administrative Officer and the Auditor-Controller to revise the Proposition A contracting guidelines to require that all new and all renewed contracts mandate the provision of basic health benefits;
2. Instruct the Auditor-Controller to develop a standard format that each Department shall use to summarize the cost savings analysis for proposed Proposition A contracts. The format should identify the actual personnel costs, supply costs and indirect costs that will be avoided through contracting. It should also include a comparison with the direct and any indirect costs, such as contract monitoring, employee retraining, etc., that will be incurred by contracting; and
3. Instruct each Department/District Head to present a cost savings analysis and an evaluation that details why equivalent cost savings cannot be achieved with better County management practices, more efficient use of County personnel, technological improvements, or other means to reduce the cost of service proposed to be contracted.

(Continued on Page 3)

Syn. 14 (Continued)

Supervisor Edelman offered an amendment to add the following to Supervisor Molina's motion:

- Instruct each Department/District Head to report semi-annually, on how the terms of any contracts let under Proposition A are being carried out;
- Determine that no County Department/District Head shall recommend contracting out any function until the Department reports to the Board on how the County could perform that function more economically;
- Determine that pay-for-performance participants shall not be rated on the basis of how many Proposition A contracts have been awarded, but on the basic management functions of the position;
- Determine that contracting-out proposals shall be both cost effective and feasible; and
- Instruct County Counsel and the Chief Administrative Officer to prepare the appropriate language and ordinance amendment to implement the aforementioned recommendations.

Supervisor Molina accepted Supervisor Edelman's amendment, and her motion, as amended, was adopted by the following vote: Ayes: Supervisors Molina, Hahn, Edelman and Dana; Noes: Supervisor Antonovich.

On motion of Supervisor Antonovich, seconded by Supervisor Hahn, unanimously carried, the aforementioned adopted actions were referred to the Los Angeles County Citizens Economy and Efficiency Commission for a review and report.

30409-3.com

Copies distributed:  
Each Supervisor

Letter sent to:  
Chairperson, Los Angeles County  
Citizens Economy and Efficiency  
Commission

**Charter of the Los Angeles County**

**Article IX**

**Sec. 44.7. Nothing in this Article shall prevent the County, when the Board of Supervisors finds that work can more economically or feasibly be performed by independent contractors, from entering into contracts for the performance of such work. The Board of Supervisors shall adopt an ordinance specifying criteria for entering into contracts, and specifying competitive bidding procedures for the award of such contracts.\***

**\*NOTE: The Board of Supervisors has mended the ordinance to delete the feasibility option from the County Code, although it is still provided in the Charter.**





# COUNTY OF LOS ANGELES CHIEF ADMINISTRATIVE OFFICE

713 HALL OF ADMINISTRATION / LOS ANGELES, CALIFORNIA 90012  
974-1101

RICHARD B. DIXON  
CHIEF ADMINISTRATIVE OFFICER

February 1, 1993

To: All Department Heads

From: Richard B. Dixon  
Chief Administrative

## **Subject: CHANGES TO THE PROPOSITION A CONTRACTING REQUIREMENTS**

On January 28, 1993, the Board of Supervisors approved a number of changes to the Proposition A contracting requirements. This memorandum summarizes the new requirements and provides the formats for the required reports.

### **Standard Formats for Cost Savings Analysis and Benefit Comparison**

The Board instructed department heads to provide contract cost savings analyses and employee benefit comparisons for proposed Proposition A contract awards. Attached are the approved standardized formats that must be included in all Board letters requesting approval of Proposition A contracts. These are, the Comparison of Estimated Avoidable Costs to the Cost of Contracting (Attachment I) and Contract Employee Wages and Benefits comparison (Attachment II). Proposition A Board letters, new and resolicitations, will not be placed on the agenda without them.

### **Department Head Evaluation of Services Proposed for Contracting**

The Board instructed department heads to explore cost efficiencies/productivity improvements that could be implemented to make a service proposed for contracting more economical prior to making a decision to contract out a function. Department heads were further instructed to provide a cost savings analysis and a report that details why equivalent cost savings cannot be achieved with better County management practice, more efficient use of County personnel, technological improvements, or other means to reduce' the cost of the service. The department head's report on this must likewise be included in all Board letters requesting the award of a new Proposition A Contract.

proposa.mao

All Department Heads  
February 1, 1993  
Page 2

### **Cost-Effective Contracting**

The Board approved ordinance changes to delete the option to award a Proposition A contract based solely on feasibility. Board letters requesting award of a Proposition A contract must show cost-effectiveness in all cases.

### **Annual Report to the Board on Proposition A Contract**

The Board instructed department heads to report annually on how the terms of any contracts executed under Proposition A are being carried out. The first annual report is due to this office March 1, 1993. Attachment III gives the requested format for this report which should be sent to your Chief Administrative Office (CAO) analyst. My office will forward a compiled report to each Board office.

### **Performance-Based Pay (PBP) Evaluation Guidelines**

The Board instructed that PBP participants shall not be rated on the basis of how many Proposition A contracts have been awarded, but on basic management functions. While this has always been the case, the PBP rating form has been modified to clarify this.

Questions about these requirements may be directed to your CAO analyst.

RBD:VAC NF:os/G

Attachments

c: Each Supervisor

proposa.mao

## Chapter 2.121

## CONTRACTING WITH PRIVATE BUSINESSES

## Sections:

- 2.121.250 Scope of Chapter 2. 121 provisions.
- 2.121.260 Definitions.
- 2.121.280 Request for work to be performed by independent contractors
- 2.121.290 Rejection of bids or proposals -- Language to be included
- 2.121.295 Certain contracts prohibited
- 2.121.300 Bids and proposals - Solicitation, receipt and award.
- 2.121.310 Source selection and award -- Methods.
- 2.121.320 Competitive sealed bidding.
- 2.121.330 Competitive negotiation
- 2.121.340 Negotiations after competitive sealed bidding where all bids exceed available funds.
- 2. 121.350 Noncompetitive negotiation.
- 2.121.360 Determination of bidder responsibility -- Language to be included
- 2.121.380 Award of Contracts - Mandatory prerequisites
- 2.121.390 Award of Contracts -- Statement on reduction of county services
- 2.121.400 Breach of contract -- Liquidated damages clause required when.
- 2.121.410 Breach of contract -- Performance bond provisions.
- 2.121.420 Award of contracts -- Board of supervisors finding required.

**2.121.250 Scope of Chapter 2.121 provisions.** A. This Chapter 2.121 implements Charter Section 44.7 as revised on November 7, 1978, and shall apply to the contracting with private businesses to perform personal services which are currently performed by county employees, or which could be performed by county employees through the recruitment of additional county personnel.

B. This Chapter 2.121 shall not apply to the contracting with private business to perform personal services when:

1. Authority to contract is expressly provided by statute:
2. The service cannot be performed adequately or competently or satisfactorily by civil service employees and it is impossible to recruit such personnel to perform such service for the period of time such service is needed by the county.
3. The service is of an extraordinary professional or technical nature and the services are of a temporary nature:
4. The services are needed on a part-time or intermittent basis: or
5. The contract is for personal services to provide an independent analysis/evaluation, review and/or audit of an existing or proposed county project, function or program, and there is a need or contractual obligation to obtain an independent analysis, evaluation, review and/or audit of said project, function or program.

C. This chapter shall not apply to the purchase, lease or acquisition of materials, supplies, furnishings, equipment, land other personal property. (Ord. 90-0030 § 3 (part). 1990.)

**2.121.260 Definitions.** As used in this chapter:

A. "Established catalogue price" means the price or rate included in the most current catalogue, price list, rate schedule or other form that:

1. Is regularly maintained by the offeror; and
2. Is either published or otherwise available for inspection by customers; and
3. States prices or rates at which services are currently, or were last,

provided to a significant number of users constituting the general consuming public for that item of service.

B. "Evaluated bid price" means the dollar amount of a bid, after bid price adjustments are made pursuant to objective, measurable criteria set forth in the invitation for bids, which affect the economy and effectiveness of the service.

C. "Invitation for bids" means all documents, whether attached or incorporated by reference, utilized for soliciting bids in accordance with the procedures set forth in Section 2.121.320, competitive sealed bidding.

D. "Request for proposals" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals in accordance with the procedures, set forth in Section 2.121.330, competitive negotiation, Section 2.121.340, negotiations after competitive sealed bidding where all bids exceed available funding, or Section 2.121.350, noncompetitive negotiation.

E. "Responsible bidder or offeror" means a person, firm or corporation who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.

F. "Responsive bidder" means a person, firm or corporation who has submitted a bid under Section 2.121.320, competitive sealed bidding, which conforms in all material respects to the invitation for bids, so that all bidders may stand on equal footing with respect to the method and timeliness of submission and as to the substance of any resulting contract. (Ord. 90-0030 § 3 (part), 1990).

**2.121.280 Request for work to be performed by independent contractors.**

A. The department recommending the award of a contract for services within the scope of this chapter shall be responsible for the preparation of the invitation for bids or request for proposals. The purchasing agent, county counsel and chief administrative officer shall advise the department, as appropriate, to assure proper format and compliance with this chapter and other legal, budget and policy requirements.

B. If any department determines to contract for services provided by another department, with the exception of services provided by the auditor-controller and county counsel, and believes that work can be performed more economically, by independent contractors, that budgeted funds are available, and that the work will not have an adverse effect on county tort liability, it may, with the consent of the chief administrative officer, solicit or request the purchasing agent to solicit bids or proposals for the work to be performed by independent contractors. The requesting department or purchasing agent shall also solicit a bid or proposal from the department providing the services. If the cost to perform the work is less than \$25,000.00. and if at least three bids or proposals are obtained from independent contractors, the contract may be awarded by the department head. The obtaining of three bids or proposals from independent contractors, one or more of which is lower than the bid or proposal submitted by the department providing the services,

shall constitute a finding by the board of supervisors that the work can be performed more economically by independent contractors. (Ord. 93-0013 § 1, 1993: Ord. 90-0030 § 3 (part), 1990.)

**2.121.290 Rejection of bids or proposals X Language to be included.** All bids or proposals may be rejected when such rejection is in the best interest of the county. All invitations for bids and requests for proposals shall contain a provision reading substantially as follows:

"The County may, at its sole discretion, reject all bids/proposals submitted in response to this Invitation for Bids/Request for Proposals. In the event of any such rejection, the County shall not be liable for any costs incurred in connection with the preparation and submittal of a bid/proposal." (Ord. 90-0030 § 3 (part), 1990.)

**2.121.295 Certain contracts prohibited.** A. Notwithstanding any other section of this code, the county shall not contract with, and shall reject any bid or proposal submitted by, the persons or entities specified below, unless the board of supervisors finds that special circumstances exist which justify the approval of such contract:

1. Employees of the county or of public agencies for which the board of supervisors is the governing body;
2. Profit-making firms or businesses in which employees described in subdivision 1 of subsection A serve as officers, principals, partners or major shareholders;
3. Persons who, within the immediately preceding 12 months, came within the provisions of subdivision 1 of subsection A, and who:
  - a. Were employed in positions of substantial responsibility in the area of service to be performed by the contract; or
  - b. Participated in any way in developing the contract or its service specifications; and
4. Profit-making firms or businesses in which the former employees, prescribed in subdivision 3 of subsection A, serve as officers, principals, partners or major shareholders.

B. Contracts submitted to the board of supervisors for approval or ratification shall be accompanied by an assurance by the department submitting, district or agency that the provisions of this section have not been violated. (Ord. 90-0030 § 3 (part). 1990.)

**2.121.300 Bids and proposals X Solicitation, receipt and award.** A. The purchasing agent or the department recommending the award of a contract within the scope of this chapter shall solicit and receive bids and proposals. All interested bidders shall have the same information and specifications. Responsive bids and proposals received by the purchasing agent shall be referred to the department recommending the award of a contract. The department recommending the award of a contract shall receive and evaluate the bids and proposals and make award recommendations to the board of supervisors. Except as otherwise provided in subsection B of Section 2.121.280, all contracts shall be awarded by the board of supervisors in accordance with the requirements in this chapter, and shall be signed by the chairman of the board of supervisors.

2.121.300

B. Any renewal or modification to any contract let under this chapter shall be approved by the board of supervisors and executed by the chairman unless the contract contains a provision expressly delegating to a county officer or employee

the authority to renew or modify the contract and the scope of the authority so delegated is specifically set forth in the contract. In recommending the award of a contract containing such a delegation, the department recommending the award shall state in writing that the scope of delegation has been reviewed with and approved by the county counsel. (Ord. 90.0030 § 3 (part), 1990.)

**2.121.310 Source selection and award X Methods.** All contracts for services within the scope of this chapter shall be awarded by:.

- A. Competitive sealed bidding, pursuant to Section 2.121.320;
- B. Competitive negotiation, pursuant to Section 2.121.330 and Section 2.121.340; or
- C. Noncompetitive negotiation, pursuant to Section 2.121.350. (Ord. 90-0030 § 3 (part), 1990.)

**2.121.320 Competitive sealed bidding.** A. Conditions for Use. Contracts shall be awarded by competitive sealed bidding unless it is determined in writing by the department recommending the award of a contract that this method is not practicable. Factors to be considered in determining whether competitive sealed bidding is not practicable shall include whether.

1. Specifications can be prepared that permit award on the basis of either the lowest bid price or the lowest evaluated bid price; and

2. The available sources, the time and place of performance, and other relevant circumstances are appropriate for the use of competitive sealed bidding.

B. Evaluation Factors. The invitation for bids shall state whether award shall be made on the basis of the lowest bid price or the lowest evaluated bid price. If the latter basis is used, the objective measurable criteria to be utilized shall be set forth in the invitation for bids.

C. Public Notice. Public notice of the invitation for bids shall be given a sufficient time prior to the date set forth therein for the opening of bids by the posting of a copy of the invitation for bid in the office of the purchasing agent. Where the award of a contract can reasonably be expected to exceed \$25,000.00, such notice shall include publication in a newspaper of general circulation within the county of Los Angeles a reasonable time prior to bid opening.

D. Bid Opening. Bids shall remain sealed until opened publicly at the time and place designated in the invitation for bids. No bids shall be accepted after the time designated for the opening of bids. Each bid, together with the name of the bidder, shall be retained and be open to public inspection.

E. Award. Except in those instances where all bids are rejected pursuant to Section 2.121.290, the contract shall be awarded with reasonable promptness to the responsive and responsible bidder whose bid is either the lowest bid price or lowest evaluated bid price. (Ord. 90-0030 § 3 (part), 1990.)

**2.121.330 Competitive negotiation.** A. When Used. When the department recommending the award of a contract determines in writing that the use of competitive sealed bidding is not practicable, and except as provided in Section 2.121.350, a contract may be awarded by competitive negotiation.

B. Use After Unsuccessful Competitive Sealed Bidding. Contracts may be competitively negotiated when it is determined in writing by the department recommending the award or a contract that the bid prices received by competitive sealed bidding either are unreasonable as to all or part of the requirements, or were not independently reached in open competition, and for which:

1. Each responsible bidder has been notified of the intention to negotiate and is given reasonable opportunity to negotiate;
2. The negotiated price is lower than the lowest rejected bid by any responsible bidder, and
3. The negotiated price is the lowest negotiated price offered by any responsible offeror.

C. Public Notice. Adequate public notice of the request for proposals shall be given in the same manner as provided in subsection C of Section 2.121.320.

D. Evaluation Factors. The request for proposals shall indicate the relative importance of price and other evaluation factors.

E. Award. Except in those instances where all bids are rejected pursuant to Section 2.121.290, award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the county, taking into consideration price and the evaluation factors set forth in the request for proposals.

F. Discussion with All Responsible Offerors. Written or oral discussions may be conducted with responsible offerors who submit proposals determined in writing to be reasonably susceptible of being selected for award. Discussions shall not disclose any information derived from proposals submitted by competing offerors. (Ord. 90-0030 § 3 (part), 1990.)

**2.121.340 Negotiations after competitive sealed bidding where all bids exceed available funds.** A. Determination. In the event that all bids submitted pursuant to competitive sealed bidding under Section 2.121.320 result in bid prices in excess of the funds available and the department recommending the award of the contract determines in writing:

1. That there are no additional funds available from any source so as to permit an award to the lowest responsive and responsible bidder, and
2. The best interest of the county will not permit the delay attendant to a resolicitation under revised specifications, and/or for reduced level of services, under competitive sealed bidding as provided in Section 2.121.320; then a negotiated award may be made as set forth in subsections B and C of this section.

B. Negotiation with Multiple Bidders. Where there is more than one bidder, competitive negotiations pursuant to Section 2.121.330 shall be conducted with the three (two if there are only two) bidders determined in writing to be the lowest responsive and responsible bidders to the competitive sealed bid invitation. Such competitive negotiations shall be conducted under the following restrictions:

1. If discussions pertaining to the revision of the specifications or quantities are held with any potential offeror, all other potential offerors shall be afforded an opportunity to take part in such discussions;
2. An addendum to the invitation for bids, based upon revised specifications or quantities, shall be issued as promptly as possible, shall provide for an expeditious response to the revised requirements, and shall be awarded upon the basis of the lowest bid price or lowest evaluated bid price submitted by any responsive and responsible offeror. No discussion shall be conducted with offerors



after submission of proposals except for a compelling reason as determined in writing by the department recommending the award of a contract. All addenda shall state that award is to be made without discussions except as herein provided.

C. Negotiation with Single Bidder. Where, after competitive sealed bidding, it is determined in writing by the department recommending the award of a contract that there is only one responsive and responsible bidder, a noncompetitive negotiated award may be made with such bidder in accordance with Section 2.121.350. (Ord. 90-0030 § 3 (part), 1990.)

**2.121.350 Noncompetitive negotiation.** A contract may be made by noncompetitive negotiation only when competition is not feasible, as determined in writing prior to award by the department recommending the award of a contract. (Ord. 90-0030 § 3 (part), 1990.)

**2.121.360 Determination of bidder responsibility X Language to be included.** A determination of responsibility of a bidder or offeror shall be made. All invitations for bids and requests for proposals shall contain a provision reading substantially as follows:

"A reasonable inquiry to determine the responsibility of a bidder or offeror may be conducted. The unreasonable failure of a bidder or offeror to promptly supply information in connection with such inquiry, including but not limited to information regarding past performance, financial stability, and ability to perform on schedule, may be grounds for a determination of nonresponsibility with respect to such a bidder or offeror." (Ord. 90-0030 § 3 (part), 1990.)

**2.121.380 Award of contracts X Mandatory prerequisites.** A. No contract may be awarded pursuant to this chapter unless all of the following requirements are met;

1. The services provided under the contract will be performed more economically by an independent contractor;
2. The county's ability to respond to emergencies will not be impaired;
3. The award of the contract will not result in the unauthorized disclosure of confidential information;
4. Alternative resources are available so that the services can be obtained from another source in the event of default by the contractor;
5. The award of the contract will not infringe upon the proper role of the county in its relationship to its citizens: and
6. The award of the contract, if financed in whole or in part by federal or state funds, will be in full compliance with all applicable federal and state regulations.

B. In making a recommendation to the board of supervisors for the award of a contract, the department recommending the award shall state in writing that the requirements of this section have been met. (Ord. 93-0013 § 2. 1993: Ord. 90-0030 § 3 (part). 1990.)

**2.121.390 Award of contracts X Statement on reduction of county services.** In making a recommendation for the award of a contract, the department recommending the award shall state in writing whether the contract will result in a reduction of county services, and if so, the extent of the reduction. (Ord. 90-0030 § 3 (part). 1990.)

**2.121.400 Breach of contract X Liquidated damages clause required when.** In all cases where it would be impracticable or extremely difficult to fix the actual damage resulting from a breach by the contractor, the invitation for bids or request for proposals and the contract shall include a liquidated damages clause. (Ord. 90-0030 § 3 (part), 1990.)

**2.121.410 Breach of contract X Performance bond provisions.** Contracts awarded pursuant to this chapter may require the contractor to post a performance bond adequate in amount to cover the county's damages in the event of a breach of contract by the contractor. (Ord. 90-0030 § 3 (part), 1990.)

**2.121.420 Award of contracts X Board of supervisors finding required.** A. No contract shall be awarded pursuant to this chapter until the board of supervisors has made a finding that the services can more economically be performed by the independent contractor.

B. The department recommending the award of a contract shall provide the board of supervisors, in writing:

1. Those facts which support a finding that the work can be performed more economically by independent contractors;
2. A description of the anticipated scope and cost of the work to be contracted;
3. A statement as to the availability of budgeted funds;
4. A statement as to the possible impact on county tort liability; and
5. A statement concerning the projected employee relations implications. (Ord. 93-0013 § 3, 1993; Ord. 90-0030 § 3 (part), 1990.)