

300 - CONTRACTS AND AGREEMENTS

A. CONTRACTS

All contracts for goods and services provided to the County of Santa Cruz are entered into under the legislative authority of the Board of Supervisors. Unless authority is delegated to another official (for example, to the Purchasing Agent for certain contracts under the purchasing ordinance, or to another individual as specified in this Section), ALL contracts must be approved by official action of the Board before their terms can be enforced, except for contracts entered into by constitutional office holders pursuant to Government Code Section 25303 and 29601. Verbal contracts are acceptable only under emergency circumstances when necessary for the detection or prosecution of criminal matters, and the basic provisions of any verbal contracts shall be confirmed in writing within 1-10 working days.

For the Board and interested members of the Public to assess the financial impact of an agreement being considered by the Board, the agenda items asking for the agreement to be approved must summarize the fiscal content of the contract. An appropriate consent agenda item might read, for example:

"Approve a contract with the Department of Health Services, in the amount of \$105,680, to provide for increased public outreach activities with respect to Lyme's Disease, as recommended by the Health Services Officer."

Contracts are initiated by the department that requires a service, and it is the department's responsibility to administer the contract after it is approved by the Board of Supervisors or Purchasing Agent.

The Board or the Purchasing Agent must approve changes to contracts approved by the Board or Purchasing Agent.

If the Board authorizes a Department Head to negotiate an agreement, it must be returned to the Board for approval. Agreements shall be submitted to the Board prior to the commencement of any work. In extraordinary circumstances, if the terms of a contract are to be retroactive, the Board must state their intent in advance. **IF THE BOARD DOES NOT CLEARLY STATE ITS INTENT TO MAKE CONTRACT PROVISIONS RETROACTIVE TO A SPECIFIC DATE, NO PAYMENTS WILL BE ALLOWED FOR SERVICES RENDERED PRIOR TO BOARD APPROVAL OF THE AGREEMENT.**

When the Board authorizes a Department Head to execute an agreement, it is authorizing the Department Head to sign the Board approved agreement on behalf of the Board but the terms and conditions must not be altered.

It is recommended that the standardized Agreement Forms approved by County Counsel be used. See example included at the end of this section.

Contracts are generally divided into two groups:

- Services, construction and repair

- Revenue

The Purchasing Department has the authority to engage independent contractors to perform services for the County and its offices and to employ independent contractors for construction and repairs within limits prescribed by the Government Code. To establish necessary procedures to be followed in these areas, Purchasing should be consulted as particular requirements arise. This authority has been provided in Santa Cruz County Code Chapter 2.37.

Under this provision the Purchasing Agent has the duty to purchase, rent, lease or lease/purchase for the County, all materials, supplies, furnishings, equipment, facilities (maximum \$100,000 per contracted item), and other personal property of whatever kind and nature for items previously budgeted by the Board. State law prohibits the splitting of projects into smaller projects to circumvent any or all limitations. Purchase orders may also be utilized in these transactions. Currently purchase order system requires a separate workflow.

All personal service agreements and all public project agreements must be approved by the Board of Supervisors if they are greater than the thresholds indicated in Section 2.1.b and 3.0, respectively, of the Purchasing Policy Manual. Contracts submitted to the Board of Supervisors must be accompanied by an ADM-29. The Purchasing Agent may approve agreements below these levels or other Board authorized agents.

Approval of contracts, leases or any other form of agreement for contracted services or supplies, or revenue contracts, requires the use of Forms ADM-29 and W-9. These forms standardize and facilitate processing of such requests and approvals through the Auditor's Department, and gather required information for tax reporting.

The originating department must provide that each contract contain provisions for:

- Adequate documentation of personal service agreement with individual to determine their status as an independent contractor.

- Adequate clarity as to payment for services. Contract provisions should not provide for payment in less than 30 days of receipt by the County of invoice without specific approval by Auditor-Controller-Treasurer-Tax Collector.

- Use of escalator clauses, factors that automatically increase agreement payments annually, are generally discouraged except for rental and use type agreements.

- Advances are allowed only under the following conditions:
 1. Non-profit, community based organizations granted tax-exempt status under IRC Section 501 may receive a one-time cash advance, not to exceed 1/4th of the total contract amount. Each subsequent payment will be made based on actual services. If advances are to be allowed, the Board must approve them when the contract is approved. The Department Head or designee shall determine that the program cannot be carried out without the advance prior to submitting it to the Auditor-Controller-Treasurer-Tax Collector. Evidence of such shall be retained in the department files. The contract shall include a written assurance by the contractor

that cash advances will not be used to provide working capital for non-County programs, and when possible such advances shall be deposited in interest bearing accounts, and the interest used to reduce program costs. In most cases a one or two month advance should be adequate.

2. Cash advances for all other organizations shall require the analyses and assurances in (1) above, AND may require faithful performance and fidelity bonds naming the County as loss payee depending on the necessity, which will be determined and approved by both the County Administrative Office and Auditor-Controller-Treasurer Tax Collector.

- Allowance for audit and retention of records for a period of not less than 5 years or until audited whichever occurs first.

- Termination and/or suspension of payments for non-compliance.

- Any budgetary control.

- Declaration as to required insurances and posting of the necessary certificates of insurance coverage with the originating department. Insurance is usually required for:

- a. General liability
- b. Automobile
- c. Worker's compensation
- d. Fidelity bonds

- The department will require the inclusion of the following equal opportunity clauses as a condition of all contracts in excess of \$10,000:

The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, disability, medical condition (cancer related and genetic characteristics), gender, pregnancy, marital status, sex, sexual orientation, age (over 18), veteran status or any other non-merit factor unrelated to job duties. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

- For all contracts in excess of \$50,000 where the Contractor employs at least 15 employees, the department will require the inclusion of the following equal opportunity clauses as a condition of the contract:

The Contractor will state that they are an equal opportunity employer in all solicitations or advertisements for employees placed by or on behalf of the Contractor, and ensure that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, disability, medical condition (cancer related and genetic characteristics), gender, pregnancy, marital status, sex, sexual

orientation, age (over 18), veteran status or any other non-merit factor unrelated to job duties.

All County contracts must comply with the non-discrimination requirements of both the State and Federal governments. Certain specific projects conducted under State and/or Federal oversight may have additional definitions and requirements.

If applicable according to the contract-funding source, the Contractor will comply with all provision of Executive Order 11246, as amended, and of the rules, regulations and orders of the Secretary of Labor, which include furnishing required information and report.

In the event of the contractor's non-compliance with the non-discrimination clauses of this contract or with any of the said rules, regulations, or orders this contractor may be declared ineligible for further contracts with the County.

Entering a New Contract

Add new contract in the Contract module (mask CMUPCM) to initiate a new contract.

The County's Form ADM-29 is generated as a CDD report under mask SCZCM1000 and a copy of the Form W-9 is available on the General Services Department website.

For detailed step by step instructions for use of the OneSolution Contracts Module, accompanied by screenshots, refer to the Contracts End User Guide, available on the Auditor-Controller-Treasurer-Tax Collector's OneSolution Information Page:
<http://countyintranet.co.santa-cruz.ca.us/aud/sungard.html>

The Department approves their contract via OneSolution workflow.

Attach all copies including the contract or a copy thereof, to the Attachments tab. The contract should be delivered to County Counsel (see section B, below) and Risk (see section C, below) for review and signature at least 48 hours prior to the deadline the County Administrative Officer has established as a cutoff for including the item on the Board of Supervisor's Agenda (See Section 103 of Title V). Contracts will be forwarded to the Clerk of the Board through the Agenda Management System, who will approve the contract in OneSolution after all approvals and documentation have been received. Original contracts with wet ink signatures will also be forwarded to the Clerk of the Board. Once the Clerk of the Board approves the contract, the Originator, the Auditor, and Purchasing will be notified with a copy of the final ADM-29 report so the department will know when it can submit claims for payment under the contract.

B. FORM W-9

This form is used to gather required tax information for reporting payments to Federal and State tax agencies. All applicable items must be completed, and the form must be signed. The Auditor-Controller-Treasurer-Tax Collector will access the W-9 form in the system contract file. The W-9 is not required for revenue contracts.

Caution must be exercised on sole proprietors using fictitious names to ensure both their personal name and business name are reported correctly on the W-9. Failure to submit will result in the automatic backup withholding of income taxes pursuant to IRS regulations.

C. COUNTY COUNSEL

Department will route original documents to County Counsel. The County Counsel will review and approve other than Standard County contracts by signature for "approval as to form." Such approval indicates that the contract contains all of the necessary elements of a Contract and is binding on the parties. Such approval does not necessarily indicate that the Contract contains all clauses, which may be advisable, or that the language clearly expresses the intent of the parties. **SUCH CONCERNS SHOULD BE RAISED BY SPECIFIC QUESTIONS TO COUNTY COUNSEL.** Failure to submit the original contract for review at least 48 hours prior to the deadline for submitting agenda items to the County Administrative Office may result in a deferral of the item to the next agenda.

D. RISK MANAGER

Following County Counsel review of documents, contracts shall be delivered to Risk Management to review and ensure that the County is adequately protected against liability for the potential negligence of the contractor while under contract with the County.

In the case of independent contractor agreements, the Risk Manager must approve departures from the standard insurance requirements.

E. AUDITOR-CONTROLLER-TREASURER-TAX COLLECTOR

Following approval from Risk Management the Auditor-Controller-Treasurer-Tax Collector shall review the documents, except for the Human Services Department, Health Services Agency, and Department of Public Works, contracts will be routed in the system to the Auditor-Controller-Treasurer-Tax Collector. The Auditor-Controller- Treasurer-Tax Collector will review and approve the following:

1. that all contracts have been assigned a separate contract number, including revenue contracts. OneSolution will generate the next available contract number.

that appropriations are available and have been or will be encumbered for contracts. If sufficient appropriations are available, funds will be encumbered. If appropriations are NOT sufficient, and an appropriate AUD-74 or AUD-60 is NOT included to correct the insufficiency, **THE ADM-29 WILL NOT BE PROCESSED BY THE AUDITOR-CONTROLLER-TREASURER-TAX COLLECTOR**, and the entire package will be returned to the originating department for correction. **ALL DEPARTMENTS MUST USE OneSolution TO ASSURE THAT SUFFICIENT FUNDING IS AVAILABLE BEFORE SUBMITTING ADM-29's OR AUD-74's.**

The originating department is responsible for ensuring that all required standard and special provisions are included in the agreement and that payment terms and conditions are clearly stated and the proper amount and timing of payments under the contract can be computed.

F. COUNTY ADMINISTRATIVE OFFICE

The signature lines on the Contract Cover memo and the SCZM1000 Report (formerly ADM-29) that goes to the Board of Supervisors certifies that the subject agreement clearly expresses the intent of the parties.

All pertinent documents will be forwarded to the Clerk of the Board through the Agenda Management System.

After department receives documents back from Auditor-Controller-Treasurer-Tax Collector, paper documents with Board memo are delivered to the County Administrative Office for review by CAO Analyst. Once documents are received, the CAO analyst reviews online and approves via workflow. As appropriate, the CAO or CAO's designee reviews and approves through the Agenda Management System workflow. Documents are then routed to the Clerk of The Board through the Agenda Management System workflow.

G. CLERK OF THE BOARD

Clerk of the board reviews documents, and contracts requiring board approval are placed on board agenda through the Agenda Management System. Paper documents requiring wet ink signature are maintained on file with the Clerk of The Board.

Once approved, department gets any paper documents from the Clerk of the Board for Department Head signature. Department returns original documents to Clerk of the Board for Department Head signature.

Clerk of the Board reviews contract online, enters BOS approval date and approves via workflow. Clerk of the board then prints Contract Workflow report - SCZM1000 Report (formerly ADM-29) to include as part of the official record.

H. AFTER BOARD APPROVAL

System notifies contract originator, Purchasing and Auditor-Controller-Treasurer-Tax Collector via email that the contract has been approved and is ready to push to PO in the system. Purchasing pushes contract to PO in the system in order to encumber the funds.

Each department is responsible for preparing the agreement and administering it after Board approval, which includes:

1. Executing the Agreement
2. Providing Clerk of the Board with original signatures on Agreements for distribution.
3. Obtain and maintain Certificates of Insurance and oversee compliance of terms of the agreement.
4. All contracts must be reviewed for recertification or renegotiation not less than every four (4) years. Bringing the contract back to the Board with updated provisions would typically do this.

5. Copies of deposit permits (AUD-36) must be reconciled to the revenue agreement. Revenue contracts must also use contract workflow report – SCZM1000 (formerly ADM-29).

I. OTHER CONTRACT ISSUES

Multi Year Grant Agreements should be prorated and budgeted in the appropriate fiscal year. At fiscal year end, the Board authorizes the Auditor-Controller and County Administrative Officer to make necessary budget adjustments to account for the multi-year nature of the agreement and provide for year by year budget requirements.

Departments must request all re budgets.

Encumbrance changes to contracts may be made when approved by the County Administrative Office where the original terms of an agreement are unaffected. In these cases, if the new agreement is only changing the term and amount, if applicable, the new agreement does not require signature from Risk Management. The agreement must still be signed by County Counsel, the authorized department signer and the vendor. If the new agreement may have an effect on insurance or indemnification provisions, it must be signed by Risk Management.

Continuing Agreements comprise two categories of agreements:

1. Agreements which are multi-year or continuous whose ORIGINAL terms extend from the old fiscal year into the new fiscal year; and
2. Agreements which terminate on June 30 of the old fiscal year, but which will be re-established by a new agreement in the new fiscal year.

The procedure for obtaining Board approval for Continuing Contracts is generally the Continuing Contracts List. The Continuing Contracts List is considered and acted on by the Board of Supervisors during final budget hearings each June, and once the Board approves the list, it becomes the legal authority to accept goods and services, and make payments on those agreements, which are included on the list. Omission of an agreement from the Continuing Contracts List considered during budget hearings will result in delayed or denied contract payments because there is no legal authority to pay on that contract. Agreements which are omitted from the list which were approved by the Board will need to be taken to the Board for approval in the new fiscal year.

When a contract is extended from one fiscal year to the next and approved on the continuing agreements list, monthly payments on these agreements are limited to two months of payments equal to the lesser of: two-twelfths of the prior year amount, or two-twelfths of the new year amount. Only two payments can be made until necessary approvals are obtained.

The Continuing Contracts List, which is presented to the Board for consideration during budget hearings, includes four sections. Agreements are grouped into the sections depending on the nature, the dollar amount, and the terms of the agreement. Although ALL continuing agreements must be included on the Continuing Contracts List, different types of agreements will require different actions AFTER the list is approved by the Board, as described below.

SECTION I: Contracts included in Section I of the Continuing Contracts List are those agreements which, BY THEIR ORIGINAL TERMS are multi-year or continuous, and require no changes from the original terms. These contracts will not return to the Board for any future action, because the original terms and conditions are considered ratified by the Board at this time. WIDGET I are a type of Section I agreement that are based on a rate or unit of service. Any contract whose terms and conditions contain built-in changes such as cost-of-living escalators or periodic rate changes are considered to be No-Change agreements because the Board has already approved these escalators when they considered the original contract terms. Agreements with built-in escalators or modifications DO NOT need to return to the Board to implement the new fiscal year agreement.

For Section I contracts including Widget I contracts with escalators or rate changes that require increases in encumbrances above the prior year amount, a Contract Workflow Report SCZM1000 (formerly ADM-29) and brief explanatory memo is required to be submitted to the CAO for approval through OneSolution. The CAO will review and, upon approval, forward documents to the Auditor's Office for processing.

Contracts approved by the Purchasing Agent under the authority of County Code Section 2.35-2.37, and contracts approved by the Board of Supervisors for specific public works construction improvements by formal bid process are NOT continuing contracts for purposes of this section and DO NOT require Board approval to allow payments into the new fiscal year unless Board approved contingency amounts are exceeded.

SECTION II: Agreements in Section II of the List are those, which expire on June 30 of the old fiscal year, but which will be renewed for the new year, include NO program changes and any contract payment increases do not exceed 10% of the expenditures incurred in the old year. Widget II agreements are a type of Section II that are based on a rate or unit of service.

Section II agreements including Widget II agreements are approved by the Board for the new year, pending execution and approval of the new agreement or amendment. Following approval of the Continuing Contracts List during budget hearings, the new agreements or amendments will be presented to the CAO for review and approval.

SECTION III: Section III of the Continuing Contracts List will include all contracts, which will incorporate changes in scope or program activities in the new year, and all contracts, which are not eligible to be in the Section I, or II above. Widget III agreements are a type of Section III that are based on a rate or unit of services. All Section III contracts must be submitted as individual items on the Board's agenda during the new year, as approval of the Continuing Contracts List constitutes only temporary authority to spend until the new contract is executed.

SECTION IV: Revenue agreements, such as grant awards and State financing agreements, must be approved by the Board each year, and are identified in this section of the Continuing Contracts List.

J. CONTRACTS OUT OF SPECIAL FUND BY SHERIFF AND DISTRICT ATTORNEY

District Attorney and Sheriff Special Fund Independent Contractors

Whenever these offices hire an independent contractor and pay for those services out-of-the-special fund, they must submit to the Auditor-Controller, at least annually on or before January 5th, a listing of the individual contractor paid and the total paid to each for the calendar year. In addition, they must secure and submit to the Auditor-Controller a completed W-9 with required tax -payer information.

K. FINAL REPORTS

Departments, which contract for a study or evaluation, which results in a final report, shall provide a copy of the final report to the Board of Supervisors.