

FAIL TO PLAN; PLAN TO FAIL  
County of Santa Clara's Doomed History Book



2023-24 Santa Clara County  
Civil Grand Jury

*June 11, 2024*

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## GLOSSARY AND ABBREVIATIONS

<b>Consent Calendar</b>	Generally, non-controversial items on a legislative body's meeting agenda that do not require much, if any, discussion, and that are grouped together under one heading to allow decision-makers to decide them at one time.
<b>County Executive's Office</b>	The Office of the County Executive is responsible for oversight and coordination of the County of Santa Clara's governmental functions. One of the primary responsibilities of the County Executive is to oversee the preparation and administration of the County budget. The Office also coordinates the activities of other departments to ensure the effective accomplishment of the Board of Supervisors' directions and policies. The office provides analytical support, strategic planning, and policy analysis for the County organization, and coordinates between and among departments to ensure that County of Santa Clara government runs smoothly.
<b>Form and Legality Review</b>	An affirmation that counsel has carried out legal review of the document, it embodies the parties' agreement, and counsel perceives no legal impediment to signing it.
<b>Manuscript</b>	An unpublished document.
<b>Professional Services</b>	Any professional technical or consultant services that support and facilitate department operations and the governmental functions of the County administration/management, or program management.

## SUMMARY

The County of Santa Clara (County) Office of the County Executive (County Executive's Office) mismanaged a history book writing project resulting in a loss of more than \$1 million. In 2018, the County Executive's Office extended an existing grant-writing contract with a non-staff County grant writer (Contractor) to undertake a history book writing project. The Contractor had no academic background or experience publishing long-form historical nonfiction.

The 2023-24 Santa Clara County Civil Grand Jury (Civil Grand Jury) found many concerning issues:

- The scope of the project, the historical period to be covered, and the length of the envisioned history book were not clearly defined.
- The County made no plans for publishing the book.
- The normal checks and balances were ignored, and the project had no milestone deliverables.

Over the next two years, the County paid the Contractor over \$1 million based on minimally detailed monthly invoices, while no one in the County managed the contract or reviewed the work-in-progress. In 2022, the Contractor turned in a manuscript that the County deemed unpublishable, and the County has determined it will not seek legal recourse to recover the \$1 million.

## BACKGROUND

This report investigates a mismanaged County project involving violations of County guidelines. This background section discusses the procurement process for outsourcing project work, the County departments involved in the mismanaged book project, relevant policies and guidelines, and a previous project with similar goals.

### County Procurement

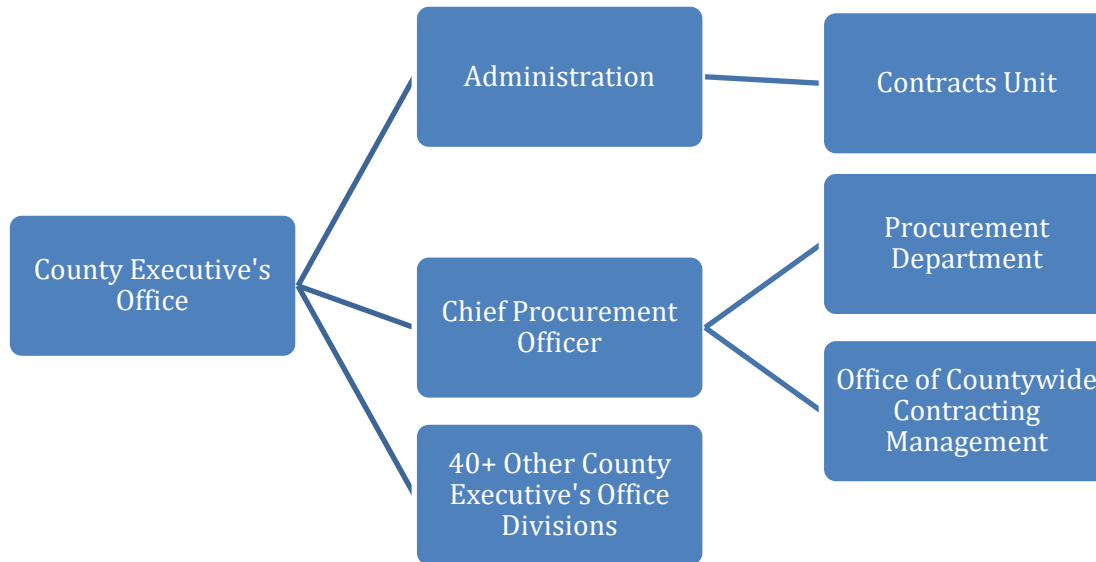
“Procurement” is an umbrella term that includes purchasing, identifying needs, selecting suppliers, establishing payment terms, and managing supplier relationships.

The County manages thousands of contracts with goods and service providers. The County purchases some small value items directly, but more frequently establishes an expenditure contract with a vendor, defining terms and stipulating how the County pays the vendor. The County distinguishes between tangible assets, called goods, and intangible assets, called services.

Unlike some other California counties, which have centralized procurement services, individual County departments generally handle their own procurement for services such as the book project. The decentralized model allows individual departments to manage, and in the case here mismanage, procurement.

### The Office of the County Executive

The County Board of Supervisors (Board) appoints a County Executive to manage the County’s operations. The County Charter states that the County Executive has a duty to deliver efficient, effective services to the public, and develop the County budget (County Charter, Section 404). The County Executive’s Office supports the County Executive and directly manages approximately 42 divisions with approximately 680 employees (see Figure 1), and indirectly manages multiple large departments.



**Figure 1: The County Executive’s Office**

### **The County Executive’s Office Contracts Unit (Contracts Unit)**

The Contracts Unit employs approximately eight staff and manages the County Executive’s Office service contracts. County Executive’s Office divisions generally identify their own service needs, prepare scopes of work and vendor evaluation criteria, develop a final agreement and budget, and monitor contract performance. Meanwhile, the Contracts Unit oversees the solicitation process, contract execution, and preparation of contract amendments for divisions within the County Executive’s Office.

### **The Office of Countywide Contracting Management (OCCM)**

OCCM employs approximately eight staff focused on countywide procurement issues. OCCM responsibilities include countywide procurement training and the development and maintenance of countywide procurement guidelines. OCCM has the responsibility to approve contract extensions that exceed five years.

### **The County of Santa Clara Procurement Department (Procurement Department)**

The Procurement Department is a separate department. The head of the department is appointed by the County Executive. The Procurement Department employs approximately 90 staff and is primarily responsible for the procurement of goods and non-professional services that are not separately handled by a department. It establishes and administers goods and non-professional service contracts. Other departments purchase goods under the terms of these established contracts. The Procurement Department also assists other departments in the procurement of professional services when requested. The Procurement Department has the responsibility to approve non-competitive contracts, such as single and sole source contracts that are not competitively bid.

## **The Office of the County Counsel (County Counsel)**

The Office of the County Counsel is a separate department, and the County Counsel is appointed directly by the Board of Supervisors. (County Charter section 300(c).) County Counsel employs approximately 250 staff and provides legal advice and representation to the County. County Counsel reviews and approves contracts and provides legal advice on contract disputes. The County Counsel reports directly to the Board.

## **Legal and Policy Requirements for Procurement**

The legal and policy requirements governing the County's procurement activities are prescribed by law as well as Chapter 5 of the Board of Supervisors Policy Manual (Policy Manual) and the Procurement Department's internally published guidelines. These policies cover broad subject areas such as the competitive bidding process, authority and responsibilities of the County's Procurement Department, and purchasing dollar limits, among others.

## **The Policy Manual**

Chapter 5 of the Policy Manual summarizes the goals of the procurement policies. These policies reflect the Board's commitment to:

- Establishing an open and competitive process for individuals and organizations that do business with the County.
- Ensuring fairness and equal access to business opportunities in the County.
- Promoting the most cost-effective use of taxpayer dollars and County resources in its contracting and solicitation processes.
- Increasing social and environmental awareness and responsibility and environmental sustainability in the County.

## **Conflicts of Interest**

Section 5.2 of the Policy Manual discusses conflicts of interest, disclosure and disqualification requirements, and ethical business practices, stating:

Public entities, public officials, public employees and contractors are required by law to engage in fair and ethical business practices in their public procurement process. The County is accountable to the taxpayers on how public funds are spent.

Agencies/Departments are prohibited from awarding contracts to any entity or individual that does not meet the required solicitation criteria for the award. If no entity or individual meets the required solicitation criteria, the Agency/Department must reevaluate its needs and the solicitation process that was conducted and engage in another solicitation process, if appropriate, that will result in the award of the contract to a qualified entity or individual.

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Agencies/Departments are prohibited from selecting an inappropriate solicitation method as explained in Section 5.6 of this chapter, in order to circumvent the process, cut corners, or award the contract to a particular entity or individual.

## **Contracting Procedure Requirements**

Section 5.4 of the Policy Manual sets forth the policy requirements for contracting activities in the County, stating:

Monitoring, administration and evaluation of County contracts are essential to promoting the most cost-effective use of taxpayer dollars and County resources and to ensuring that the County receives the goods and/or services for which it contracts.

Although the method used to monitor, administer and evaluate a contract will depend on the type of contract, Agencies/Departments are required to develop performance standards and implement a process that incorporates monitoring, administration and evaluation of contracts. For example, self-monitoring and self-reporting may be appropriate for certain contracts.

Agencies/Departments must also document their performance evaluations of contractors. The retention period for this documentation should [be] the same as the retention period for the subject contract. These performance evaluations may be used by Agencies/Departments to evaluate the propriety of entering into contract extensions or future agreements with the same contractor. The Board or Board Committees may also request copies of evaluations from time to time.

Wherever possible, payment terms should be tied to performance or level of effort, and expense reimbursements for consulting contracts must be consistent with the County's travel policy, unless it is a fixed price contract, in which case no expense reimbursement above the fixed price is authorized.

Thus, Board policy requires individual departments to specify their contract monitoring guidelines. The County's 2023 report "Management Audit of the County of Santa Clara Office of the County Executive" states "the Administration Division has been exploring the use of a contract monitoring template for division managers to use on a quarterly basis to monitor contract performance and identify any issues that might impact overall performance."

## **General Contract Policies and Provisions**

Section 5.5 of the Policy Manual describes the contracting policies and provisions that should be included in County contracts, subject to approval from County Counsel, stating:

All contracts must be reviewed and approved by County Counsel as to form and legality.



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All Agencies/Departments are required to have a review process for their contracts to ensure compliance with any applicable policies and laws and to protect the interests of the County.

## **The Procurement Process**

Section 5.6 of the Policy Manual discusses the procurement process, stating:

In order to ensure a successful solicitation process, Agencies/Departments are required to engage in advance acquisition planning after identifying a need to ensure that the selected solicitation process will result in the best outcome for the County. Agencies/Departments must also maintain proper documentation reflecting how the process was conducted, as well as justification for the selection of a contractor, and they must ensure that employees involved in the contracting process are adequately trained.

There are limited exemptions to competitive procurement. If an Agency/ Department determines that an exemption applies, the Agency/Department must obtain prior approval of the exemption.

Sole Source and Single Source procurements are used in the procurement of products or services. They should only be utilized when justified and necessary to meet the County's needs and when the procurement needs warrant award on a sole source or single source basis. Sole source and single source requests must be supported by evidence that due diligence has been performed in an objective market analysis to arrive at the determination. Although the sole source and single source procurements are exceptions to competitive procurement, Agencies/Departments must still aim to make the process as competitive as is practicable under the circumstances.

Agencies/Departments must show through documentation that the selection of the source was based on an objective basis and justifiable reason, and the source selected is the most advantageous for the County to fulfill a given requirement as defined in the Scope of Work or specifications and the competitive bidding or competitive proposal process would be contrary to the public interest or would adversely impact the County.

## **Procurement Methods**

Board Policy requires open and competitive procurement. High value contracts (valued at more than \$100,000) normally require one of many formal competitive approaches, according to the Procurement Administrative Guidelines (County of Santa Clara, 2021). The County can use an informal competitive procurement approach for lower value contracts. The County uses a noncompetitive approach when only one vendor qualifies (sole source), or the County finds competitive bidding impractical (single source) (known as "exceptions to competitive

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procurement”). For specific types of contracts, the County permits “exceptions to competitive procurement” where competition is not practical and would not serve public policy goals (e.g., agreements exclusively with other government agencies, or procurement of standard commercial off-the-shelf software products).

Figure 2 shows the County’s procurement methods that are used by County departments.

<b>Procurement Method</b>	<b>Approaches</b>	<b>Evaluation or Award Criteria</b>	<b>Maximum Contract Value</b>
<b>Formal Competitive</b>	Include Invitation to Bid, Request for Proposals, Request for Applications	Depends on specific approach.	None
<b>Informal Competitive</b>	Request for Quotation	Award determined based on price to lowest responsive and responsible bidder.	Up to \$100,000
	Informal Competitive Procurement	Price and weighted qualitative criteria (e.g., experience, project management approach, recommended solutions).	Up to \$100,000 per budget unit, per fiscal year, not to exceed a cumulative value of \$300,000 in a five-year term.
<b>Noncompetitive (Exceptions to Competitive Procurement)</b>	Sole Source Exception	Only one vendor for the required product or service capable of meeting requirements of acquisition as defined in Scope of Work or specifications.	None
	Single Source Exception	The County determines that requirements of competitive sealed bidding or competitive sealed proposals are impracticable, or single source is in the public interest.	None

**Figure 2: County Procurement methods. (Source: Procurement Administrative Guidelines)**

The public can see contract approvals in the Board meeting minutes. The public can also view active contracts on a webpage maintained by the Procurement Department. The active contracts webpage

does not identify single and sole source contracts. Thus, there is no mechanism for the public to search and learn about the County's sole and single source contracts.

All County contracts require multiple levels of authorization including:

- The Board or the Procurement Department provide final authorization unless they have delegated their authority.
- OCCM must approve contract extensions that exceed five years.
- Non-competitive contracts must be approved by the Procurement Department (unless they fall within a narrow group of contracts categorically exempt from competitive procurement).
- County Counsel must approve all contracts for form and legality, but does not approve the purpose, wisdom, or business need for the contract.

Contracts approved by the Board are commonly referred to as "Board contracts." The approval process for Board contracts may involve placing the item on the Board agenda for discussion and action or placing it on the consent calendar for approval. The consent calendar can include a group of items that are then approved by the Board without discussion.

### **1995 History Book: *County Leadership: Santa Clara County Government History***

In 1995, the County Historical Heritage Commission published the book *County Leadership: Santa Clara County Government History* by Glory Anne Laffey and Robert G. Detlefs.

The writers, a local historian and a San José State University student, bid competitively for the writing contract with the County and won with a bid of approximately \$25,000. They were paid a flat rate once the manuscript was completed about a year later. The writers consulted with other local historians and had the manuscript edited by professional editors. The 150-page book included seven thematic chapters, covering the timespan from the County's founding in 1850 until 1994, and included 56 pages of biographical vignettes of Board Supervisors. It was not a chronicle of every event in the history of the County, but rather concentrated on specific thematic areas such as administration, transportation, law and order, education, and health care.

The 1995 book was edited by professional editors and was laid out, printed, and published by a commercial publisher. The book was then distributed to offices and libraries throughout the County.

## **METHODOLOGY**

The Civil Grand Jury interviewed more than 20 people, including past and present County leadership and staff, historians, and publishing experts. The Civil Grand Jury reviewed the manuscript for the book that was submitted, other County history books, other related documents, and applicable County procurement guidelines.

## INVESTIGATION

### County History Book

#### Finding an Author

Sometime around 2017 or earlier, the then-County Executive and several current and former Board Supervisors informally discussed the idea of a new County history book to cover the County's unique evolution under the leadership of the Board. In 2017, a senior adviser in the County Executive's Office inquired informally with local historians whether there was any interest in writing a continuation of the 1995 book *County Leadership: Santa Clara County Government History*, which the County had published. Other possible sources of local history writers that could have been contacted, but were not, include the Santa Clara County Historical Heritage Commission, local university history departments, and the California Historical Resources Information System (CHRIS) list of historians, archeologists, and other historical professionals.

At the same time, the then-County Executive and the senior adviser had started to discuss the idea of a County history book with an existing County Contractor who, for more than 20 years, had been engaged in grant writing for the County.

#### The Contractor

The Contractor had been writing grant applications for the County since approximately 1995, focused mostly on health and human services departments. The Board had approved the Contractor's single source contract exception from competitive bidding for grant writing in 2009 and approved annual contract extension amendments for the next five years, as limited by County policies for contract extensions. In 2014, the Board approved a new single source contract with the Contractor under the single source exception outlined in the Policy Manual to do grant writing and renewed the contract annually until 2017 (Policy Manual Section 5.6.5.1(D)(2)(a)(i)). Between 2009 and 2017, the Contractor's hourly rate increased from \$150 to \$200, with an annual contract limit increase from \$120,000 to \$165,000.

Over the years, the Contractor's grant proposals had netted the County at least \$320 million in grants, according to an assessment from the then-County Executive. In May 2015, the County Executive's Office recommended doubling the Contractor's maximum annual payments to \$330,000 from \$165,000, which the Board subsequently approved in a contract extension. Two months later, the Contractor proposed in an email that the County Executive's Office handle all of the Contractor's writing projects and that all invoices for the Contractor's work be submitted to the County Executive's Office directly, rather than to individual departments, thus simplifying the process for the Contractor and for departments seeking grants. The County Executive at that time agreed to the proposal and sent an email to hundreds of County employees explaining that the Contractor's work would reside in the County Executive's Office going forward. Until 2015, the

Contractor had submitted monthly invoices to individual departments that had requested or were administering the grant requests, but after the Contractor's work moved to the County Executive's Office, the Contracts Unit in that office approved all of the Contractor's invoices.

## **The 2018 Contract Extension for History Writing**

### **The Contracting Process**

On January 10, 2018, the then-County Executive contacted the Contractor with a proposal to write a County history book. The Contractor responded with a request for a pay raise from \$200 to \$250 per hour for the new assignment. The Contractor advised they had consulted various sources and determined that an hourly rate would be the most appropriate payment option. However, Civil Grand Jury research indicates that nonfiction book writers are not paid at an hourly rate. Nonfiction writers may receive advances before research begins, but the advance counts against royalties from future sales, and is paid in increments, mostly after the manuscript is complete:

... advance payments are generally paid in anywhere from two to four equal installments, often at significant milestones in the publishing process—when you sign the contract, when your complete manuscript is approved by the editor, when the book is published. (Klems, 2014)

The Civil Grand Jury could find no references to nonfiction book writers being paid at an hourly rate. According to local historians, the typical rate for writing local history books ranges from a labor of love (free) to \$10,000 or \$20,000, paid by publishers based on royalties (a percentage of sales) after publication. No one had heard of a history book writer being paid at an hourly rate.

The Contractor had over 20 years of experience as a grant writer for the County but did not have experience as a published writer of local history. Grant writing is a revenue-generating activity that mostly consists of responding to specific prompts and assembling information from sources. According to an article from the U.S. Bureau of Labor Statistics,

... grant writers might describe the past, present, and planned activities of the grant-seeking individual or organization. In drafting the proposal, writers must follow the grant's guidelines, such as ensuring that the organization meets eligibility requirements, and provide a budget that outlines how the grant money would be spent. (Torpey, 2014)

By contrast, writing nonfiction history books requires a collaboration between the writer and an experienced editor to envision, research, and structure historical material in a way that will be interesting to readers. Unlike grant writing, there is no template to follow. According to the book *Writing Local History Today*,

Once manuscripts are submitted, historical societies and university presses use peer review as a method of quality control. Thus, submissions should receive critiques by both inside readers chosen by the author and outside readers chosen by the publisher. (Mason and Calder, 2013)

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But the County made no plans to subject the manuscript to editing or peer review to determine its accuracy and completeness.

The County Executive's Office proceeded to create two versions of a request for a sole source exception from competitive bidding for the proposed history book project, specifying that the Contractor in question had unique knowledge of recent County history as well as familiarity with Board Supervisors. According to County policy, a sole source, non-competitive contract is acceptable only "if it has been determined that there is only one source for the required product or service and not as an attempt to contract with a favored service provider or for a favored product" (Policy Manual Section 5.6.5.1(D)(2)(a)(i)).

The first sole source exception request from the County Executive's Office, dated April 11, 2018, stated that "No other contractors were identified that could meet this need," that "research yielded no other contractors" capable of doing the work, and that "a competitive recruitment would be impracticable." The first request estimated the cost of the project at \$220,000, with a term from May 1, 2018, to June 30, 2019.

On April 17, 2018, the County Executive's Office created a second version of the sole source exception, more than doubling the cost of the project to \$500,000 and extending the end date by six months to December 31, 2019, with no explanation or justification for the increase in budget and timeline. The Civil Grand Jury learned that the Procurement Department denied both sole source exception requests because there were other potential contractors, including local historians and college history departments, that would be capable of writing a history book and interested in bidding for a contract.

A week later, on April 24, 2018, the County Executive's Office created a third request, this time for a single source exception from competitive bidding, with identical language as the rejected sole source exceptions, describing the Contractor's unique ability to perform the work. The County's policy on single source contracts states:

The County must determine and establish that a situation exists that makes the application of all requirements of competitive sealed bidding or competitive sealed proposals impracticable or contrary to the public interest. (Policy Manual, Section 5.6.5.1(D)(2)(a))

The Procurement Department researched the issue and found that several local universities were interested in and capable of writing County history, negating the need for a sole or single source contract. Employees in the Procurement Department had contacted university professors and found interest in bidding for a \$500,000 County history contract, if it were to materialize. The Procurement Department recommended against a sole or single source exception for this contract, favoring instead a competitive bidding process.

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In response to the Procurement Department's objections, the County Executive's Office then changed its strategy and presented to the Board a contract extension for the Contractor's existing contract, with the idea of adapting the existing contract term "professional writing" to cover writing a history book. The sequence of events demonstrated that the County was more interested in awarding the contract to a specific, chosen individual rather than following best practices for producing a viable history book.

The contract extension describes the proposed history book as a "historical record" that would cover:

... the role of County government throughout the years since the County of Santa Clara was formed, from the selection of railroad and transportation corridors still in use, the preservation of open space, the transformation of this area into the technology capital of the world, and other areas to be specified by the County. (County of Santa Clara, 2018)

The 2018 contract extension further states that the book should "depict the significant ways in which County government leaders have influenced outcomes" and "take into consideration the social, political, and economical context of the time."

On June 5, 2018, the Board approved the contract extension, increasing the Contractor's hourly rate to \$250 per hour and increasing the annual maximum to \$510,000. The contract extension would expire on June 30, 2019 (County of Santa Clara, 2018). The County Executive's Office had placed the approval on the Board's consent calendar, amid hundreds of routine items. No Supervisor singled out the contract extension from the consent calendar, so it did not receive individual scrutiny or discussion at the meeting before approval by the Board.

Figure 3 summarizes book project contracts and events.



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Date	Event
2017	County Executive's Office contacts local historians about a book update.
January 10, 2018	Then-County Executive contacts the Contractor about a book contract.
April 11, 2018	County Executive's Office applies for a first sole source exception for \$220,000.
April 17, 2018	County Executive's Office creates a second sole source exception request for \$500,000.
April 2018	Procurement Department denies the second sole source exception request.
April 24, 2018	County Executive's Office applies for a single source exception.
April 27, 2018	Procurement Department denies the single source exception request.
June 5, 2018	Board of Supervisors approves a \$510,000 extension of an existing grant and professional writing contract to include history writing. This contract briefly describes writing a historical record.
May 21, 2019	Board approves a \$500,000 writing contract extension to June 30, 2020
January 5, 2022	Contractor submits a 587-page document to the former County Executive.
February 18, 2022	County Executive's Office sends the document to the County printing office.
May 29, 2022	Mercury News publishes first story about the history-writing contract.
June 2, 2022	Mercury News publishes story alleging plagiarism.
July 5, 2022	Then-County Executive issues memo stating that the book project "should have been put out to bid."
March 2023	Then-County Executive announces that the book project has been canceled.

**Figure 3: History-Writing Event Timeline**

## Problematic Invoicing and Monitoring

Invoices indicate that the Contractor had started research for the history book as early as January 2018, well before the Board had approved the contract extension for history writing in June 2018. Invoices from January through June referred to meetings the Contractor had with the then-County Executive, a senior adviser in the County Executive's Office, and other County staff for a history book project. An invoice for May 2018, before the grant-writing contract had been extended with wording about history writing, included no references to grant writing, but stated:

Made arrangement for an initial group of records to be sent to the Clerk of the Board's Office for greater accessibility due to the limited hours of the Archives ... Added to the collection of historical books and records I am collecting for reference. Finished reading and marking a number of the books. Met and talked with a local historian who is assisting

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the County with the completion of an application for recognition by the federal government as a national historical site. Made contact with other local historians.

After the Board approved the \$510,000 contract extension in June 2018, the Contractor continued to submit monthly invoices to the County Executive's Office. The Civil Grand Jury's review of invoices revealed that they did not include hourly, daily, or even weekly reports of work accomplished. For example, a May 2019 invoice claiming 178 hours of professional services (\$44,500) describing work for the month as follows:

Continued to do extensive research and writing for a book on Santa Clara County history.  
Found and utilized several new sources of information and public domain photographs.  
Was provided a private, three-hour tour of the Portuguese Museum at the San Jose History Park and lunch at a local Portuguese restaurant. Acquired additional books and printed material.

The May 2019 invoice included no other details of work performed, or of progress on the book project. Other invoices similarly lacked details of work activities or product.

An employee in the County Executive's Office approved the Contractor's invoices but did not require details of hourly or daily activities, did not see work-in-progress, and did not function as project manager in the way it is outlined per County guidelines. The County's Procurement Administrative Guidelines, adopted in 2021, states, "[t]he role of Project Manager is to manage and monitor assigned contracts and the delivery of the agreed outcomes under each of the contracts during the full lifecycle of each contract." The County cannot identify who if anyone in the County Executive's Office had project manager responsibility. The then-County Executive met alone with the Contractor multiple times, but the County was unable to provide the Civil Grand Jury with any records documenting the purpose and content of those meetings.

The 2018 modified grant-writing contract extension stated that the Contractor's familiarity with current and former Board Supervisors made the Contractor uniquely qualified for the history project. In February 2019, more than six months into the first history-writing contract extension, the Contractor emailed the County Executive asking that he contact current and former Board Supervisors to request interviews for the history book project. The Contractor subsequently submitted invoices that did not mention interviews with current or former Board Supervisors. Additionally, after extensive research, the Civil Grand Jury did not find any evidence of current or former Board Supervisors being interviewed as part of the Contractor's research.

### **Contract Extension and Expiration With No Work Product Submitted**

On May 21, 2019, the Board approved another \$500,000 contract extension so that the Contractor could continue to work on the history book project, even though no one in the County Executive's Office had ever asked to see or reviewed any portion of a manuscript for the book.

The legislative file associated with the 2019 contract extension states:

The amendment is being recommended for approval to provide the Contractor with enough time and resources to complete the remainder of her many interviews, historical research, historical photograph procurement, and to edit/revise sections of the Santa Clara County Government History Writing Project (County Historical Book).

The delays are not attributable to the Contractor. It took longer than anticipated to locate and contact most of the individuals for interviews. And, many of these individuals did not respond in a timely fashion and were unable to meet with the Contractor within a reasonable timeframe. (County of Santa Clara, 2018)

However, reviewed documents and interview responses indicated that no outreach had ever occurred. Email communications between the Contractor and employees of the County Executive's Office showed that at no time during the active life of the contracts, from June 2018 to June 2020, did the County Executive's Office ever ask to see a work product.

### **Contract Expiration**

In March 2020, the COVID-19 pandemic began to monopolize the County Executive's Office's time. The Contractor's last contract extension for writing the history book expired in June 2020. In July 2020, the senior adviser in the County Executive's Office emailed the Contractor stating that the contract would not be renewed. The senior adviser requested that the Contractor turn in the book manuscript. In August 2020, another employee in the County Executive's Office requested the Contractor return a County-supplied computer. Still, the Contractor had not submitted a manuscript.

### **Submission of the Manuscript**

The Civil Grand Jury learned that the Contractor met with the then-County Executive in July 2021, and showed him a hard copy of the manuscript. The Contractor later told the County Executive in an email that there were problems with the editing of the copy he had seen, specifically with the index.

Meanwhile, because the project was so poorly managed, the County had made no official plans for professional editing, layout, printing, or permission for the use of historical photographs.

*Writing Local History Today* states,

... during the publication phase an author's most valuable ally is a skilled copy editor. Ideally the copy editor will be knowledgeable in not only language and style conventions but also the historical content of the publication. (Mason and Calder, 2013)

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The university history departments that the Procurement Department had consulted in 2018 (and which had been interested in bidding if a Request for Proposal had been circulated) would have understood the need for peer review and editing.

During Fall 2021, the Contractor repeatedly emailed employees of the County Executive's Office asking for information about any plans for publication. In January 2022, the Contractor submitted a 587-page electronic document in PDF format to the County Executive's Office covering County government history only through 1950. The manuscript did not cover the topics specified in the 2018 contract extension, specifically:

- Railroad and transportation corridors still in use.
- The preservation of open space.
- The transformation of this area into the technology capital of the world.

The manuscript did not include interviews with past or current Board Supervisors. The Civil Grand Jury could find no evidence in the manuscript or in emails between the Contractor and the County that the January 2022 manuscript was a draft rather than a finished product.

The PDF manuscript submitted included 37 pages of biographies copied nearly word-for-word from the 1995 *County Leadership* book which was copyrighted by the County's Historical Heritage Commission. The Civil Grand Jury could find no evidence that the County or the Contractor had permission from the County Historical Commission to copy and paste material from the 1995 book. The Contractor briefly acknowledged the 1995 book in the submitted manuscript, but the amount of material copied directly constitutes an intellectual property concern. In *The Little Book of Plagiarism*, writer Richard A. Posner distinguishes between fair use and plagiarism:

The fair-use doctrine permits quotations of brief passages from a copyrighted work without the copyright holder's permission ... But the fair user is assumed to use quotation marks and credit the source. (quoted in Mason and Calder, 2013)

The excerpts from the 1995 book in the submitted manuscript were too numerous and too direct to be considered fair use, were not placed in quotation marks, and were not individually credited to the source.

The January 2022 manuscript was formatted as a PDF with photographs, captions and inset illustrations, which is not typical of manuscripts submitted to publishers. Neither the 2018 nor 2019 contract extension specified that the Contractor needed to submit a publication-ready manuscript. But the County told the Contractor after the last contract had expired in July 2020 that the County would not provide professional editing or layout and design services. The senior adviser in the County Executive's Office told the Contractor that if the book were to be published, the Contractor would have to submit the manuscript in a ready-to-publish format. However, the Civil Grand Jury's research indicated this is not how a book is published. Manuscripts for books submitted to publishers are typically formatted in a word processing application such as Microsoft Word, which is easily edited. Publishers use professional editors and layout designers to design

and format books, so they need submissions in easy-to-edit formats rather than publication-ready formats such as PDFs.

In February 2022, the senior adviser in the County Executive's office sent the PDF manuscript to the County printing office, inquiring how much it would cost to print. In email correspondence between the Contractor and the senior adviser, the Contractor mentioned that some formatting changes and photo permissions were still needed, but the Contractor did not state that the manuscript submitted was a draft, or that it contained placeholder content that would later be replaced. The Contractor later told a Mercury News reporter that content the newspaper identified as plagiarized had been "placeholder" content that the Contractor intended to later cite properly; "[t]he paragraphs you refer to and others were utilized as placeholders and were never intended to be included in the final copy," the Contractor told the Mercury News (Greschler, June 5, 2022).

## **The Role of the Office of the County Counsel**

County Counsel reviewed and approved the Contractor's original 2014 single source contract and subsequent extensions for form and legality, following procedural norms.

In 2023, after the project had been canceled, County Counsel requested files of work product related to the project from the Contractor. The then-County Counsel later informed the Mercury News that the County would not (Greschler, March 13, 2023). The legal rationale for the County's decision not to seek reimbursement is subject to attorney-client privilege. The Civil Grand Jury is not speculating why that decision was made; however, as this report details, the description of the book project in the original contract is so vague that it may be difficult for the County to pursue a demand for the return of contract awarded funds due to the County's own failures with the contracting process. The Contractor was paid an hourly rate of \$250 to do historical writing with no defined end product, project deadline, or interim checks on progress.

## **System Failures**

### **The Book**

The Civil Grand Jury learned that there are several reasons the 2018-2020 book project failed, which include:

- Under the then-County Executive, the County Executive's Office disregarded the advice of the Procurement Department about the book writing project.
- No understanding in the County Executive's Office of how a successful book project would be completed.
- No evaluation of appropriate qualifications and experience in selecting a writer for the project.

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- No clearly defined scope of the project.
- No progress and review of milestones or checkpoints.
- Failure to apply customary contractual and payment practices for book writing.
- Poor and ineffective contract management.
- Confusion about who had the project manager responsibility.

Several of these issues were understood by employees in the Procurement Department and were the basis for their objections to the 2018 contract as proposed.

The request for extra work from the Contractor after funding for the project had run out, to produce a ready-to-publish document, was not included in the 2018 and 2019 contracts. The unusual request was not in keeping with standard publishing industry practices, in which writers are responsible for written content, but not for design, layout, or placement of photos and other graphics.

### **Comparing the 1995 *County Leadership Book* with the 2018-2020 Failed Book Project**

The writers of the 1995 County Leadership book were hired to complete a manuscript, which they submitted in an editable format, leaving the layout, photo placement, and other formatting issues to the publisher. Figure 4 compares the 1995 book project with the 2018-2020 failed book project.

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	1995 Book	2018 History Book Project
<b>Contractor</b>	Experienced history writer and graduate student	Grant writer with county operations experience
<b>Contract Type</b>	Competitive contract	Non-competitive contract
<b>Payment terms</b>	Fixed price for completed product	Hourly rate
<b>Maximum financial obligation to writer(s)</b>	\$25,000 (payable upon completion of project)	\$1 million (with no guarantee of a completed project)
<b>Duration</b>	Writing finished in approximately one year; publication in second year	Incomplete and deemed unusable after more than two years of writing
<b>Content about Board Supervisors</b>	Includes biographies of nearly every supervisor from 1850-1994	Includes nearly word-for-word copies of the biographies 1850-1950 from the 1995 book, and no information thereafter
<b>Timeframe covered</b>	1850-1994	Prehistory to 1950
<b>Requirements in original contract</b>	Unknown	“History project should cover open spaces, transportation corridors and the County’s transformation to a technology capital.” (Not in submitted manuscript)
<b>Professional editing</b>	Manuscript was professionally edited	County made no plans for professional editing
<b>Printing and publishing</b>	County arranged to print and publish the book separately	County made no plans to print or publish book

**Figure 4: Comparison of 1995 County History book and 2018-2023 history-writing projects**

The writers of the 1995 book and other local historians familiar with Santa Clara County research were well aware that a 1931 fire had destroyed 70 years of County records. One of the 1995 writers developed biographical vignettes about past Board Supervisors after painstaking research of the remaining fire-damaged records. Yet the 2018-2020 book Contractor did not know about the difficulty of obtaining pre-1931 information until several months into the book contract, as reflected in the invoices submitted.

### Policy Manual Violations

The County awarded the Contractor a single source contract in 2014 for the purpose of providing grant-writing services and proceeded to extend it multiple times for an unrelated purpose. The

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Policy Manual and Procurement Administrative Guidelines provide specific guidelines for extending contracts, including providing a maximum five-year term regardless of whether or not the contract was competitively bid. Extending any contract, but especially those that were single source to begin with, beyond this five-year term may prevent competition. The significant changes in scope made this particular extension even more of a deviation from policy.

Under the then-County Executive, the County Executive's Office failed to adhere to multiple rules specified in the Policy Manual (which were in effect in 2018 and 2019), including:

- The County Executive's Office selected an inappropriate solicitation method to award the contract to a particular individual. The Policy Manual states that agencies and departments are prohibited from "selecting an inappropriate solicitation method ... in order to circumvent the process, cut corners, or award the contract to a particular entity or individual" (Policy Manual, Section 5.2.5.2 Ethical and Best Business Practices (B) Awarding Contracts to Unqualified Entities or Individuals).
- The County Executive's Office did not conduct a formal, objective market analysis leading to the Contractor being chosen, and provided insufficient documentation of the reason for selecting the specific Contractor. The Policy Manual states that "sole source and single source requests must be supported by evidence that due diligence has been performed in an objective market analysis to arrive at the determination" (Policy Manual, Section 5.6.5.1 Solicitation Process (D) Non-Competitive Procurement (2) Exceptions to Competitive Procurement (a).).
- The County Executive's Office failed to use a competitive bidding method. The Policy Manual states that even though "sole source and single source procurements are exceptions to competitive procurement, Agencies/Departments must still aim to make the process as competitive as is practicable under the circumstances" (Policy Manual, Section 5.6.5.1 Solicitation Process (D) Non-Competitive Procurement (2) Exceptions to Competitive Procurement).
- The County Executive's Office failed to demonstrate that the selection of the Contractor was based on an objective basis and justifiable reason, or that the Contractor selected was the most advantageous for the County to fulfill a given requirement as defined in the scope of work. The Policy Manual states that agencies and departments must "show through documentation that the selection of the source was based on an objective basis and justifiable reason, and the source selected is the most advantageous for the County to fulfill a given requirement as defined in the Scope of Work or specifications and the competitive bidding or competitive proposal process would be contrary to the public interest or would adversely impact the County" (Policy Manual, Section 5.6.5.1 Solicitation Process (D) Non-Competitive Procurement (2) Exceptions to Competitive Procurement (a) (ii) Single Source).
- The County Executive's Office failed to specify appropriate payment terms consistent with industry standards for the book project and paid the Contractor at an hourly rate. The Policy



Manual states that “wherever possible, payment terms should be tied to performance or level of effort” (Policy Manual, Section 5.4.5.6 Contract Payment Terms).

- The County Executive’s Office failed to implement an appropriate monitoring process. The Policy Manual states that agencies and departments “are required to develop performance standards and implement a process that incorporates monitoring, administration and evaluation of contracts” (Policy Manual, Section 5.4.5.5 Monitoring, Administration, and Evaluation of Contracts).

### **Media Coverage and Public Outcry**

County residents did not know about the history book project until the Mercury News published its first story on May 29, 2022 (Greschler). Because the 2018 and 2019 contract extensions had been on the Board’s consent calendar, and because the County does not have a searchable database of single and sole source contracts, the newspaper article was the first time most County residents heard about the book contract. (The 2022 Santa Clara County Civil Grand Jury, in the report “Garbage In, Garbage Out: Santa Clara County Public Contract Data,” recommended that the County “should post an electronic copy of the actual contracts for public view, ensuring transparency and mitigating human input error” [Recommendation 9f], but the County rejected the recommendation as “not warranted” or “not reasonable” in its March 7, 2023, response to the 2022 report.)

On June 2, 2022, the Mercury News published a story alleging plagiarism in the PDF manuscript submitted in January (Greschler). The Mercury News published excerpts allegedly copied and pasted from Wikipedia and other sources. A County Board Supervisor called for an inquiry, and on July 5, 2022, the then-County Executive issued a memo, stating:

In hindsight, these historical book writing services should have been put out to bid, as the experience and skills needed to be a highly effective grant and technical writer for and about County government do not necessarily translate to the production of a comprehensive historical book.

In March 2023, the then-County Executive announced in a Mercury News article that the book project had been canceled (Greschler, March 13, 2023).

## CONCLUSION

Under the leadership of the former County Executive, the County Executive's Office circumvented procurement guidelines and failed to follow the County's rules. The County failed to make plans for the project to be completed and published, and further failed to monitor the project, resulting in \$1 million of public funds being spent on an unusable product.

The County did not adequately define the scope and terms of the history book contract, with only one paragraph in the contract and scant details. The manuscript, submitted over a year after the contract extensions had expired, did not cover the areas mentioned in the contract.

Procurement best practices dictate that contracts be awarded through competitive bidding whenever practical and, once awarded, be monitored by measurable standards. The entire process for the history book project defied commonly accepted practices within County procurement as well as the publishing industry.

The failed history book writing project provides an example of how violations of the County's procurement policy increase the risk of misuse or inappropriate expenditures of public funds. Had the County followed correct procurement procedures, the County would have competitively bid the contract, selected an appropriate awardee, identified a project manager, and fully defined the project scope and cost with appropriate payment terms. The end result of violating procurement policy was the expenditure of more than \$1 million in public funds for an incomplete and unpublishable manuscript.

## FINDINGS AND RECOMMENDATIONS

### Finding 1a

The County Executive's Office, led by the then-County Executive, violated Board of Supervisors policy commitments to an open competitive procurement process that ensures fairness and equal access to business opportunities.

### Finding 1b

The then-County Executive modified and extended an existing grant writing and professional writing contract so it could award a history book project to a specific Contractor despite the fact that the Contractor lacked relevant experience.

### Recommendation 1

The County should enforce adherence to its existing provision that requires all County contracts (including non-competitively bid contracts) to be re-bid after five years and expand existing contracting guidelines to explicitly cover contract extensions, defining conditions for when contracts should be bid competitively rather than extended, such as a significant change in scope. This recommendation should be implemented by November 1, 2024.

### Finding 2

The County failed to adequately specify the scope of the Contractor's work on the history book project. This resulted in an unusable manuscript.

### Recommendation 2

The County should analyze ways it can improve its policies to ensure that contracts include the appropriate specificity regarding terms and conditions to enable the County to pursue legal recourse when those terms and conditions have been violated by the contractor, including but not limited to County Counsel's and County staff's role in this process. This recommendation should be implemented by November 1, 2024.

## **Finding 3a**

The County approved and awarded a book contract on an hourly wage basis, inconsistent with publishing industry practice, resulting in over \$1 million being spent on a manuscript that was not publishable.

## **Finding 3b**

The County regularly paid invoices without verifying contract performance and without documentation of work done and extended the book contract for a second year without requiring any proof of progress.

## **Finding 3c**

The County failed to clearly delineate project roles and responsibilities, especially for the project manager role.

## **Recommendation 3**

The County should evaluate its current contracting policies for needed safeguards to prevent the situation here, which permitted a County department to place a contract on the consent calendar even though there were multiple aberrations from existing contracting policies and a failure to monitor the contract. Given the independent role of the County Counsel and its existing role in approving contracts, the evaluation should include how County Counsel, in addition to County staff, can play a role in these safeguards. This recommendation should be implemented by November 1, 2024.

## **Finding 4**

The County makes it impractical for members of the public to review contracts like the history book contract, causing the public to rely on whistleblowers and news reporters to understand the County's business.

## **Recommendation 4**

The County should require the County Executive's Office to implement a practical contract search system for the public to view all contracts, including non-competitive (sole and single source) Board contracts and extensions. This recommendation should be implemented by February 1, 2025.

**REQUIRED RESPONSES**

**Pursuant to California Penal Code section 933(b) et seq. and California Penal Code section 933.05, the 2023-24 Santa Clara County Civil Grand Jury requests responses from the following governing body:**

<b>Responding Agency</b>	<b>Findings</b>	<b>Recommendations</b>
The County of Santa Clara	1a, 1b, 2, 3a, 3b, 3c, 4	1, 2, 3, 4

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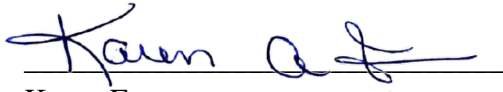
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This report was **ADOPTED** by the 2023-24 Santa Clara Civil Grand Jury on this 11<sup>th</sup> day of June, 2024.

A handwritten signature in blue ink, appearing to read "Karen Enzensperger", written over a horizontal line.

Karen Enzensperger  
Foreperson