

AN EXAMINATION OF MONTEREY COUNTY CONTRACTING AND PURCHASING PRACTICES

SUMMARY

The Monterey County budget for Fiscal Year 2020-21 projects expenditures of over \$1.64 billion. Of that total, nearly \$392 million has been budgeted for the purchase of goods and services. Significant purchases of goods and services involve contracts between the County and its vendors and suppliers.

Due to media attention and citizen concern, the 2020/21 Monterey County Civil Grand Jury initiated an investigation into the management and oversight of contracts. As part of that effort, we began by looking at the policies and procedures utilized by the Monterey County Administrative Office. As the investigation unfolded, we expanded its scope to include a study of the decentralized nature of contracting and purchasing used in Monterey County.

When the Civil Grand Jury first requested copies of large contracts for review, we were informed that those records were scattered among the various departments and would take several months to produce. It became immediately apparent that management and oversight by members of the County senior management team are severely impaired by an inability to have ready access to details of key contract information. We found many dedicated employees responsible for individual department contracts trying to provide the best results for the residents of the County. Moreover, we heard accounts of how significant savings could be achieved by preventing the incidental waste caused by inaccessible information.

The Civil Grand Jury found significant areas that provide opportunity for improvement in contracting practices that will not require significant expenditures.

The areas identified are:

- Lack of Countywide centralized contract data.
 - Centralized contract and purchasing data will enhance transparency.

- Centralized contract and purchasing data will provide information for informed business decisions.
- Centralized contract and purchasing data could eliminate incidental waste from purchasing decisions.
- The Standard Operating Procedures (SOPs) approved by the Board of Supervisors are not consistently followed across county departments.
 - Requiring the use of the approved SOPs across all 28 county departments could instill greater confidence among those approving contracts.
- The Contracts/Purchasing division of the Monterey County Administrative Office developed and deployed an award-winning Contracts and Purchasing Academy, but it is not available online for self-directed learning.
 - The Contracts & Purchasing Academy has been on a hiatus since March due to the COVID-19 pandemic.
 - Providing the training in an “online” format would expand the training availability.
- The Contracts/Purchasing Manual prepared and used by the County has not been updated for 13 years and is not user-friendly.
 - Updating and reorganizing the Manual would make it a valuable resource.

With the specter of tightening County budgets and a wider use of contracting in post-pandemic times, capturing savings while enhancing business practices would allow the County to forge a winning budgetary strategy without significant expenditures.

GLOSSARY

Contracts/Purchasing – Contracts/Purchasing division of the Monterey County Administrative Office

CAO – County Administrative Officer

Auditor – Monterey County Auditor–Controller

RMA – Resource Management Agency (now separated into two departments-Housing and Community Development and Public Works, Facilities and Parks)

BoS – Monterey County Board of Supervisors

ECMS – Enterprise Contract Management System

Requestor – Person in a County department with the need for supplies or services

Originator – Person in a County department responsible for liaison with Contracts/Purchasing

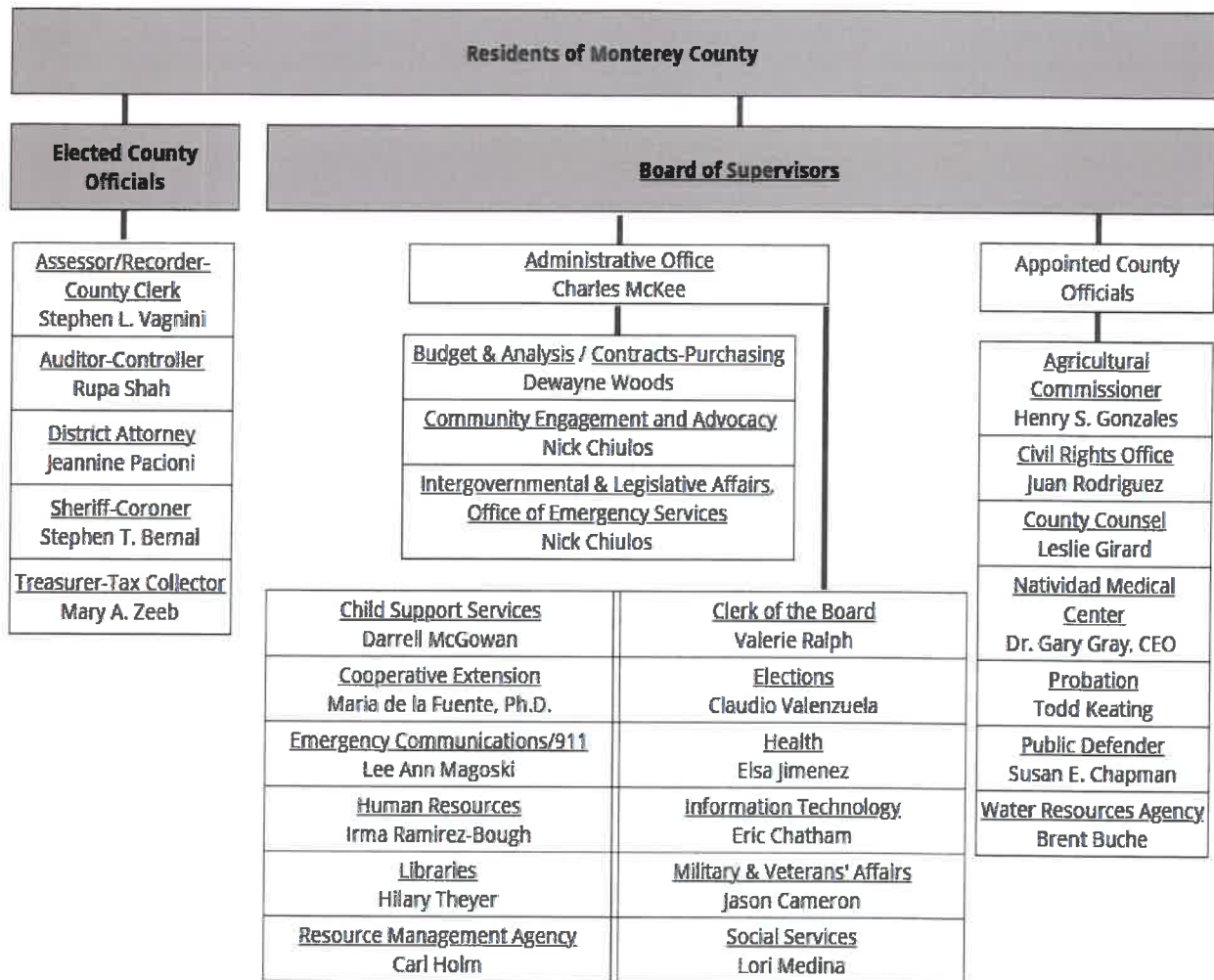
Manual - Monterey County Contracts/Purchasing Manual

SOP – Standard Operating Procedures

BACKGROUND

The Monterey County organizational chart below shows a decentralized organization with a mix of elected officials, appointed officials, and career employees. Elected County officials include the Assessor-County Clerk-Recorder, the Auditor-Controller, the District Attorney, the Sheriff-Coroner, the Treasurer-Tax Collector, and the Board of Supervisors.

Appointed officials include the County Administrative Officer, the heads of the Civil Rights Office, Natividad Medical Center, the Probation Department, as well as the Agricultural Commissioner, the County Counsel, and the Public Defender. Most County departments and employees are under general supervision of the County Administrative Office. Together these account for 5,400 employees who serve Monterey County citizens and support the operation of Monterey County government.



It takes goods and services to support the operations of Monterey County government and to facilitate the work done for its citizens. As seen in the table below, taken from the County's 2020/2021 budget, proposed expenditures for services and supplies are approximately 25% of the total budget in any given year. Dollar figures are expressed in millions.

All Funds	2018- 19 Actual	2019- 20 Adopted	2020 -21 Recommended
Expenditures			
Salaries & Benefits	\$ 656.2	\$ 711.0	\$ 749.1
Services & Supplies	376.1	395.7	391.8
Other Charges	154.5	126.6	133.5
Fixed Assets	85.3	66.3	93.6
Op. Transfers Out / Other Financing	236.9	238.4	265.3
Extraordinary Items	-	0.2	-
Contingencies	-	5.8	6.8
Total Expenditures	\$ 1,509.0	\$ 1,543.9	\$ 1,640.1

Continuing on with the topic of the decentralized nature of Monterey County government, as of the point in time that this investigation was undertaken, there were three separate and individually functioning purchasing departments to help county employees adhere to all the laws and regulations that control the spending of public money. Those departments were in the Resource Management Agency (RMA) (now separated into two departments-Housing and Community Development and Public Works, Facilities and Parks), Natividad Medical Center, and the Contracts/Purchasing division of the County Administrative Office. Additionally, many individual County Departments have employees that perform contracting functions of various types for their respective departments. This creates a decentralized purchasing business model for the County. The Civil Grand Jury limited its investigation to the Contracts/Purchasing division of the of the County Administrative Office and the contracting functions of individual departments.

Depending on the need and cost, there are several ways a Monterey County department can buy goods and services. The State of California has “master agreements” with pre-negotiated prices and terms that Monterey County departments can use, and the Contracts/Purchasing division has “master agreements” that departments can use. Additionally, Monterey County has a “purchase card” system for purchasing low dollar items. For more costly or unusual goods and services it has established formal and informal contracting processes with levels of purchasing and

contracting authority based on the value and terms of the contract. Final approval for expenditures over \$100,000 lies with the Monterey County Board of Supervisors.

Given the large amount of the County budget allocated to supplies and services, the expressed concern Monterey County residents had regarding several county contracts negotiated in 2019, and the media coverage those contract actions garnered, the Civil Grand Jury viewed purchasing and contracting as an area of government to be examined. We wanted to know the following:

- Are the Monterey County contracting and purchasing policies in place being consistently followed across County departments?
- Are the Monterey County contracting and purchasing procedures in place being consistently followed across County departments?
- Is there adequate oversight to ensure fraud, waste, and abuse are eliminated or at least minimized?

The investigation attempted to answer the question: Are there recommendations to Contracting and Purchasing processes and procedures that would save Monterey County taxpayer dollars?

METHODOLOGY

The Civil Grand Jury employed four methods of research. First, we reviewed publicly available documents, including meeting notes and consent agendas of Monterey County Board of Supervisors meetings for the past two years, and several contracts authorized by the Monterey County Board of Supervisors that were valued at more than \$100,000.00. Second, we reviewed County documents including the Contracts/Purchasing Manual and Training materials provided to employees with contracting authority. Third, we interviewed employees from a cross section of County departments to gather information on the contracting practices used by each department. Lastly, we arranged for a demonstration of the capabilities of the ECMS (Enterprise Contract Management System) software application that is employed by several County departments. The facts reported throughout this report are a result of those activities.

DISCUSSION

The Civil Grand Jury found facts that fell into five broad categories as shown below.

Three Monterey County Purchasing Authorities

When this investigation began, there were three independent contracting and purchasing authorities in Monterey County: RMA, Natividad Medical Center, and all other departments of Monterey County via the Contracts/Purchasing division within the County Administrative Office. We did not review Natividad Medical Center or the RMA but instead focused the investigation on the other departments. Below, we use the term “departments” to mean “all other departments”.

Contract Information

An array of methods is available for tracking contract information across Monterey County departments. They include spreadsheets, departmentally developed custom computer applications, and a tracking system developed by Monterey County Information Technology Department (Enterprise Contract Management System or ECMS). The departmental systems and spreadsheets do not connect with each other or to the Monterey County Enterprise Resource Planning (ERP) accounting system to provide a comprehensive view of contracts across Monterey County.

Improved access to information will enhance decision-making to support the dedicated staff of civil servants.

The Civil Grand Jury identified the following areas of concern:

- The current ERP system does not provide all contract information.
 - Information in departmental systems is not available to other departments in real-time, resulting in issues such as making it difficult for departments to achieve consistent pricing.
 - Creating a barrier to check other departmental experience with vendors.
 - Creating unintended competition among departments for services from the same vendor.

- The Enterprise Contracts Management System as deployed lacks the ability to store contract data useful to departments (i.e., Terms and Conditions and open contracts with a given vendor).
- The Contracts/Purchasing division of the County Administrative Office does not have comprehensive access to all contracts.
- Monterey County departments do not track the same set of contract information.
- Because ECMS allows it, Monterey County departments use different names for the same vendor.

Contract Process

On July 22, 2014, the Board of Supervisors adopted a set of standard operating procedures (SOPs) prescribing contracting and purchasing processes. The standard operating procedures provide an overview of the tasks in the purchasing process and give guidance as to which processes to use and when. Departments' staff necessarily must fill in gaps in the SOPs.

The Civil Grand Jury identified the following areas of concern:

- The SOPs do not provide guidance to the departmental purchasing person on the appropriateness of making vendor contacts at the beginning of the process.
- The person in a department with the need for supplies or services may be responsible for negotiating a final agreement.
- The invoice approval process for payment varies from department to department and is not documented in the SOPs.
- The SOPs do not prescribe how to manage the contract after it has been awarded.
- The BoS-mandated requirement to use the Contracts/Purchasing division is not consistently followed in practice.
- The SOPs associated with the Contracts & Purchasing Academy are not consistently followed.

- Monterey County departments do not have a method to check if a vendor is providing consistent pricing to each department.
- Monterey County departments do not have a method of checking other departments' experience with vendors.
- Monterey County departments compete for the same services from the same vendor.

Training

In December 2013, the Board of Supervisors approved the development of a Contract Academy and the implementation of a Contract Tracking System. The Contracts/Purchasing division of the County Administrative Office developed the Contracts & Purchasing Academy ("Academy"), which is a structured training program for contract development and processing. Academy certification is required for all County staff assigned to contract functions.

The Academy has received recognition and has been adopted with modifications by other counties. Monterey County employees have found the Academy courses to be valuable. Academy courses are available to Monterey County employees engaged in purchasing or contracting.

The Civil Grand Jury identified the following areas of concern:

- Some Monterey County employees who are doing contracts and purchasing activity have not been certified by the Academy.
- Academy training is only offered in an "in person" setting as it is not available online.
- Academy training has not been offered to new contracting personnel during the COVID-19 pandemic.
- The Academy training has gaps in ethics material, such as:
 - Academy training does not have ethics material that helps employees understand how to use public funds legally.
 - Academy training does not have ethics material that helps employees understand how to avoid pitfalls when interacting with vendors.

- Academy information related to ethics does not cover the laws and regulations related to ethics.
- The Academy training does not have a contracts management module.
- Recertification is not required.

Monterey Contracts/Purchasing Manual

One resource for Monterey County employees involved in purchasing is the “Monterey County Contracts/Purchasing Manual” (Manual). The most current version dated April 25, 2008 is available [online](#).¹

The Manual contains sections that discuss procurement policies, local preference policies, the duties of the Contracts/Purchasing Division, and a variety of other contracts/purchasing topics.

The Manual states, “It is the policy of the County of Monterey to centralize the purchasing of goods and services, to the extent possible”. The Civil Grand Jury found contract and purchasing activity to be *decentralized* - most contracting and purchasing activities were performed at the departmental level.

The Civil Grand Jury identified the following areas of concern:

- The Manual, dated April 25, 2008, is outdated.
- The Manual is inconsistent with the Academy training.
- The Manual is inconsistent with the SOPs adopted by the Board of Supervisors.
- The Manual does not make it clear that it is the final and authoritative source of information for County contracts and purchasing.
- A section captioned “Ethical Standards for Purchasing” that provides ethical guidance related to contracts and purchasing is found at pages 346 - 347.
- The Manual does not reference contracts and purchasing ethics laws and regulations.
- The table of contents for the Manual does not contain page numbers.

¹ <https://www.co.monterey.ca.us/home/showpublisheddocument?id=62280>

- The Manual is not presented in an intuitive manner.
- The Manual lacks an index.
- The Manual lacks a glossary.
- The Manual lacks sufficient references or citations.

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.
- 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 departmental level, cumulative contract business across Monterey County government departments requires manual tabulation. The lack of timely information being available to decision-makers can contribute to ineffective decision making by senior management. Based upon discussions 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 decisions such as inconsistent terms and conditions and variable pricing among other contract stipulations.
- F3. Based upon discussions with Department level employees, a lack of departmental 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 services.
- F4. Based upon discussions with Department level employees, a lack of departmental access to other department contracts is a barrier to checking experience with vendors among the various County departments.

- F5. Based upon discussions with Department level employees, the lack of a method of providing real-time contract details could lead to added cost when multiple departments are competing for the same services from the same supplier.
- F6. Standard Operating Procedures associated with the 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 on behalf of the County.
- F7. The County's practice of allowing departmental-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 of using a professional negotiator to seek the best terms and conditions available.
- 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.
- 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.
- 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.
- F11. The Contracts & Purchasing Academy is a valuable resource for Monterey County employees because it guides them through the contracts and purchasing processes.

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

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 31, 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.
- R3. Provide a system and training designed to promote collaboration among the County's departmental employees and staff in the Contracting/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.
- 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.
- 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.
- 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. (F11,12)
This recommendation should be implemented by the Board of Supervisors on or before February 1, 2022.
- 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.

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

REQUIRED RESPONSES

Pursuant to Penal Code §933 and 933.05, the Civil Grand Jury requests responses as follows:

From the following governing body within 90 days:

- Monterey County Board of Supervisors
 - F1 through F18
 - R1 through R12

INVITED RESPONSES

- County Administrative Officer (CAO)
 - F1, F2, F3, F4, F5, F6, F7, F8, F11, F12, F13, F14, F15, F16
 - R1, R2, R3, R4, R5, R8, R9, R10
- Contracts & Purchasing division of the Monterey County Administrative Office
 - F8, F9, F10, F12, F14, F16, F17, F18, F19
 - R6, R7, R9, R11, R12

Reports issued by the Grand Jury do not identify individuals interviewed. Penal Code section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Grand Jury.