

COUNTY OF VENTURA	2018 ADMINISTRATIVE POLICY MANUAL		LEGAL CHAPTER VI
Originating Agency: County Counsel	Last Issued 2018	Revised 2019	<u>Policy No. Chapter VI -1</u> COUNTY CONTRACTS
Policy Change Requires: <input checked="" type="checkbox"/> Board of Supervisors Approval <input type="checkbox"/> CEO Approval Forms Change Requires: <input checked="" type="checkbox"/> CEO Approval			

POLICY

1. The power to bind the County of Ventura to contracts vests with the Board of Supervisors. The Board is required by law to make policy decisions on what services, materials, and/or equipment are needed for, or are to be furnished by, the County, the conditions of acquisition or furnishing, and the cost. Except in limited circumstances, all contracts and all amendments to contracts must be presented to the Board for approval prior to execution. Board approval must be obtained on all contracts and amendments to contracts unless the agency/department head has specific statutory authority or specific delegated authority to approve and execute a contract. Statutory authority means that the agency or department is given authority, by statute, to enter into contracts binding the County. Delegated authority means that the Board has expressly authorized an agency/department head to enter into a contract, or type of contract, within established specific criteria and guidelines as to the terms of the contract, including the total cost; normally the exercise of such delegated authority is made subject to County Counsel review and approval as to legal form and compliance with the established criteria and guidelines.
2. Sometimes an agency/department head's authority to enter into a contract is established by both statute and Board delegation. The primary example of this is the contracting authority of the County Purchasing Agent. Under Government Code section 25502.5, in counties having a population of 200,000 or more, the board of supervisors may authorize the purchasing agent to engage independent contractors to perform services for the county, with or without the furnishing of material, up to a certain amount. The Board did so by enacting Ventura County Ordinance No. 4084, which authorizes the County Purchasing Agent to exercise the contracting power described in Government Code section 25502.5. For the Purchasing Agent to enter into contracts for services in excess of the amount authorized under Government Code section 25502.5, the Board must approve the delegation and the terms of the contract.
3. All contracts to which the County is a party should reflect the intent of the negotiating agency/department, protect the interests of the County, and be legally sufficient in form. Contracts include all written agreements which bind the County, including leases, grant agreements, and memoranda of agreement with other public agencies.

4. Contracts for consideration by the Board of Supervisors must be submitted for review in draft form to the County Counsel, Risk Management (for appropriate insurance and indemnity provisions), the Auditor-Controller's Office and the County Executive Office. The Purchasing Agent also should be provided with a review copy when Board approval to increase the Purchasing Agent's dollar limit authority will be requested. Contracts must be submitted for review at least 10 working days before the deadline to upload the Board item into the agenda management system.
5. Contracts other than those requiring Board approval must be on a standard form approved by the County Counsel or approved in original form by the County Counsel. Agencies/departments are encouraged to meet with the County Counsel to discuss specific contract requirements.

ELEMENTS REQUIRED IN A COUNTY OF VENTURA CONTRACT

1. Statement of Purpose
The contract must include a short statement summarizing the purpose or intent of the contract.
2. Parties
The legally correct names of the parties must be specified at the beginning of the contract. For the County, the "County of Ventura" should be used; names of agencies or departments, such as Human Services Agency or Sheriff's Department, should not be used. However, where desired, the agency or department may be referenced along with the County in the following format: "County of Ventura, on behalf of its Human Services Agency" or "County of Ventura, on behalf of its Sheriff's Department." The correct legal name of the other party must be used. For subsequent references to the parties, the contract may use abbreviated references, such as "County" or "Contractor."
3. Term
The contract must clearly state the time the contract begins and ends and whether the contract is subject to renewal. Renewal may be automatic, if no party gives notice of nonrenewal, or may require specific notice or action by one of the parties, with acceptance by the other party, by a certain time prior to expiration of the contract. Contracts should not routinely be renewed. Prior to renewal, each contract should be reviewed to ensure compliance with contract policy and current law. No contract may commit the County to expend funds that have not been approved in the Final Budget adopted by the Board of Supervisors. Accordingly, a contract may be automatically renewed, but only subject to the appropriation of funds by the Board of Supervisors for the specific purpose covered by the contract.
4. Termination
The contract must state the basis or procedure for termination of the contract by either party.
5. Rights and Obligations of the Parties
The consideration to be received and furnished by each party – that is, each party's rights and obligations -- must be clearly stated in the contract. This may include any of the following:

- A. The services (including personnel, materials, and equipment) to be provided by the party, often detailed in a scope of work attached to the contract.
 - B. The payments to be made by the party.
 - C. The use of the County's name or facilities.
 - D. Anything else of value to be contributed by the party.
 - E. Any forbearance by the party in something where the party has the right to act and said action has value.
6. Payments
The maximum total contract payment generally should be specified in the contract. If the amount to be paid is contingent on any factors, the method of ascertaining whether the factors have been complied with must be clearly explained. If progress payments are to be made, the schedule, criteria, and amounts should be listed. If money is to be withheld from any payment pending completion of the contract, the percentage and dollar amount of the retained money should be stated, as well as the criteria to be met to release the retained money.
7. Signature of Other Party
The person who signs on behalf of the other party must have the legal authority to sign the contract and bind that party. If the other party is a corporation, the contract must be signed by two specific corporate officers. One officer must be the chief executive officer, chairman of the board, president, or any vice president. The other officer must be the secretary, an assistant secretary, the chief financial officer, or any assistant treasurer. In the alternative, a single corporate signature is acceptable when accompanied by a resolution from the corporation's board demonstrating the legal authority of the signatory to bind the corporation. It is sound practice to include under the signature line the names and titles of those who sign the contract.

OTHER ELEMENTS THAT MAY BE INCLUDED

1. Prohibitions
If either party intends to strictly prohibit something, a specific statement to that effect must be included in the contract.
2. Insurance
If there is an insurance requirement on the part of either party, the specific requirements must be set forth in the contract. A "hold harmless" or indemnification clause does not eliminate the need for insurance. A standard insurance clause, which includes the essential provisions (e.g., requirements of a certificate of insurance, written notice prior to cancellation, County as an additional insured, and County coverage as excess), is available from the County Counsel. The appropriate amount of insurance required should be specified after consulting with Risk Management.

3. Indemnification/Hold Harmless
Any obligation on the part of either party to defend and/or indemnify (or "hold harmless") the other party against claims against the other party must be clearly specified in the contract. Any such obligation must be limited to claims by third parties.
4. Delays in Performance
The consequences of delays in performance by either party must be specified in the contract.
5. Notice
Each contract should contain a clause specifying the name and address of the person to whom notice for all purposes is to be sent.

ELEMENTS NOT TO BE INCLUDED

1. Attorney's Fees
Contracts shall not include provisions for the payment of attorney's fees by one party to the other party.
2. Interest
Contracts shall not include provisions for the payment of interest by the County.
3. Governing Law and Venue
Contracts shall not specify that the laws of a state other than California govern the contract or that venue for any legal proceedings or disputes shall be in a state other than California.

PROCEDURES

1. After County staff has identified that a contract will be necessary, a contract draft should be prepared with the appropriate elements, including those outlined above.
2. The contract draft should be forwarded for review to the County Counsel, the Auditor-Controller's Office, Risk Management and the County Executive Office no later than 10 working days before the deadline to upload the contract's Board item into the agenda management system. (Contracts up to the amount prescribed in Government Code section 25502.5 that will not be submitted to the Board for approval should be reviewed by the County Counsel and the Auditor-Controller prior to processing by the Purchasing Agent.)
3. After the reviewing agencies complete their review, the finalized contract is filed on the Board agenda with a cover letter summarizing the contract. (See "Board Letter Procedures" Policy.)
4. The Auditor-Controller and the Clerk of the Board must be provided with a copy of all signed contracts. Contracts authorized to be signed by agency/department heads on behalf of the Board, must be attached to the applicable VCFMS document, submitted, and encumbered

through workflow and also forwarded to the Clerk of the Board and Files as the County's Official record.