

**FRESNO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION (FCERA)
PROCUREMENT POLICY**

I. Background and Purpose

To establish a Board of Retirement policy that defines various methods of procuring goods and services, dictates when competitive procurement of goods and services is required, and sets forth exemptions and exceptions from the competitive procurement requirements.

It is the policy of the Board of Retirement that:

- 1) FCERA shall competitively procure goods and/or services unless otherwise allowed under this policy or required by State or Federal law.
- 2) The Board of Retirement, the Retirement Administrator or the Assistant Retirement Administrator, as stated in Section IV, shall determine whether the price or cost to FCERA of any contract for goods or services is fair and reasonable prior to awarding the contract.
- 3) The competitive procurement requirements of this policy are satisfied by an Informal or Formal Procurement, as detailed in Section VI.
- 4) Exemptions and Sole Source exception to the competitive procurement requirements are set forth in this policy.

II. Public Purchasing Standards and Ethical Considerations

FCERA subscribes to the following Purchasing Standards:

- 1) Fair Competition – all proposers will be treated with fairness, and be given the same information when preparing quotations or tenders.
- 2) Conflict of Interest – situations of conflict of interest should be declared in accordance with FCERA's code of conduct.
- 3) Cost-effectiveness – quotations and tenders¹ are evaluated not only on competitiveness in pricing but also factors such as quality of the products/services and track records of the proposers.
- 4) Transparency – tender documents² should provide all necessary information to facilitate submission of appropriate and competitive tenders.
- 5) Public Accountability – FCERA is accountable to the Board of Retirement and the public for any procurement involving the use of FCERA funds.

¹ Tenders are formal offers to supply goods or do work at a stated price.

² Tender documents refer to the documents provided by FCERA to solicit tenders and quotations.

III. Conflict of Interest

State of California Government Code Section 1090 prohibits any County employee, trustee, director, or officer from having any financial interest in any contract made by them in their official capacity. Section 1090 also prohibits FCERA employees or officers from being “purchasers at any sale or vendors at any purchase made by them in their official capacity.” No officer or employee shall receive any commission, money or thing of value, or derive any profit, benefit or advantage directly or indirectly, from or by any reason of any dealing with, or service for the FCERA, by himself or otherwise, except his lawful compensation as such officer or employee.”

IV. Purchasing for Personal Use Prohibited

FCERA employees, trustees, or officers shall not use their official capacity or FCERA or County time to negotiate or make personal purchases for themselves or others. Employees must act purely in the best interest of the public at all times and avoid the introduction of personal factors.

V. Impermissible Use of Confidential Information for Personal Gain

It is impermissible for any employee to knowingly use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of another person.

VI. Methods and Procedure of Acquisition

Purchases for goods and services for the operation of FCERA are authorized by the Retirement Administrator, the Assistant Retirement Administrator and/or the Board of Retirement. The procurement process is based on the following dollar thresholds:

Type of Procurement	Purchase Amounts	Procurement Methodology	Desired # quotes	Approval Authority
ROUTINE	\$0.01 to \$10,000.00	See (1) below	n/a	Retirement Administrator, Assistant Administrator
INFORMAL	\$10,000.01 to \$75,000.00	Written* price and scope of work by at least 3 vendors. *includes fax and email	Three (3)	Retirement Administrator, Assistant Administrator
FORMAL	\$75,000.01 and greater	Written Request for Proposals (RFP) or Request Quotation (RFQ)	No Minimum	Retirement Administrator, up to \$100,000; or Board of Retirement, any amount

The Retirement Administrator has authority to execute contracts for amounts less than \$100,000.01 without prior Board approval. The Retirement Administrator shall inform the Board during the next regular Board meeting following the execution of a contract within the Retirement Administrator's signing authority of (i) the subject matter of the contract; (ii) the amount of the contract; and (iii) the contracting parties. Acquisitions exceeding the Retirement Administrator's authority will be taken to the Board of Retirement for approval. Neither the Board nor FCERA staff shall piecemeal³ or structure contracts in an effort to make the contract amounts fall below any particular monetary threshold.

1) Routine Procurement

Routine procurement, for purchases for day-to-day operations under \$10,000, does not require a competitive procurement by FCERA, including the use of Countywide purchase orders and contracts. Other routine purchases include, but are not limited to, the following operational items: individual or small quantities of book, film or electronic media, and Board of Retirement costs. Additionally, FCERA staff shall make every reasonable effort to obtain services or goods in the most cost and efficient manner and may purchase goods or services covered by a blanket Countywide contract from another source when the other source provides a better price. Documentation of the prices, which may include prices posted online, will be kept with the order.

2) Informal Procurement

Informal procurement for non-complex solicitations, where the description of goods or services process can be clearly stated, require a competitive procurement in which FCERA staff obtains written price and scope of work via fax, e-mail, or other writing by at least three vendors. Solicitation may be by an information Request for Quotation (RFQ) or other method. Adequate competition requires receipt of at least three responses, as opposed to waiting for a specific date and time.

Award is made to the lowest proposer (or proposers, if allowed for in the procurement) who is both responsive (conforming to material proposal requirements) and responsible (competent and otherwise qualified to perform under any resulting contract).

If FCERA is unable to obtain at least three written quotations, staff shall document this fact and provide as much available information regarding why it could not obtain three (3) quotes. FCERA reserves the right to use a formal competitive procurement for purchases of \$75,000 or less, especially if there is any uncertainty about the types of goods or services FCERA is seeking to obtain.

3) Formal Procurement

³ Piecemeal is described as the division of a quantity of something in order to have multiple purchases fall below a threshold, or the separation of essential components from the whole in order to have the separate purchases fall below (i.e. hard drives separate from the computer server that needs them to operate) the purchasing threshold.

Formal procurement solicits goods or services that require a more detailed description and explanation. These solicitations are a competitive procurement process by which proposers respond to a written Request for Quotation (RFQ) or Request for Proposals (RFP) issued by the Board, and include specifications and requirements that must be complied with in order to participate in the solicitation.

RFP award is made after an evaluation committee⁴ objectively evaluates proposals based upon the proposed goods or services, qualifications, price and other relevant evaluation criteria, and recommends for award proposal(s) that provide the best value to FCERA. A contract or contracts may be awarded after completion of successful negotiations with one or more proposers. All agreements resulting from the formal Procurement process shall require Legal Counsel review and sign-off prior to execution.

A formal RFQ is similar to an RFP except that the award is based on price and there is no review team to evaluate the proposals.

VII. Exemptions and Exceptions

Countywide contracts and leveraged purchase (“piggyback”) agreements that include other governmental agencies are deemed to satisfy this policy’s competitive procurement requirements and will not require competitive procurement by FCERA.

When competitive solutions cannot be secured, or only one manufacturer, distributor, supplier or service provider can provide the required goods and/or services, FCERA may suspend competition in favor of a “sole source” agreement. The following is a non-exclusive list of sole source examples:

- a) Competition is precluded because of the existence of patent rights, copyrights, secret processes, control of the basic raw material(s), or similar circumstances, and no equivalent good or service is available.
- b) The procurement is for parts or components for equipment, and no information or data is available to ensure that the parts or components obtained from another supplier will perform the same function in the equipment; or the parts or components could compromise the safety or reliability of the product, or would void or invalidate a manufacturer’s warranty or guarantee.
- c) A distributor or service provider has an exclusive franchise or operating agreement with the supplier of goods to be purchased or maintained and no other person or entity may provide, install or maintain the goods in the service area. This may include maintenance, support and hosting of software applications that were competitively

⁴ An evaluation committee, appointed by Retirement Administrator or the Board, is comprised of at least three individuals that are either staff, trustees, or paid consultants.

- bid. This does not include the purchase of goods where a same or similar good may be purchased and is not otherwise defined as a sole source item.
- d) The procurement is for goods and/or services where standardization is beneficial for reasons including maintenance, repair, training, and interoperability.
 - e) The procurement is for goods and/or services where continuity of providers will provide efficiency or critical knowledge, and other providers of the goods and/or services cannot provide similar efficiencies or critical knowledge.
 - f) As stated in FCERA’s Due Diligence Policy, Paragraph III. 2) e), for each “primary service provider,” as defined in FCERA’s Due Diligence Policy, issuing an RFP on a required specified frequency, regardless of the circumstances, may not be an efficient use of agency resources and may have negative unintended consequences. Accordingly, in certain limited circumstances, the Board may extend/renew contracts with primary service providers consistent with this paragraph. If such circumstances arise, the Board may extend/renew the contract of a primary service provider beyond the five (5)-year period in the initial contract, without competitively procuring, only after receiving: (i) a recommendation of the Retirement Administrator that is supported by a review of the primary service provider contract and an analysis establishing that the provider’s costs are within industry norms and standards; and, (ii) confirmation by FCERA legal counsel that the circumstances required by the Due Diligence Policy, Paragraph III. 2) e), have been met and that the Retirement Administrator’s recommendation complies with federal, state, and local laws, regulations, and ordinances applicable to the proposed procurement.⁵

The following types of procurement of goods and/or services are categorically exempt from the competitive procurement requirements:

1. Federal and State Award Schedules
2. City, County, State or Federal agency services.
3. Standard Commercial Off-the-Shelf Software Packages – Procurement of software products that are ready-made and commercially available for sale to the general public, and designed to be easily integrated into existing systems without the need for more than minimal customization.

⁵ Provided, however, that FCERA legal counsel shall not be asked to confirm, review, or participate in, and FCERA legal counsel shall not confirm, review, or participate in, a procurement or contract that directly or indirectly benefits FCERA legal counsel or that otherwise constitutes a conflict of interest for FCERA legal counsel. In such an event, the Board may, at its discretion, form an ad hoc committee to confirm that the circumstances required by the Due Diligence Policy, Paragraph III. 2) e), have been met and that the Retirement Administrator’s recommendation complies with federal, state, and local laws, regulations, and ordinances applicable to the proposed procurement.

4. Emergency Purchases – Procurement, subsequent approval, or modification of an existing (emergency or non-emergency) contract in case of emergency to life or property where the value of the goods and/or services acquired for the emergency does not exceed \$100,000 in value.

VIII. Public Notice

To maximize competition, the FCERA shall comply with the following notice and publication requirements:

- A. For all procurements when competition is required, the Retirement Administrator shall post the procurement and make available to the vendor community notice of the procurement in accordance with the following processes:
 - a. Public notice will be on the Association’s website, in local or trade newspaper, periodical, or online exchange when deemed appropriate and necessary by staff to achieve the greatest response. FCERA staff shall keep evidence of posting of such notices.
 - b. Publication shall be no less than ten (10) calendar days prior to the procurement time and tender due date.

IX. Contacts during Procurement Period

As of the issue date of the RFP/RFQ and continuing through the public notification of the award, all FCERA staff and Board of Retirement Trustees shall not hold any unscheduled meetings, conferences or technical discussions regarding the RFP/RFQ with prospective service providers or vendors. “Off the record” contact can potentially taint the FCERA’s decision-making process. This restriction does not include communication with any of FCERA’s incumbent service providers for normal business not related to the RFP/RFQ selection process.

Proposers may only contact the FCERA as identified in the RFP/RFQ in response to any matter pertaining to that RFP/RFQ. Contact between FCERA staff or Board members and proposer(s), regarding any matter directly or indirectly related to the RFP/RFQ, outside of the process allowed in the RFP/RFQ, is prohibited. Such prohibited contact may result in disqualification of the potential contractor’s proposal.

Proposers are encouraged to review FCERA’s Conflict of Interest Policy.

X. Policy Review

- 1) This policy will be reviewed at least every three years.

XI. Policy History

- 1) The Board first approved this policy on August 1, 2018.
- 2) The Board of Retirement reviewed and modified by the Board on October 6, 2021.

XII. Secretary's Certificate

I, Donald Kendig, the duly appointed Secretary of the Fresno County Employees' Retirement Association, hereby certify the adoption of this Policy.

October 6, 2021

Date of Action:

Donald C. Kendig

By: Retirement Administrator