



## OFFICE OF THE COUNTY COUNSEL

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November 26, 2018

**TO:** Dora Briley, MCSO – Measure B Committee Clerk

**FROM:** Christian M. Curtis, Assistant County Counsel

**RE:** Measure B Committee and Public Contracting Requirements  
Opinion No. 18-012

### QUESTIONS:

1. Can the Citizen’s Oversight Committee approve funds for a design or construction project without a formal request for proposal?
2. Are projects funded with Measure B funds subject to the same public contracting requirements as other County projects?
3. If projects funded with Measure B funds are exempt from County public contracting requirements, what rules apply?

### ANSWER:

1. As an advisory body, the Citizen’s Oversight Committee is not required to engage in a formal competitive process prior to making a recommendation to the Board of Supervisors. The Board of Supervisors, however, will have to comply with all usual contracting requirements before the expenditure of public funds. Consequently, the Committee should avoid any action that might compromise the integrity of later competitive contracting processes.
2. Yes. Special tax revenues are subject to the same public contracting requirements as any other County funds.
3. N/A. Any project using Measure B funds will need to comply with relevant County procurement rules. Specific requirements will vary based on the particular project.

### ANALYSIS:

There has been an inquiry by the Citizen’s Oversight Committee (often referred to as the “Measure B Committee”) as to what rules and processes they need to follow prior to approving the use of funds for new design or construction projects. Specifically, the Committee is interested in knowing what competitive processes, such as a request for proposal or formal bid, that it needs to adhere to prior to any approval. Our conclusion is that the County needs to comply with these processes prior to any contract award but that this process does not need to

happen until after the Committee makes any general recommendations. Nevertheless, the Committee should be careful to avoid any action or recommendation that would compromise the competitive processes that the County will need to follow.

Mendocino County Ordinance No. 4387, which was approved by the voters in November of 2017 as “Measure B,” adopted a County sales and use tax for the specific purpose of funding improved services, treatment, and facilities for persons with mental health conditions. (MCC §§ 5.180.010 et seq.) The ordinance created a Mental Health Treatment Fund, from which specified percentages may be used for facilities, services, treatment, and ongoing operations. (MCC §5.180.040(F)) Additionally, the Ordinance created a Mental Health Treatment Act Citizen’s Oversight Committee, which is responsible for reviewing the independent annual audit and performance management plan to ensure compliance with the ordinance. (MCC §5.180.040(D)) The Committee is also charged with making “recommendations to the Board of Supervisors on the implementation of [the] ordinance.” (MCC § 5.180.040(D))

As with all County funds, ultimate authority to expend the Measure B tax revenue lies with the County Board of Supervisors. This power is exercised in at least two ways. First, the Board of Supervisors has exclusive authority to approve expenditure of funds through the County’s budget process. (Gov. C. §§ 29000 et seq.) This budgeting authority cannot be modified or delegated by a general law county. (*Totten v. Board of Supervisors* (2006) 139 Cal. App. 4th 826) Second, the Board of Supervisors may expend budgeted revenues by entering into various contracts. (See, e.g., Gov. Code §25351.3 (acquiring real property and constructing buildings); Gov. Code §31000 (special services); Pub. Contract Code §§ 20120 et seq. (public works contracts)) The Board may make some limited delegations of this contracting authority. (See, e.g., Gov. C. § 25502.3 (Board can create a purchasing agent, but must limited authority to agreements of less than fifty thousand dollars)) In this case, however, some of the anticipated uses may be non-delegable, and nothing in the ordinance includes any special contracting process. (MCC §§ 5.180.010 et seq.)

Competitive contracting processes do not apply when the funds are initially budgeted, but creation and adjustment of the budget instead follows a process which includes noticed public hearings. (See Gov. C. §§ 29000 et seq.) Prior to spending budgeted funds, however, the Board may be required to engage in competitive procurement procedures. (See, e.g., Pub. Contract Code §§ 20120 et seq.) The specific requirements will vary significantly depending on the nature of the service or item being purchased, the value of the contract, whether any grant funds are utilized, and other factors. As such, the relevant public contracting requirements will have to be evaluated on a case-by-case basis. Generally speaking, however, the use of Measure B funds is unlikely to materially alter the analysis as to which public contracting requirements apply.

As the Citizen’s Oversight Committee does not award contracts, public contracting laws are not directly applicable to its recommendations. Nevertheless, the Committee should avoid conduct which could be detrimental to any competitive processes that will occur down the line. For example, Committee recommendations may be relied upon or even incorporated in any eventual

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bid documents or requests for proposals. If the Committee utilizes a consultant to help in crafting those recommendations, it might cause that consultant to be disqualified from participating in a later competitive process (depending on the specific circumstances). Consequently, to maximize the pool of potential contractors, the Committee should avoid engaging prospective future contractors in a manner that would give them an unfair advantage in any future competitive process.

Sincerely,

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COUNTY COUNSEL



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