

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Title 2.36 and Title 2.37,  
Contracting, of the Deschutes County Code.

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ORDINANCE NO. 2023-012

WHEREAS, the Deschutes County Code (DCC) contains rules and regulations duly enacted through ordinance by Deschutes County and the Deschutes County Board of Commissioners; and

WHEREAS, from time-to-time the need arises to make amendments, including new enactments to the DCC; and

WHEREAS, staff from Facilities, Administration, and Legal have identified a need to amend DCC 2.36 and DCC 2.37 to reflect state law changes in SB 1047 and also revisions appropriate for county operations; and

WHEREAS, the Board of County Commissioners of Deschutes County considered this matter at a duly noticed public hearing during the Board meeting on August 16, 2023, and determined that DCC 2.36 and DCC 2.37 should be amended; now therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, ORDAINS as follows:

Section 1. AMENDMENT. DCC 2.36 and DCC 2.37 are amended to read as described in Exhibit “A,” attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strike through~~.

Section 2. ADOPTION. This Ordinance takes effect 90 days after second reading.

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Dated this \_\_\_\_\_ of \_\_\_\_\_, 2023

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

\_\_\_\_\_  
ANTHONY DeBONE, Chair

\_\_\_\_\_  
PATTI ADAIR, Vice Chair

ATTEST:

\_\_\_\_\_  
Recording Secretary

\_\_\_\_\_  
PHIL CHANG, Commissioner

Date of 1st Reading: \_\_\_\_\_ day of \_\_\_\_\_, 2023.

Date of 2nd Reading: \_\_\_\_\_ day of \_\_\_\_\_, 2023.

<u>Commissioner</u>	<u>Yes</u>	<u>No</u>	<u>Record of Adoption Vote</u>	
			<u>Abstained</u>	<u>Excused</u>
Patti Adair				
Phil Chang				
Anthony DeBone				

Effective date: \_\_\_\_\_ day of \_\_\_\_\_, 2023.

# EXHIBIT A

(To Ordinance No. 2023-012)

## **CHAPTER 2.36 LOCAL CONTRACT REVIEW BOARD**

### **2.36.010 Purpose; Statutory Authority**

### **2.36.020 Creation And Functions Of Board**

### **2.36.030 Model Public Contract Rules**

### **2.36.040 Exemptions From Competitive Bidding**

### **2.36.050 Delegation**

### **2.36.010 Purpose; Statutory Authority**

The purpose of DCC 2.36 is to authorize the Board to perform the duties of a local contract review board in lieu of permitting the Public Contract Review Board to perform the functions of reviewing public contracts as required by Oregon Laws 1975, Chapter 771.

#### **HISTORY**

*Adopted by Ord. [203-8](#) §1 on 1/21/1976*

### **2.36.020 Creation And Functions Of Board**

The Board is designated a local contract review board to perform the functions of the Public Contract Review Board.

#### **HISTORY**

*Adopted by Ord. [203-8](#) §2 on 1/21/1976*

### **2.36.030 Model Public Contract Rules**

The Attorney General's Model Public Contract Rules adopted pursuant to operative sections of ORS Chps. 279A, 279B and 279C, shall be the rules of the local contract review board. Procedures for personal services contracts required by ORS 279A.055 are set forth in DCC 4.06.

#### **HISTORY**

*Adopted by Ord. [97-030](#) §1 on 4/2/1997*

*Amended by Ord. [98-092](#) §1 on 12/16/1998*

*Amended by Ord. [2003-018](#) §1 on 6/9/2003*

*Amended by Ord. [2020-005](#) §1 on 1/1/2021*

### **2.36.040 Exemptions From Competitive Bidding**

~~See DCC 2.37.070 and DCC 2.37.090 for exemptions. In addition to the exemptions from competitive bids or proposals set forth in operative sections of ORS Chps. 279A, 279B and 279C contracts may be awarded as follows:~~

~~A.———Contracts, other than contracts for personal services, may be awarded without competitive bidding pursuant to DCC 2.36.030 for the following classes of contracts:~~

~~1.———Emergency contracts.~~

2. ~~Contracts \$10,000 or over, but under \$150,000, where competitive written quotes were obtained.~~

3. ~~Contracts under \$10,000 need not be awarded competitively.~~

B. ~~Where a contract is awarded under DCC 2.36.040, the department head or elected official awarding the contract shall document in the records of the County the quotes received, or if no quotes were received, the reason why it was not feasible or required to obtain quotes.~~

C. ~~Except for emergency contracts, the aggregate of all contracts awarded by the County under DCC 2.36.040(A)(2) where it was not feasible to obtain competitive quotes, shall not exceed \$75,000 to any one contractor in any one fiscal year; and under DCC 2.36.040(A)(3), shall not exceed \$20,000 to any one contractor in any one fiscal year.~~

D. ~~When competitive quotes are obtained, award of contract shall be to the lowest responsible quote in conformance with the specifications.~~

E. ~~An oral quote received by telephone shall be considered a written quote when it is recorded in the records of the County.~~

#### HISTORY

Adopted by Ord. [98-092](#) §1 on 12/16/1998

Amended by Ord. [99-035](#) §1 on 11/24/1999

Amended by Ord. [2000-012](#) §1 on 5/8/2000

Amended by Ord. [2020-005](#) §1 on 1/1/2021

Amended by Ord. 2023-012 §1 on 8/16/2023

#### 2.36.050 Delegation

- A. ~~Excepting the department head of the Health Department who shall have contract authority to \$50,000, Each~~ County employee and elected official designated as a department head of the County is authorized to contract in an amount not to exceed ~~\$5025,000~~ for each contract, amendment, and/or change order provided sufficient sums are appropriated and unencumbered in the County budget and there are sufficient cash resources available to pay the maximum consideration set forth in each contract.
- B. The County Administrator may award competitive bids and enter into contracts, amendments, and/or change orders in an amount not to exceed ~~\$2150,000~~ for each contract, amendment, and/or change order ~~any single contract~~.

#### HISTORY

Adopted by Ord. [98-092](#) §1 on 12/16/1998

Amended by Ord. [2000-012](#) §1 on 5/8/2000

Amended by Ord. [2007-002](#) §1 on 1/24/2007

Amended by Ord. [2020-005](#) §1 on 1/1/2021

Amended by Ord. 2023-012 §1 on 8/16/2023

## **CHAPTER 2.37 PUBLIC CONTRACTING CODE**

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[2.37.020 Model Public Contract Rules](#)

[2.37.030 Public Contract Review Board](#)

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[2.37.120 Notice Of Intent To Award; Notice To Proceed And Contract Administration](#)

[2.37.130 Qualified Pool](#)

[2.37.140 Contested Case Procedures](#)

[2.37.150 Standard Contract Provisions](#)

[2.37.160 Competitive Electronic Auction Bidding](#)

### **2.37.010 Purpose; Statutory Authority**

The purpose of DCC 2.37 is to implement the provisions of ORS 279A, 279B and 279C, which may be collectively referred to herein as the Public Contracting Code. This chapter shall be known as the Deschutes County Contracting Code and may be referred to herein as "this chapter."

#### **HISTORY**

*Adopted by Ord. [2005-010](#) §1 on 2/28/2005*

### **2.37.020 Model Public Contract Rules**

~~Except as otherwise provided in this chapter or by rule or order of the Board, the~~ Model Rules of Public Contract Procedure, OAR 137, divisions 46, 47, 48 and 49, herein referred to as the Model Rules, adopted by the Oregon Attorney General, as amended in 2008, and from time to time amended, shall be the rules of the Deschutes County Contract Review Board. Where ~~reference these rules conflict with any provision of the Public Contracting Code, unless expressly stated that this chapter will apply, is made in these rules to any provision of the Public Contracting Code, unless this chapter provides otherwise,~~ the corresponding provisions of the Model Rules shall ~~also~~ apply.

#### **HISTORY**

*Adopted by Ord. [2005-010](#) §1 on 2/28/2005*

*Amended by Ord. [2008-023](#) §1 on 11/23/2008*

*~~Amended by Ord. [2023-012xxx](#) §1 on 8/16/2023~~[DATE](#)*

### 2.37.030 Public Contract Review Board

Except as expressly delegated under this chapter or by Board Resolution, the Board of County Commissioners, "Board," acting in its capacity as the governing body of the County or of each and every County service district, reserves to itself the exercise of all duties and authority of a contract review board and a contracting agency under state law. Where this chapter refers to the "County," unless the context indicates a different meaning, the reference shall mean and include Deschutes County or the particular County service district for which the Board is the governing body.

#### HISTORY

*Adopted by Ord. [2005-010](#) §1 on 2/28/2005*

*Amended by Ord. [2008-023](#) §1 on 11/23/2008*

### 2.37.040 Purchasing Agent

- A. The County Administrator is designated as the Purchasing Agent of the County and is hereby authorized to issue or cause to be issued all solicitations and to award all County contracts for which the contract price does not exceed \$~~2~~150,000. Subject to the provisions of this chapter, the Purchasing Agent may adopt and amend all solicitation materials, contracts and forms required or permitted to be adopted by contracting agencies under the Public Contracting Code or otherwise convenient for the County's contracting needs.
- B. In the context of requests for County proposals the department director and in the case of county service districts, each administrator, director or managing board, is authorized to determine the method of contractor selection and selection criteria.
- C. Notwithstanding ORS 279B.075, the Purchasing Agent and in the case of county service districts, each administrator, director or managing board, is authorized to determine that goods or services, or classes of goods or services, are available from only one source, based upon one or more of the following findings: (1) that the efficient utilization of existing goods requires the acquisition of compatible goods or services; (2) that the goods or services required for the exchange of software or data with other public or private agencies are available from only one source; (3) that the goods or services are for use in a pilot or experimental project; or (4) other findings that support the conclusion that the goods or services are available from only one source. In making the determination under this subsection C the Purchasing Agent or other authorized representative shall publish notice at least seven (7) days in advance and consider any written comments or objections. At the conclusion of the seven-day notice period written findings to justify the sole source determination shall be prepared and placed in the contract file. A copy of such findings shall promptly be furnished to all persons who submitted written comments or objections.
- D. In the case of county service districts the director, administrator or managing board is designated as the purchasing agent of the district and is hereby authorized to issue all solicitations and to award all district contracts for which the contract price does not exceed \$~~50~~25,000 unless otherwise specifically set forth in the operating agreement between the County and the district. Subject to the provisions of this chapter, the purchasing agent of the district may adopt and amend all solicitation materials, contracts and forms required or

permitted to be adopted by contracting agencies under the Public Contracting Code or otherwise convenient for the district's contracting needs.

- E. Whenever the Oregon State Legislative Assembly enacts laws or the attorney general modifies the Model Rules, the County Legal Counsel shall review this chapter and recommend to the Board any modifications required to ensure compliance with changes in state law or the Model Rules.

#### HISTORY

*Adopted by Ord. [2005-010](#) §1 on 2/28/2005*

*Amended by Ord. [2008-023](#) §1 on 11/23/2008*

*[Amended by Ord. 2023-012 §1 on 8/16/2023](#)*

#### **2.37.050 Definitions**

The following terms used in this chapter shall have the meanings set forth below:

- A. "Award" means the selection of a person to provide goods, services or public improvements under a public contract. The award of a contract is not binding on the County until the contract is executed by the person and the County.
- B. "Bid" means a binding, sealed, written offer to provide goods, services or public improvements for a specified price or prices.
- C. "Concession agreement" means a contract that authorizes and requires a private entity or individual to promote or sell, for its own business purposes, specified types of goods or services from real property owned or managed by the County, and under which the concessionaire makes payments to the County based, at least in part, on the concessionaire's revenues or sales. The term "concession agreement" does not include a mere rental agreement, license or lease for the use of premises.
- D. "Contract price" means the total amount paid or to be paid under a contract, including any approved alternates, and any fully executed change orders or amendments.
- E. "Debarment" means a declaration by the Purchasing Agent or the Board under ORS 279B.130 or ORS 279C.440 that prohibits a potential contractor from competing for the County's public contracts for a prescribed period of time.
- F. "Disposal" means any arrangement for the transfer of personal property by the County under which the County relinquishes ownership.
- G. "Emergency" means circumstances that: (1) could not have been reasonably foreseen; (2) creates a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and (3) requires prompt execution of a contract to remedy the condition.
- H. "Findings" are the statements of fact that provide justification for a determination. Findings may include, but are not limited to, information regarding operation, budget and financial data; public benefits; cost savings; competition in public contracts; quality and aesthetic

considerations, value engineering; specialized expertise needed; public safety; market conditions; technical complexity; availability, performance and funding sources.

- I. "Goods" means any item or combination of supplies, equipment, materials or other personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto.
- J. "Informal solicitation" means a solicitation made in accordance with the Contracting Code and this chapter to a limited number of potential contractors, in which the Solicitation Agent attempts to obtain at least three quotes or proposals.
- K. "Invitation to bid" means a publicly advertised request for competitive sealed bids.
- L. "Offeror" means a person who submits a bid, quote or proposal to enter into a public contract with the County.
- M. "Personal services contract" means a contract with an independent contractor predominantly for services that require special training or certification, skill, technical, creative, professional or communication skills or talents, unique and specialized knowledge, or the exercise of judgment or skills, and for which the quality of the service depends on attributes that are unique to the service provider. Personal services include, but are not limited to, the services of architects, engineers, land surveyors, attorneys, auditors and other licensed professionals, artists, designers, computer programmers, performers, consultants and property managers. The Purchasing Agent or the Board shall have discretion to determine whether additional types of services not specifically mentioned in this paragraph fit within the definition of personal services.
- N. "Proposal" means a binding offer to provide goods, services or public improvements with the understanding that acceptance will depend on the evaluation of factors other than, or in addition to, price. A Proposal may be made in response to a request for proposals or under an informal solicitation.
- O. "Qualified pool" means a pool of vendors who are pre-qualified to compete for the award of contracts for certain types of contracts or to provide certain types of services.
- P. "Quote" means a price offer made in response to an informal or qualified pool solicitation to provide goods, services or public improvements.
- Q. "Request for proposals" means a publicly advertised request for sealed competitive proposals.
- R. "Services" means and includes all types of services (including construction labor) other than personal services.
- S. "Solicitation" means an invitation to one or more potential contractors to submit a bid, proposal, quote, statement of qualifications or letter of interest to the County with respect to a proposed project, procurement or other contracting opportunity. The word "solicitation" also refers to the process by which the County requests, receives and evaluates potential contractors and awards public contracts.

- T. "Solicitation Agent" means with respect to a particular solicitation or contract, the County employee charged with responsibility for conducting the solicitation and making an award, or making a recommendation on award to a department head, the Purchasing Agent or the Board.
- U. "Solicitation documents" means all informational materials issued by the County for a solicitation, including, but not limited to advertisements, instructions, submission requirements and schedules, award criteria, contract terms and specifications, and all laws, regulations and documents incorporated by reference.
- V. "Surplus property" means personal property owned by the County, which is no longer needed for use by the department to which such property has been assigned.

#### HISTORY

Adopted by Ord. [2005-010](#) §1 on 2/28/2005

Amended by Ord. [2008-023](#) §1 on 11/23/2008

#### 2.37.060 Signature Authority

- A. ~~Excepting the department head of the Health Department who shall have contract authority to \$50,000, Each~~ County Department Head and each elected County official designated as a department head (unless expressly provided otherwise by the Board of County Commissioners) is authorized to award competitive bids and proposals and enter into contracts, [amendments, and/or change orders](#) in an amount not to exceed ~~\$5025~~,000 for each [contract, amendment, and/or change order](#)~~contract~~, provided sufficient sums are appropriated and unencumbered in the County or, as applicable, district budget and there are sufficient cash resources available to pay the maximum consideration set forth in each and every contract.
- B. The County Administrator is authorized to award competitive bids and proposals and enter into contracts, [amendments, and/or change orders](#) in an amount not to exceed ~~\$24~~50,000 for [each any single](#) contract, [amendment, and/or change order](#) provided sufficient sums are appropriated and unencumbered in the County budget and there are sufficient cash resources available to pay the maximum consideration set forth in each and every contract. For purposes of this subsection contracts shall include agreements between the county and any public entity, including federal, state and local governments.
- C. In determining the monetary limits of authority to enter into contracts, [amendments, and/or change orders](#) on behalf of the County, the cost or price for the [specific contract, amendment, and/or change order](#) ~~entire term, including optional renewals~~ shall be considered.

#### HISTORY

Adopted by Ord. [2005-010](#) §1 on 2/28/2005

Amended by Ord. [2008-023](#) §1 on 11/23/2008

Amended by Ord. [2014-024](#) §1 on 8/27/2014

Amended by Ord. [2020-005](#) §1 on 1/1/2021

[Amended by Ord. 2023-012 §1 on 8/16/2023](#)

#### 2.37.065 Competitive Sealed Proposals (Repealed)

## HISTORY

Repealed by Ord. [2014-024](#) on 8/27/2014

### 2.37.070 Class Special Procurements

- A. The County may award a public contract under a Class Special Procurement pursuant to the requirements of ORS 279B.085. Such procurements allow the County to enter into one or more contracts over time without following the requirements of competitive sealed bidding, competitive sealed proposals or intermediate procurements.
- B. The Board of County Commissioners declares the following as classes of special procurements. Such contracts may be awarded in any manner, which the Solicitation Agent deems appropriate to the County's needs, including by direct appointment or purchase. Except where otherwise provided the Solicitation Agent shall make a record of the method of award.
  1. Manufacturer Direct Supplies. The County may purchase goods directly from a manufacturer without competitive bidding if a large volume purchase is required and the cost from the manufacturer is the same or less than the cost the manufacturer charges to its distributor(s). Procurements of this type are made on a contract-by-contract basis and are not requirements contracts.
  2. Purchase of Advertising Contracts. Contracts for the placing of notices or advertisements may be published in any medium.
  3. Contracts Up to ~~\$2510~~,000. Contracts of any type for which the contract price does not exceed ~~\$2510~~,000 without a record of the method of award.
  4. Copyrighted Materials; Library Materials. The County may purchase copyrighted materials where there is only one known supplier available for such goods. This includes, but is not limited to, works of art, books, periodicals, curriculum materials, reference materials, audio and visual media, training materials in any media and non-mass marketed software from a particular publisher or its designated distributor.
  5. Requirements Contracts. The County may competitively select a vendor to provide specified goods and services that are routine or repetitive over a defined contract term at particular prices even though the precise volume or number of such purchases is not known in advance.
  6. Use of Existing Contractors. When a public improvement is in need of minor alteration or repair at or near the site of work being performed by another County contractor, the County may hire that contractor to perform the work, provided:
    - a. The contractor was hired through a selection process permitted by County Code;
    - b. The Solicitation Agent first obtains a price quotation for the additional work from the contractor that is competitive and reasonable;

- c. The total cost of the proposed work and the original work will not exceed the Bureau of Labor and Industries' prevailing wage threshold; and
  - d. The original contract is amended to reflect the new work and is approved by the Purchasing Agent before work begins.
- 7. Purchase of Used Personal Property or Equipment. The County may directly purchase used personal property and equipment if such property is suitable for the County's needs and can be purchased for a lower cost than substantially similarly new property. For this purpose the cost of used property shall be based upon the life-cycle cost of the property over the period for which the property will be used by the County.
- 8. Hazardous Material Removal and Oil Clean-up. When ordered to clean up or remove hazardous material or oil by the Oregon Department of Environmental Quality, the County may directly acquire such services from any qualified or certified vendor. In doing so, the following conditions apply:
  - a. To the extent reasonable under the circumstances, encourage competition by attempting to obtain informal price quotations or proposals from potential suppliers of goods and services.
  - b. The county department responsible for managing or coordinating the clean-up shall prepare and submit to the Purchasing Agent a written description of the circumstances that require it and a copy of the DEQ order for the cleanup , together with a request for contract authorization;
  - c. The county department shall record whether there was time for competition, and, if so, the measures taken to encourage competition, the amount of the price quotations obtained, if any, and the reason for selecting the contractor to whom award is made; and
  - d. The timeline for cleanup does not permit use of intermediate or formal procurement procedures.
- 9. Change orders and amendments to contracts and price agreements. The County may execute contract amendments and change orders, as follows:
  - a. An original valid contract exists between the parties;
  - b. The change order is within the general scope of the contract;
  - c. The change order is implemented in accordance with the change provisions of the contract;
  - d. The amount of the aggregate cost change resulting from all change orders does not exceed twenty-five (25%) of the initial contract; and
  - e. The change order does not modify the contract's terms and conditions except to reflect a change in:
    - 1. the amount of payments;

2. technical specifications, time of delivery, place of delivery, form of delivery, quantity or manufacturer of services or goods;

3. completion date of the project;

4. any combination of the foregoing under the Contract; and,

4.5. (5) the amounts of any applicable performance and payment bonds are proportionally increased.

f. Contract change orders are authorized under this subsection where the original contractor is allegedly in default and the contractor's surety can provide substitute performance pursuant to the original contract to complete or correct the work at hand.

10. Concession Agreements. Contracts entered into by the Fair and Expo Center which grant a franchise or concession to a private entity or individual to promote or sell, for its own business purposes, specified types of goods or services from all or a portion of the fairgrounds and under which the concessionaire or promoter makes payments to the Fair and Expo Center based, at least in part, on the concessionaire's revenues from sales or the value of such promotion to the sponsor's business, whether on or off the fairgrounds property. The Director of the Fair and Expo Center shall, subject to approval of the Deschutes County Fair Board, prepare and implement selection criteria, based upon the proprietary nature of the Fair and Expo Center. A Concession Agreement does not include an agreement, which represents a rental, lease, license, permit or other arrangement for the use of public property. The Fair and Expo Center Director may award concession agreements in connection with the annual fair by any method deemed appropriate by the Director, including without limitation, by direct appointment, private negotiation, from a qualified pool, or using a competitive process.

11. Equipment Repair. Contracts for equipment repair or overhauling, provided the service or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing.

12. Abandoned, Seized and Non-Owned Personal Property. Contracts or arrangements for the sale or other disposal of abandoned, seized or other personal property not owned by the County at the time the County obtains possession are not subject to competitive procurement procedures.

13. Sponsorship Agreements. Sponsorship agreements, under which the County receives a gift, donation or consideration in exchange for official recognition of the person making the donation or payment may be awarded by any method deemed appropriate by the County, including without limitation, by direct appointment, negotiation, from a qualified pool, or using a competitive process.

14. Renewals. Contracts that are being renewed in accordance with their terms (and may include a fiscal adjustment not exceeding one-half of the established CPI January –

January COLA) are not considered to be newly issued Contracts and are not subject to competitive procurement procedures.

15. Temporary Extensions or Renewals. Contracts for a single period of one year or less, for the temporary extension or renewal of an expiring and non-renewable, or recently expired contract, other than a contract for public improvements.
16. Temporary Use of County-Owned Property. The County may negotiate and enter into a license, permit or other contract for the temporary use of County-owned property without using a competitive selection process if:
  - a. The contract results from an unsolicited proposal to the County based on the unique attributes of the property or the unique needs of the proposer;
  - b. The proposed use of the property is consistent with the County's use of the property and the public interest; and
  - c. The County reserves the right to terminate the contract without penalty, in the event that the County determines that the contract is no longer consistent with the County's present or planned use of the property or the public interest.
17. Event agreements between the Fair and Expo Center and private parties, which represent a rental, lease, license, permit or other arrangement for the use of a portion of the fairgrounds property whether a fee is paid or not.
18. Franchises for cable television and for collection and disposal or processing of solid waste and recyclable material.
19. Leases and revocable permits for use of county-owned real property, including right-of-way.
20. Contracts for paper products which are specified to be used in conjunction with the County Clerk's election ballot tabulation equipment.
21. Collective bargaining agreements
22. Contracts with area humane societies, which generally involve receipt, care for and disposition of stray domestic animals.

#### HISTORY

*Adopted by Ord. [2005-010](#) §1 on 2/28/2005*

*Amended by Ord. [2008-023](#) §1 on 11/23/2008*

*Amended by Ord. [2014-024](#) §1 on 8/27/2014*

*Amended by Ord. [2020-005](#) §1 on 1/1/2021*

*[Amended by Ord. 2023-012 §1 on 8/16/2023](#)*

#### **[2.37.080 Exemption For Certain Personal Services](#)**

- A. The County may award contracts for personal services, as defined in DCC 2.37.050, under the procedures of ORS 279C.100 through 279C.125 and the Model Rules which implement such

statutes, or subsection B of this section without following the selection procedures set forth elsewhere in the Model Rules.

- B. Direct Appointment. In any of the following circumstances a qualified provider of personal services may be appointed under any method deemed in the County's best interest by the Solicitation Agent, including by direct appointment.
1. Under circumstances which could not reasonably have been foreseen which create a substantial risk of loss, damage, interruption of services or threat to the public health and safety and require the prompt performance of the services to remedy the situation; or
  2. Where the estimated fee does not exceed \$725,000 in any fiscal year or \$2150,000 over the full term, including optional renewals; or
  3. Contracts of not more than \$2150,000 for the continuation of work by a contractor who performed preliminary studies, analysis or planning for the work under a prior contract may be awarded without competition if the prior contract was awarded under a competitive process and the Solicitation Agent determines that use of the original contractor will significantly reduce the costs of or risks associated with the work.
  4. Contracts for maintenance, repair and technical support for computer hardware, software and networking systems.
  5. Services provided by a psychologist, psychiatrist or psychiatric nurse practitioner.
- C. Direct appointment pursuant to this section shall be competitive to the extent practicable and may be based upon criteria which include without limitation the provider's experience, available resources, the project's location and the provider's pricing.
- D. The County may select a provider of personal services under this section from a qualified pool, or from:
1. The County's current list of qualified providers;
  2. From another public contracting agency's current list of qualified providers pursuant to an intergovernmental agreement; or
  3. From among all qualified providers offering the necessary services that the County can reasonably locate under the circumstances.
- E. Design-Build or Construction Manager/General Contractor. Contracts for the construction of public improvements using a design/build or construction manager/general contractor construction method shall be awarded under a request for proposals. The determination to construct a project using a design/build or construction manager/general contractor construction method must be approved by the Board or its designee, upon application of the Purchasing Agent and in compliance with competitive bidding requirements as specified in ORS 279A.065(3).

## HISTORY

Adopted by Ord. [2005-010](#) §1 on 2/28/2005

Amended by Ord. [2008-023](#) §1 on 11/23/2008

Amended by Ord. [2014-024](#) §1 on 8/27/2014

[Amended by Ord. 2023-012 §1 on 8/16/2023](#)

### **2.37.090 Exemption From Sealed Bids Or Proposals**

In addition to the contracts not subject to the Public Contracting Code, pursuant to ORS 279A.025, and contracts which are exempt from competitive bidding and proposal requirements under this chapter, contracts may be awarded as follows:

- A. Contracts, other than contracts for personal services, may be awarded without competitive sealed bids under ORS 279B.055 and without competitive sealed proposals under ORS 279B.060, pursuant to ORS 279B.065, 279B.070, 279B.075, 279B.080, or 279B.085 and the Model Rules for the following classes of cases:
  1. The Purchasing Agent determines that an emergency condition exists which requires prompt execution of a contract. The determination shall be made prior to execution of a contract and part of the acquisition record. Exemption under this paragraph shall include exemption from bid security and payment and performance bond requirements. An amendment to any contract entered into pursuant to this paragraph shall be approved in accordance with required procurement procedures.
  2. Contracts under ~~\$2510~~,000 need not be awarded competitively.
  3. Contracts exceeding ~~\$2510~~,000 but not exceeding ~~\$21~~50,000, where competitive quotes or proposals are obtained.
- B. Where a contract is awarded under paragraphs 3 of subsection A of this section, the department awarding the contract shall obtain at least three (3) informally solicited quotes or proposals, if possible; shall document in its records the quotes and proposals received, and if fewer than three, the effort that was made to obtain quotes or proposals. A quote or proposal received by telephone shall be considered a written quote when it is recorded in records of the County. A quote or proposal received by email shall be considered a written quote or proposal when it is received by the County.
- C. If a contract is awarded under this section, the County shall award the contract to the offeror whose quote or proposal will best serve the County's interests, taking into account price, as well as, considerations including, but not limited to experience, expertise, product functionality, suitability for a particular purpose and contractor responsibility under ORS 279B.110.
- D. The Board may approve a contract specific special procurement if it finds after giving notice pursuant to ORS 279B.055(4) that a written request submitted by the Purchasing Agent demonstrates that the use of a special procurement as described in the request, or in alternative procedures described by the Purchasing Agent will:

1. Be unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts; and
  2. Is reasonably expected to result in substantial cost savings to the county or to the public, or otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under ORS 279B.055, 279B.060, 279B.065 or 279B.070.
- E. Unless otherwise provided in the contract or purchase order, the provisions of Section 2.37.150 shall apply to all contracts entered into pursuant to this section.

#### HISTORY

*Amended by Ord. [2008-023](#) §1 on 11/23/2008*

*Amended by Ord. [2014-024](#) §1 on 8/27/2014*

*[Amended by Ord. 2023-012 §1 on 8/16/2023](#)*

#### **2.37.100 Purchases Through Federal Programs**

Goods and services may be purchased without competitive procedures under a local government purchasing program administered by the United States General Services Administration ("GSA") as provided in this section.

- A. The procurement must be made in accordance with procedures established by GSA for procurements by local governments, and under purchase orders or contracts submitted to and approved by the Purchasing Agent or the Board. The Solicitation Agent shall provide the Purchasing Agent with a copy of the letter, memorandum or other documentation from GSA establishing permission to the County to purchase under the federal program.
- B. The price of the goods or services must be established under price agreements between the federally approved vendor and GSA.
- C. The price of the goods or services must be less than the price at which such goods or services are available under state or local cooperative purchasing programs that are available to the County.
- D. If a single purchase of goods or services exceeds ~~\$21~~50,000, the Solicitation Agent must obtain informal written quotes or proposals from at least two additional vendors (if reasonably available) and find, in writing, that the goods or services offered by GSA represent the best value for the County. This subsection does not apply to the purchase of equipment manufactured or sold solely for military or law enforcement purposes.

#### HISTORY

*Adopted by Ord. [2005-010](#) §1 on 2/28/2005*

*Amended by Ord. [2008-023](#) §1 on 11/23/2008*

*[Amended by Ord. 2023-012 §1 on 8/16/2023](#)*

#### **2.37.110 Contracts For Disposal Of Personal Property**

- A. General Methods. Except as otherwise provided in subsection E of this section, surplus property may be disposed of by any of the following methods upon a determination by the Solicitation Agent that the method of disposal is in the best interest of the County. Factors that may be considered by the Solicitation Agent include costs of sale, administrative costs, and public benefits to the County. The Solicitation Agent shall maintain a record of the reason for the disposal method selected, and the manner of disposal, including the name of the person to whom the surplus property was transferred.
1. Governments. Without competition, by transfer or sale to another County department or public agency.
  2. Auction. By publicly advertised auction to the highest bidder.
  3. Bids. By publicly advertised invitation to bid.
  4. Liquidation Sale. By liquidation sale using a commercially recognized third-party liquidator selected in accordance with rules for the award of personal services contracts.
  5. Fixed Price Sale. The Solicitation Agent may establish a selling price based upon an independent appraisal or published schedule of values generally accepted by the insurance industry, schedule and advertise a sale date, and sell to the first buyer meeting the sales terms.
  6. Trade-In. By trade-in, in conjunction with acquisition of other price-based items under a competitive solicitation. The solicitation shall require the offer to state the total value assigned to the surplus property to be traded.
  7. Donation. By donation to any organization operating within or providing a service to residents of the County which is recognized by the Internal Revenue Service as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended.
- B. Disposal of Property with Minimal Value. Surplus property which has a value of less than \$1500, or for which the costs of sale are likely to exceed sale proceeds may be disposed of by any means determined to be cost-effective, including by disposal as waste. The official making the disposal shall make a record of the value of the item and the manner of disposal.
- C. Personal-Use Items. An item (or indivisible set) of specialized and personal use with a current value of less than \$2100, other than police officer's handguns which may exceed \$2100 in value, may be sold to the employee or retired or terminated employee for whose use it was purchased. These items may be sold for fair market value without bid and by a process deemed most efficient by the Purchasing Agent or the Board.
- D. Restriction on Sale to County Employees. County employees shall not be restricted from competing, as members of the public, for the purchase of publicly sold surplus property, but shall not be permitted to offer to purchase property to be sold to the first qualifying bidder until at least three days after the first date on which notice of the sale is first publicly advertised.

- E. The provisions of this section are in addition to other methods of disposition of surplus county property provided by DCC chapter 2.70, state law or analogous provisions of federal law.

#### HISTORY

*Adopted by Ord. [2005-010](#) §1 on 2/28/2005*

*Amended by Ord. [2008-023](#) §1 on 11/23/2008*

*Amended by Ord. [2020-005](#) §1 on 1/1/2021*

*[Amended by Ord. 2023-012 §1 on 8/16/2023](#)*

#### **2.37.120 Notice Of Intent To Award; Notice To Proceed And Contract Administration**

- A. At least seven (7) days before the award of a public contract, unless the Purchasing Agent or the Board determines that seven days is impractical, the Purchasing Agent shall post on the county's website or provide each bidder or proposer notice of the county's intent to award a contract. This subsection does not apply to a contract awarded as a small procurement under ORS 279B.065, an intermediate procurement under ORS 279B.070, a sole-source procurement under ORS 279B.075, an emergency procurement under ORS 279B.080 or a special procurement under ORS 279B.085.
- B. Unless a timely protest is received and after issuing notice in accordance with subsection A of this section, if required, the Purchasing Agent shall prepare a contract in accordance with the contractor selection results and furnish same for the contractor's execution.
- C. After the contractor has executed the contract and furnished bonds, if required, and proofs of insurance the Purchasing Agent shall execute the contract, if within the Purchasing Agent's authority, or submit same to the Board for approval.
- D. If the Board approves the contract, it shall adopt an order or otherwise authorize the Purchasing Agent to execute the contract and to approve change orders within the scope of 2.37.080.B.9 or amendments within the scope of the project for which the contract has been prepared.
- E. The contractor shall not begin work under the contract until the contract is fully executed and in the case of public works contracts the county has issued and delivered a Notice to Proceed.
- F. For purchases of goods the county may indicate in the solicitation that the selected contractor will be issued a purchase order, which refers to 2.37.150 for required contract terms.

#### HISTORY

*Adopted by Ord. [2005-010](#) §1 on 2/28/2005*

*Amended by Ord. [2008-023](#) §1 on 11/23/2008*

#### **2.37.130 Qualified Pool**

- A. General. To create a qualified pool, the Purchasing Agent or Board may invite prospective contractors to submit proposals to the County for inclusion as participants in a pool of contractors qualified to provide certain types of goods, services, or projects including personal services, and public improvements.

- B. The invitation to participate in a qualified pool shall be advertised in the manner provided for advertisements of invitations to bid and requests for proposals by publication in at least one newspaper of general statewide circulation. If qualification will be for a term that exceeds one year or allows open entry on a continuous basis, the invitation to participate in the pool must be re-published at least once per year and shall be posted at the County's main office and on its website.
- C. Contents of Solicitation. Requests for participation in a qualified pool shall describe the scope of goods or services or projects for which the pool will be maintained, and the minimum qualifications for participation in the pool, which may include, but shall not be limited to qualifications related to financial stability, contracts with manufacturers or distributors, certification as an emerging small business, insurance, licensure, education, training, experience and demonstrated skills of key personnel, access to equipment, and other relevant qualifications that are important to the contracting needs of the County. The solicitation may provide that proposals will be evaluated and decisions over participation will be made based upon proposers meeting minimum qualifications, as well as the price or rate of compensation for particular services in the county's best interest.
- D. The operation of each qualified pool may be governed by the provisions of a retainer contract to which the County and each qualified pool participant is a party. The Contract shall contain or incorporate by reference all terms required by the County, including, without limitation, price, performance, business registration or licensure, continuing education, equipment, staff resources, insurance, required standard contract terms as set forth in Section 2.37.150 and requirements for the submission, on an annual or other periodic basis, of evidence of continuing qualification. The selection procedures shall be objective and open to all qualified pool participants and afford all participants the opportunity to compete for or receive job awards. Unless expressly provided in the retainer contract, participation in a qualified pool will not entitle a participant to an award of any County contract. The county will refer to the qualified pool participants or any subset of such pool established by the County in determining when particular services are needed, and select the most appropriate participant for award of a contract, which may be based upon County solicitation of additional competitive proposals.
- E. Use of Qualified Pools. Subject to the provisions of these regulations concerning methods of solicitation for classes of contracts, the Solicitation Agent or the Board shall award all contracts for goods or services of the type for which a qualified pool is created from among the qualified participants, unless the Solicitation Agent or the Board determines that best interests of the County require traditional solicitation, in which case, pool participants shall be notified of the solicitation and invited to submit competitive proposals.
- F. Amendment and Termination. The Purchasing Agent or the County may discontinue a qualified pool at any time, or may change the requirements for eligibility as a participant in the pool at any time, by giving notice to all participants in the qualified pool.
- G. Protest of Failure to Qualify. The Purchasing Agent shall notify any applicant who fails to qualify for participation in a pool that it may appeal a qualified pool decision to the Board in the manner described in section 2.37.140.

## HISTORY

Adopted by Ord. [2005-010](#) §1 on 2/28/2005

Amended by Ord. [2008-023](#) §1 on 11/23/2008

### 2.37.140 Contested Case Procedures

- A. Any person who has been debarred from competing for County contracts or for whom prequalification has been denied, revoked or revised, or who would be entitled under the Public Contracting Code and who wishes to file a protest must appeal the County's decision to the Board as provided in this section. The Board may conduct a de novo hearing or appoint a hearing officer to conduct such a hearing and recommend a decision, in which case the Board shall consider the matter on the record developed by the hearing officer, and, if specifically allowed by the Board, on de novo review or limited de novo review.
- B. For purposes of this section, "Party" means:
  - 1. Each person entitled as of right to a hearing before the Board;
  - 2. Each person named by the County to be a party; or
  - 3. Any person requesting to participate before the agency as a party or in a limited party status which the County determines either has an interest in the outcome of the County's proceeding or represents a public interest in such result.
- C. Filing of Appeal. The person must file and the County must receive a written (hard copy, not fax or electronic) notice of appeal with the Purchasing Agent no later than seven (7) days after the prospective contractor's receipt of notice of the County's decision which is the subject of the protest. If the seventh day falls on a Saturday, Sunday or legal holiday, the deadline shall be extended to the next regular business day. The notice of the County's decision shall be deemed received no later than three (3) days after the date on which the County makes the decision. Except as otherwise provided in this section, the contents and filing of protests shall be in accordance with the Public Contracting Code (ORS 279B.400 to 279B.425) and the Model Public Contracting Rules (OAR 137-047-0700 to 137-047-0800).
- D. Parties may elect to be represented by counsel and to respond and present evidence and argument on all issues involved.
- E. Unless precluded by law, informal disposition may be made of any case by stipulation, agreed settlement, consent order, default or written agreement.
- F. Members of the Board shall place on the record a statement of the substance of any written or oral *ex parte* communications on a fact in issue made to the member during the pendency of the proceeding and notify the parties of the communication and of their right to rebut such communications.
- G. The record in support of a decision shall be made at the time set for hearing or any extension thereof approved by the Board. Testimony may be given without oath or affirmation. Cross-examination of witnesses by parties shall not be allowed. Provided however, the Board may question any witness appearing before it. A verbatim oral, written or mechanical record shall be

made of all motions, rulings and testimony. The Board presiding at the hearing shall ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the presiding officer. The record need not be transcribed unless requested for purposes of court review. The party requesting transcription shall pay the cost thereof unless the Board determines on affidavit the indigence of the requesting party.

H. Evidence in contested cases. In contested cases:

1. Irrelevant, immaterial or unduly repetitious evidence shall be excluded but erroneous rulings on evidence shall not preclude action on the record unless shown to have substantially prejudiced the rights of a party. All other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible. The Board shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Any part of the evidence may be received in written form.
  2. All evidence shall be offered and made a part of the record in the case, and except for matters stipulated to and except as provided in paragraph (4) of this subsection, no other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. The burden of presenting evidence to support a fact or position in a case rests on the proponent of the fact or position.
  3. Every party shall have the right to submit rebuttal evidence.
  4. The Board may take notice of judicially cognizable facts. Parties shall be notified at any time during the proceeding but in any event prior to the final decision of material officially noticed and they shall be afforded an opportunity to contest the facts so noticed.
  5. Cross-examination of witnesses is not allowed, however, questions may be tendered to the chair who may then direct all or some of such questions to a witness.
- I. Costs. The Board may allocate the County's costs for the hearing between the appellant and the County. The allocation shall be based upon facts found by the Board and stated in the Board's decision that, in the Board's opinion, warrant such allocation of costs. If the County does not allocate costs, the costs shall be paid by the appellant, if the decision is upheld, or by the County, if the decision is overturned.
- J. The Board shall issue a written, proposed final order, including findings of fact and conclusions of law, and furnish a copy thereof on all parties. The proposed order shall become final no later than seven (7) days following the date of the proposed order, unless the Board within that period issues an amended order.

HISTORY

*Adopted by Ord. [2005-010](#) §1 on 2/28/2005*

*Amended by Ord. [2008-023](#) §1 on 11/23/2008*

### 2.37.150 Standard Contract Provisions

- A. Except as otherwise provided in the solicitation document or otherwise approved by the Purchasing Agent or County Legal Counsel, the following standard public contract provisions shall be included expressly, by reference or by URL hyperlink where appropriate, in every contract of the County.
1. Contractor shall make payment promptly, as due, to all persons supplying to such contractor labor or material for the prosecution of the work provided for in the contract, and shall be responsible for payment to such persons supplying labor or material to any subcontractor.
  2. Contractor shall pay promptly all contributions or amounts due to the State Industrial Accident Fund and the State Unemployment Compensation Fund from contractor or any subcontractor in connection with the performance of the contract.
  3. Contractor shall not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished, shall assume responsibility for satisfaction of any lien so filed or prosecuted and shall defend against, indemnify and hold County harmless from any such lien or claim.
  4. Contractor and any subcontractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
  5. For public improvement and construction contracts only, if contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the contractor or a subcontractor by any person in connection with the public contract as such claim becomes due, the County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the contractor by reason of the contract. The payment of a claim in a manner authorized hereby shall not relieve the contractor or its surety from the obligation with respect to any unpaid claim. If the County is unable to determine the validity of any claim for labor or services furnished, the County may withhold from any current payment due contractor an amount equal to said claim until its validity is determined, and the claim, if valid, is paid by the contractor or the County. There shall be no final acceptance of the work under the contract until all such claims have been resolved.
  6. Contractor shall make payment promptly, as due, to any person, co-partnership, association or corporation furnishing medical, surgical, hospital or other needed care and attention, incident to sickness or injury, to the employees of contractor, of all sums which the contractor agreed to pay or collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing payment for such service.
  7. With certain exceptions listed below, contractor shall not require or permit any person to work more than 10 hours in any one day, or 40 hours in any one week except in case of necessity, emergency, or where public policy absolutely requires it, and in such cases the person shall be paid at least time and a half for:

- a. All overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday, or
- b. All overtime in excess of 10 hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday, and
- c. All work performed on the day specified in ORS 279B.020(1) for non-public improvement contracts or ORS 279C.540(1) for public improvement contracts.

For personal service contracts as designated under ORS 279A.055, instead of (a) and (b) above, a laborer shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under these contracts who are excluded under ORS 653.010 or 653.261 or under 29 USC Sections 201 to 209, from receiving overtime.

Contractor shall follow all other exceptions, pursuant to ORS 279B.235 (for non-public improvement contracts) and ORS 279C.540 (for improvement contracts), including contracts involving collective bargaining agreements, contracts for services and contracts for fire prevention and suppression. This paragraph 7 does not apply to contracts for purchase of goods or personal property.

Contractor must give notice to employees who work on a public contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

8. The hourly rate of wage to be paid by any contractor or subcontractor to workers upon all public works shall be not less than the applicable prevailing rate of wage for an hour's work in the same trade or occupation in the locality where such labor is performed, in accordance with ORS 279C.800 to ORS 279C.850. For projects covered by the federal Davis-Bacon Act (40 USC 276a), contractor and subcontractor shall pay workers the higher of the state or federal prevailing rate of wage.
9. The contractor, its subcontractors, if any, and all employers working under the contract are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, or otherwise be exempt under ORS 656.126.
10. As to public improvement and construction contracts, Contractor shall comply with all applicable federal, state, and local laws and regulations, including but not limited to those dealing with the prevention of environmental pollution and the preservation of natural resources that affect the performance of the contract. Entities which have enacted such laws or regulations include the following: **Federal:** Department of Agriculture, Forest Service, Soil Conservation Service, Army Corps of Engineers, Department of Energy, Federal Energy Regulatory Commission, Environmental Protection Agency, Department of Health and Human Services, Department of Housing and Urban Development, Solar Energy and Energy Conservation Bank, Department of Interior, Bureau of Land Management, Bureau of Indian Affairs, Bureau of Mines, Bureau

of Reclamation, Geological Survey, Minerals Management Service, U.S. Fish and Wildlife Service, Department of Labor, Mine Safety and Health Administration, Occupational Safety and Health Administration, Department of Transportation, Coast Guard, Federal Highway Administration, Water Resources Council, and Department of Homeland Security. **State:** Department of Administrative Services, Department of Agriculture, Columbia River Gorge Commission, Department of Consumer and Business Services, Oregon Occupational Safety and Health Division, Department of Energy, Department of Environmental Quality, Department of Fish and Wildlife, Department of Forestry, Department of Geology and Mineral Industries, Department of Human Resources, Department of Land Conservation and Development, Department of Parks and Recreation, Soil and Water Conservation Commission, State Engineer, Department of Transportation, State Land Board, Water Resources Department. **Local:** City Councils, County Boards of Commissioners, County Service Districts, Sanitary Districts, Water Districts, Fire Protection Districts, Historical Preservation Commissions and Planning Commissions.

If new or amended statutes, ordinances, or regulations are adopted, or the contractor encounters a condition not referred to in the bid document not caused by the contractor and not discoverable by reasonable site inspection which requires compliance with federal, state, or local laws or regulations dealing with the prevention of environmental pollution or the preservation of natural resources, both the County and the contractor shall have all the rights and obligations specified in ORS 279C.525 to handle the situation.

11. The contract may be canceled at the election of County for any substantial breach, willful failure or refusal on the part of contractor to faithfully perform the contract according to its terms. The County may terminate the contract by written order or upon request of the contractor, if the work cannot be completed for reasons beyond the control of either the contractor or the County, or for any reason considered to be in the public interest other than a labor dispute, or by reason of any third party judicial proceeding relating to the work other than one filed in regards to a labor dispute, and when circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the work. In either case, for public improvement contracts, if the work is suspended but the contract not terminated, the contractor is entitled to a reasonable time extension, costs, and overhead per ORS 297C.655. Unless otherwise stated in the contract, if the contract is terminated, the contractor shall be paid per ORS 279C.660 for a public improvement contract.
12. If the County does not appropriate funds for the next succeeding fiscal year to continue payments otherwise required by the contract, the contract will terminate at the end of the last fiscal year for which payments have been appropriated. The County will notify the contractor of such non-appropriation not later than 30 days before the beginning of the year within which funds are not appropriated. Upon termination pursuant to this subsection, the County shall have no further obligation to the contractor for payments

beyond the termination date. This provision does not permit the County to terminate the contract in order to provide similar services or goods from a different contractor.

13. By execution of the contract, contractor certifies, under penalty of perjury that:
  - a. To the best of contractor's knowledge, contractor is not in violation of any tax laws described in ORS 305.380(4), and
  - b. Contractor has not discriminated against minority, women or small business enterprises in obtaining any required subcontracts.
  - c. Contractor prepared its bid or proposal related to this Agreement independently from all other bidders or proposers, and without collusion, fraud or other dishonesty.
14. Contractor agrees to prefer goods or services that have been manufactured or produced in this State if price, fitness, availability or quality are otherwise equal.
15. Contractor agrees not to assign the contract or any payments due under the contract without the proposed assignee being first approved and accepted in writing by the County.
16. Contractor agrees to make all provisions of the contract with the County applicable to any subcontractor performing work under the contract.
17. The County will not be responsible for any losses or unanticipated costs suffered by contractor as a result of the contractor's failure to obtain full information in advance in regard to all conditions pertaining to the work.
18. All modifications and amendments to the contract shall be effective only if in writing and executed by both parties.
19. The contractor certifies he or she has all necessary licenses, permits, or certificates of registration (including Construction Contractor Board registration or Landscape Contractor Board license, if applicable), necessary to perform the contract and further certifies that all subcontractors shall likewise have all necessary licenses, permits or certificates before performing any work. The failure of contractor to have or maintain such licenses, permits or certificates is grounds for rejection of a bid or immediate termination of the contract.
20. Unless otherwise provided, data which originates from the contract shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by the County. Data shall include, but not be limited to, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights. Data which is delivered under the contract, but which does not originate therefrom shall be transferred to the County with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do so; provided that such license shall be

limited to the extent which the contractor has a right to grant such a license. The contractor shall exert all reasonable effort to advise, the County, at the time of delivery of data furnished under the contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of the contract. The County shall receive prompt written notice of each notice or claim of copyright infringement received by the contractor with respect to any data delivered under the contract. The County shall have the right to modify or remove any restrictive markings placed upon the data by the contractor.

21. If as a result of the contract, the contractor produces a report, paper publication, brochure, pamphlet or other document on paper which uses more than a total 500 pages of 8 ½" by 11" paper, the contractor shall use recycled paper with at least 25% post-consumer content which meets printing specifications and availability requirements. In all other cases Contractor shall make reasonable efforts to use recycled materials in the performance of work required under the contract.
22. Unless otherwise provided in the contract approved by county legal counsel or in the bid documents, the current editions of the *Oregon Standard Specifications for Construction* adopted by the State of Oregon, and the *Manual on Uniform Traffic Control Devices*, shall be applicable to all road construction projects.
23. As to contracts for lawn and landscape maintenance, the contractor shall salvage, recycle, compost or mulch yard waste material in an approved, site, if feasible and cost-effective,
24. When a public contract is awarded to a nonresident bidder and the contract price exceeds \$10,000, the contractor shall promptly report to the Department of Revenue on forms to be provided by the department the total contract, price, terms of payment, length of contract and such other information as the department may require before the County will make final payment on the contract.
25. In the event an action, lawsuit or proceeding, including appeal therefrom, is brought for violation of or to interpret any of the terms of the contract, each party shall be responsible for their own attorney fees, expenses, costs and disbursements for said action, lawsuit, proceeding or appeal.
26. Contractor is not carrying out a function on behalf of County, and County does not have the right of direction or control of the manner in which Contractor delivers services under the Contract or exercise any control over the activities of Contractor. Contractor is not an officer, employee or agent of County as those terms are used in ORS 30.265. Contractor covenants for itself and its successors in interest and assigns that it will not claim or assert that Contractor is an officer, employee or agent of the County, as those terms are used in ORS 30.265.
27. Contractor shall adhere to and enforce a zero tolerance policy for the use of alcohol and the unlawful selling, possession or use of drugs while performing work under the Contract.

28. The Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein, which would conflict with law, are deemed inoperative to that extent.
29. Contractor shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Contract. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations and executive orders:
- a. Titles VI and VII of the Civil Rights Act of 1964, as amended;
  - b. Sections 503 and 504 of the Rehabilitation Act of 1973, as amended;
  - c. the Americans with Disabilities Act of 1990, as amended and ORS 659A.112 through 659A.139;
  - d. Executive Order 11246, as amended;
  - e. the Health Insurance Portability and Accountability Act of 1996;
  - f. the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended;
  - g. the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended;
  - h. ORS Chapter 659A, as amended;
  - i. all regulations and administrative rules established pursuant to the foregoing laws; and
  - j. all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

The above listed laws, regulations and executive orders and all regulations and administrative rules established pursuant to those laws are incorporated by reference herein to the extent that they are applicable to the Contract or required by law to be so incorporated.

30. Contractor and subcontractors shall comply with the Oregon Consumer Identity Theft Protection Act (ORS 646A.600 et seq.).
31. Indemnification. To the fullest extent authorized by law, Contractor agrees to indemnify, defend, reimburse and hold harmless County, its officers, employees and agents (the "Indemnified Parties") from any and all threatened, alleged or actual claims, suits, allegations, damages, liabilities, costs, expenses, losses and judgments, including, but not limited to, those which relate to personal or real property damage, personal injury or death, attorney and expert/consultant fees and costs, and both economic and non-economic losses, to the extent caused by the negligence, breach of contract, breach of warranty (express or implied), or other improper conduct of Contractor, its employees, subcontractors, or anyone for whose acts Contractor is responsible. If claims are

asserted against any Indemnified Party by an employee of the Contractor, a subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the Contractor's indemnification obligation and other obligations under this section shall not be limited by any limitation on the amount or type of damages, compensation, or benefits payable to the employee by or for the Contractor or subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

#### HISTORY

*Adopted by Ord. [2008-023](#) §1 on 11/23/2008*

*Amended by Ord. [2010-033](#) §1 on 3/28/2011*

#### **2.37.160 Competitive Electronic Auction Bidding**

- A. The County may utilize electronic or online solicitation, subject to the provisions of this Code, for the purchase of goods as provided in this section. Any of the steps provided in this section prior to award of a contract may be accomplished through the use of an agent. The objective of this procurement method is to inform suppliers prior to the close of an auction what the current low bid is and enable such suppliers to submit additional lower bids prior to the close of bidding or award of the contract.
- B. An invitation to bid (ITB) pursuant to this section shall be issued and shall include a procurement description and all contract terms, either expressly or by reference, including without limitation a description of the property to be purchased, required specifications, number of units, warranties, delivery date and location, the pool of potential suppliers, the method by which prospective offerors register with the county and any prequalification requirements, the county representative's name and contact information and the timeframe for which the auction will be open to bids. The ITB shall include notice that bids will be received in an electronic auction manner.
- C. The Solicitation must designate both an opening date and time and a closing date and time. The closing date and time need not be a fixed point in time, but may remain dependant on a variable specified in the solicitation. At the opening date and time, the county must begin accepting real time electronic offers. The solicitation must remain open until the closing date and time. The county may require offerors to register and prequalify before the opening date and time and, as a part of that registration, to agree to the terms, conditions, or other requirements of the solicitation. Following receipt of the first offer after the opening date and time, the lowest offer price or, if proposals are accepted, the ranking of each proposal (without disclosing the identity of the proposer), must be posted electronically to the internet and updated on a real time basis. At any time before the closing date and time, an offeror may lower the price of its offer or revise its proposal except that after opening date and time, an offeror may not lower its price unless that price is below the then lowest offer. Offer prices may not be increased after opening. Except for offer prices, offers may be modified only as otherwise allowed by these rules or the solicitation document.
- D. Withdrawal of bids may be allowed in accordance with OAR 137-047-0470 (Mistake). If an offer is withdrawn, no later offer submitted by the same offeror may be for a higher price. If the

lowest responsive offer is withdrawn after the closing date and time, the county may cancel the solicitation or reopen the solicitation to all pre-existing offerors by giving notice to all pre-existing offerors of both the new opening date and time and the new closing date and time. Notice that electronic solicitation will be reopened must be given as specified in the solicitation document.

- E. Failure of the electronic procurement system. In the event of a failure of the electronic procurement system that interferes with the ability of offerors to submit offers, protest, or to otherwise meet the requirements of the procurement, the county may cancel the solicitation or may extend the solicitation by providing notice of the extension immediately after the system becomes available.
- F. At the conclusion of the auction the records of bids received and the identity of each bidder shall be open to public inspection.
- G. The contract shall be awarded within 60 days by written notice to the lowest responsible bidder. Extensions of the date of the award may be made by mutual written consent of the contracting officer and the low bidder. County may reject any proposals not in substantial compliance with all prescribed procedures and requirements, and may reject for good cause, any or all proposals upon a finding that it is in the public interest to do so.

#### HISTORY

*Adopted by Ord. [2008-023](#) §1 on 11/23/2008*