

**EL DORADO COUNTY BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL
Meeting of August 29, 2006**

AGENDA TITLE: Proposed Purchasing Ordinance and Procurement Policy

DEPARTMENT: Chief Administrative Office	DEPT SIGNOFF:	CAO USE ONLY: D-Use
CONTACT: Terri Knowlton		
DATE: 8/22/2006 PHONE: 621-5530		

DEPARTMENT SUMMARY AND REQUESTED BOARD ACTION:
 Chief Administrative Officer submitting an ordinance to repeal former Chapter 3.12 of Title 3 of the El Dorado County Ordinance Code titled Purchasing Procedures and add a new Chapter 3.12 of Title 3 of the El Dorado County Ordinance Code titled Procurement and recommending the same be introduced for first reading and set for adoption on September 12, 2006.

CAO RECOMMENDATIONS: *Recommend approval. Laura S. Gell 8/23/06*

Financial impact? () Yes (X) No	Funding Source: () Gen Fund () Other
BUDGET SUMMARY: Total Est. Cost _____ Funding Budgeted _____ New Funding _____ Savings _____ Other _____ Total Funding _____ Change in Net County Cost _____	Other:
	CAO Office Use Only:
	4/5's Vote Required () Yes () No
	Change in Policy () Yes () No
	New Personnel () Yes () No
	CONCURRENCES:
Risk Management _____	
County Counsel _____	
Other _____	

***Explain**

BOARD ACTIONS:

Vote: Unanimous _____ Or _____ Ayes: _____ Noes: _____ Abstentions: _____ Absent: _____ <small>Rev. 0-1/05</small>	I hereby certify that this is a true and correct copy of an action taken and entered into the minutes of the Board of Supervisors Date: _____ Attest: Cindy Keck, Board of Supervisors Clerk By: _____
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EL DORADO COUNTY CALIFORNIA
Chief Administrative Office

August 22, 2006

Memo To: Board of Supervisors

From: Laura S. Gill, Chief Administrative Officer



Subject: Proposed Purchasing Ordinance and Procurement Policy

Recommendation

Chief Administrative Officer submitting an ordinance to repeal former Chapter 3.12 of Title 3 of the El Dorado County Ordinance Code titled Purchasing Procedures and add a new Chapter 3.12 of Title 3 of the El Dorado County Ordinance Code titled Procurement and recommending the same be introduced for first reading and set for adoption on September 12, 2006.

Reason for Recommendation

On July 18, 2006, item #62, my staff presented the final drafts of the new proposed County Purchasing Ordinance and Procurement Policy. At that meeting, the Board directed that the ordinance and policies undergo final review by County Counsel and be brought back on August 29, 2006. That review has been completed and the ordinance is presented for introduction and first reading, with the second reading and anticipated final adoption on September 12, 2006. The ordinance will take effect 30 days after the date of final adoption. The new proposed Procurement Policy is presented with this item for the Board's final review and comments and will be submitted for adoption concurrent with final adoption of the ordinance on September 12.

Following the July 18 presentation, staff met with County Counsel, the Auditor-Controller, and the Purchasing Agent. The following revisions have been made to the ordinance and policy documents as a result of these discussions:

- Refinement and clarification of the following:
 - Definition of "Services"
 - Unauthorized Purchases
 - Purchases Prohibited from Delegation of Authority
 - Exemptions from Competitive Bidding (expanded comparative market analysis requirement)
- Removal of \$5,000 cap on local vendor preference (preference remains at 5%)
- Application of local vendor preference limited to the purchase of goods (as in current ordinance)
- Removal of requirement for local vendors to have an established place of business for at least 6 months prior to bidding

- Requirement for Purchasing Agent to solicit formal bids within 120 days rather than 90 days when the cumulative purchases of a commodity reach \$25,000.
- Protest policy provided for bids for goods only
- Contracts for legal services exempted from selection process requirements for contracts over \$100,000
- CAO approval required for emergency purchases or emergency service contracts made by department heads when the Purchasing Agent is not immediately available
- Requirement that anyone issuing a purchase order or contract confirm that the vendor is in compliance with applicable federal regulations regarding debarment and suspension.

Other minor revisions have been made to ensure consistency between and throughout the documents. Attachment 'A' to this letter provides a chart summarizing the changes between the current and proposed ordinance and Attachment 'B' provides a listing of Purchasing and Contracting policies that will be deleted when the new Procurement Policy is adopted.

Action to be Taken Following Approval

The Clerk of the Board will have the Ordinance Summary published in the Mountain Democrat and the Ordinance and Procurement Policy will be presented for final adoption at the next Board meeting, on September 12, 2006.

Attachments

Attachment 'A'
Proposed Purchasing Ordinance – Summary of Changes

Authority	Current	Proposed	Comment
No competitive process required to purchase goods (departments)	\$500	\$3,000	“Standard” delegated authority (currently defined as “direct purchase order” authority)
No competitive process required to purchase goods (Purchasing Agent)	\$3,000	\$3,000	No change from current practice
Informal bid for goods	\$3,000- \$10,000	\$3,000-\$25,000	Purchasing Agent may require formal bids under \$25,000 at his/her discretion
Formal bid for goods	\$10,000	\$25,000	Purchasing Agent may require formal bids under \$25,000 at his/her discretion
Purchasing Agent authority to award bids and execute purchase orders for goods	\$10,000	\$100,000	No limit in Government Code. Discretionary limit set by Board.
Purchasing Agent authority for <i>exemptions</i> from competitive bidding for goods	\$10,000 (or by resolution of the Board)	\$100,000 (or by resolution of the Board)	Must be based on written findings of fact that exemption meets criteria in ordinance
Purchasing Agent Authority for contracts for special services	\$10,000	\$50,000*	GC 25502.3 was changed from \$10K to \$50K for Counties with population < 250,000 *increases annually per California CPI
Purchasing Agent Authority to delegate authority to purchase goods to department heads	Purchasing Agent decision is final	CAO concurrence required for any delegated authority	Current ordinance section 3.12.065 New ordinance section 3.12.140
Purchasing Agent Authority to rescind authority delegated to department heads to purchase goods	Purchasing Agent decision is final	CAO concurrence required for any rescinded authority	Current ordinance section 3.12.065 New ordinance section 3.12.140
Department head authority to delegate to other department staff	Up to department head’s authority for direct purchase orders	Purchasing Agent with CAO concurrence required	Current ordinance section 3.12.070 New ordinance section 3.12.140
Purchases prohibited from delegation	Fixed assets, items available through Central Stores, items available pursuant to awarded contracts, computer hardware and software, contractual services per GC 31000	Fixed assets, items available through Central Stores, items available pursuant to awarded contracts, computer hardware and software, contractual services per GC 31000	Exception in new ordinance allows Director of IT to purchase computer hardware and software up to amount delegated by Purchasing Agent with CAO concurrence

Attachment 'B'

Board Policies Section C - Purchasing & Contracting

<u>Current Policy</u>	<u>Status</u>	<u>Comment</u>
C-1 Contracts with Other Counties	Remains as is	
C-2 Leases - Renewals and Extensions	Remains as is	
C-3 There is no policy as yet	No policy	
C-4 Purchasing Contract Extensions	To be deleted	in proposed policy C-17
C-5 Purchasing Protest Procedure	To be deleted	in proposed policy C-17
C-6 Additional Equipment for Integrated Systems	To be deleted	now covered in policy A-10
C-7 (Previously Deleted)		
C-8 Gasoline Purchases	To be deleted	no longer applicable
C-9 Williamson Act Contract Compliance	Remains as is	move to Land Use policy section
C-10 Selected Food Purchases	To be deleted	handle as exemption via resolution (if necessary)
C-11 Request for Proposal	To be deleted	in ordinance/policies
C-12 Williams Act Contract/Agricultural Preserves Notices of Nonrenewal	Remains as is	move to Land Use section
C-13 Recycled Paper Products Procurement	To be deleted	need to update
C-14 Election Materials Procurement	To be deleted	in ordinance
C-15 Removal from County's Bidder's Mailing List	To be deleted	in proposed policy C-17
C-16 Contract Administration for Special Projects	Remains as is	
C-17 Procurement Policy	NEW / proposed	

PEB:km
Procurement Sum
08/23/06



SUMMARY

ORDINANCE NO. _____

THE BOARD OF SUPERVISORS OF THE COUNTY OF EL DORADO DOES ORDAIN AS FOLLOWS:

Chapter 3.12 of Title 3 of the County Ordinance Code titled Procurement repeals former Chapter 3.12 of Title 3 on the same subject titled Purchasing Procedures and adds a new Chapter 3.12 with major components as follows.

Chapter 3.12 contains a number of definitions which generally define the subject matter that is regulated, including definitions for the methods of competitively bidding supplies, materials, goods, furnishings, equipment, and other personal property through formal and informal bids and services through requests for proposal.

The ordinance designates the Procurement and Contracts Manager as the Purchasing Agent for the County and sets forth the duties of that manager, provides for the delegation of limited authority to department heads, establishes a code of ethics for all procurement, continues the central stores account, and sets forth the method for disposal of surplus property. The ordinance details the method for competitive bidding, and provides enumerated exceptions from competitive bidding including in the case of emergency.

A full and complete copy of the full text of the proposed ordinance is available for viewing in the office of the Clerk of the Board of Supervisors at 330 Fair Lane, Placerville, California.

PEB:km
Procurement Ord
08/23/06



ORDINANCE NO. _____

**THE BOARD OF SUPERVISORS OF THE COUNTY OF EL DORADO DOES
ORDAIN AS FOLLOWS:**

Section 1. Chapter 3.12 of Title 3 of the El Dorado County Ordinance Code is hereby removed in its entirety.

Section 2. Chapter 3.12 entitled "Procurement" of Title 3 of the El Dorado County Ordinance Code is hereby added as follows:

Chapter 3.12

PROCUREMENT

3.12.010 Title.

This chapter shall be known as the county purchasing ordinance.

3.12.020 Purpose.

The purpose of this chapter is to secure for the county taxpayers the advantages and economies which will result from centralized control over procurement of services, supplies, materials, goods, furnishings, equipment and other personal property by the county.

3.12.030 Procurement Policies and Procedures.

The board of supervisors shall adopt comprehensive policies and procedures governing purchases of services, supplies and equipment. These policies shall be consistent with federal and state law and with the county's charter and ordinances, resolutions and policies of the board of supervisors.

3.12.040 Purchases not subject to this chapter.

- A. The purchase of space for advertising in newspapers or periodicals shall not be subject to the provisions of this chapter.
- B. The purchase of elections materials and services shall not be subject to the provisions of this chapter in accordance with Elections Code section 13001.

Purchases not subject to this chapter must conform to federal and state law and the county's charter, and other applicable ordinances, resolutions and policies.

3.12.050 Definitions.

When used in this chapter:

- A. "Competitive process" means a procurement process whereby the county solicits bids or proposals from multiple vendors for the provision of products or services.
- B. "Department" or "department of the county" means any of the offices, departments or other organizational units of the county government and any special districts whose affairs and funds are under the supervision and control of the board of supervisors acting as its ex officio government body.
- C. "Department head" means the officer in charge of the department. Where the department is a special district or has no one person in charge, the board of supervisors shall act by minute order as the department head for the purposes of this chapter, unless and until it appoints a person to act as department head for a specified purpose or for a specified time to carry out the provisions of this chapter.
- D. "Emergency purchase" means a purchase which is immediately necessary for the preservation of life or property or for the continued operation of the office or department involved where undue delay would cause substantial loss to the county.
- E. "Fixed asset" means any item of equipment belonging to one of the general classes of property considered a fixed asset in accordance with generally accepted accounting principles, or as defined by the county auditor-controller.
- F. "Formal bid" means the competitive process in which the request for bid for product or services is circulated to all vendors on an established bidders' list for that commodity maintained by the purchasing agent, advertised in a newspaper, and received sealed and in writing by a stated deadline.
- G. "Informal bid" means the competitive process in which the request for bid for product or services is solicited from a minimum of three vendors on an established bidders' list for that commodity maintained by the purchasing agent and is received by a stated deadline in writing, by fax, or by email.

- H. "Request for Proposal" means the competitive process in which vendors are requested to submit proposals when factors in addition to price may be considered, such as varying product specifications or methodology of service.
- I. "Services " means work or services, inclusive of the services, advice, education, and training enumerated in Government Code section 31000, and exclusive of public works as defined in Public Contract Code. For the purposes of this chapter, services shall not mean monthly usage agreements for refuse, wireless and other telephone services, or utility usage agreements.
- J. "Supplies, materials, goods, furnishings, equipment and other personal property" means any and all items furnished to or used by any department, but excluding services, and excluding services or materials furnished "in kind" in lieu of a cash expenditure.
- K. "Surplus property" means any item of personal property that is no longer needed by the office, department or institution in possession thereof.

3.12.060 Purchasing Agent – Office Established.

The procurement and contracts division of the chief administrative office is established, headed by the procurement and contracts manager, hereinafter referred to as "purchasing agent", and includes such other assistants as the Board may designate. The purchasing agent shall have the powers and duties prescribed for county purchasing agents in federal and state law, the county charter and county ordinances, resolutions and policies. The chief administrative officer shall have responsibility for appointing and supervising the purchasing agent.

3.12.070 Purchasing Agent Duties.

Except when otherwise provided by state and federal law, the purchasing agent shall:

- A. Purchase, rent or lease for the county and its offices, all supplies, materials, goods, furnishings, equipment and other personal property of whatever kind and nature.
- B. Enter into facility rental agreements for meeting rooms, storage space, and parking spaces for the county and its offices.
- C. Engage independent contractors to perform services for the county and its offices pursuant to this chapter and award informally bid public works contracts pursuant to County Ordinance Chapter 3.14.
- D. Submit to the board of supervisors a report of procurement and contracting activity not less than quarterly.
- E. Sell or dispose of any personal property belonging to the county and found by the board of supervisors not to be required for public use.

- F. Accept trade-in allowances for personal property not further required for public use when purchasing additional personal property for public use.
- G. Perform such other services as the board of supervisors may require.
- H. Maintain records developed pursuant to this chapter.

3.12.080 Unauthorized Purchases.

If any officer, employee, or agent of the county makes a purchase or contracts for services contrary to the provisions of this chapter, such purchase or contract for services shall be void and of no effect, and shall not constitute a lawful charge against county funds.

3.12.090 Standards Establishment.

The purchasing agent or designee may organize and appoint standards committees as needed to establish standards with respect to the type, design, quality or brand of an item or group of related items or services to be purchased by the county. The membership of a standards committee shall be the purchasing agent, who shall serve as chair, and the heads of any county offices, departments or institutions that are primary users of the item or group of items for which the committee is appointed. Any member of the committee may act through a representative designated by the member.

3.12.100 Code of Ethics for Procurement.

Employees participating in a procurement process shall uphold and adhere to all federal, state, and local laws, ordinances and regulations and dedicate themselves to the highest ideals of honesty and integrity in that process. Employees shall discourage any inappropriate contact or encroachment on one's official duties by others who seek to influence a decision, and shall expose corruption whenever discovered.

No employee participating in a procurement process shall:

1. Accept any fee, compensation, gift, or payment of expenses which results in private gain in return for preferential treatment.
2. Grant any special consideration, treatment, or advantage to any person beyond that which is available to every other person in similar circumstance.

3.12.110 Purchases Over Budget Prohibited.

Except as otherwise provided by state law, no purchase of supplies, materials, goods, furnishings, equipment, other personal property, or services shall be made by any department in excess of the department's appropriations for that class of expenditure in the county budget.

3.12.120 Splitting Purchase Orders or Contracts for Services Prohibited.

The splitting of, or separation into smaller purchase orders or contracts for the purchase of goods or services for the purpose of evading the requirements of this chapter is prohibited, and shall be cause for disciplinary action.

PROCUREMENT & DISPOSAL OF SUPPLIES, MATERIALS, GOODS, FURNISHINGS AND OTHER PERSONAL PROPERTY

3.12.130 Authority.

Except as otherwise provided in this chapter or by resolution of the board of supervisors, the purchasing agent:

- A. May purchase supplies, materials, goods, furnishings, equipment and other personal property of whatever kind and nature in amounts up to but not exceeding \$3,000 without a competitive process.
- B. Shall solicit and award informal bids for the purchase of all supplies, materials, goods, furnishings, equipment and other personal property of whatever kind and nature in amounts in excess of \$3,000 but not exceeding \$25,000 and may thereafter execute any necessary contracts or purchase orders.
- C. Shall solicit and award formal bids for the purchase of all supplies, materials, goods, furnishings, equipment and other personal property of whatever kind and nature in amounts in excess of \$25,000 but not exceeding \$100,000 and may thereafter execute any necessary contracts or purchase orders in amounts up to but not exceeding \$100,000.
- D. Shall solicit and submit to the board of supervisors for award formal bids for the purchase of all supplies, materials, goods, furnishings, equipment and other personal property of whatever kind and nature in amounts in excess of \$100,000. The purchasing agent may, after award by the board of supervisors, execute any necessary contracts or purchase orders.
- E. To the extent allowed by law the purchasing agent shall give preference to local vendors in the determination of the bid award.

3.12.140 Purchasing Agent—Delegation of Signature Authority.

At the request of a department head, the purchasing agent, with concurrence from the chief administrative officer, may, and where legally required to do so shall, authorize in writing any county department head to purchase supplies, materials, goods, furnishings, equipment and other

personal property. These purchases shall comply with this chapter and any county purchasing policies and procedures. Considerations for delegation of authority shall include but not be limited to the repetitive nature of purchases, volume, the purchasing experience of the department and other common factors lending themselves to delegation. The purchasing agent, with concurrence from the chief administrative officer, may also rescind the authorization to purchase under this section by written notice to the county department head, unless otherwise prohibited by law.

The purchasing agent, with concurrence from the chief administrative officer, may, at a department head's request, authorize department personnel to purchase supplies, materials, goods, furnishings, equipment and other personal property. These purchases shall comply with this chapter and any county purchasing policies and procedures. The purchasing agent, with concurrence from the chief administrative officer, may also rescind the authorization to purchase under this section by written notice to the county department head, unless otherwise prohibited by law.

3.12.150 Purchases Prohibited from Delegation of Signature Authority.

Notwithstanding the provisions of 3.12.140, the following limitations on delegation of signature authority apply:

Authority to purchase fixed assets, supplies available through central stores, and supplies, materials and equipment available for purchase pursuant to a contract awarded by the board of supervisors or the purchasing agent may not be delegated to any department head or department personnel.

Authority to purchase computer hardware and software may not be delegated to a department head or department personnel of any department other than the Department of Information Technologies.

Authority for emergency purchases may only be delegated to department heads and may not be delegated to department personnel.

3.12.160 Exemptions from Competitive Process.

Competitive bidding shall not be required for items exempt from competitive bidding pursuant to resolution adopted by the board of supervisors or when the purchasing agent (for purchases not exceeding \$100,000), or the board of supervisors makes written findings of fact that:

- A. competitive bidding would not be in the public's interest because of an emergency as defined in this chapter; or
- B. the unique nature of the property or services required precludes competitive bidding; or

- C. competitive bidding would produce no economic benefit to the county; or
- D. all of the following requirements are met with respect to the item:
 - 1) the item may be procured from a vendor that has a contract with another public agency of this state, an alliance of this state and other states, or an alliance of local public agencies within the state for the purchase of the item; and,
 - 2) the contract was awarded utilizing a competitive bidding process substantially the same as that utilized by the county; and,
 - 3) the item and terms of the transaction are the same, or substantially the same; or
- E. special circumstances exist such that the purchase must be made within a limited period of time in order to secure for the county an advantageous price for the item that would not be achievable through competitive bidding. Such purchases shall be reported to the board of supervisors at its next regularly scheduled meeting; or
- F. it is in the best interest of the county to extend a contract award from the previous contract period for up to one additional contract term provided the contractor agrees to furnish such products or services at the same contract price and under the same terms, and conditions as the prior contract. This finding shall be made only when one of the following conditions exists:
 - 1) The extension is necessary to avoid the interruption of County business; or
 - 2) The extension makes good business sense; or
- G. the products or services are needed by the county pending a bid award and the contractor with the most recently awarded contract for such product or services agrees to extend that contract for an interim period at the same contract price, terms, and conditions as the previous award. Such interim period contracts shall not exceed the greater of ninety (90) days, or until the conclusion of a bidder's appeal, if applicable, of the pending bid process.

A comparative market analysis shall be included in the written findings of fact for purchases made pursuant to 3.12.160(D), (E), or (F) hereinabove.

3.12.170 Emergency Purchases of Supplies, Materials, Goods, Furnishings and Other Personal Property.

Emergency purchases, including those in excess of an individual's normal purchasing authority, may be made by the purchasing agent, or when the purchasing agent is not immediately available, by any department head with pre-approval from the chief administrative officer. Emergency purchases shall be reported as soon as possible, but in no event later than 30 days from the date of the emergency, to the board of supervisors at a regularly scheduled meeting.

3.12.180 Stores Account Established.

The board of supervisors shall, on an annual basis, as part of the budget process, set the appropriation level necessary for the purchasing agent to make quantity purchases and maintain an inventory of supplies, materials and equipment for issue to the several offices and departments of the county as needed. As such supplies, materials and equipment are issued, the fund from which purchases were made shall be periodically reimbursed from the proper budget appropriations of the entity receiving such issues.

3.12.190 Surplus Pool.

The purchasing agent shall provide secure storage for, and maintain an inventory of, surplus personal property. All items of surplus property shall remain available to county departments for a minimum of fifteen (15) business days prior to disposal or sale of same.

3.12.200 Surplus Property of No Value.

Items of surplus property, excluding fixed assets, shall be inspected by appropriate qualified staff for the purpose of determining operability and useful life. Those items found to be beyond economical repair or of little or no value shall, at the discretion of the purchasing agent, be disposed of in any manner the purchasing agent deems appropriate. Such determination of no value shall exempt items from placement in the surplus pool.

Specific fixed assets found by the purchasing agent to be beyond economic repair or of little or no value and found by the board of supervisors not to be required or adequate for county use may be disposed of in any manner the purchasing agent deems appropriate.

3.12.210 Surplus Property Sale.

The purchasing agent may sell any surplus property belonging to the county and found by the board of supervisors not to be required for public use. Such sales shall be conducted in accordance with Government Code section 25504.

3.12.220 Surplus Property Availability to Community Organizations.

Upon the recommendation of the purchasing agent that specific items of property belonging to the county and found by the board of supervisors not to be required or adequate for county use, the board of supervisors may make available to community based organizations engaged in the pursuit of public purposes those items of surplus personal property. The transfer of personal property to such organizations shall be made in accordance with Government Code sections 25365 and 25372, and pursuant to a written agreement.

PROCUREMENT OF SERVICES

3.12.230 Authority.

Notwithstanding any other provision in this chapter, the board of supervisors may contract for services as authorized and provided in the Government Code without advertising for bids or seeking proposals thereon.

The purchasing agent may enter into contracts authorized by this section, provided the total contract amount, inclusive of all amendments, does not exceed \$50,000 or the amount allowed by Government Code 25502.3, whichever is greater.

Unless otherwise prescribed by statute, nothing herein shall limit or restrict the board of supervisors or the purchasing agent from electing to call for and receive bids or proposals when awarding contracts under this section. Contracts for services shall meet all county requirements for contracts.

3.12.240 Emergency Purchases of Services.

Emergency purchases of services, including those in excess of an individual's normal purchasing authority, may be made by the purchasing agent, or when the purchasing agent is not immediately available, by any department head with pre-approval of the chief administrative officer. Emergency service contracts shall be reported as soon as possible, but in no event later than 30 days from the date of the emergency, to the board of supervisors at a regularly scheduled meeting.

Section 3. This ordinance shall become effective thirty (30) days following adoption hereof.

Ordinance No. _____
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PASSED AND ADOPTED by the Board of Supervisors of the County of El Dorado at a regular meeting of said Board, held on the ____ day of _____, 2006, by the following vote of said Board:

Ayes:

ATTEST
CINDY KECK
Clerk of the Board of Supervisors

Noes:
Absent:

By _____
Deputy Clerk

Chairman, Board of Supervisors

I CERTIFY THAT:
THE FOREGOING INSTRUMENT IS A CORRECT COPY OF THE ORIGINAL ON FILE IN THIS OFFICE

Date _____
ATTEST: CINDY KECK, Clerk of the Board of Supervisors
of the County of El Dorado, State of California.

By _____
Deputy Clerk