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# MEMORANDUM

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Date: September 26, 2017

To: The Honorable Chair and Members  
Pima County Board of Supervisors

From: C.H. Huckelberry  
County Administrator

A handwritten signature in black ink, appearing to be "CH Huckelberry", is written over the typed name and title.

Re: **Basic Objection to Master Agreements**

At the September 19, 2017 Board of Supervisors meeting, there was again discussion about Master Agreement contracts. The information below provides further explanation about Master Agreements. This type of contract is known by many different names. Pima County has two distinct types of Master Agreements; Materials and Services versus Design and Construction Title 34 related services.

## Master Agreements – Materials & Services (M & S)

### What is a M & S Master Agreement?

The succinct answer is a Master Agreement is a legal and binding contract that has established the terms and conditions, including fixed unit price, an undefined quantity, and put in place pursuant to approved Pima County Procurement Code and Policy. There is no magic or mystery to a Master Agreement. Pima County calls some contracts Master Agreements because that is what the County's financial Advantage system calls them. In our previous system, they were called Blanket Purchase Orders. They are the same thing. The procurement world has many different terms and definitions for these contracts. This type of contract is not only used by all government agencies but also private companies, such as Raytheon or Allied Signal. Private companies also call this type of contract by different names, such as company-wide contracts, corporate-wide contracts or IDIQ (indefinite delivery, indefinite quantity) contracts. Examples of different names and definitions are:

Blanket Order: 1. An agreement to purchase goods from a specific supplier over a *defined period of time, up to a maximum dollar amount*. 2. A blanket order generally includes *established prices*, terms and conditions for a defined period of time, although *no quantities are specified*; shipments are to be made when and as required by the purchaser, which, in certain cases, may be the end user.

Blanket Purchase Agreement: A simplified procurement method of filling the anticipated *repetitive needs* for supplies or services through the award of *competitive line item* contracts or discounts off of a supplier's/manufacturer's catalog, usually through *competition*. *Used to reduce administrative expense resulting from small, repetitive requirements*.

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Open-End Contract: A contract that sets forth the general provisions of supplies and services that may be delivered or performed within a given period of time, but in which *quantity and/or duration is not specified*. The quantity and delivery are specified with the placement of orders.

Price Agreement: A contractual agreement in which a purchaser contracts with a supplier to provide the purchaser's requirements at a *predetermined price*.

Requirements Contract: A contract used to order only the material or services actually required during a contract term. An *indefinite quantity contract for frequently used commodities or products*.

#### **What is the Authority for M & S Master Agreements?**

The Arizona Revised Statutes (A.R.S.) Title 11, the Pima County Code, and Board of Supervisors Policies all authorize the use of these types of contracts that Pima County calls Master Agreements. The Board of Supervisors unanimously approved revisions to the Procurement Code and Policy allowing the continued authority of this process on September 5, 2017 and this process has been in place for years.

A.R.S. §41-2535 states "A. Any procurement that does not exceed the aggregate dollar amount of one hundred thousand dollars may be made in accordance with rules adopted by the director, except that the procurements shall be made with such competition as is practicable under the circumstances." and "C. Procurement requirements shall not be artificially divided or fragmented so as to constitute a purchase under this section and to circumvent the source selection procedures required by section 41-2533 or 41-2534 or be artificially combined to circumvent this section."

The intention is for agencies to plan their aggregate dollar amount, not make small discrete buys, with the result being improved prices and government efficiency.

#### **What is the Purpose and Benefits of M & S Master Agreements?**

The primary purpose of using a Master Agreement is to establish a source with a qualified contractor for Pima County's consolidated and anticipated annual needs by commodity groups through a procurement process. These contracts improve efficiency when there are needs for repetitive purchases by having Procurement establish a contract that sets the terms, conditions, and prices, and allows multiple departments to order specific items as needed without multiple procurement processes for the same commodities. This is strategic sourcing and is a best practice. Contracting of combined anticipated needs avoids unleveraged spend through a multitude of small non-contract buys, provides an economy of scale in the unit prices, reduces the need to hold inventory, avoids emergency procurements, reduces risk and liability, reduces expedited shipping charges, and improves staff efficiencies at all levels of the process from procurement through payment.

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These contracts allow Departments to order contracted goods and services from the Master Agreement for the specific items on an as-needed basis. At the time of the procurement, the exact number of the goods or services needed for a year is impossible to determine, so the dollar amount of the Master Agreement is based on estimates of the amount of items the various departments would likely need during the term of the contract. When an award is made for these contracts, the award is based on historic usage and estimated future usage. A not-to-exceed award amount is not required by statute, but Pima County self imposes not-to-exceed amounts. Master Agreements do not encumber any funds but rather establish the sources and pricing for future orders yet to be fully specified. Departments' use of Master Agreements and potentially how much work they can complete are essentially controlled by the individual departmental budgets approved by the Board of Supervisors.

Professional procurement certification organizations recognize the establishment of this type of contract to be a best practice. One of the criterion of The Achievement of Excellence in Procurement certification process is the "Use of requirements contracts (annual or term also known as blanket orders) for at least 30 percent of total dollar commodity and services purchases. The purpose of this criterion is to demonstrate that the agency has leveraged spend through establishing annual requirements contracts for at least 30 percent of the total procurement spend. Requirements contracts improve efficiency and provide opportunity to save through negotiated pricing contracts." Pima County does an exceptional job using these contracts. Our materials and services term contract spend in Fiscal Year 2014/15 was 95 percent of the materials and services procurement spend.

#### **What happens if the County's policy is to stop using M & S Master Agreements?**

The elimination of Master Agreements in favor of issuing Purchase Orders for each discrete purchase will, in reality, end the procurement process, as it is known today and put Pima County literally in the Dark Ages. The recently approved Procurement Code and Policy that is effective October 1, 2017 would be negated. As one example, Board of Supervisor Policy D 29.3 states "A competitive solicitation is required when a one-time purchase exceeds \$10,000 or there will be reasonably anticipated or recurring requirements for the same or similar materials or general non-professional services that exceed an estimated annual aggregate cost of \$10,000, Countywide." In Fiscal Year 2017 Pima County issued 32,752 orders at a total cost of \$122,724,172. Since the average cost of order issued by departments was only \$3,747, without Master Agreements none of these would have needed to be competitively obtained and would be processed outside the contract as small purchases.

The benefits of competitive procurement based on combined anticipated needs are lost. Unleveraged spend increases costs through a multitude of small non-contract buys, there is no economy of scale in the unit prices as only small purchases occur, inventory costs increase, emergency procurements increase, risk and liability increase, expedited shipping charges increase, and staff efficiencies decrease at all levels of the process from procurement through payment.

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Supervisor Valadez requested an analysis of a process using a Master Agreement and outside of a Master Agreement. An example based on the procurement of three real items purchased by Pima County shows the Master Agreement provided the County a cost savings of 55.1 percent. (Attachment A)

If the Board of Supervisors desires more competitive prices and control over Pima County spending by approving more bid contracts, the opposite would occur if we stopped using Master Agreements. This would allow the primary procurement process to shift from formal and openly competitive bids with a threshold of \$100,000 (based on the County's estimated annual aggregate amount) performed by professional and trained procurement staff, to the exercise of a policy threshold of \$10,000 that would disregard annual aggregate as stated in A.R.S. §41-2535.A, essentially mandating County employees to violate A.R.S. §41-2535.C. by fragmenting purchases to a discrete known need. That need might be for that day, week or month, but certainly not the County's annual anticipated aggregate needs. Informal processes would be performed by department staff with no or little procurement knowledge, training or certifications, and payment would be made by Purchase Requests or PCards with no Board of Supervisor involvement. Pima County would be acquiring goods and services without contract protections. This would result in an increase in both direct and indirect costs due to increased prices and a decrease in staff efficiency due to duplication of efforts. Visibility to the Board of Supervisors would almost completely cease as very little would need to be approved by the Board of Supervisors or the Procurement Director.

### **Master Agreements – Design & Construction (D & C)**

#### **What is a D & C Master Agreement?**

A Master Agreement for construction, also known as a job-order-contracting (JOC), is used to competitively select multiple contractors who can provide design or construction services, generally for smaller routine projects which are usually not yet fully developed or designed or are needed to keep operations continuing, hence avoiding an emergency procurement. The contractors are selected based on qualifications. At the time of the procurement, the exact projects are unknown. The Master Agreement is set up to permit small projects to be awarded to one of the qualifying contractors and to require quotes from multiple contractors to competitively select for larger projects. Essentially, the Procurement Department develops a Master Agreement to provide flexible job ordering for the many small projects that come up during the year. When a department has a project, they can quickly get the project started. There are twenty-three JOCs in Pima County. Each JOC has multiple contractors and has a bid threshold above which additional competition must be obtained among the authorized contractors. Some of these contracts have a bid threshold as low as \$5,000, which provides competition. Only eight of the contracts allow for an individual project to be above \$250,000. If JOC's were not utilized, only those projects above \$250,000 would have been presented to the Board of Supervisors.

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Amendments to the Master Agreement are brought to the Board of Supervisors for increased annual award approvals when departments have a greater number of small projects than originally anticipated. Examples of projects handled under a JOC include guardrail installation and maintenance; asbestos abatement; concrete coring; conveyance repair; demolition; electrical repair; HVAC services; and paving services.

#### **What is the Authority for D & C Master Agreements?**

For procurement of construction and architect and engineering (A&E) services, the County must follow the requirements of A.R.S. Title 34. For larger projects, Pima County primarily uses the design-bid-build method or the Construction Manager at Risk (CMAR) method for selecting contractors to construct a project. Those contracts have set pricing which require Board of Supervisors approval before work begins. For small, more routine projects, the County uses Job Order Master Agreements for "job-order-contracting" as allowed by State statute. In those situations, after Procurement has conducted a qualifications-based procurement to obtain the contract with multiple contractors, a department can utilize one of the contractors to perform a specific job when the need arises. The authority for this type of construction contract is further defined in Section F, Paragraph IV of Board of Supervisors Policy D 29.1.

Master Agreements are used for the industry term "job order contracts". This is a collaborative construction project delivery method that enables the County to procure numerous, commonly-encountered construction projects quickly and efficiently through indefinite delivery, indefinite quantity multi-year contracts. This process reduces unnecessary levels of engineering, design, and contract procurement time along with construction project procurement costs by awarding long-term contracts for a wide variety of renovation, repair and construction projects. With an emphasis on partnering and teamwork between the County and contractors, job order contracting provides the methodology to execute a wide variety of construction, renovation, repair and maintenance projects for facilities and infrastructures via multiple simultaneous job orders. The contractor may provide "on call" construction services from concept to close-out. Job order contracts are about performance, reliability, dependability, timelines and quality. At the same time, job order contracts are about results and working within budget and time constraints.

#### **What is the Purpose and Benefits of D & C Master Agreements?**

Master Agreements do not encumber any funds but rather establish the source for qualified contractors. Departments' use of Master Agreements and potentially how many jobs they can complete are essentially controlled by the individual departmental budgets approved by the Board of Supervisors. A not-to-exceed award amount is not required by statute, but Pima County self imposes not-to-exceed amounts.

Job Order Master Agreement contractors are competitively selected based on qualifications, as authorized by statute. After a Job Order Master Agreement is established, award of individual job orders using plans and specifications are determined based on price book and/or competition thresholds to determine the lowest responsive and responsible contractor. To be clear, certain

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Master Agreements require that the Job Order Contractors compete for award of the Job Order by providing a written quote based upon the provided scope of work and schedule. The Job Order is then issued to the Contractor submitting the lowest quotation or bid. This process brings not only a level of qualification to the process, but price competition as well to provide best value to the County. Unlike consulting contracts, the assumption that quotes for Job Orders are provided on a time and materials basis is false. Instead, Job Order Contractors provide fixed price quotations with a lump sum amount for labor and materials. They are not compensated by the hour.

The standard process is to establish the Master Agreement for a one-year term with four one-year renewal options. Job Order Master Agreements are awarded by the Board of Supervisors with an agreed upon not-to-exceed annual award amount. The intent is for the Master Agreements to be renewed annually based on the annual award amount and the anticipated needs for the next year.

Supervisor Valadez requested an analysis of a process using a Master Agreement and outside of a Master Agreement. While an apples-to-apples analysis cannot be completed for construction projects since each one is unique, a comparison of two road projects on Attachment B shows the time and efficiency benefit that the County is receiving. The bid took 60 days while the JOC Master Agreement process took 15 days, enabling road projects to get started sooner. Similarly, the existence of Master Agreements for HVAC repair enables Facilities Management to respond immediately to failed air conditioning equipment without having to wait weeks to process a separate procurement.

**What happens if the County's policy is to stop using D & C Master Agreements?**

Supervisor Miller has asked the question "Why do we use Master Agreements versus discrete contracts for our construction services." It is important to note that Job Order Contracting has more than a 25-year record of implementation within the United States Department of Defense. Currently, there are hundreds of successful contracts going by the JOC name or by its counterparts of delivery order contracting (DOC), task order contracting (TOC) and simplified acquisition of base engineering requirements (SABER). JOC deployment has not remained solely federal. The JOC concept and principles have been further embraced in all areas of publicly funded state facilities, universities, housing authorities, transportation agencies, and school systems. A non-profit organization dedicated to education, training, advocacy, and best practices for JOC was formed in 1995 in partnership with the contracting community to bring about change in the legislation for alternative project delivery methods (APDM). In 2000, Arizona Revised Statutes enacted use of job order contracting as a viable APDM initially for public agencies for projects up to \$750,000; the job order limit is now \$1,000,000. As a result, Job Order Contracting is a fundamental law that has been authorized by the State of Arizona and used by the County as an efficient project delivery method.

The elimination of Master Agreements in favor of conducting Design-Bid-Build procurements for each discrete purchase will not only negate the recently approved Procurement Code and Policy that is effective October 1, 2017, but Pima County's construction contracting practices will regress. Delivery time for County projects will ultimately increase causing an increase in overall

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project costs and a decrease in project efficiencies. It should be noted this process has been used for years. Procurement costs will increase. Cost to bidding contractors will also increase potentially causing fewer contractors willing to bid the many small County projects.

The determination to use a JOC in lieu of independently bidding a particular project involves an assessment of tradeoffs with respect to quality, schedule and cost:

- The qualifications-based selection of the JOC contractor generally results in a lower risk of quality issues on a given project. Conversely, a low-bid contractor may be only minimally qualified, resulting in greater risk of quality issues.
- The JOC is faster in terms of project delivery; individual job orders rarely require detailed design and the time to conduct a competitive bid is eliminated, although this may be offset by the time needed to negotiate a final job order. A bid, on the other hand, requires sufficient time to select a designer, develop, review and accept a detailed design, and conduct a competitive procurement, potentially adding months to the time needed to deliver a project.

Competitively bidding a project will typically result in lower initial construction costs. The apparent low-bid cost advantage *may* be offset, however, by the added cost of developing the detailed design needed to bid the job, the soft costs associated with managing the design process, the transaction costs associated with conducting a competitive bid process, costs (if any) associated with delayed project delivery, and an enlarged risk of change orders because of the lack of contractor input into the design.

Finally, it is important to note, that awarding Master Agreements for Job Order Contracting allows visibility to the Board which would be vastly reduced if each and every small construction project (less than \$250,000) were bid and awarded by the Procurement Director.

#### **Procurement Department Accreditation**

The Procurement Department is an award-winning department that has received The Achievement of Excellence in Procurement award for thirteen consecutive years and the triennial accreditation award of NIGP's Outstanding Agency Accreditation Award (OA4) since 2005, most recently on September 13, 2017. The only agencies in the Arizona who hold an active OA4 accreditation are the Arizona Department of Transportation, City of Mesa, Maricopa County, Mohave Educational Services Cooperative and Pima County. That speaks to the honor of this distinction.

Both of these awards require a demonstration of ethical and professional practices and abilities, including use of best practices, which result in a solid procurement operation.

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**Summary**

The Procurement Department takes pride in providing an extensive selection of Materials and Services Master Agreements and an excellent job order contract program using Master Agreements as these contracts were established with procurement processes in a fair, open, competitive, and ethical manner, within the provisions of applicable Arizona Revised Statutes and the Pima County Procurement Code, Policy and Procedures, and conserve public funds in the best interest of Pima County.

Supervisor Miller made the statement "Just because you can, doesn't mean you should." with regard to using Master Agreements as allowed by law. Besides being legally permitted, Pima County should use Master Agreements because of their efficiency and cost savings. Use of Master Agreements by Pima County provides the best value to Pima County taxpayers.

CHH/lab

Attachments

c: Tom Burke, Deputy County Administrator for Administration  
Mary Jo Furphy, Director, Procurement

ATTACHMENT A

M & S Master Agreement Contract Vs No Master Agreement Purchase Example

1) Mini Maglite 19G66

<u>Master Agreement</u>	<u>Discrete Purchase off Contract</u>
Contract Price: \$20.11	Retail Price: \$34.40
Freight Costs: \$0	Est Freight: \$10.48
County Usage: 36	Retail Sales: 36
Extend Cost: \$723.96	Ext Cost: \$1,615.68

COUNTY SAVINGS: \$891.72 (58.46%)

2) Channel lock Pliers 4CR41

<u>Master Agreement</u>	<u>Discrete Purchase off Contract</u>
Contract Price: \$13.67	Retail Price: \$19.41
Freight Costs: \$0	Est Freight: \$10.48
County Usage: 13	Retail Sales: 13
Extend Cost: \$177.71	Ext Cost: \$388.57

COUNTY SAVINGS: \$210.86 (70.43%)

3) Pallet Truck 5500lb 2ZE57

<u>Master Agreement</u>	<u>Discrete Purchase off Contract</u>
Contract Price: \$362.54	Retail Price: \$658.68
Freight Costs: \$0	Est Freight: \$150.09
County Usage: 3	Retail Sales: 3
Extend Cost: \$1,087.62	Ext Cost: \$2,426.31

COUNTY SAVINGS: \$1,338.69 (44.83%)

Total Cost using Master Agreement \$ 1,989.29

Total Cost not using Master Agreement \$ 4,430.56

**HARD COST SAVINGS TO COUNTY \$ 2,441.27 (55.1%)**

ATTACHMENT B

D & C Master Agreement Bid Project Vs Non-Master Agreement Bid Project Example

1) Bid: Solicitation No. 217216 Wilmot Rd: Sahuarita Rd to Interstate 10

4/21/16 RQS Record Date

5/3/16 Invitation to Bid posted

5/10/16 Pre bid meeting

5/26/16 Bid Open

5/31/16 NORFA

6/21/16 BOSAIR, BOS meeting

**Time from approved requisition to award: 60 days**

Number of bidders: 8

Bid: \$4,996,167.08

2) JOC: Traffic Signal, Road Intersection, Paving and Drainage Improvements MA-PO-17-117

Threshold: Quotes required for projects over \$100,000.00, JOC Limit is \$1,000,000.00

Contractors: Borderland Construction, Granite Construction, KE&G Construction, Markham Construction, SAP Construction

Project JOC Ironwood Hills: Camino Verde Mil & Overlays

- March 23, 2017: Emailed Request for Quote with Project Scope Cost Proposals

- April 7, 2017: Issued Results of quotes and issued NTP with DO 17-35062

**Time from bid notice to Notice to Proceed: 15 days**

Number of bidders: 4

Bid: \$668,866.00

**PROCESS TIME SAVINGS TO COUNTY 45 DAYS**