



REGULAR MEETING OF THE PURCHASING TASK FORCE

**Wednesday, January 22, 2020 – 1:30 p.m.
Laguna Woods Village Community Center Sycamore Room
24351 El Toro Road**

AGENDA

1. Call to Order
2. Approval of the Agenda
3. Chair Remarks
4. Member Comments (Items Not on the Agenda)
5. Department Head Update

Items for Discussion and Consideration

6. Modifications to Purchasing Policy
7. Purchasing Matrix Final Format
8. Dollar Threshold for Boards Approval of Purchases
9. Legal Review Scope for Procurement Lawyer
10. Proposed Contract Revisions – Terms & Conditions

Future Agenda Items

Concluding Business:

11. Task Force Member Comments
12. Date of Next Meeting – February 25, 2020 at 1:30 p.m.
13. Adjournment

Bunny Carpenter, Chair
Betty Parker, Staff Officer
Telephone: 949-597-4201

PURCHASING POLICY

1. PURPOSE

The Purchasing Department's goal is to obtain the product or service that best meets the needs of the corporation at the best possible value and to protect the corporation from litigation resulting from these services.

2. CODE OF CONDUCT

No employee, officer, or agent shall participate in the selection, award, or administration of a contract if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the Corporation shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to sub agreements except for where the financial interest is not substantial or the gift is an unsolicited item of nominal value. **No officer, employee or agent shall intentionally be involved in bid "splitting" to purchase or break down proposals to evade or circumvent the requirements for signature authorization levels.** Members of the Corporation Board of directors shall comply with all relevant fiduciary duties, including those governing conflicts of interest, when they vote upon matters related to procurement contracts in which they have a direct or indirect financial or personal interest. Officers, employees, directors, and agents of the Corporation shall be subject to disciplinary actions for violations of these standards.

3. FUNDS

Funding for all procurement is approved by the Corporation Board of Directors through the

capital plan, a supplemental appropriation or the operating budgets of each department, prior to procurement of goods or services.

4. COMPETITIVE BIDDING PROCESS

The Purchasing Department carries out a bidding process whether the request is for an item, a service or a project. The following steps are taken:

- a. A Purchase Requisition (PR) and a detailed Scope of Work (SOW) are submitted by the requesting department. The Purchasing Department reviews the SOW and if it requires more detail, it is returned to the requesting department with questions and comments.
- b. The Purchasing Department will incorporate the final SOW into a request for proposal (RFP) for professional services or bid solicitation for constructions services , together with brief information about the community, insurance requirements, a pre-bid meeting date and the deadline for submitting

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proposals/bids. The RFP/bid solicitation is normally sent to at least three (3) vendors/contractors to obtain bids, or may be widely advertised. c.

When the proposal/bids are received, the Purchasing Department will evaluate them to ensure that each bidder meets the SOW and will recommend the best qualified bid and competitive proposal/bid. If a proposal is submitted late, the Purchasing & Supply Manager will determine if the proposal should be accepted or rejected.

Exceptions to carrying out the bidding process are when:

- The Board of Directors passes a resolution to Ssingle source the work per signed justification.
- The item or project is under \$32,500, unless required by the Purchasing & Supply Manager.
- A specialized item or project is required and vendors/contractors are limited or the vendor/contractor has previously proven their expertise in this field. (Sole Source)
- Work is required immediately (e.g. a broken water main).
- A current material purchase agreement or annual service contract is expiring using a proven vendor/contractor and their pricing does not increase.
- A contractor is currently working under a service contract and the same work is required for a one time project.
- Having received no complaints from a contractor currently working if no price increase.
- Blanket purchase orders are used. Items are supplied without agreed prices on an emergency basis only.
- Change Order to an existing contract, as per the Board-adopted Contract Change Order Policy.

5. AWARD PROCESS

- a. After proposal/bids are received, opened, and analyzed by staff, a detailed Contract Award report will be prepared for the appropriate Committee or Board as outlined in the Board-adopted Delegation of Action and Commitments Matrix. The Contract Award report will be prepared by the Division overseeing the services to be contracted for, and shall include a comparison spreadsheet listing all the

proposals/bidders; a description of the services to be contracted for; and staff's recommendations.

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b. Minimum requirements prior to Standard purchase In purchasing from any supplier in which there is no contract, these items are required prior to ordering

:

- 3 day refusal based on initial inspection
- 30 day returns due to initial failure
- Maximum 25% Restocking Charge
- 1 Year Warranty for failure of product If these items are not provided by the vendor, alternate sources must be used. ¶

6. CONTRACT EXCEPTIONS

Certain purchases made by VMS are considered appropriate for direct payment and are excluded from competitive sourcing, requisition and purchase order requirements, including:

- Casualty and Property Insurance
- Community Sponsored Functions (entertainers, caterers)
- Debt Service Payments
- Employee Benefits/Contracts with Third Parties for Payroll Deductions
- i.e. Life, Health and Dental Insurance, 401K contributions, Pension payments, EAP
- Investments
- Legal Fees
- Memberships, Dues, Subscriptions, Publications
- Permits
- Postage
- Recording Fees
- Recreation Services (instructors, entertainers, caterers)
- Retirement Plan Contributions
- Section 457 (Deferred Compensation) Contributions
- Services Procured with non-Corporation Funds (Developer Deposits, etc.)
- Staff Support
- Tax Withholding Payments
- Training, Seminars and Travel Expenses
- Unemployment Compensation
- Utilities
- Vehicle Licensing
- Contracts for television programming for Village TV and cable providers are not part of purchasing, but negotiated and controlled by Village TV/Broadband. ¶ 7. Following the competitive bidding process the parties enter into an agreement. The process and document differs between product and services:

a. Standard or Blanket Purchases

Authority is given to staff to purchase items/materials based on approved budgets. Standard purchases are not signed by the Board. To be reviewed by Corporations. Purchases based on approved budgets was never authorized by the Corporations (I need any documentation that gives that authorization). Guidelines must be set. Delegation of Authority Document for VMS is necessary. Any purchase order processed through the AX system must be signed and stipulate applicable terms and conditions which will be addressed by Legal counsel.

Parts and materials purchased as standard requisitions purchased for stocking in warehouse and for direct use by the work centers in the manors or repair of capital equipment by staff.

Capital purchases for fixed assets are considered approved purchases by purchasing if

requisitions are approved by accounting. Guidelines must be established

i. Supply item:

The Buyer uses the Purchase Requisition (PR) to create a Purchase Order (PO) and then forwards it to the vendor.

ii. Stock item:

A material purchase agreement is written and after execution the Warehouse Department creates purchase requisitions when the stock items are required. The requisitions are approved by the Purchasing & Supply Manager and the items ordered by the Buyers.

b. Annual service:

A contract is written for the service and when executed a Purchase Order from the requisition is generated to enable payment through the accounting system.

Annual Contracts are not to exceed contracts based on unit prices guaranteed through the term of the contract. They are used by the work centers for miscellaneous services provided through the year. Work is competitively bid or minor work that require expedience to complete. Open buildings, dangerous conditions that will

cause early building failure, etc.

Annual not-to-exceed contracts for work that has been previously bid and satisfactory work performance, does not require Board approval. The completed contract is sent to the contractor and then to the Board for signature by two officers.

Amounts are authorized by approved purchase orders created by work centers within budget amounts.

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c. Minor project (Less than \$3,51,000):

The Purchasing Department obtains approval of the contractor and value from the requesting division. The Contract Administrator adds conditions to the purchase requisition, prepares a Purchase Requisition and the Purchasing Department generates a Purchase Order after all requirements are met, and forwards it to the contractor.

d. Small Project (\$3,51,000 - \$250,000):

The Purchasing Department obtains approval of the contractor and value from the requesting division and a contract is written for the work. The contract SOW is copied from the RFP with any changes that occurred during the bidding process. The completed contract is signed by the contractor then by the VMSI CEO or designated Division Director. ¶

e.

f.e Medium Project (\$250,000 - \$100,000):

The Purchasing Department obtains approval of the contractor and value from the appropriate Committee via the requesting division and a contract is written for the work. The contract SOW is copied from the RFP with any changes that occurred during the proposal/bidding process. The completed contract is presented to the appropriate committee and signed by the contractor then by two Officers of the Board.

Staff provides a report and evaluation to the appropriate committee who makes the recommendation to the Boards for approval.

The Purchasing Department receives a requisition from the requesting division and a contract is written for work. The completed contract is sent to the contractor and then to the Board for signature by two officers. ¶

g. Large Project (>\$100,000):

The Purchasing Department obtains approval of the contractor and value from the appropriate Board via the requesting division and a contract is written for the work. The contract SOW is copied from the RFP with any changes that occurred during the proposal / bidding process. The completed contract is signed by the contractor then by two Officers of the Board.

Staff provides a report and evaluation to the appropriate committee who makes the recommendation to the Boards for approval.

The Purchasing Department receives a requisition from the requesting division and a contract is written for work. The completed contract is sent to the contractor and then to the Board for signature by two officers.

h. Very Large and Special Projects (>\$500,000)

Additional process and specific procedures required for Very Large Projects with direct

Board involvement not covered here.

i. Leasing;

Leasing agreement will be forwarded to the appropriate Board for signature.

Examples are Copier Equipment, Golf Carts and other agreements that the leasing agent require on their forms.

j. The Purchasing Department will assist the requesting department to cancel a contract or produce written warnings to a contractor.

k. Non-standard contracts will be forwarded to VMS legal counsel with expertise in contract law for review [GRF only].

l. Industry specific television programming contracts are exceptions to this

policy [GRF only]. Addressed in Exceptions.

8. CHANGE ORDER TO CONTRACTS

- a. Per the Board-adopted Change Order Policy.

9. AX PAYMENT PROCESSING

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- a. When an executed contract is completed, the Contract Administrators will process the PR and a PO will be generated for work approval and payment. This process will be reviewed in meeting.

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SCOPE OF WORK FOR PURCUREMENT ATTORNEY

The Purchasing Task Force desires to hire a lawyer who specializes in Procurement Law to review and advise on the following:

1. Review Internal Purchasing Manual
2. Review Standard Terms and Conditions for all Standard and AX Purchase Orders.
3. Recreation and any other Department Standard Terms and Conditions template reviewed. [The Recreation Template does not define the Insurance coverage amounts. Also is missing general terms such as Arbitration, Severability, Governing Law, Waiver of Contractual Right, Amendment, Assignment and Entire Contract consistent with Corporation's Standard Terms and Conditions and Insurance Requirements?](#)
3. Research AX System Purchase Order System Terms and Conditions and signature authority applicability.

EXHIBIT C

STANDARD TERMS AND CONDITIONS

1. INDEPENDENT CONTRACTOR

CONTRACTOR is an Independent Contractor and shall have the responsibility for and control over the details and means for performing the Services and shall be subject to the direction of the CORPORATION and Agent, but only with respect to the scope, community scheduling rules and general results required. CORPORATION will not withhold from the sums paid to CONTRACTOR under the Contract any sums for federal and state income taxes or make employee payroll deductions under the Federal Insurance Contribution Act, the California State Unemployment Insurance Code, or other similar taxes. CONTRACTOR shall be solely responsible for payment of all taxes, including but not limited to federal and state income taxes, unemployment and disability insurance taxes, Social Security taxes, and for maintaining its own workers' compensation insurance, as well as all City of Laguna Woods taxes, license fees, union dues, union fees and assessments.

2. INDEMNIFICATION

To the fullest extent permitted by law, CONTRACTOR agrees to indemnify and hold harmless CORPORATION, Agent, and all officers, directors, agents, employees and members (collectively "Indemnified Parties"), from and against any and all claims, (including, without limitation and not limited to, claims for bodily injury, death or damage to property) demands, obligations, actions, causes of action, damages, suits, losses, judgments, fines, penalties, liabilities, losses, costs and expenses (including without limitation and not limited to, reasonable attorneys' fees, disbursements, court costs and all other professional, expert or Contractors' fees, costs and expenses) of every kind and nature whatsoever (individually, a "Claim"; collectively "Claims"), which may arise from negligent acts, errors and omissions of CONTRACTORS, or anyone for whom contractor is legally responsible, in performance of this agreement, however, only to the extent caused by, and on a percentage basis of fault as ultimately determined by a court of competent jurisdiction.

CONTRACTOR's indemnification obligation hereunder shall survive the expiration or termination of this Contract until such time as action against the Indemnified Parties for such matter indemnified is fully and finally barred by the applicable statute of limitations. Under no circumstances shall the insurance requirements and limits set forth in this Contract be construed to limit CONTRACTOR's indemnification obligation or other liability hereunder.

3. IMMIGRATION REFORM AND CONTROL ACT

CONTRACTOR must remain in full compliance with the Immigration Reform and Control Act of 1986 and subsequent amendments, as legislated, for the duration of this Contract. CONTRACTOR has verified employment eligibility of all CONTRACTOR's employees and guarantees that all of CONTRACTOR's employees have a legal right to work in the United States.

4. ACTS AND OMISSIONS

CONTRACTOR is completely responsible for all acts and omissions of CONTRACTOR's employees, subcontractors and suppliers on the Contract, and of any other persons or entities acting on behalf of CONTRACTOR. This includes damage by delay, property damage, building damage, and any unprofessional statements to residents, which may cause conflict. Nothing in the Contract shall create any contractual relationship between any of CONTRACTOR's employees, subcontractors and suppliers and CORPORATION or Agent or any obligation on the part of CORPORATION or Agent to pay or to see to the payment of any monies due any of them, except as may otherwise be required by law. CONTRACTOR agrees to bind specifically CONTRACTOR's employees, subcontractors and suppliers, to the extent of the Services to be performed by them, to the applicable terms and conditions of the Contract for the benefit of CORPORATION.

5. CONFIDENTIALITY

CONTRACTOR and CONTRACTOR'S employees, agents, or representatives will not at any time or in any manner, either directly or indirectly, use for the personal benefit of CONTRACTOR or divulge, disclose, or communicate in any manner, any information that is proprietary to CORPORATION. CONTRACTOR and its employees, agents, and representatives will protect such information and treat it as strictly confidential. This provision will continue to be effective after the termination of this Contract.

6. WORK FOR HIRE

All work performed by CONTRACTOR is considered a Work-for-Hire and all intellectual property rights in these works belong to the Corporation. This includes but is not limited to any ideas, information, designs and derivatives developed under this contract (the "work product") contained in or shown upon the drawings, specifications, photographs, samples and other engineering information supplied or developed by CORPORATION or CONTRACTOR. All intellectual property rights in any work(s) or derivatives belong to CORPORATION. This intellectual property work product shall be retained in confidence by or CONTRACTOR and not disclosed to any other person or entity. CONTRACTOR shall not use the work product to provide goods or services to any other person or entity. CONTRACTOR agrees to return to CORPORATION all drawings, specifications, photographs and other engineering information supplied by CORPORATION or developed or derived by CONTRACTOR promptly following Corporation request.

7. RETURN OF DOCUMENTS

Upon termination of this Contract, CONTRACTOR will return to CORPORATION all records, notes, documentation and other items that were used, created, or controlled by CONTRACTOR during the term of this Contract.

8. NO CONFLICT OF INTEREST

CONTRACTOR shall disclose to CORPORATION any previous or current employment by CONTRACTOR with CORPORATION or with Village Management Services Inc. by CONTRACTOR or any family member of CONTRACTOR whether as a direct employee or as an independent contractor or subcontractor.

9. CHANGE ORDER

SERVICES
CORPORATION, Agent's Representative or any public body or inspector may make changes to the scope of the work from time to time during the term of this Contract. However, any such change or modification shall only be made in a written "Change Order" which is signed and dated by the Parties to this contract. Such Change Orders shall become part of this Contract. Change orders must be documented in writing to the Agent's representative no later than two (2) days after discovery. CORPORATION agrees to pay any increase or decrease in the cost as a result of any written, dated and signed Change Order. In the event the cost of a Change Order is not known at the time a Change Order is executed, CONTRACTOR shall estimate the cost thereof and CORPORATION shall pay the actual cost so long as the actual cost does not exceed 10% of the estimated cost. Unless the Parties agree to a written extension of time for performance, the completion date under this Contract shall remain the same.

uncontested
prior to the commencement of any such work

10. NOTICE OF COMPLETION

N/A

11. WORK SITE

Corporation warrants that it is authorized to enter into this contract. Prior to the start of construction, Corporation shall provide an easily accessible building site, which meets all zoning requirements for the structure.

All Contractors will be required to obtain a Laguna Woods Vendors Work Permit to perform work under this contract.

12. APPLICABLE LAW

federal, state, local ordinances or otherwise
CONTRACTOR will comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction for persons or property and for protecting property from CONTRACTOR's operations. CONTRACTOR shall also comply with all provisions of CONTRACTOR's and Agent's Injury & Illness Prevention Program

13. TERMINATION FOR CONVENIENCE

CORPORATION may terminate this Contract at any time without cause by giving the CONTRACTOR at least thirty days prior written notice of termination. Upon termination of this Agreement (1) CORPORATION shall remain responsible for paying for all approved services provided and expenses incurred prior to the end of the termination period, whether or not billed during that period, and (2) CONTRACTOR shall use commercially reasonable efforts to complete any work that CORPORATION requests Contractor to complete prior to the termination date and to minimize the fees incurred during the termination period by discontinuing all work that CORPORATION does not ask Contractor to complete. Notwithstanding the foregoing, CONTRACTOR'S obligations under this Contract shall survive termination of this Contract despite termination including, but not limited to, CONTRACTOR'S Confidentiality obligation, Warranty and Material Defects obligations, Insurance Indemnity obligation and Limitations of Liability and Actions obligation. In no event shall either party be liable for any consequential damages or loss of profits.

14. DEFAULT

Either party may terminate this Agreement for cause at any time upon ten (10) days written notice to the other party. Causes for termination of this Agreement include, but are not limited to, insolvency, an assignment for the benefit of creditors, or a bankruptcy petition filed by or with respect to one of the Parties. The recordation of a mechanics lien shall be deemed a default under the Contract unless the Contractor within 20 days post a bond to have the mechanics lien expunged. The other party may by notice in writing, terminate this Agreement without liability to the other party, except for items already accepted by CORPORATION from CONTRACTOR for which CORPORATION has already paid for such Services and expenses for such items. Other causes for termination include but are not limited to a lawsuit brought on any claim, seizure, lien or levy for labor performed or materials used on or furnished to the project by either party, or there is a general assignment for the benefit of creditors, application or sale for or by any creditor or government agency brought against either party or the failure of CORPORATION to make the building site available or the failure of CONTRACTOR to deliver the Services in the time and manner provided for in this Contract.

15. REMEDIES

In addition to any and all other rights a party may have available according to law of the State of California, if a party defaults by failing to substantially perform any provision, term or condition of this Contract (including without limitation the failure to make a monetary payment when due), the other party may terminate the Contract by providing written notice to the defaulting party. This notice shall describe with sufficient detail the nature of the default. The party receiving said notice shall have ten days from the effective date of said notice to cure the default(s) or begin substantial completion if completion cannot be made in ten days. Unless waived by a party providing notice, the failure to cure or begin curing, the default(s) within such time period shall result in the automatic termination of this Contract.

16. DELAYS

No payment or compensation of any kind shall be made to CONTRACTOR for damages because of hindrance or delay from any cause in the progress of the Services, whether such hindrances or delays are avoidable or unavoidable.

17. FORCE MAJEURE

If performance of this Contract or any obligation under this Contract is prevented, restricted, or interfered with by causes beyond either party's reasonable control ("Force Majeure"), and if the party unable to carry out its obligations gives the other party prompt written notice of such event, then the obligations of the party invoking this provision shall be suspended to the extent necessary by such event. The term Force Majeure shall include, but not be limited to, acts of God, fire, explosion, vandalism, storm, casualty, illness, injury, general unavailability of materials or other similar occurrence, orders or acts of military or civil authority, or by national emergencies, insurrections, riots, or wars, or strikes, lock-outs, work stoppages, or supplier failures. The excused party shall use reasonable efforts under the circumstances to avoid or remove such causes of non-performance and shall proceed to perform with reasonable dispatch whenever such causes are removed or ceased. An act or omission shall be deemed within the reasonable control of a party if committed, omitted, or caused by such party, or its employees, officers, agents, or affiliates.

18. ARBITRATION

Any controversy arising between the Parties regarding the consulting, interpretation, application, or otherwise of this contract, and/or any claim arising from a breach of this Contract shall be submitted to binding arbitration before a mutually acceptable retired judge at either Judicate West or Judicial Arbitration and Mediation Service in Orange County, California upon the written request of one party after service of the same on the other party. The signing Parties agree that the arbitrators shall not have the power to commit errors of law or legal reasoning, and that the award may be vacated and/or corrected upon petition to a California court of competent jurisdiction for any such error. Each side shall pay one half the cost of the arbitration subject to reallocation by the arbiter. In the event that arbitration or any other legal proceeding is necessary to enforce any of the terms, provisions, conditions or rights arising out of this Contract, the prevailing party shall be entitled to recover its costs and reasonable attorney fees.

19. SEVERABILITY

If any provision of this Contract will be held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court finds that any provision of this Contract is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.

20. GOVERNING LAW

This Contract shall be construed in accordance with, and governed by the laws of the State of California, without regard to any choice of law provisions of California or any other jurisdiction. This entire paragraph shall be binding upon the arbitrator.

21. NOTICE

Any notice or communication required or permitted under this Contract shall be sufficiently given if delivered in person or by first class mail, return receipt requested, to the address set forth in the opening paragraph or to such other address as one party may have furnished to the other in writing.

22. WAIVER OF CONTRACTUAL RIGHT

The failure of either party to enforce any provision of this Contract shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Contract.

23. AMENDMENT

This Contract may be modified or amended in writing, if the writing is signed by each party.

24. ASSIGNMENT

Neither party to this Contract shall assign, sell or transfer any portion or part of this Contract, nor any of the rights and privileges granted, without prior written approval of the other party.

25. ENTIRE CONTRACT

This Contract contains the entire Contract of the Parties, and there are no other promises or conditions in any other contract whether oral or written concerning the subject matter of this Contract. Any amendments must be in writing and signed by each party. This Contract supersedes any prior written or oral agreements between the Parties.

prior to the performance of any additional work under the Contract.

This Contract is a complete and exclusive statement of the terms of the Contract between the Parties, as provided for under Section 1856, subdivision (b), of the California Code of Civil Procedure, in so far as documents are required to be completed to give effect to the terms of this Contract.

26. SITE INSPECTION

CONTRACTOR has fully examined the Contract and any referenced information and physically inspected the Contract site and CONTRACTOR is entering into this Contract based on an independent investigation and not relying upon any opinions or representations of the CORPORATION or Agent. Any discrepancies between Contract, any referenced information, and/or site conditions shall be immediately brought to the attention of the Agent representative.

and confirms Contractor has the ability to perform the Services of the Contract for the contract amount

Agenda Item