



# **San Juan County Procurement Policy**

**Prepared by F. Milene Henley,  
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### **§1 Legislative Authority and Resources**

This policy pertains to procurement by San Juan County for public works/construction projects, professional and personal services agreements, and purchasing over legislated dollar-amount thresholds of goods, equipment, supplies, and some purchased services.

Legislative Authority and Resources. Applicable legislation includes, but is not limited to:

- SJCC 3.24, “Purchasing Procedures”
- RCW 36.32.245-270, regarding competitive bids
- RCW 39.04-12 and 39.28, regarding public works contracts
- RCW 39.04.190, “Purchase contract process – Other than formal sealed bidding”
- RCW 39.26, “Procurement of Goods and Services”
- RCW 39.30, “Purchases – Competitive Bidding – etc.”
- RCW 39.34, “Interlocal Cooperation Act”

The following legislation applies specifically to the expenditure of Federal funds:

- 48 CFR part 2, subpart 2.1
- 48 CFR part 13
- 2 CFR part 200 (Uniform Guidance), especially subpart D, section 317-327

The following resource also applies to the expenditure of State and Federal funds:

- “Buying and Bidding: Ensuring Your Government Follows Washington Purchasing Laws,”  
Washington State Auditor’s Office

Powers granted by Washington State law to the County Council as San Juan County’s legislative authority for procurement/contracting/purchasing are delegated to the County Manager as its administrative authority, and thereby to Department Directors, who supervise the work of their contract coordination staff in carrying out procurement, contracting, and purchasing activities in accordance with the rules and procedures set forth in the applicable laws and regulations.

## §2 State or Locally Funded Procurement

2.1 Bidding Thresholds. For public works subject to competitive bidding, San Juan County will adhere to the bidding thresholds set forth in its County Code and Washington State laws cited in Section 17.1.1, *Legislative Authority and Resources*, to determine the minimum level of competition required in the awarding of contracts for the purchase of goods, equipment, and/or supplies and for construction and other public works.

In accordance with RCW 36.32.250, the County may enter into public works contracts of a value of less than \$40,000 without a competitive bidding process, on adoption of a resolution by the County Council.

There are currently no statutory thresholds for professional, personal, or purchased services, either in statute or in County Code. Nonetheless, County Code does require, in SJCC 3.24.020, a process to ensure equity, transparency, and the greatest opportunity to select a qualified consultant.

### 2.2 Methods of Procurement

*Rosters.* San Juan County subscribes to Municipal Research and Services Center (MRSC) for the maintenance of the following rosters to be used for selection of contractors, consultants, and/or vendors, where and as allowed and/or required by law:

- *Small Works Roster* in accordance with RCW 39.04.155. To use the small works roster process or limited public works process, as provided in RCW 39.04.155, in lieu of formal competitive bidding for public works contracts, departments may accept bids ONLY from firms listed on the MRSC Small Works Rosters for San Juan County. If employees wish to have certain contractors submit bids, employees should invite those firms to join the MRSC Small Works Rosters in the appropriate categories of work and indicate San Juan County as a local agency they are willing to work for. Employees may also encourage contractors whose MRSC Small Works Rosters registrations have lapsed to renew them. Contractors must be active, registered members of the correct MRSC Small Works Rosters before the bid acceptance deadline for any particular contract in order for the County to accept bids from them for that contract.
- *Consultant Roster* of firms providing professional and personal services. Use of the MRSC Consultants Roster in contracting for professional services is optional; proposals for services may be solicited from any number and combination of firms who are qualified to perform the type of work in question. Qualifications-based selection in accordance with RCW Chapter 39.80 must be used in the awarding of contracts for professional Architectural, Engineering, Landscape Architecture, and/or Land Surveying (A&E) services. Most firms listed on the MRSC Consultants Roster have Statements of Qualifications (SOQs) uploaded to their MRSC member profiles; those SOQs may be downloaded and reviewed in order to determine the best qualified firms from which to request proposals. The awarding department must keep a record of the criteria and/or scoring system used to determine the most suitable proposal for contract award.
- *Vendor Roster* of firms selling materials, equipment, supplies, and some purchased services. Use of the MRSC Vendor Roster for purchases of machinery, equipment, and supplies is recommended, but is not required. However, for purchases between \$5,000 and \$25,000, a documented, good faith effort to obtain at least three quotes is required (SJCC 3.24.050). Purchases greater than \$25,000 require a formal competitive bidding process (SJCC 3.24.060).

The use of MRSC Rosters is encouraged, but not required, within San Juan County. Rosters may also be used to help find vendors for federal awards, but the use of rosters does not eliminate the requirement to follow federal requirements for the expenditure of federal funds.

*State (DES) Contracts.* San Juan County may use DES (“State”) contracts in lieu of the bidding process if the State contract satisfies all of the County’s requirements.

*Purchasing Cooperatives.* San Juan County may use purchasing cooperatives, such as King County Directors’ Association (KCDA) or Sourcewell, to leverage purchasing power. Such purchases do not substitute for the bidding process or eliminate bidding threshold requirements.

To leverage buying power within the County, the Auditor’s Office will order office supplies and limited other items for departments that wish to take advantage of that service.

*Other Methods of Procurement.* Details on use of a competitive bidding process, as well as other methods of procurement for State or locally funded procurement, are available at SJCC 3.24.

### **§3      Federally Funded Procurement**

3.1      Bidding Thresholds. Federally funded procurement processes must follow the requirements laid out in 48 CFR part 2, subpart 2.1, 48 CFR part 13, and 2 CFR part 200, particularly subpart D, sections 317-327.

*Micro-Purchase Threshold.* According to 48 CFR chapter 1, subchapter A, part 2.101, a “micro-purchase” is an acquisition of supplies or services, using simplified acquisition procedures, that may not exceed a specified threshold. The threshold is compared to the aggregate purchase amount (i.e., all items together), rather than the cost of individual items. In San Juan County, the micro-purchase threshold is less than \$5,000 (SJCC 3.24.040), except in the following circumstances:

- For acquisitions of construction work subject to 40 U.S.C. chapter 31, subchapter IV, Wage Rate Requirements (Construction), \$2,000.
- For acquisitions of services subject to 41 U.S.C. chapter 67, Service Contract Labor Standards, \$2,500.
- For acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a contingency operation; to facilitate defense against or recovery from cyber, nuclear, biological, chemical or radiological attack; to support a request from the Secretary of State or the Administrator of the United States Agency for International Development to facilitate provision of international disaster assistance pursuant to 22 USC 2292 *et seq.*; or to support response to an emergency or major disaster (42 USC 5122), as described in 13.201(g)(1), except for construction subject to 40 U.S.C. chapter 31, subchapter IV, Wage Rate Requirements (Construction) (41 USC 1903):
  - \$20,000 in the case of any contract to be awarded and performed, or purchase to be made, inside the United States, or
  - \$35,000 in the case of any contract to be awarded and performed, or purchase to be made, outside the United States.

*Simplified Acquisition Threshold.* According to 2 CFR part 200, subpart A, section 1, “The Simplified Acquisition Threshold (SAT)” is the dollar amount below which the County may purchase supplies or

services using small purchase methods (2 CFR part 200, subpart D, section 320). The County's SAT is less than \$35,000, matching the threshold set by SJCC 3.24 for using the limited public works process.

*Purchases of \$35,000 or more.* For purchases of \$35,000 or more, use a formal procurement method (described in Section 3.3, below).

3.2 Methods of Procurement, Informal. Informal Procurement Methods (2 CFR part 200, subpart D, section 320). When the value of the procurement for property or services under a Federal award does not exceed the County's simplified acquisition threshold (SAT) of \$35,000, formal procurement methods are not required. The County may use the informal procurement methods below to expedite the completion of its transactions and minimize the associated administrative burden and cost.

*Micro-Purchases.* "Micro-purchases" for less than an aggregate of \$5,000 may be awarded without soliciting competitive price or rate quotations if the County considers the price to be reasonable based on research, experience, purchase history or other information, and documents its findings accordingly. Purchase cards may be used for micro-purchases, subject to the terms of the County's Credit Card Policy (SJCC 2.10.180). To the maximum extent possible, the County should distribute micro-purchases equitably among qualified suppliers.

*Small Purchases.* "Small purchases" refers to the acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold of less than \$5,000 but does not exceed the County's SAT of less than \$35,000. The small purchase method is laid out in 48 CFR chapter 13, subchapter C, Part 1313. If small purchase procedures are used, price or rate quotations must be obtained from three qualified sources. These price quotations must be documented.

3.3 Method of Procurement, Formal. When the value of the procurement for property or services under a federal financial assistance award exceeds the County's SAT of less than \$35,000, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement can be used in accordance with 2 CFR part 200, subpart D, section 319. The following formal methods of procurement are used for procurement of property or services of \$35,000 or more:

*Sealed bids.* "Sealed bids" refers to a procurement method in which bids are publicly solicited and a firm, fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bids method is the preferred method for procuring construction.

For sealed bidding to be feasible, all the following conditions should be present:

- A complete, adequate, and realistic specification or purchase description is available.
- Two or more responsible bidders are willing and able to compete effectively for the business.
- The procurement lends itself to a firm, fixed price contract and the selection of the successful bidder can be made principally based on price.

If sealed bids are used, all the following requirements apply:

- The invitation for bids must be publicly advertised.
- In addition, bids must be proactively solicited from at least two (preferably more) qualified sources, providing them sufficient response time prior to the date set for opening the bids.

- The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services clearly enough for the bidder to properly respond.
- All bids will be opened publicly at the time and place prescribed in the invitation for bids.
- A firm, fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is the lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of.
- Any or all bids may be rejected if there is a sound, documented reason.

*Proposals.* “Proposals” refers to a method in which either a fixed-price or cost-reimbursement type contract is awarded. Proposals are used when conditions are not appropriate for the use of sealed bids. They are awarded in accordance with the following requirements:

- Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from at least two (preferably more) qualified offerors (i.e. a person or entity who submits a bid or proposal which conforms in all material respects to the invitation for bids or request for proposals).
- Any response to publicized requests for proposals must be considered to the maximum extent practical.
- The County must have a written plan for conducting technical evaluations of the proposals received and making selections, prior to issuing the request for proposals.
- Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the County, with price and other factors considered.
- The County may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services, whereby each offeror's qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. This method, where price is not used as a selection factor, may be used only for procurement of A/E professional services. It cannot be used to purchase other types of services through A/E firms that are not A/E professional services.

*Noncompetitive procurement.* “Noncompetitive procurement” may be used only if one or more of the following circumstances apply and are adequately documented:

- The procurement is for the acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold of less than \$5,000.
- The item is available only from a single source.
- The public exigency or emergency for obtaining the property or services will not permit a delay resulting from publicizing a competitive solicitation.
- The federal awarding agency or pass-through entity (i.e., a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program) expressly authorizes a noncompetitive procurement in response to a written request from the County
- After solicitation of proposals from at least three sources, competition is determined inadequate.

3.4 Competition. With few exceptions (see 3.3, *Noncompetitive Procurement*, above), San Juan County will conduct all procurement transactions for the acquisition of property or services required under a Federal award in a manner providing full and open competition.

In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

- Unreasonable requirements placed on firms in order for them to qualify to do business.
- Unnecessary experience and excessive bonding required of firms.
- Noncompetitive pricing practices between firms or between affiliated companies.
- Noncompetitive contracts to consultants that are on retainer contracts.
- Organizational conflicts of interest.
- Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement.
- Any arbitrary action in the procurement process.

The County will not use geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. This section does not preempt state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

The County’s procurement transactions must incorporate a clear and accurate description of the technical requirements of the material, product, or service to be procured, which does not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided, if possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offerors must be clearly stated and identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

3.5 Special Contracting Requirements for Federal Procurement. The following special contracting requirements apply to federally funded procurement as specified in 2 CFR part 200 (Uniform Guidance).

*Affirmative Action.* The County will take and document all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps must include:

- Placing qualified small and minority businesses and women's business enterprises on solicitation lists.
- Assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources.
- Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises.
- Establishing delivery schedules, where the requirement permits, that encourage participation by small and minority businesses and women's business enterprises.

- Using the services and assistance, as appropriate, of such organizations as the federal Small Business Administration, the Minority Business Development Agency of the federal Department of Commerce, and the Washington State Office of Minority & Women's Business Enterprises.
- Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed above.

*Domestic Preference for Procurements.* As appropriate and to the extent consistent with law, the County will, to the greatest extent practicable under a federal award, provide and document a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards, including all contracts and purchase orders for work or products under this award. For purposes of this section:

- "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

*Procurement of Recovered Materials.* San Juan County will comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include:

- Procuring only items designated in Environmental Protection Agency (EPA) guidelines at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$5,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$5,000.
- Procuring solid waste management services in a manner that maximizes energy and resource recovery.
- Establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

*Contracting with the Enemy.* If San Juan County receives a federal grant or cooperative agreement that is expected to exceed \$50,000; that will be performed outside the United States, including U.S. territories; and that is in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities, the County will not contract with the enemy (2 CFR part 183).

### 3.6 Additional Requirements for Federal Procurement

*Conflict of Interest.* No employee, officer, or agent of San Juan County may participate in the selection, award, or administration of a contract supported by a federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization that employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. Neither may the officers, employees, and agents of San Juan County solicit or accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts, with the exception of unsolicited items of nominal value (less than \$25). Violations of this policy may result in disciplinary action, up to and including termination of employment.



*Duplicative Items.* The County must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements in order to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

*Responsible Contractors.* The County must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

3.7 Contract cost and price. The County will perform a cost or price analysis in connection with every procurement action exceeding the SAT, including contract modifications. The method and degree of analysis is dependent on the facts surrounding each procurement situation, but as a starting point, the County must make independent estimates before receiving bids or proposals.

The County will also negotiate profit as a separate element of the price for each contract in which there is no price competition. Negotiation of a fair and reasonable profit will consider the complexity of the work to be performed, risk borne by the contractor, contractor's investment, amount of subcontracting, quality of the contractor's record of past performance, and industry profit rates in the surrounding geographical area for similar work.

Costs or prices based on estimated costs are allowable only to the extent that costs incurred, or cost estimates included in negotiated prices, would be allowable under the terms of the Federal award (2 CFR part 200, subpart E).

The "cost plus a percentage of cost" and "percentage of construction cost" methods of contracting may not be used.

3.8 Federal Awarding Agency or Pass-Through Entity Review. The County will make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the County desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

If a review is requested, the County will make available for the Federal awarding agency or pass-through entity, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, if any of the following is applicable:

- The County's procurement procedures or operation fails to comply with the procurement standards in this part.
- The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation.
- The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product.

- The proposed contract amount is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement.
- A proposed contract modification changes the scope of a contract or increases the contract amount over the Simplified Acquisition Threshold.

The County is exempt from the pre-procurement review described above if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

- The County may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets the standards to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis.
- The County may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the County that it is complying with these standards. The certification must cite specific County policies, procedures, regulations, or standards as complying with these requirements and have its system available for review.