

MONTEREY COUNTY



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August 24, 2021

The Honorable Stephanie E. Hulsey
Judge of the Superior Court
c/o Office of the County Counsel
Attention: Sandra Ontiveros
Monterey County Superior Courts
168 West Aslial Street
Salinas, CA 93901

Re: Response to 2020-2021 Monterey County Civil Grand Jury Final Report – “An Examination of Monterey County Contracting and Purchasing Practices”

Dear Judge Hulsey:

Attached please find the Monterey County Board of Supervisors Response to **2020-2021 Monterey County Civil Grand Jury Final Report – “An Examination of Monterey County Contracting and Purchasing Practices”** (signed Board Order will be sent upon completion by the Clerk of the Board). The Board of Supervisors approved the response on August 24, 2021, which complies with the requirements set forth in Sections 933 and 933.05 of the California Penal Code.

The Board approved response should be deemed and accepted by the Presiding Judge of the Superior Court of Monterey County and the Monterey County Civil Grand Jury as the response of the Board of Supervisors, Assistant County Administrative Officer, and appointed department heads.

Sincerely,

DocuSigned by:

 8/24/2021 | 4:35 PM PDT

By: Nicholas E. Chiulos

Assistant County Administrative Officer

cc: Charles McKee, County Administrative Officer
Les Girard, County Counsel
2020 – 2021 Civil Grand Jury

Attachments: Board of Supervisors Response
August 24, 2021 Signed Board Order (will be sent upon completion by the Clerk of the Board)



COUNTY OF MONTEREY

Monterey County Contracts & Purchasing

Response to the

2020 - 2021 Monterey County Civil Grand Jury

Topic: “An Examination of Monterey County Contracting and Purchasing Practices”

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REPORT TITLE: 2020 - 2021 Monterey County Civil Grand Jury Final Report –
“An Examination of Monterey County Contracts and Purchasing Practices”

RESPONSE BY: Monterey County Board of Supervisors

RESPONSE TO: Findings: F1-F18 and F19

Note: F19 is not on the original report

FINDINGS

F1: The Contracts/Purchasing division of the Monterey County Administrative Office does not have access to all contracts executed by/on behalf of the County, which inhibits visibility and transparency of vital management information.

Response F1:

Short Response:

The Board agrees with this finding.

Additional Discussion:

The Board relies on Department Heads to determine what best serves their department. Department Heads can request the Board to authorize them to directly engage into service contracts by/on behalf of the County where they conform to standard terms and conditions. The Board reserves approval authority where non-standard terms and conditions are necessary and requires to be scheduled on the Board’s agenda where direct visibility and transparency is achieved.

F2: Two Monterey County departments have developed homegrown software systems to track contracts, while other departments use Microsoft Excel or other methods for contract tracking. Because contract tracking is performed using multiple methods at the department level, cumulative contract business across Monterey County government departments requires manual tabulation. The lack of timely information being available to decisions-makers can contribute to ineffective decision making by senior management. Based upon discussion with numerous Department level employees, not having standardized contract information available across Monterey County government departments precludes information sharing and could lead to poor business such as inconsistent terms and conditions and variable pricing among other contract stipulations.

Response F2:

Short Response:

The Board partly agrees with this finding. County ITD developed a platform for

departments to track elements of contracts management; however, this platform was originally designed for limited department use. All County departments have been introduced to the platform and allowed to make the decision to use this platform or to continue to use their individual methods for managing contracts.

Additional Discussion:

There are several parameters in place to centralize the cumulative tabulation of contract management in terms of cost:

- 1) Multi-year Agreement (MYA) Financial Document in the Advantage Financial System: Departments set up individual non-encumbering MYA documents in the Adv Financial System to manage the spending and term of an Agreement.
- 2) eCMS, the electronic homegrown software system is used to manage variable elements of a contract and associated amendments.
- 3) Other individual tracking systems used to ensure contract management, term and spending.

Outside of a centralized contract management tracking system that ALL departments use, departments rely on the Advantage Financial System and Info Advantage reports to review overall contract and Vendor activity. As part of a replacement system scheduled for implementation in 2024, the Board will seek to have the replacement system provide a centralized contract management platform/functionality.

F3: Based upon discussions with Departmental level employees, a lack of department access to other department access to other department contracts is a barrier to consistent pricing from vendors and creates the potential for different departments to pay the same vendor different prices for the same service.

Response F3:

Short Response:

The Board partly agrees with this finding.

Additional Discussion:

Where there are similar services requirements across County departments, Contracts/Purchasing establishes Countywide Service Agreements through a competitive formal solicitation process to ensure price consistency and best value for the County. Departments can utilize the Financial Advantage system which would provide visibility of vendor activity throughout the County. It is agreed that this is not a streamline system which provides information in an easily accessible manner.

F4: Based upon discussions with Departmental level employees, a lack of department access to other department contracts is a barrier to checking experience with vendors among the various County departments.

Response F4:

The Board agrees with this finding.

F5: Based upon discussions with Departmental level employees, a lack of a method of providing real-time contract details could lead to added cost when multiple departments are consuming for the same services from the supplier.

Response F5:

The Board partly agrees with this finding.

Additional Discussion:

Contracts/Purchasing establishes Countywide Service Agreements through a competitive formal solicitation process to assist in price consistency and best value for the County where there are similar services procured across County departments, this however does not provide a comprehensive system to cross reference all county contracts.

F6: Standard Operating Procedures associates with Contracts & Purchasing Academy, as approved by the Board of Supervisors on July 22, 2014, are not consistently followed in some Monterey County government departments which has the potential for County employees to avoid policies and procedures deemed critical by the Board of Supervisors for the efficient execution of contract commitments of behalf of the County.

Response F6:

Short Response:

The Board partly agrees with this finding.

Additional Discussion:

The approved Standard Operating Procedures are best business practice guidelines, processes and procedures that are generally followed Countywide. Exceptions to normal business practices are reviewed and/or approved by County Counsel, Risk Management, Auditor Controller, Contracts & Purchasing and the Board of Supervisors as necessary.

F7: The County’s practice of allowing department-level staff (“The person in a department with the need for supplies or services”) to contact potential suppliers may create bias toward or away from some suppliers, leading to reduced competitiveness in County purchasing. This also takes away the vital negotiating tool if using a professional negotiator to seek the best terms and conditions available.

Response F7:

Short Response:

The Board partly agrees with this finding. The County of Monterey is a decentralized structure for the procurement process of goods and services. Departments have individual procurement structures for responsibility and accountability to procure supplies and services.

Additional Discussion:

The County is committed to encouraging greater availability, capacity development and contract participation by Small Local Businesses. The County adopted a Local/Small/ WBE/ DVBE Vendor Policy on August 29, 2012, to ensure equity within the following groups:

- Disabled Veteran Business Enterprise (DVBE)
- Certified Green (GRN)
- Local Small Business (LOCL)
- Minority Business Enterprise (MBE)
- Non-Profit (NPO) [*Not previously reported*]
- Small-Local Business (SMAL)
- Woman-Owned Business Enterprise (WBE)

The County has a Local Vendor Preference Policy that credits five percent (5%) for Monterey County businesses applied when evaluating bids for supplies, goods, materials, furnishings and other personal property. Monterey County’s Local Preference Policy includes the Tri-County area which encompasses Monterey, San Benito, and Santa Cruz Counties.

F8: The County’s practice of allowing “The person in a department with the need for supplies or services” to contact potential suppliers can create the potential for such staff to make an unauthorized or inadvertent commitment.

Response F8:

Short Response:

The Board partly agrees. The County of Monterey is a decentralized structure for the

procurement process of goods and services. Departments have individual procurement structures for responsibility and accountability to procure supplies and services.

Additional Discussion:

The potential of unauthorized or inadvertent commitments is minimized by the County’s centralized electronic Financial System (Advantage) for workflow and approval of all procurement documents for purchase order creation and fiscal processing. The centralized workflow process begins with the originator within a department, to their designate managerial oversight, then workflows to Contracts/Purchasing, the Auditor Controller and for final approval by Contracts/Purchasing (C/P) to allow for purchase order generation.

Procurement for services require additional approval workflow and authorization to minimize risk of unauthorized or inadvertent commitments. Informal and Formal procurement procedures are required for Departments to identify a source, negotiate, and obtain the necessary services for their operational needs. Contractual documents are authorized and approved based upon dollar amounts, standard terms and conditions and routed for approval and signatures through the originating Department, County Counsel, Auditor Controller, other departmental approvers as applicable, and including the County Board of Supervisors as required by County guidelines. However with a high volume of contracts and multiple department staff initiating contracts, it is possible that inadvertent or unauthorized commitments could occur.

F9: The County’s practice of allowing “The person in a department with the need for supplies or services” to negotiate contracts with suppliers could lead to fraud and abuse.

Response F9:

Short Response:

The Board partly agrees with this finding. Without proper training and oversight, this “practice” is found in both centralized and decentralized structures. The Contracts/Purchasing Division of the County Administrative Office relies on the department personnel and their training to ensure compliance with the County’s procurement policies and procedures are followed with extensive oversight through various centralized workflow processes.

Additional Discussion:

To prevent fraud and abuse, contractual documents are routed for approval and signatures through a centralized workflow process: The Department, County Counsel, Auditor Controller, Risk and IT when required, and Contracts/Purchasing, to ensure the integrity of an ethical procurement process. Contractual documents that include non-standard terms and conditions or that exceed an allotted “Not to Exceed” threshold, are submitted, reviewed and

approved by the County Board of Supervisors prior to service engagement. Once a contractual document is executed, the corresponding fiscal document is routed through the centralized electronic Financial System (Advantage) for workflow and approval for purchase order creation and fiscal processing.

F10: Not requiring Monterey County departments to use the Contracts/Purchasing division to acquire goods and services can lead to staff who are not contracting specialists agreeing to contracts that are not optimal.

Response F10:

Short Response:

The Board partly agrees with this finding. The Board relies on Department Heads to determine what best serves their department as well as the residents of Monterey County.

Additional Discussion:

In a collaborative effort to procure a myriad of goods and services across the complexities of the 27 County Departments, Contracts/Purchasing has established Purchasing Coordinators comprised of Contract Managers, Management Analysts, and Finance Teams from all County Departments who have a key role in the procurement process. Purchasing Coordinators meet in a forum to be apprised of any revisions concerning procurement and contract management processes, procedures, and policies on a consistent basis. These Purchasing Coordinators, in conjunction with County Counsel, do their due diligence to ensure that best practices are optimal and follow the centralized workflow and approval process to minimize potential risk. However it is acknowledged that with multiple staff taking lead on contract formation and negotiation the degree of competency will vary depending on each departments training and oversight controls.

F11: The Contracts & Purchasing Academy is a valuable resource for Monterey County employees because it guides them through the contracts and purchasing processes.

Response F11:

The Board agrees with this finding.

F12: Training offered by the Contracts & Purchasing Academy is not required of all Monterey County employees involved in contracting and purchasing of supplies and services, which could cause those employees to deviate from the Contracts and Purchasing Standard Operating Procedures.

Response F12:

Short Response:

The Board partly agrees with this finding. The Contracts/ Purchasing Academy and other real-time training is available for departments as they designate procurement personnel to attend. The Academy is promoted and intended to provide training for all levels of County staff to understand the ethos of ethical government procurement.

Additional Discussion:

In addition to the Academy, the C/P Division is comprised of Deputized Purchasing Agents who are assigned specific County departments in every facet of the procurement of good and services to ensure departments do not deviate from the Contracts and Purchasing Standard Operating Procedures. It is the recommendation and desire of C/P to require all County staff involved with the purchasing of goods or establishing contractual documents to complete the Academy.

F13: Discussions with numerous Department level personnel revealed that ethics and contract management training was either minimal or nonexistent in the current format of the Contracts & Purchasing Academy, which may lead to unintentional ethical lapses and the perception by county employees that they have authority beyond what law and regulations allow. New departmental contracting personnel have not been able to attend the Contracts & Purchasing Academy since early in 2020 due to COVID-19, which could lead to errors due to lack of training.

Response F13:Short Response:

The Board partly agrees with this finding. There are several modules within the Contracts & Purchasing Academy that provide procurement ethical training:

- Mitigating Risk
- Evaluating Solicitation Documents
- Conflicts of Interest
- Negotiating Terms and Conditions
- Managing Contractor Performance

Additional Discussion:

The Contracts & Purchasing Academy has not been formally taught since early 2020; however, the Deputized Purchasing Agents in Contracts/Purchasing are assigned specific County departments provide ad hoc training, guidance and to answer any questions.

F14: The Contracts & Purchasing Academy is not available online, which is an impediment to achieving and maintaining an optimal level of flexibility in delivery of employee training.

Response F14:

The Board agrees with this finding. Prior to the County of Monterey's emergency declaration for COVID-19 in March 2020, Contracts & Purchasing was in the process of "re-vamping" the Academy and exploring virtual alternatives to make it available for online training. As such training materials are being updated to support a virtual platform. With the adoption of remote working due to the pandemic The Contracts & Purchasing Academy is at a disadvantage not having an online program.

F15: The Monterey County Contracts & Purchasing Manual has not been updated since 2008 and may have sections that do not comply with the current County and State laws and regulations. County employee who relies on the accuracy of the Manual could use that information to make non-compliant decisions.

Response F15:

The Board agrees with this finding.

F16: The Manual lacks an index, glossary, and references about where to obtain more information. In addition, the Manual's table of contents does not contain page numbers, making it difficult to use.

Response F16:

The Board agrees with this finding. Contracts & Purchasing began the process of revising our County Purchasing Manual prior to the COVID-19 Pandemic and will continue with the revisions to include an index, glossary, table of contents, page numbers and references. Contracts & Purchasing will endeavor to make the Manual easily accessible in various formats under the direction of and approval by the County Board of Supervisors. The anticipated completion is by May 2022.

F17: The Manual does not connect to County training in contracts and purchasing – including required ethics involved in contracts and purchasing, making it difficult for employees to gain a deeper understanding of their responsibilities.

Response F17:

Short Response:

The Board partly agrees with this finding. The Contracts/Purchasing Academy was developed and established based upon the content within the Purchasing Manual along with approved business practices by the Board of Supervisors.

Additional Discussion:

The revised Purchasing Manual will include the Standard Operating Procedures taught in the Contracts/Purchasing Academy training material and will include ethical procurement practices. The relevant information between both resource documents will be cross referenced as relevant and appropriate to assist County employees with a better understanding of their responsibilities to provide and support their department in the ethical procurement of goods and services.

F18: The Manual does not make it clear that it is the final and authoritative source of information for County contracts and purchasing leaving County employees to use other sources for contracts and purchasing policies and procedures which may not align with current County policies and procedures.

Response F18:

Short Response:

The Board partly agrees with this finding. The Purchasing Manual includes the Purchasing Agent’s responsibility by County Ordinance and outlines the procurement practices vetted by County Counsel and approved by the Board of Supervisors.

Additional Discussion:

As the Purchasing Manual and the Contracts/ Purchasing Academy training materials are being developed, re-formatted and produced in alignment with County ordinances, policies and standard operating procedures, it will eliminate ambiguous guidelines, outdated rules and confusion. The Manual and training provided to County employees will make clear that while other resources for contracts and purchasing may be used as a guide, they may not align with current County policies and procedure, therefore, they should revert to the final authority and approval of all contract and purchasing policies and procedures set by the Monterey County Board of Supervisors.

REPORT TITLE: 2020 - 2021 Monterey County Civil Grand Jury Final Report –
“An Examination of Monterey County Contracts and Purchasing Practices”

RESPONSE BY: Monterey County Board of Supervisors

RESPONSE TO: Recommendations:R1-R12

RECOMMENDATIONS

R1: Develop a uniform set of required contract information (to include but not limited to Terms and Conditions, vendor information, overall cost, unit cost) to support sound decision-making for all County departments. (F1,2,3,4,5). This recommendation should be implemented by the CAO on or before January 2022.

Response R1:

The Board partly agrees and will continue to provide uniformity templates and other standardized documents to support sound decision-making for all County departments. Where there are inconsistencies, CAO will work to establish processes and procedures to ensure clarity by May 2022.

R2: Establish and fully implement a system that provides online, real-time access to all Monterey County contract information that meets the unique needs of individual departments. (F1, 2,3 4, 5). This recommendation should be implemented by the CAO on or before April 1, 2022.

Response R2:

The Board partly agrees. A new Financial and HRM replacement system will incorporate this objective. The new system is not expected to operational until early 2024.

R3: Provide a system and training designed to promote collaboration among the County’s departmental employees and staff in the Contracts/Purchasing division of the County Administrative Office. (F1,2,3,4,5) This recommendation should be implemented by the CAO on or before February 1, 2022.

Response R3:

The Board agrees. The County will continue to provide a system and training designed to promote collaboration between County departments and staff in Contracts/Purchasing as well as undergo continuous improvement.

R4: Continue to fund the Contracts & Purchasing Academy course material updates. (F11, 12, 13, 14). This recommendation should be implemented by the CAO on or before February 1, 2022.

Response R4:

The Board agrees. The County will continue to provide funding in support of the Contracts & Purchasing Academy.

R5: The Contracts & Purchasing Academy should be made available in an on-demand, self-directed online instructional format. (F14). This recommendation should be implemented by the CAO on or before April 1, 2022.

Response R5:

The Board partly agrees. Contracts & Purchasing Academy will be made available on-line, to include reference documents; however, it will continue to require a level of formal instruction. CAO will work to establish a virtual platform for instruction by May 2022 as an achievable timeframe.

R6: Require all Monterey County departmental managers and employees involved in contracts and purchasing to recertify their contracts and purchasing skills on a periodic basis. (F11, F12)

Response R6:

The Board Agrees. Contracts & Purchasing is in the process of revising the Purchasing Manual and the Contracts / Purchasing Academy training materials. As County department managers and staff complete the Academy and other ad hoc trainings, certificates of completion will be issued. Refresher Courses will also be made available.

R7: Provide a more robust module in the Contracts & Purchasing Academy training materials that directly addresses current contracting ethical standards. (F13) *This recommendation should be implemented by the CAO on or before April 1, 2022.*

Response R7:

The Board partly agrees. Contracts/Purchasing will address ethics and risk in the Academy materials that is planned to be present to the County Board of Supervisors by May 2022 as an achievable timeframe.

R8: Require Monterey County government departments to follow the Contracts & Purchasing Academy Standard Operating Procedures adopted by the Board of Supervisors on July 22, 2014. (F6) This recommendation should be implemented by the Board of Supervisors on or before February 1, 2022.

Response R8:

The Board agrees. The Board will continue to require County departments to follow the Contracts & Purchasing Academy Standard Operating Procedures adopted by the Board of Supervisors on July 22, 2014.

R9: Update the Monterey County Contracts/Purchasing Manual to reflect all current policies and procedures and SOP's. Edit the updated Manual for organization and readability. The County should use the services of a professional editor if internal staff is not a viable resource. (F17) *This recommendation should be implemented by the Contracts/Purchasing officer on or before February 1, 2022.*

Response R9:

The Board partly agrees. The County Purchasing Manual is in the process of being revised. Once complete and approved by the County Board of Supervisors, it will be comprehensive and inclusive of a table of contents, appropriate formatting, and in more than one format for easy accessibility. Due to COVID-19 and the dual function that Contracts/ Purchasing provides in operating as Logistics in the current Level II emergency for the pandemic, the anticipated completion date is May 2022 as an achievable timeframe.

R10: Update the material in the "Ethical Standards for Purchasing" section of the Monterey County Contracts/Purchasing Manual to be consistent with current contracting ethical standards. (F18). This recommendation should be implemented by the Contracts/Purchasing Officer on or before February 1, 2022.

Response R10:

The Board partly agrees. The Contracts/Purchasing Officer will begin drafting the update the Contracts/Purchasing Manual and the "Ethical Standards for Purchasing" will be prioritized in the draft. Due to COVID-19 and the dual function that Contracts/ Purchasing provides in operating as Logistics in the current Level II emergency for the pandemic, the anticipated completion date is May 2022 as an achievable timeframe.

R11: Emphasize the “Ethical Standards for purchasing” section of the Monterey County Contracts/Purchasing manual by expanding the content and repositioning the text. (F18) *This recommendation should be implemented by the Contracts/Purchasing Officer on or before February 1, 2022.*

Response R11:

The Board partly agrees. Purchasing Manual will emphasize the “Ethical Standard for Purchasing” section and be including in the overall update to the manual to be presented to the Board of Supervisors. Due to COVID-19 and the dual function that Contracts/ Purchasing provides in operating as Logistics in the current Level II emergency for the pandemic, the anticipated completion date is May 2022 as an achievable timeframe.

R12: Make the Monterey County Contracts/Purchasing Manual available in an online format with easily searchable content. (F19) *This recommendation should be implemented by the Contracts/Purchasing officer on or before April 1, 2022.*

Response R12:

The Board partly agrees. The County Purchasing Manual is in the process of being revised. Once complete and approved by the County Board of Supervisors, it will be comprehensive and inclusive of a table of contents, appropriate formatting, and in more than one format for easy accessibility. Due to COVID-19 and the dual function that Contracts/ Purchasing provides in operating as Logistics in the current Level II emergency for the pandemic, the anticipated completion date is May 2022 as an achievable timeframe.