Definition

Agreements are "as needed" purchase contracts for services, supplies, materials, equipment, furnishings and all other personal property. For the purpose of this standard, "agreements" are synonymous with "contracts."

Authority

Acquisition of personal property are made by the Purchasing Agent pursuant to:

- California Government Code 25501, et seq.;
- County Code, Title 2, Chapter 2.81; and
- Section 24 of the County Charter.

General

Under the statutory authority mentioned above, the Purchasing Agent establishes agreements through the competitive bid process to ensure quality products and services can be obtained in a timely manner at fair, reasonable and competitive prices. These contracts enable County departments to take advantage of opportunities to acquire supplies, materials and equipment at a price substantially lower than through other procurement methods.

With the exception of sole-source or monopoly purchase agreements (See Purchasing Policy, No. P-3700, Sole Source Purchases), County agreements are generally considered non-exclusive. This means that the County is not obligated or committed to make purchases from any agreement or agreement vendor, nor is the County precluded from soliciting or contracting with any other vendor for the same supplies, materials or equipment, when it is determined to be in the best economic interest of the County.

However, on rare occasions the Purchasing Agent may determine that the price advantage for the County to enter into an exclusive arrangement with a vendor is significant enough to warrant this type of agreement.

Master Agreements

In order to facilitate the acquisition of products ordered or used by County departments on a routine basis, the Purchasing Agent establishes multiple contracts (Master Agreements) for the same supplies, materials or equipment. Master Agreements cover a broad array of products that include office supplies, personal computers, printing forms and services, janitorial supplies, and building material and industrial equipment and supplies.

The benefits for establishing Master Agreements include:

- They are competitively bid. This means that although the pricing among the awarded vendors may differ, they are generally the lowest prices available in the given market area.

- The vendor(s) have already acknowledged and agreed to the County's standard terms and conditions.
- The pricing represents a maximum cost (which is the lowest competitive bid price) to the department for a given product. If a department solicits pricing between Agreement vendors, additional discounts may be applied or bid by the vendor(s). In any event, the County would not pay more than the contract price for any product.

- They are non-exclusive. Departments may order from another vendor without violating the terms and conditions of the agreement.

- Departments have the option to select an Agreement vendor based on their specific requirements, including price, quantity and product availability, delivery schedules, geographical convenience, etc.

Strategy and Methodology for Agreement Pricing

On a case-by-case basis, a detailed analysis and evaluation must be conducted for strategic initiatives regarding the development of pricing principles and methodology for each type of contracted agreement that will serve the best interests of the County's procurement activities. The guiding principles are to establish agreements that will maximize the purchasing value of public funds with consideration for accommodating the ease in which County departments can understand, access and use agreements without undue complication in pricing formulas, terms and multiple discount schedules.

Wherever feasible, consideration should be given to negotiating a single discount for a manufacturer's commodities or product line, or another pricing structure that simplifies the process from an "end user" standpoint.

As the marketplace differs and routines fluctuates for the many commodities and services purchased by the County, efforts must be concentrated in developing extended source and cost selection techniques and principles designed to provide the best economical approach for all types of purchase agreements used.

Method to Determine an Agreement Price Principles and Cost Type

Although variations may exist, the County employs two basic contract types for the on-going acquisition of commodities, they are **Fixed-Price**, and **Cost-Plus** agreements.

Fixed Price Agreements

This type of agreement used for items purchased which are easily defined and have established pricing that the County agrees to pay a fixed price for a specific commodity. This type of agreement provides the buyer with the most control over contract pricing. Based on the high volume of acquisitions generated by the County through commodity purchases, Fixed Price agreements are normally tied to, or reflect a percentage or discount off list, catalog or manufacturer's price. Nearly all of the 800 or so Purchasing Agent agreements are Fixed Price. They include: Office and janitorial supplies, electrical equipment and supplies, etc.

When purchasing material that will be delivered over several years, Fixed Price agreements will typically include an "escalator" clause to protect the County as well as the Supplier from material and labor fluctuations. These clauses should address cost decreases as well as increases.

An escalation clause usually is in an agreement that the contract will be adjusted once a year to reflect the difference in material or some percentage of the unit price of each element. For example, the County and the supplier agree upon material indices as shown by certain economic indicators (i.e., material fluctuations might be noted by current market costs on an agreed upon date or those published by some agency measuring such data).

Agreements can vary from that discussed in the preceding paragraph to a simple statement noting that the contract will be adjusted 3% per year for its duration. The important concept to remember in using this type of contract is to be sure that the adjustment factors are fair and will allow both the County and supplier an opportunity for a reasonable contract arrangement. The adjustment clause must be clearly written in the agreement. An example of Fixed-Price agreement with an escalator clause would include the Paper Supplies agreement.

<u>Cost-Plus Agreements</u>

As a governmental agency, the County employs risk-averse principles when establishing agreement pricing for high-risk or price-volatile commodities to minimize the potential for loss of Public funds. This risk-neutral position is normally accomplished through Cost-Plus agreements.

There are several variations of a Cost-Plus agreement, but the guiding principle is to establish a defined percentage or mark-up margin against a manufacturer price for a commodity that fluctuates regularly and/or significantly based on a published Price Index. This margin protects both the County and the supplier, if the manufacturer's list price increases or drops. In essence, no matter what the price of the commodity is today, tomorrow or three months from now, the County will pay the same amount (i.e., percentage) over the manufacturer's price list for that period. Current Cost-Plus agreements include technology products (i.e., Personal Computers and Peripherals), gasoline and other petroleum products, and certain food products, which are all in highly volatile markets in which pricing changes almost daily.

There are two key factors to consider when developing a purchasing decision-making strategy in Cost-Plus arrangements: (1) The commodity's importance to the Department or Agency. (2) The price-volatility of the commodity. When a volatile commodity is a major cost component, risk identification is required. Understanding the risk factor is essential to any manager making a contract for the future when costs are not fixed. Also, the risk may not be what price change might occur, but the coverage and inventory price of the commodity.

<u>Other Types of Pricing Agreements</u>

There are many other variations and types of pricing principles that are not preferred or consistent with use in government commodity agreements, such as performance-based and tiered pricing agreements. Performance-based contracts are predominantly tied to a service-related agreement, in which prices and discount schedules are determined based on timetables, milestones and deliverables.

Tiered pricing is predicated on different pricing discounts and/or schedules for different levels of consumption or commitment. Without a consistent measure or Countywide tracking mechanism as to actual usage of a product, there is no means to validate or audit pricing to endure the discount tier is appropriately applied to the actual consumption. In such cases, a vendor must be required to supply accurate consumption information.

Agreement Term Periods

Unless there is a compelling reason to solicit requirements more often (e.g., volatile commodity or market, significant increase in competition, etc.), Purchasing Agent Agreements are normally established for a three-year period, with two-12 month optional periods for extension.

Prior to exercising either extension, the Purchasing and Contracts Analyst must determine whether it is appropriate to extend or re-solicit the agreement requirements.

This is normally accomplished by validating the pool of potential bidders, whether it has increased enough to obtain a greater participation in the competitive bid process; and by benchmarking Agreement prices to ensure that they remain fair, reasonable and competitive. In many cases, this is done through a comparison of County pricing against other cities, counties, state and federal contract prices.

Required Information

Each agreement shall be based on a competitive bid, justified sole source acquisition or approved negotiated transaction. Agreements shall be entered into the Countywide Acquisition Management Information System (CAMIS) by the responsible Purchasing & Contracts Analyst (PCA), and at a minimum, clearly specify the following:

Standard County agreement clauses
Commodities/Services with complete specifications
Source of pricing and payment terms
Period of contract
Dollar limit of contract
Delivery time
Cancellation provisions

Agreement Item Description

The responsible PCA must ensure that the description of an item matches the correct National Institute for Government Purchasing (NIGP) commodity code in the Advanced Government Purchasing System (AGPS).

All item descriptions entered into CAMIS must be standardized, specific and complete when entering item description/specification.

Each line item will begin with a generic (noun); and continue to the specific (adjectives, case sizes, etc.) description. The manufacturer’s brand name and model number will be included at the end of the item description.

The method in which how an end user verifies the correct agreement price should be factored into how and/or what additional information is provided on the contract in AGPS. This is specifically the case for cost-plus and discount off list price agreements.