

KLAMATH COUNTY, OREGON

CONTRACTING POLICIES AND PROCEDURES



Klamath County Finance Department
Adopted: _____

Klamath County Contracting Policies and Procedures are adopted in whole or in part from the State of Oregon Department of Justice (DOJ), Attorney General's Public Contracts Manual and OAR chapter 125, Department of Administrative Services (DAS) Rules.
[The Oregon Attorney General's model rules do not apply to Klamath County. ORS 279A.065]

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OVERVIEW:

Klamath County department heads are responsible for ensuring that their operations follow the adopted Contracting Policies and Procedures, as well as the Oregon Statutes and Administrative Rules pertaining to purchasing by public agencies. In the event a situation arises where the Klamath County Contracting Policies and Procedures are in conflict with or create an ambiguity with the Oregon Statutes and/or the model rules adopted by the Attorney General, as authorized by ORS 279A.065 the Board of County Commissioners hereby specifically state that the Klamath County Contracting Policies and Procedures will prevail. Notwithstanding the previous statement, however, the BOCC specifically intends to maintain the maximum degree of control of public contracting afforded by Oregon law. If there is a situation in which strict adherence to the Oregon Administrative Rules provides the BOCC greater discretion in award of a contract, the BOCC may defer to said Rules.

LOCAL PREFERENCE:

The County shall endeavor to utilize local suppliers of materials and services whenever practical and feasible while seeking to obtain the lowest and best responsible bid, quotation or proposal.

DELEGATION OF AUTHORITY:

Unless authority to bind the County is granted pursuant to an Order signed by the Board of County Commissioners, **the Board has the exclusive authority to enter into all contracts on behalf of Klamath County.** The Board of County Commissioners must also approve all grant applications prior to submission and the subsequent grant agreements.

The Board of County Commissioners grants authority to the Information Technology Director to sign software agreements and to the Department Directors for equipment maintenance agreements (copiers, fax machines, etc.) that do not exceed \$1,000 annually.

The Board of County Commissioners retains the authority to order revisions, exceptions and suspensions of these policies and procedures within the limitations of County Ordinance and Policy and Oregon Statute and Administrative Rule.

ORS 279A.015: It is the policy of the State of Oregon, in enacting the Public Contracting Code that a sound and responsive public contracting system should

- simplify, clarify and modernize procurement practices so that they reflect the market place and industry standards;
- instill public confidence through ethical and fair dealing, honesty and good faith;
- promote efficient use of state and local government resources;
- clearly identify rules and policies;
- allow impartial and open competition; and
- provide a public contracting structure that can take full advantage of evolving procurement methods.

OAR 137-047-0250: A contracting agency shall award a public contract for goods and services based on offers received in response to either competitive sealed Bids pursuant to ORS 279B.055 or competitive sealed Proposals pursuant to ORS 279B.060. (Exceptions ORS 279B.065 - 279B.085 and ORS 279A.200 – 279A.225.)

CAPITAL PURCHASING, CHANGE ORDERS AND DECLARATION OF SURPLUS PROPERTY:

The Board of County Commissioners must approve all capital purchases exceeding \$2,000, change

orders, and declarations of surplus property. The department's liaison commissioner has the authority to approve change orders not exceeding \$25,000 and declare vehicles as "surplus" if the wholesale value is less than \$10,000 as determined by the Kelly Blue Book. The Board must approve change orders and declaration of surplus property in excess of these amounts during a public meeting. Additionally the Board must approve applications for a grant; grant agreements, issuing an Invitation to Bid or a Request for Proposals¹, accepting the lowest bid or highest rated proposal and finally approve the resulting contract and any subsequent amendments.

Surplus Property and Equipment is auctioned off through the Public Works Office annually and the list of surplus property is advertised in the local newspaper. Surplus property shall be offered first to county departments then to special districts and/or other governmental organizations in Klamath County (i.e. irrigation districts, road districts, volunteer fire departments and/or towns/cities in Klamath County) at Kelly Blue Book wholesale value or similar reference of values for equipment. Surplus Computer equipment will be auctioned off through the IT department.

LOCAL CONTRACT REVIEW BOARD:

Pursuant to Klamath County Ordinance No. 32 and ORS Chapter 279A.060, the Board of County Commissioners is the designated Local Contract Review Board, and reserves all powers inherent to that Board. The Board of County Commissioners is the public contracting agency for the County.

CONTRACT SPECIALIST:

The role of the Contract/Grant Specialist is to ensure and facilitate compliance with the Oregon Revised Statutes, Chapter 279 (the "Public Contracting Code").

DEFINITIONS:

"Contract": means a legal relationship consisting of the rights and duties of the contracting parties; a promise or set of promises constituting an agreement between the parties that gives each a legal duty to the other and also the right to seek a remedy for the breach of those duties. A contract can cover any possible type of transaction, such as:

- Financial and/or non-financial;
- Transfer real property and/or personal property;
- Product and/or equipment oriented;
- To provide or obtain a service;
- Involve public and/or private agencies and companies;
- Only for labor/personal services; or
- Any combination of these.

"Personal services" [279C.100(5)]: means the services of a person or persons that are designed by the Department of Administrative Services or a local contract review board (see Exhibit B) as personal services under ORS 279A.055. "Personal services includes architect, engineer or land surveyor.

"Public Work": includes, but is not limited to, roads, highways, buildings, structures and

¹The Public Works Department is exempt from acquiring Board approval prior to issuing an Invitation to Bid.

improvements of all types, the construction, reconstruction, major renovation or painting of which is carried on or contracted for by any public agency to serve the public interest but does not include the reconstruction or renovation of privately owned property which is leased by a public agency.

“Public Contract”: means a sale or other disposal, or a purchase, lease, rental or other acquisition, by a contracting agency of personal property, services, including personal services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement. “Public contract does not include grants.”

“Public Improvement”: means projects for construction, reconstruction or major renovation on real property by or for a public agency. “Public Improvement” does not include emergency work, minor alteration, ordinary repair or maintenance necessary in order to preserve a public improvement.

“Emergency Procurements” [see ORS 279A.010(1)(f)]: means circumstances that could not have been reasonably foreseen that create a substantial risk of loss, damage, interruption of services or threat to the public health or safety that requires prompt execution of a contract to remedy the condition.

“Capital Purchase”: the purchase of durable goods (lasting three years or more).

“Procurement”: the act of purchasing, leasing, renting or otherwise acquiring goods or services.

PUBLIC NOTICE (see Attachment C, “sample advertisement”):

In accordance with ORS 279B.055(4)(b) every formal solicitation for offers must be advertised. See OAR 137-047-0300 for public notice requirements. It must be published at least once in a local paper of general circulation in the area where the contract is to be performed. Klamath County utilizes the Herald and News or other appropriate publications as prudent.

The Notice should be emailed to the Herald and News to legals@heraldandnews.com to avoid a set-up fee. The basic rule is three working days advance notice is required.

<u>Advertisements received by 11:00 A.M.:</u>	<u>are Published:</u>
Monday	Thursday
Tuesday	Friday
Wednesday	Monday or Sunday
Thursday	Tuesday
Friday	Wednesday

Every advertisement must be posted at the business office of the County. To ensure compliance with this requirement, all advertisements should be posted on the board in the 305 Main Street, second floor lobby outside the Board of County Commissioners Office. Public Works projects will be posted in their lobby at 305 Main Street on the second floor.

In addition to the above, **Public Improvement** projects notice of solicitation must be placed in a trade journal of general circulation when the estimated cost is greater than \$125,000 (ORS 279C.360). The County currently utilizes the services of the Daily Journal of Commerce, P.O. Box 10127, Portland OR 97210-0127 (503) 226-1311 and facsimile (503) 222-5358.

<u>Advertisements received by 10:00 A.M.:</u>	<u>are Published:</u>
Monday	Thursday
Tuesday	Friday
Wednesday	Monday or Sunday
Thursday	Tuesday
Friday	Wednesday

Pursuant to Klamath County Resolution, advertisements for the purchase of new vehicles will only be advertised locally.

TYPES OF PROCUREMENT:

Cooperative procurements (ORS 279A.205) -- A contracting agency may participate in, sponsor, conduct or administer a cooperative procurement for the procurement of any goods, services or public improvements. Conducted by or on behalf of one or more contracting agencies. Protests regarding the procurement process must be directed to the Administering contracting agency. Protest regarding use of a cooperative procurement must be directed only to the purchasing agency pursuant to ORS 279B.400 or 279B.425, which may be reviewed in circuit court. Disputes regarding contract performance are addressed by contractor and purchasing agency.

Joint Cooperative Procurements (ORS 279A.205) – Agencies and contract requirements for price agreements are identified. Uses source selection methods (competitive sealed bids, competitive sealed proposals) 279B.055. A joint Cooperative Procurement may not be a Permissive Cooperative Procurement (OAR 279A.210).

Permissive Cooperative Procurements (ORS 279A.215) -- parties are not identified. Original solicitation was competitive source selection; administering agency allows other contracting agencies to establish contract or price agreement; no material change is made in terms, conditions or prices, *must provide public notice if over \$50,000* (County policy) of intent use permissive cooperative procurement and provide notice to vendors who would otherwise be prospective bidders or proposers of the contract or price agreement with an opportunity to comment.

Interstate Cooperative Procurements (ORS 279A.220) -- permissive cooperative procurement where the administering agency is a government body and enters into public contract(s) in which one or more of the participating agencies is located outside this state. The “administering contracting agency” means a contracting agency that solicits and establishes the original contract for procurement of goods, services or public improvements in a cooperative procurement.

Sourcing methods:

Invitation to Bid

Multistep competitive Sealed Bids (OAR-137-047-0257)

Request for Proposals

Competitive Sealed Proposals (OAR 137-047-0260)

Multi-tiered (OAR 137-047-0261)

Multistep Proposals (OAR 137-047-0263)

Request for Written Quotes:

Intermediate Procurements (ORS 279B.070) \$5,000 -- \$150,000

Minimum of three (3) informal bids or proposals.

Emergency (ORS 279B.080)

Sole Source (OAR 137-047-0275) [see attachment 6]

Special Procurement (OAR 137-047-0285)

SOLICITATION GUIDELINES:

The requesting department will prepare an Invitation to Bid (ITB), a Request for Proposal (RFP), or a Request for Quotes (RFQ). These documents will contain specifications, desired delivery date, quantities and other relevant information. This document will be forwarded to the Contract/Grant Specialist along with the completed Agenda Report (“Bluesheet”) for review. The Board of County Commissioners will approve issuing the fully completed ITB or RFP during their weekly scheduled public meeting.

Bids must be let in the manner prescribed by statute, which states in part: advertisement for bids shall be published at least once in at least one newspaper of general circulation in the area where the contract is to be performed [ORS 279B.055(4)(b)]. The advertisement must state the date after which bids will not be received (not less than five days after date of the last publication of advertisement), the nature of the bids and where specifications can be obtained. There are additional advertising requirements for many types of bids; the Finance Department shall advertise and issue the solicitation document. Questions pertaining to the solicitation will be directed to the department head or his/her designee.

Bids/proposals shall be received by the Finance Department and stamped with the date and time of receipt. All bids/proposals shall be securely stored in the Finance Department until the time fixed for opening. All bids/proposals shall be opened publicly and read aloud at the time and place stated in the ITB/RFP. The ITB/RFP will be forwarded to the requesting department head for Bid Award recommendation. Following the award of the bid, the department or the Contract/Grant Specialist will prepare an appropriate contract.

Bid security or surety bond in the amount of ten (10%) percent of the bid may be required for public improvement contracts expected to exceed \$50,000 (\$100,000 highways, bridges) unless specifically exempted by the Board of County Commissioners [ORS 27C.365(5)(6)].

It is County policy to advertise only locally for bids for the purchase of pickups, vans and cars; and that such solicitations shall call for delivery, without penalty, within ninety days unless the Board of County Commissioners approves a shorter delivery date.

Generally speaking, the Board of County Commissioners must accept the bid that best meets the County's needs, including cost, quality and performance of products/services, as well as the demonstrated reliability of the vendor and timely delivery. The Board of County Commissioners will accept the bid that meets all applicable standards, specifications and requirements, or reject all bids and re-advertise.

A **Performance Bond**, pursuant to ORS 279C.380, in an amount equal to the full contract price to insure faithful performance will be required of the successful bidder when required by the County, and shall be required for all public improvement contracts exceeding \$50,000 (100,000 highways, bridges). A **Payment Bond** in an amount equal to the full contract price is also required to ensure that contractors pay for all goods and services supplied to them for the contract.

The prepared contract will be reviewed and approved as to content by the department head, and the successful bidder shall sign the contract. The signed contract will be returned to the Contract/Grant Specialist for review, along with all necessary attachments, including the required Certificates of Insurance and a blue sheet. The contract will then be forwarded to County Counsel to be approved as to form and legal sufficiency. County Counsel will forward the contract to the Board of County Commissioners for action.

Contracts initiated by other entities, such as Intergovernmental Agreements, generally involve direct negotiation with the Board of County Commissioners, their designees and/or specific department heads. Such proposed contracts shall be forwarded to the Finance Department for initial review, comments and recommendations. When finalized, the completed contract shall be returned to the Finance Department, with all necessary attachments, including the "blue sheet". The contract will be approved as to form and legal sufficiency by County Counsel. County Counsel will forward the contract to the Board of County Commissioners for liaison approval and formal action.

With the exception of Public Works, the Finance Department shall maintain records of bids, quotes and proposals received as a result of procurement activity, which shall include the solicitation document, notification list, resolution allowing RFP, any addenda, affidavit of publication, records of bids, quotes and proposals received as a result of procurement activity, justification for rejection of higher scoring proposals or for rejecting lowest bid, the completed evaluation forms, correspondence and resulting contract (OAR 137-030-0125). Contract originals shall be filed in the County Clerk's office as part of the Board of County

Commissioner's Journal. Copies of all active contracts shall be maintained in the Finance Department, the Board of County Commissioner's office and the affected department. The Contractor shall be provided a fully executed original. Bid documents for public Improvements must be maintained for 10 years, all others for 6 years.

All solicitation documents and contracts need to be in the Board of County Commissioners office **no later than 12:00 noon on the Thursday prior to the Public Meeting** for the purpose of being added to the BOCC's Public Meeting Agenda. Please consider this when you forward the document to be approved by both the Contract/Grant Specialist and County Counsel. Please plan in advance. If you want something on the agenda for the following week **do not expect the document to be reviewed and approved within 24 hours. Depending on workloads and prior scheduling, allow at least two days for the Contract/Grant Specialist and County Counsel to review and forward the document.**

The Klamath County Public Works Department will follow the Contracting Policies and Procedures as adopted by the Klamath County Board of Commissioners within their own department and are not subject to participation or review by the Contract/Grant Specialist.

CONTRACTING PROCESS²

Source Selection: Except as provided below, the County shall award all public contracts for goods or services by competitive sealed bidding under ORS 279B.055 or completeive sealed proposals under ORS 279B.060 [ORS 279B.050].

Small Procurements: Goods or services not exceeding \$2,000 (County policy) may be awarded in any manner deemed practical or convenient including direct selection or award. Goods or Services between \$2,000 and \$5,000 require a minimum of three verbal quotes. The procurement may not be eligible by artificial division or fragmentation.

Intermediate Procurements: Contracts/purchases of \$5,000 to \$150,000 a minimum of three written quotes are required pursuant to ORS 279B.070. Board approval should have been obtained during the budget process to ensure that funds exist. Contracts shall be awarded to the offeror whose quote or proposal best serves the interests of the County. Purchasing Department personnel will be directly involved with the solicitation of written quotes.

Sole Source Procurements: Competition is not required if a determination in writing shows that the goods or services are only available from one source (ORS 279B.075).

Emergency Procurements: Competition for a contract for the emergency work that is reasonable and appropriate under the emergency circumstances (ORS 279B.080).

Special Procurements: for the purpose of entering into a series of contracts over time or for multiple projects (ORS 279B.085).

COMPETITIVE SEALED SOLICITATIONS:

Invitation to Bid or Request for Proposals: Contracts/purchases over \$150,000 will be subject to formal bidding procedures, unless exempted by the Local Contract Review Board, the Board of County Commissioners. See "Exhibit A" for a current list of classes of contracts or purchases exempt from competitive bidding. The formal bidding procedure will be coordinated with the Contract Specialist. Issuance, receipt and award of a contract/purchase through the use of competitive bid documents requires a minimum of four to six weeks in order to comply with all applicable laws and rules.

²These rules have been established by the Board of County Commissioners/Local Contract Review Board.

Contracts for services, including those for personal services and construction, are also considered purchases under State law.

Contracts for “public improvements” as defined in ORS 279A.010(1)(a) are subject to the Prevailing Wage Rate if the total cost of the project exceeds \$50,000.

Contract award must be reported to the Bureau of Labor and Industry (BOLI) on public works projects over \$50,000 on form WH-81. Contact Contract Specialist for current rules.

All contracts shall be approved by the appropriate department head as to content, the Contract/Grant Specialist, and by County Counsel as to form and legal sufficiency.

The signature page of every contract (if it is separated from the text of the contract), whether initiated by Klamath County or the Contractor, shall be identified with the name of the contractor, nature of the contract and term of the contract provided at the top of the page

Selection for Architect or Engineering Services

Local Contracting agencies MUST use Qualifications Based if all three exist: [ORS 279C.110(2)]

- Project cost over \$900,000.
- State Highway funds or State grant funds used to pay portion of design and construction
- State money received exceeds 10% of project

Local contracting agency can include pricing policies, proposals and other pricing information if these conditions do not exist.

Use Direct Appointment (OAR 137-048-0200) if estimated fee is less than \$25,000.

Use Informal Selection Procedure (OAR 137-048-0210) if estimated fee is over \$25,000 but less than \$150,000.

Use Formal Selection Procedure (OAR 137-048-0220) if estimated fee exceeds \$150,000.

TYPES OF CONTRACTS:

Construction As a result of an ITB (formal process) or a Request for Quotes (informal process); includes purchase that requires installation i.e. carpet, doors & windows, sidewalks, overlay of parking lots, etc.

- A Bid bond, Performance Bond and a Payment Bond are required for **Public Improvement** (see definition) Contracts if over \$100,000 (\$50,000 for highways, bridges and other transportation projects if over \$50,000).
- Bid Bond returned after contract is **fully executed** (OAR 137-049-0290)
- Performance bond requirements (ORS 279C.380)
- Contractor registration (ORS Chapter 701)
- \$30,000 Public Works bond posted with Oregon Contractor’s Board (ORS 279C.836)
- Hours of labor (ORS 279C.540)
- Employee drug testing [ORS 279C.505(2)]
- First tier subcontractor reporting [ORS 279C.370(2)]
- File “Responsible Bidder” form (ORS 279C.375)
- Provisions concerning environmental and natural resources law (ORS 279C.525)
- Inclusion of amount for solar energy technology (ORS 279C.527)
- State Department of Energy requirements (ORS 279C.528)
- Public Improvement or Public Works contracts exceeding \$50,000:
 - Prevailing wage provisions (ORS 279C.800 – 279C.870); when applicable;
 - File form WH-81 with BOLI and send copy to contractor (ORS 279C.835)
 - Fee paid to BOLI by public contracting agency (ORS 279C.825)

Personal Services Contract (see exhibit B for more information on Personal Service Contracts)
Klamath County adopts OAR 137-047-0250 through OAR 137-047-0290 as procedures the County will use to screen and select persons to perform contracts for personal services except those that are less than \$5,000. Personal services contracts for less than \$5,000 may be awarded by direct appointment pursuant to OAR 137-047-0265. Personal Service Contracts include contracts for Physicians, Consultants, Attorneys, or other Professional services

Contracts For Medical And Remedial Care And Services Contracts for medical services may be established without competitive bidding if the reimbursement rate is established by the State Department of Human Services (ORS 414.115(2)(b),and it is nonexclusive.

An advertisement may be placed in the newspaper describing the service(s) requested and the contract shall be a result of a letter of interest submitted by a licensed medical provider. (ORS 414.135)
Different services or levels of service may be provided and reimbursement fees may vary per ORS 414.115(1)(a) and (b).

REQUEST FOR PROPOSAL:

Request for Proposals are generally used when the awarding of a contract is not to be based exclusively on the lowest responsive and responsible bid; but, rather, on the nature and quality of service to be provided, as well as factors such as the expertise and experience of respondents to the RFP.

The County may, at its discretion, use request-for-proposal competitive procurement methods pursuant to OAR 137-047-0260 or Multi-tiered and Multi-step Proposals pursuant to OAR 137-047-0263 subject to the following conditions. (see Exhibit C – “Competitive Sealed Proposals Checklist”):

- (1) Minimum contractual requirements are stated clearly in the solicitation document (or attach a sample contract).
- (2) Evaluation criteria to be applied in awarding the contract and the role of an evaluation committee are stated clearly in the solicitation document.
- (3) Criteria used to identify the proposal that best meets the County's needs may include but are not limited to cost, quality, service, compatibility, product reliability, operating efficiency and expansion potential, proposer qualifications and experience.
- (4) Solicitation document clearly states all complaint processes and remedies available.
- (5) Solicitation document states the provisions made for vendors to comment on or protest the solicitation, any addenda, exclusion from competitive range or any subsequent phases or multi-tiered or multi-step sealed proposals and/or award of contract.
- (6) All RFP's shall include a statement of residency status, certification of compliance with the Oregon tax laws and certificate of non-discrimination and for public improvement project only, a statement of written drug-testing policy. (Attachment 3 - “Certifications”)

The department will forward a draft RFP document to the Contract/Grant Specialist for review. Once approved by the BOCC, the Finance Department will advertise and issue the RFP. RFP advertisement must be published at least once in a newspaper with general circulation in the area of the contract, the last published date being no later than ten days prior to the public opening of proposals. The proposals will be received and maintained unopened by the Finance Department until closing time. The proposals will then be publicly opened and the name of each proposer read aloud at the time and date specified in the RFP. The Finance Department will retain one original of each proposal. The proposals will then be forwarded to

the department head for consideration. A review committee may be established to score the proposals according to the criteria described in the RFP. Advisory Committees/Commissions are occasionally used in the review process. In such cases, the written recommendation of such bodies will be forwarded, along with the recommendation of the department head, through the Contract Specialist and County Counsel to the Board of Commissioners for their consideration. After the seven-day protest period has expired the Department may submit the resulting contract to the BOCC for approval. Contract negotiations must be accomplished as described in the RFP. Unless otherwise stated in the RFP, the department may only negotiate the statement of work and contract price.

PROPOSAL EVALUATION GUIDELINES:

The Department requesting the Request for Proposals may establish a review committee of 3 or more individuals who are familiar with the project requirements. Do not include anyone who has a conflict of interest in the outcome of the award of the contract, i.e. an employee or relative of a proposer. Try to include reviewers who are not county employees or are from another department. Reviewers may score the proposals separately or schedule a review committee meeting. Each reviewer should receive a copy of the RFP and proposals to review prior to the meeting. During the meeting discuss each proposals strengths and weaknesses, but each reviewer should score individually on a separate score sheet. Remember, these score sheets become public records. Add scores consistent with what is stated in the RFP (average or totals scores). Submit the committee's recommendation to the Board of County Commissioners on an Agenda Report (Bluesheet – see Attachment 5) for consideration of the Board during their weekly public meeting with a copy of the highest ranked proposal.

After the Board accepts the proposal and the "intent to award contract" notices are mailed to all proposers the proposals are available for public review. The proposer next in line for the award may file a protest within 7 calendar days of the "notice of intent" to award the contract pursuant to OAR 137-047-0740. Contract negotiations may begin with the highest ranked proposer. The contract may be signed after completion of the protest period, if no protests are received.

INVITATION TO BID:

An Invitation to Bid is used when selection will be based primarily on cost. You can establish evaluation criteria in the Invitation to Bid such as: conversion costs, transportation cost, volume weighing, trade-in allowances, cash discounts, depreciation allowances, cartage penalties, ownership or life-cycle cost formulas, performance history on other private and public contracts, experience of key personnel, adequacy of equipment and physical plant, financial wherewithal, sources of supply, references and warranty provisions. The evaluation criteria must be stated in the ITB. A written justification must be placed in the contract file if other than the lowest bidder is selected. All ITB's must include a statement of residency status, certification of compliance with the Oregon tax laws and certificate of non-discrimination and for public improvement project only, a statement of written drug-testing policy (Attachment 3, "Certifications").

Awarding a Bid (ORS 279B.055(6) or Proposal OAR 279B.060(6), a department shall evaluate an **offer ONLY AS SET FORTH IN THE SOLICITATION DOCUMENT** and in accordance with applicable law. A department shall not evaluate an offer using any other requirements or criterion. The department may reject an offer that does not meet the specifications as described in the solicitation document.

The department may not negotiate scope of work or other terms or conditions under an Invitation to Bid process. OAR 137-047-0600(3).

SOLICITATION/CONTRACT FILE SHALL INCLUDE (OAR 137-047-0620):

The Contract/Grant Specialist keeps the following in the Contract file:

- (1) Solicitation Document (RFP, ITB or RFQ {Request for Quotes}).
- (2) Notification list (list of prospective proposers notified of the solicitation).
- (3) Any Addenda issued.
- (4) Advertisement and Documentation of Publication.
- (5) Bids
 - a. completed bid tabulation sheet.
 - b. justification for rejection of lower bids.
- (6) Proposals
 - a. completed evaluation sheets.
 - b. written justification for any rejection of higher scoring proposals or for failing to meet mandatory requirements of RFP.
 - c. If agency permitted negotiations, completed evaluation of the initial proposal and completed evaluation of final proposals.
- (7) Any correspondence.
- (8) Resulting contract.

EXHIBIT A

EXEMPTIONS FROM THE PUBLIC CONTRACTING CODE

Exemptions or Exceptions to the Public Contracting Code per ORS 297A.025 and/or the Local Contract Review Board (BOCC):

The Public Contracting Code **does not apply** to contracts between:

- agencies (departments) or between agencies (departments) and the federal government;
- insurance and service contracts;
- grants;
- contracts for professional or expert witnesses;
- acquisitions or disposal of real property;
- sole source expenditures when rates are set by law or ordinance (public utilities);
- textbooks;
- Oregon Corrections Enterprises program;
- procurement, transportation or distribution of distilled liquor;
- under ORS chapter 180 (Attorney General and private counsel or special legal assistants);
- sale of forest products or for forest protection or forest related activities;
- employee benefit plans;
- Oregon Corrections Enterprise.

CONTRACTS EXEMPT FROM FORMAL COMPETITIVE BIDDING³

The Local Contract Review Board (Board of County Commissioners) has determined that the following classes of contracts/purchases are exempt from formal competitive bidding.

- The County may let public contracts and/or purchases not to exceed \$150,000 for the **purchase of goods, materials, supplies and services** without formal competitive bidding, if the County has determined that the awarding of the contract without formal competitive bidding will result in cost savings and the following conditions are complied with:
 - The contract is for a single project and is not a component of any other project.
 - If the amount of the contract is \$2,000 but less than \$5,000 the County will obtain three or more oral or written quotes, if practicable. The County shall keep a written record of the source and amount of the quotes received.
 - If the amount of the contract is \$5,000 but less than \$150,000 the County will obtain a minimum of three written quotes. If three quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes. The County shall keep a written record of the source and amount of the quotes received.
- The County may let public contracts and/or purchases for **trade related projects, i.e. construction, maintenance, repair or similar labor and materials contracts**, if the County has determined that the awarding of the contract without formal competitive bidding will result in cost savings and the following conditions are complied with:
 - The contract is for a single project and is not a component of any other project.
 - If the amount of the contract is \$2,000 but less than \$5,000 the County will obtain three or more oral or written quotes, if practicable. The County shall keep a written record of the source and amount of the quotes received.

³Department of Administrative Services Rules with amounts established by Board of County Commissioners.

- If the amount of the contract is \$5,000 but less than \$150,000 the County will obtain a minimum of three written quotes. If three quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes. The County shall keep a written record of the source and amount of the quotes received.
- Contracts made with other public agencies or the federal government (ORS 279A.025);
- Contracts for the purchase of goods or services where the rate or price for the goods or services being purchased is established by federal, state or local regulatory authority;
- Contracts for personal services not exceeding \$5,000;
- Contracts for the purchase of copyrighted materials where there is only one supplier available for such goods;
- Contracts for the purchase of advertising, including that intended for the purpose of giving public notice;
- Contracts for the purpose of investment of public funds or the borrowing of funds;
- Emergency contracts;
- Contracts for the purchase of asphalt concrete and rock where the material is to be used for maintenance. Where practicable, competitive quotes shall be obtained;
- Contracts for the purchase of petroleum products if such purchase is required to be made from a particular supplier or a result of a federal allocation or if purchases from other than an established supplier could jeopardize an allocation or future supply of such petroleum products;
- Jail food items;
- Contract amendments (including change orders and extra work) if the original contract was let by competitive bidding or alternate procurement process;
- Contracts for the acquisition of ballots, ballot pages and ballot cards;
- Contracts for purchase or acquisition of data processing hardware or software if the contract amount does not exceed \$150,000 and reasonable efforts shall be made to solicit proposals from three or more vendors;
- Telecommunications Systems Contracts and Telecommunications Services Contracts, if the contract amount does not exceed \$150,000 and three quotes are obtained; and
- Contracts for insurance.

EXEMPTIONS FOR ADDITIONAL CONTRACTS:

Contracts for Price Regulated Items [OAR 125-247-0288(6)]:

The County may, without competitive bidding, contract for the direct purchase of goods or services where the rate or price for the goods or services being purchased is established by federal, state, or local regulatory authority.

Copyrighted Materials:

If the contract is for the purchase of copyrighted materials and there is only one known supplier available for such goods, the County may contract for the purchase of the goods without competitive bidding.

Advertising Contracts [OAR 125-247-0288(4)]:

The County may purchase display and legal advertising without competitive bidding, regardless of dollar value.

Investment Contracts [OAR 125-247-0288(7)]:

The County may, without competitive bidding, contract for the purpose of the investment of public funds or the borrowing of funds by the County when such investment or borrowing is contracted pursuant to duly enacted statute, ordinance, charter, or constitution.

Emergency Procurements (OAR 125-247-0280):

The County may, in its discretion, let public contracts without formal competitive bidding if an emergency exists under the following conditions:

- The emergency consists of circumstances that could not have been reasonably foreseen that create a substantial risk of loss, damage, interruption of services or threat to public safety, and requires prompt execution of the contract to remedy the condition.
- The requesting Department shall create a public record of the nature of the emergency and record the method of County used for the selection of a contractor.
- Encourage competition to the extent reasonable under the circumstances.
- Any contract awarded under this exemption shall be awarded within 60 days following declaration of the emergency.

Equipment Repair and Overhaul [OAR 125-247-0288(5)]:

The County may, without competitive bidding, contract for equipment repair or overhaul subject to the following conditions:

- (a) Service or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing; **or**
- (b) Service or parts are for sophisticated equipment for which specially trained personnel are required and such personnel are available from only one source.

Gasoline, Diesel Fuel, Heating Oil, Lubricants, Asphalts and Rock:

The County is exempt from formal competitive bidding requirements for the purchase of gasoline, diesel fuel, heating oil, lubricants, asphalt, rock and other road maintenance materials if the County seeks competitive quotes, makes its purchase from the least expensive source, and retains written justification for the purchase made.

Food Contracts [OAR 125-247-0288(8)]:

Contracts for jail food items are exempt from competitive bidding. The County should, where feasible, obtain competitive quotes.

Contract Amendments Including Change Orders and Extra Work (OAR137-049-0910):

Any public contract amendment other than an amendment to a personal services contract for additional work including change order, extra work, field orders, or other change in the original specifications which increases the original contract price, may be made with the contractor without competitive bidding subject to the following conditions:

(a) The original contract was let by competitive bidding, unit prices or bid alternates were provided that established the cost for additional work, and a binding obligation exists on the parties covering the terms and conditions of the additional work;

Ballots, Ballot Pages, and Ballot Cards:

Oregon Counties are exempt, regardless of dollar amount, from competitive bidding requirements for the printing of ballots, including ballot pages and labeling of ballot cards.

Data Processing Hardware or Software:

Must be approved by Computer Steering Committee prior to being submitted to the Commissioners for their approval.

(a) If the contract amount does not exceed \$150,000, the County shall, as a minimum, follow informal competitive procurement methods. Prior to selection of a vendor, reasonable efforts will be made to solicit proposals from three or more vendors. Justification of award shall be documented and become a public record of the County.

(b) If the contract amount exceeds \$150,000 the County may use the request for proposal process and shall solicit written proposals. Solicitations shall be requested from appropriate vendors appearing on lists compiled by the County or by statute. The County shall document the evaluation and award process, which will be part of the public record justifying the award.

Telecommunications Systems Contracts and Telecommunications Service Contracts:

(1) Contracts for acquisition of telecommunications system hardware and software, or telecommunications service, may be let using alternate competitive procurement methods subject to the following conditions:

(a) If the contract amount does not exceed \$150,000 the County shall as a minimum obtain competitive quotes. Prior to selection of a vendor reasonable efforts will be made to solicit proposals from three or more vendors. Justification of award shall be documented and become a public record of the County.

(b) If the contract amount exceeds \$150,000, the County may use the request for proposal process and shall solicit written proposals. Solicitations shall be requested from appropriate vendors appearing on lists compiled by the County or by advertising in local a newspaper of general circulation as

required by statute. A Resolution is required to provide an exemption to award the contract by the RFP process, instead of a competitive bidding process.

(2) The telecommunications solicitation:

(a) State the contractual requirements in the solicitation document.

(b) State the evaluation criteria to be applied in awarding the contract and the roles of any evaluation committee. Criteria that would be used to identify the proposal that best meets the County's needs may include, but are not limited to cost, quality, service, compatibility, product reliability, operating efficiency, and expansion potential.

(c) State the provisions made for vendors to comment on any specifications which they feel limit competition.

(3) The intent of this rule is for the County to secure the most competitive, cost-effective telecommunications services, while meeting service performance requirements and reducing unnecessary administrative processing.

(4) Telecommunications Services means the lease or rental of the use of voice and data transmission facilities or services, or of central office services, but does not include acquisition of switch or station equipment or acquisition or installation of wire and cable.

(5) In determining the appropriate procurement method for telecommunications services, the County will determine whether competition exists.

(6) In determining competition, the County may consider the following factors:

(a) The extent to which alternative providers exist in the relevant geographic and service market. The relevant market will vary from service category to service category and cannot be predetermined in advance. For example, an alternative long distance provider might offer services in Portland, but not in Klamath Falls, or the rest of the state.

(b) The extent to which alternative services offered are comparable or substitutable in technology service provided, and performance. For example, if the County's requirement is for digital services, analog services are not comparable or substitutable.

(c) The extent to which alternative providers can respond to the County's interests in consistency and continuity of services throughout its service area, volume discounts, and centralized management. For example, to be considered for the State of Oregon's provider, any long distance provider must be able to support the State's centralized automated billing requirements. The County must document for the record its finding on these factors or any other factors used in determining whether competition exists. In developing its findings, the County may solicit the information either through informal telephone or written contracts, or through a formal request for information.

(7) Upon determination that competition does not exist for the relevant service and geographical area, the County may proceed to secure the service on a sole source basis and following all applicable rules and procedures. A Resolution is required to provide an exemption to award the contract on a sole source basis.

Sole Source Procurements (OAR 137-047-0275):

Upon determination that competition does not exist for a service, the County may proceed to secure the service on a sole source basis and following all applicable rules and procedures. **Public Notice** shall be provided pursuant to the above referenced rule.

Exemptions for Additional Contracts:

The Local Contract Review Board may grant an exemption to contracts from competitive bidding if it finds:

- (1) The exemption is not likely to encourage favoritism in public contracts or substantially diminish competition in awarding the contract.
- (2) The exemption will result in substantial cost savings. In making such findings, the Board may consider the type, cost, amount of the contract, number of persons available to bid, and such other factors as the Board may deem appropriate.

Contracts for Insurance (ORS 279A.025):

The County may purchase **employee benefit insurance** without competitive bidding, regardless of dollar amount.

Contracts for insurance where either the annual or aggregate premium exceeds \$5,000 must be let by formal competitive bidding or by one of the following procedures:

- (1) **Agent of Record:** The County may appoint a licensed insurance agent (Agent of Record) to perform insurance services in connection with more than one insurance contract. Among the services to be provided is the securing of competitive proposals from insurance carriers for all coverages for which the agent of record is given responsibility:
 - (a) Prior to the selection of an agent of record, the County shall make reasonable efforts to inform known insurance agents in the competitive market area that it is considering such selection. These efforts shall include a public advertisement in at least one newspaper of general circulation in the area where the contract is to be performed. The advertisement shall generally describe the nature of the insurance that the County will require. If the amount of the annual premium for insurance, other than employee benefits insurance is likely to exceed \$10,000 per year, such notice shall also include a public advertisement in at least one trade publication of general circulation in the state.
 - (b) Any appointment period shall not exceed three years. Agents may serve more than one appointment period. Agents must qualify for appointment prior to each period as if each appointment period were the first.
 - (c) In selecting an agent of record, the County shall select the agent(s) most likely to perform the most cost-effective services.
- (2) **Specific Proposals for Insurance Contracts:** The County may solicit proposals from licensed insurance agents for the purpose of acquiring specific insurance contracts subject to the following conditions:
 - (a) County shall make reasonable efforts to inform known insurance agents in the competitive market area of the subject matter of the contract, and to solicit proposals for providing the services required in connection with the contract. Such efforts shall include public advertisement in at least one newspaper of general circulation in the area where the contract is to be performed. If the amount of annual premium for insurance, other than employee benefits insurance, is likely to exceed \$10,000 per year, such notice shall also include a public advertisement in at least one trade publication of general circulation in the state.

EXHIBIT B

PERSONAL SERVICES CONTRACTS

The County may procure personal services contracts directly through negotiation rather than through other solicitation means, if the contract price is not more than \$5,000. If the estimated cost of the service is more than \$5,000 informal or formal (whichever is applicable) selection procedures must be followed.

A contract for "personal services" calls for specialized skills, knowledge and resources in the application of highly technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment. Qualifications and performance history, expertise, knowledge and creativity, and the ability to exercise sound professional judgment are typically the primary considerations when selecting a personal services contractor, with price being secondary.

Contracts with attorneys, physicians, consultants, and photographers are personal services contracts that are exempt from the bidding process because of specialized and personal services inherent.

(1) The following are personal services contracts:

- (a) Contracts for services performed as an independent contractor in a professional capacity, including but not limited to the services of an accountant, architectural or land use planning consultant, registered professional engineer, appraiser or surveyor, data processing consultant.
- (b) Contracts for services as a consultant.
- (c) Contracts for services of a specialized, creative and research-oriented, noncommercial nature.
- (d) Contracts for educational training, or informational resource referral services.
- (e) Contracts for human services provided by independent contractors in the areas of aging and senior services, mental health services, health services, social and emergency services.
- (f) Contracts for services as an artist in the performing or fine arts including, but not limited to, a photographer, filmmaker, painter, weaver, or sculptor.

(2) The following are not personal services contracts:

- (a) Contracts, even though in a professional capacity, if predominately for a product (i.e. a contract with a landscape architect to design a garden is for personal services, but a contract to design a garden and supply all the shrubs and trees is predominately for a tangible product).
- (b) Service contract to supply labor that is of a type that can generally be done by any competent worker, (i.e. janitorial, security guard, and landscape maintenance service contracts).
- (c) Contracts for trade-related activities considered to be labor and material contracts.
- (d) Contracts for services of a trade-related activity, even though a specific license is required to engage in the activity (i.e. repair and/or maintenance of all types of equipment or structures).

Personal services contracts are specifically defined in Oregon Statute and Administrative Rule. However, care must be taken to ensure that a contract for goods or materials or an employment contract is not improperly entered into as a personal services contract; and that the contractor meets the statutory definition of an independent contractor as specified in ORS 670.600. The conditions to be met as an independent contractor are found in Attachment 1, the “**Independent Contractor Certification Statement**” form. If the individual cannot certify independent contractor status, the County may not contract with the individual using a personal services contract.

Such contracts may be used when resources do not exist within County operations to satisfactorily accomplish the intended purpose, or the purpose would be achieved in a more cost-effective manner; and only upon approval of the Board of County Commissioners.

Department heads shall propose a personal services contract based upon a process that provides for, whenever possible, selection from a group of qualified potential providers. These providers shall possess the skills, expertise and experience necessary to achieve the contract goals. They must meet the requirements of ORS 670.600 and present copies of licensure, certification, education and insurance as deemed necessary.

To secure a personal services contract, the department head will secure approval of the Board liaison for the department and ensure that funds exist for the contract.

The department head will then complete and forward to the Finance Department an “**Independent Contractor Certification Statement**” (Attachment 1) form. This shall be accompanied by a written description of the services to be performed, proposed work plan and the compensation details that have been agreed upon.

The Finance Department will then develop a contract and forward it to the department head for processing.

The Klamath County Surveyor is authorized to execute contracts with private surveyors, within available funds, on an as-needed basis to reestablish public land corners without obtaining Board of County Commissioner approval. The Surveyor shall utilize forms of contract approved by County Counsel.

Personal Services Contracts for the Public Works Department shall be developed by that department and reviewed by County Counsel.

EXHIBIT C

COMPETITIVE SEALED PROPOSALS

Solicitation Document Shall Include
OAR 137-047-0260

I. ADVERTISEMENT (OAR 137-047-0300)

- Published at least once in H&N and post notice on bulletin board in front of BOCC office.
- If for **PUBLIC IMPROVEMENT** and **OVER \$125,000** then also publish in Journal of Commerce. (OAR 137-049-0210)

ADVERTISEMENT SHALL INCLUDE:

- Where, when, how and for how long the solicitation Document may be obtained; and
- If public works project, subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 276a); and
- Date and time after which bids will not be received (not less than 5 days after the date of last publication of the advertisement); and
- Character of work to be done or material or things to be purchased; and
- Office where specifications for work, material or things may be reviewed; and
- Name, title and address of person designated for receipt of bids; and
- Date, time and place that the public contracting agency will publicly open the bids; and
- The interval between the first date of notice and closing shall be no fewer than fourteen (14) days before close of an Invitation to Bid and thirty (30) days before the close of a Request for Proposals the solicitation; and
- Statement that Klamath County may reject all bids, if in public interest to do so.

II. GENERAL INFORMATION

- County/Department need; character of work or goods the department is purchasing and if applicable, a description of the acquisition, specifications, delivery or performance schedule, inspection and acceptance requirements.
- A statement that if the contract is for a public works project subject to the prevailing wage rate laws, no bid will be received or considered unless the bid contains a statement by the bidder that prevailing wage rate laws will be complied with.
- The date and time after which bids will not be received, (*I prefer 2:00 p.m. Monday through Thursday.*) No public improvement contracts may be closed after noon on a Friday.
- The date that pre-qualification applications must be filed and the class or classes of work for which bidders must be pre-qualified if pre-qualification is a requirement.

- If there is a pre-bid conference: time, date and location and whether attendance is mandatory or voluntary and that “statements” made by the Agency’s representative at the conference are not binding upon the Agency unless confirmed by written addendum.
- Include term and whether contract is renewable in ITB. If renewable, include statement that any payment or performance obligations for succeeding fiscal periods are subject to availability and appropriation of funds.
- Facsimile or Electronic Data Interchange offers will NOT be accepted.
- The character of the work to be done or the materials to be purchased.
- The office where the project specifications and materials for the work may be reviewed.
- The name, title and address of the person designated to received the bids.
- The date, time and place the public contracting agency will publicly open the bids.
- A statement that the public contracting agency may reject any bid not in compliance with all prescribed bidding procedures and requirements; and may reject, for good cause, any or all bids upon finding of the agency that it is in the public interest to do so.
- Information on whether the contractor or subcontractor must be licensed.
- A statement that no bid for a construction contract shall be received or considered by the agency unless the bidder is registered with the Oregon Construction Contractor’s Board or licensed by the State Landscape Contractors Board.
- The following are covered by certificates which must be completed with every RFP or ITB.
 - (For public improvement projects only)* Contractor shall demonstrate that an employee drug-testing program is in place per ORS 279.312.
 - Contractor shall certify they are not in violation of any Oregon tax law described in ORS 305.380(4).
 - A statement that each proposal/bid must identify whether proposer/bidder is a resident proposer/bidder.
 - Contractor’s certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279.111.
- Form and submission of offers and any information required, including bid or proposal security, if any.
- How you will notify Offerors of Addenda and how you will make Addenda available.
- County is “not responsible for any costs for any proposals incurred while submitting proposal, and all Proposers who respond to solicitation do so solely at their own expense”.
- County reserves the right to reject any or all proposals or to cancel the solicitation if it is determined to be in the public interest.

- Protest deadline dates (request for change, notice of competitive range and intent to award contract).
- "By signing and returning the Proposal (Offer) the Proposer (Offeror) acknowledges they have read and understand the terms and conditions contained in the Solicitation Document and accept and agree to be bound by the terms and conditions of the Solicitation Document."

III. EVALUATION PROCESS

- Statement that the Agency may reject any Offer not in compliance with all prescribed solicitation bidding procedures and requirements and other applicable laws, and that the agency may reject for good cause any or all offers upon the Agency's finding that it is in the public interest to do so.
- Anticipated solicitation schedule, protest process and evaluation process, if any.
- Evaluation criteria, including the relative value applicable to each criterion.
- Invitation to Bid set forth objective evaluation criteria in the Solicitation Document.
- Request for Proposal set forth selection criteria (include evaluation [scoring] sheets if available).
- If you are awarding more than one contract, the manner in which you will determine the number of contracts you will award.-
- For and RFP, if the Department is willing to negotiate terms and conditions of contract you must identify the specific terms and conditions in the solicitation document that are subject to negotiation and authorize offerors to propose certain alternative terms and conditions identified as negotiable.
- The RFP must describe the evaluation and negotiation process in accordance with and you may only evaluate the proposal in accordance with the criteria disclosed in the RFP.
- Preference for materials and supplies manufactured from recycled materials.
- Attach sample contract to provide notice of contract terms and conditions.
- Submission of a Proposal in response to this request is the Proposer's offer to enter into a Contract. By signing and returning this Offer, the Offeror acknowledges it has read and understands the terms and conditions contained in the Solicitation Document and accepts and agrees to be bound by the terms and conditions of the Solicitation Document.
- Proposer may not make offer contingent upon County's acceptance of any terms or conditions other than those contained in the Solicitation Document unless requested to do so.

YOU MUST AWARD THE BID TO THE LOWEST RESPONSIBLE/RESPONSIVE BIDDER AND YOU MUST ACCEPT THE PROPOSAL(S) FROM THE HIGHEST EVALUATED (SCORED) PROPOSALS OR JUSTIFY YOUR RATIONALE IN WRITING FOR THE CONTRACT FILE. THIS JUSTIFICATION MUST STAND UP TO SCRUTINY IF A PROTEST IS RECEIVED. (OAR 137-030-125)

IV PROTESTS: (OAR 137-047-0261)

- Solicitation Protest:
 - Procurement process contrary to law?
 - Unnecessarily restrictive?

- Legally flawed?
- Improperly specifies a brand name?

- Protest period for each Addenda
- Exclusion Protest
 - To protest exclusion from the competitive range (if one is established) or from subsequent phases (if multi-tiered or multi-step process is used)

- Protest of Award (of contract)
 - Intent to Award notice sent to all Proposers in competitive range.
 - Award shall not be final until 7 days* after notice (unless otherwise provided in RFP*) or until written response has been provided to protests before contract can be signed.

* a minimum of seven (7) calendar days to allow protests by mail.

Exhibit D

INVITATION TO BID CHECKLIST

279B.055 Public Contracting/Public Procurement

Invitation to Bid must include:

- Time and date bids must be received;
- Place where bids are to be submitted;
- Name and title of person designated for receipt of bids;
- Contact person for procurement, if different;
- Procurement description and evaluation criteria;
- If more than one contract is to be awarded, manner in which County will determine number of contracts awarded;
- Time, date and place for pre-qualification applications, if any;
- Date, time and place of any pre-bid conference and whether attendance is mandatory;
- Certification of residency, compliance with Oregon Tax Laws and nondiscrimination required;
- How you will notify bidders of any addenda and how you will make addenda available;
- Statement that "statements made by County representatives are not binding unless confirmed by written addenda;
- Include term and whether contract is renewable in ITB. If renewable, include statement that any payment or performance obligations for succeeding fiscal periods are subject to availability and appropriation of funds.
- Statement that the county may cancel the procurement or reject any or all bids in accordance with ORS 279B.100;
- A statement that "Contractors shall use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this document";
- A statement that the contractor must possess an asbestos abatement license if required under ORS 468A.710;
- Information on whether the contractor or subcontractor must be licensed;
- County is not responsible for any costs for any bids incurred while submitting bid, and all Bidders who respond to solicitation do so solely at their own expense;
- County reserves the right to reject any or all bids or to cancel the solicitation if it is determined to be in the public interest;
- "By signing and returning the Bid (Offer) the Bidder (Offeror) acknowledges they have read and understand the terms and conditions contained in the Solicitation Document and accept and agree to be bound by the terms and conditions of the Solicitation Document";
- All contractual terms and conditions applicable to the procurement (**sample contract**);
- Facsimile or Electronic Data Interchange offers will NOT be accepted;
- Bid security in any form deemed prudent, if necessary;
 - County shall return bid security to all bidders upon execution of the contract.
 - County shall retain bid security successful proposer fails to promptly and properly execute the contract (see ORS 279B.0550).
- Provide Public Notice pursuant to ORS 279B.055(4)(b);
- County shall record the amount of the bid, the name of the bidder and other relevant information. This record is available for public inspection after the Notice of Intent to Award notice has been provided.
- County shall evaluate all bids pursuant to requirements set forth in the ITB, which may include quality, testing, discounts, transportation costs and total costs of ownership or operation of a product over its lifetime.
- Send out "Notice of Intent to Award Contract" after BOCC accepts the lowest bid and allow for 7-day protest (of award) period;
- The statement "The County reserves the right to rescind the award of the contract at any time before the execution of said contract by all parties without any liability against the County";

- ❑ Award shall go to the lowest responsible bidder whose bid substantially compiles with the requirements and criteria set out in the ITB.

ADVERTISEMENT (PUBLIC NOTICE): (see OAR 137-047-0300)

Must be published no fewer than fourteen (14) days before close of the solicitation

- ❑ Where, when and for how long the Solicitation Document may be obtained;
- ❑ General description of the goods or services being acquired;
- ❑ Date that persons must file applications for pre-qualification, if any;
- ❑ Date, time and place of any pre-bid conference and whether attendance is mandatory;
- ❑ Office where contract terms, conditions and specifications may be reviewed;
- ❑ Name, title and address of individual receiving offers;
- ❑ Date, time and place ITB will be openED;
- ❑ If project is subject to BOLI, prevailing wage or Davis-Bacon;
- ❑ Statement that Klamath County may reject all bids, if in public interest to do so;
- ❑ Any other information appropriate.

Contract Checklist:

- ❑ Signature page
- ❑ Format (outline, numbers, footer, page numbers)
- ❑ Venue
- ❑ Term
- ❑ Indemnity
- ❑ Contractor signature

Bluesheet:

- ❑ **Date Action Requested** (date item is to be placed on agenda)
- ❑ **Issue** (include who, what, for how long)
 - **example:** *Approval of a contract with Klamath Alcohol and Drug Inc. for alcohol and drug treatment services beginning July 1, 2003 and continuing until June 30, 2004.*
- ❑ **Background and Conclusions** (why, how did we get here)
 - **example:** *Klamath County issued a Request for Proposal to establish alcohol and drug treatment services for Klamath County residents on April 15, 2003. The Board of County Commissioners accepted the best responsible proposal from Klamath Alcohol and Drug Abuse Inc. May 23, 2003 and this contract concludes the solicitation process.*
- ❑ **Fiscal Impact** (total fiscal impact, revenue, expense, to who's budget, does it agree with document?)
 - **example:** *"\$120,000 expense from the Mental Health Department Budget" (Be sure to add up all figures because they are frequently wrong or do not match the stated amount in the contract.)*
- ❑ **Recommended motion** (who, what, for how long and for how much)
 - **example:** *"Approve a contract with Klamath Alcohol and Drug Inc. for alcohol and drug treatment services beginning July 1, 2003 and continuing until June 30, 2004 in the amount of \$120,000". You may have to include "approval and authorization for the Chairman to sign".*
- ❑ Do you need a signature page? If there is no place for signatures within the document include a signature page for the BOCC approval (see Exhibit F).

EXHIBIT E

REQUIREMENTS FOR CONSTRUCTION OR PUBLIC IMPROVEMENT CONTRACTS

TERMS AND CONDITIONS OF CONTRACT: (ORS 279C.500 – 270.670)

- Payment of all entities furnishing labor or material; contributions to Industrial Accident Fund; liens and withholding taxes [ORS 279C.505(1)];
- Public Improvement drug testing program for employees [ORS 279C.505(2)];
- A contract for demolition B salvage or recycle , if feasible and cost-effective [ORS 279C.510(1)];
- Lawn or landscape - compost or mulch yard waste material at approved site, if feasible or cost-effective [ORS 279C.510(2)];
- payment of claims by public officers [ORS 279C.515(1)];
- Contractor and first-tier subcontractor liability for late payment on Public Improvement Contracts [ORS 279C.515(2)];
- Public Improvement Contracts - entity's right to file complaint with Construction contractor's board;
- Hours of labor (ORS 279C.520);
- Payment for medical care and attention to employees [ORS 279C.530(1)];
- Maximum hours and overtime (ORS 279C.540);
- Time limitation on claims for overtime (ORS 279C.545);
- Overtime requirement for local governments;
- Prevailing wage rates (ORS 279C.800 - 279C.870);
- Fee paid to BOLI (ORS 279C.830);
- Retainage (ORS 279C.830);
- Prompt payment policy (ORS 279C.570);
- Contractors relations with subcontractors (ORS 279C. 570);
- Notice of Claim (ORS 279C.605);
- Contractor's certification of compliance with Oregon tax laws (ORS 305.385);
- Environmental and Natural Resources laws (ORS 279C.525);
- Solar Energy requirements (ORS 279C.527);
- State Department of Energy requirements (ORS 279B.528);
- "All employers, including Contractor, that employ subject Workers who work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Worker's Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements." [ORS 279C.530(2)];
- Contractor's certification that all subcontractors performing construction work will be registered with the Oregon Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 to 701.055 before the subcontractors commence work under the contract.
- If federal grant funds are involved, the federal laws, rules and regulations applicable to the grant shall govern in the event they conflict with a provision required by ORS 279.545 to 279.746.
- Unless otherwise provided in the Contract, the Contractor shall not assign, sell, dispose of, or transfer rights, nor delegate duties under the Contract, either in whole or in part, without the County's prior Written consent. Unless otherwise agreed by the County in Writing, such consent shall not relieve the Contractors of any obligations under the Contract. Any assignee or transferee shall be considered the agent of the Contractor and be bound to abide by all provisions of the Contract. If the County consents in Writing to an assignment, sale, disposal or transfer of the Contractor's rights or delegation of the Contractor's duties, the Contractor and its surety, if any, shall remain liable to the County for complete performance of the Contract as if no such assignment, sale, disposal, transfer or delegation had occurred unless the County otherwise agrees in writing.

FORM OF SURETY (BID BOND, PERFORMANCE BOND, PAYMENT BOND):

- (a) 10% of Bid amount,
- (b) Surety Bond from a surety company authorized to do business in Oregon, OR
- (c) Cashier's check OR Offeror's Certified check.

FIRST-TIER SUBCONTRACTORS DISCLOSURE: Within two (2) working hours of Bid Closing all bidders shall submit to the County a disclosure form (Attachment 2) identifying any first tier subcontractors whose subcontract value would be equal to or greater than (OAR 137-049-0360):

- (a) five percent of the total contract price, but at least \$15,000; or
- (b) \$350,000 regardless of the percentage of the total Contract price.

Contract provisions requiring notice of delay, providing for alternative dispute resolutions such as arbitration or mediation, providing other procedures for settling contract disputes, or providing for reasonable liquidated damages.

RETAINAGE: (OAR 137-040-0025)

- (a) No more than 5%.
- (b) After satisfactory completion of 50% of work and written application from contractor containing surety's written approval, County may reduce or eliminate retainage on any remaining progress payments. County shall respond in writing to all such applications within a reasonable time.
- (c) After 97.5% completion County may reduce the retained amount to 100% of the value of the remaining unperformed contract work.
- (d) Retainage shall be included in final payment of Contract Price.
- (e) Upon request of the Contractor, County shall deposit cash retainage in an interest bearing account in a bank, savings bank, trust company or savings assn for the benefit of the County (OAR 137-040-0025(2)).
- (f) County may recover all costs incurred in proper handling of cash retainage and securities by reduction of final payment.

INTEREST: (OAR 137-040-0031)

- (a) paid on late payments; final payment.
- (b) In the case of settlement or judgment in favor of contractor, interest is added to, not part of settlement.

FINAL INSPECTION: (OAR 137-040-0035)

- (a) Contractor shall notify County in writing of completion of project.
- (b) Within 15 days County will inspect project and project documents; and
- (c) Will either acknowledge acceptable work in writing or notify contractor of remaining work to be performed in writing.

COUNTY PAYMENT FOR UNPAID LABOR OR SUPPLIES: (OAR 137-040-0045)

- (a) If contract is incomplete County may pay valid claim and charge the amount against payments due or to become due to the Contractor under the contract. Contractor and Contractor's surety shall not be relieved from liability for unpaid claims.
- (b) If contract has been completed and all funds disbursed to Contractor all claims shall be referred to the Contractor's surety for resolution. County shall not make payment to suppliers or subcontractors for work already paid for.

Exhibit F

Sample BOCC Signature Page

Accepting a quote from Pape' Machinery for pallet forks for the 938G Loader for the Solid Waste Department in the amount of \$6,135.00.

DONE AND DATED this _____ day of _____ 2006.

Approved
 Denied _____
Chair

Approved
 Denied _____
Commissioner

Approved
 Denied _____
Commissioner

INDEPENDENT CONTRACTOR CERTIFICATION STATEMENT
KLAMATH COUNTY DEPARTMENTAL CERTIFICATION

In order to comply with the provisions of ORS 670.600, an individual or business entity performing labor or services for remuneration shall be considered to perform the labor or services as an "Independent Contractor" if the following standards are met:

- 1. The individual or business entity providing the labor or services is free from direction and control over the means and manner of providing the labor or services, subject only to the right of the person for whom the labor or services are provided to specify the desired results;
- 2. The individual or business entity providing the labor or services is responsible for obtaining all assumed business registrations or professional occupational licenses required by state law or local government ordinance for the individual or business to conduct the business;
- 3. The individual or business entity providing labor or services furnishes the tools or equipment necessary for the performance of the contracted labor or services;
- 4. The individual or business entity providing labor or services has the authority to hire and fire employees to perform the labor or services;
- 5. Payment for the labor or services is made upon completion of the performance of specific portions of the project or is made on the basis of an annual or periodic retainer.

I hereby certify that the contracted work or intended contracted work meets these standards.

Department Head

Date

(CONTRACTOR/PROPOSED CONTRACTOR
IS TO COMPLETE THE REVERSE SIDE)

CONTRACTOR CERTIFICATION

To establish status as an "Independent Contractor" as defined in ORS 670.600, certain standards must be met by the individual or business entity performing that work.

The undersigned certifies that he/she/the business entity meets the following standards:

- 1. The individual or business entity providing labor or services is registered under ORS Chapter 701 "Construction Contractors", if the individual or business entity provides labor or services for which such registration is required; and
2. Federal and state income tax returns in the name of the business or business Schedule C or farm Schedule F as part of the personal income tax return were filed for the previous year if the individual or business entity performed labor or services as an independent contractor in the previous year; and
3. The individual or business entity represents to the public that the labor or services are to be provided by an independently established business. Except when individual or business entity files a Schedule F as part of the personal income tax returns and the individual or business entity performs farm labor or services that are reportable on Schedule C, an individual or business entity is considered to be engaged in an independently established business when four or more of the following circumstances exist.

Contractor is to check four or more of the following:

- [] The labor or services are primarily carried out at a location that is separate from the residence of an individual who performs the labor or services, or are primarily carried out in a specific portion of the residence, which portion is set aside as the location of the business;
[] Commercial advertising or business cards are customary in operating similar businesses, are purchased for the business, or the individual or business entity has a trade association membership;
[] Telephone listing and service are used for the business that is separate from the personal residence listing and service used by an individual who performs the labor or service;
[] Labor or services are performed only pursuant to written contracts;
[] Labor or services are performed for two or more different persons within a period of one year; or
[] The individual or business entity assumes financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be performed.

Contractor Signature

Date

Printed Name

Federal Tax I.D. #

FIRST-TIER SUBCONTRACTOR DISCLOSURE FORM

Bids which are submitted by Bid Closing, but for which a required disclosure submittal has not been made by the specified Disclosure Deadline, are not responsive and shall not be considered for Contract award.

AGENCY SUPPLIED INFORMATION:

PROJECT NAME: _____
 BID #: _____ BID CLOSING: Date: _____ Time: _____ AM PM
 REQUIRED DISCLOSURE DEADLINE: Date: _____ Time: _____ AM PM
 Deliver Form To (Agency): _____
 Designated Recipient (Person): _____ Phone #: _____
 Agency's Address: _____

INSTRUCTIONS:

The contracting agency will insert "N/A" above if the contract value is not anticipated to exceed \$100,000. Otherwise this form must be submitted either with the bid or within two (2) working hours after the advertised bid closing date and time; but no later than the DISCLOSURE DEADLINE stated above.

Unless otherwise stated in the solicitation, this document shall not be submitted by facsimile. It is the responsibility of bidders to submit this disclosure form and any additional sheets, with the bid number and project name clearly marked, at the location indicated by the specified disclosure deadline. See "Instructions to Bidders".

List below the Name, Category of Work and Dollar Value for each first-tier subcontractor that would be furnishing labor, or labor and material, for which disclosure is required. Enter the word "NONE" if there are no first-tier subcontractors subject to disclosure. ATTACH ADDITIONAL SHEETS IF NECESSARY.

BIDDER DISCLOSURE:

	SUBCONTRACTOR NAME	CATEGORY OF WORK	DOLLAR VALUE
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____
5.	_____	_____	_____

The above listed first-tier subcontractor(s) are providing labor, or labor and material, with a Dollar Value equal to or greater than:

a) 5% of the total Contract Price, but at least \$15,000. [If the Dollar Value is less than \$15,000 do not list the subcontractor above.]

OR

b) \$350,000 regardless of the percentage of the total Contract Price.

Form Submitted By (Bidder Name): _____

Contact Name: _____ Phone #: _____

KLAMATH COUNTY
INVITATION TO BID/REQUEST FOR PROPOSAL

BIDDER/PROPOSER RESIDENCY STATEMENT

Pursuant to ORS 279A.120, Oregon’s Reciprocal Preference Law, public contracting agencies shall, for the purposes of determining the lowest responsible bidder/proposer and the awarding of a contract, add a percent increase on the bid of a non-resident bidder/proposer equal to the percent, if any, of the preference given to that bidder/proposer in the state in which the bidder/proposer resides.

As defined in ORS 279A.120, “Resident Bidder/proposer” means a bidder/proposer that has paid unemployment taxes or income taxes in this state in the twelve calendar months immediately preceding submission of the bid, has a business address in this state, and has stated in the bid whether the bidder/proposer is a “Resident Bidder/proposer”. A “Non-resident Bidder/proposer” is a bidder/proposer who does not meet the definition of a “Resident Bidder/proposer” as stated above.

- 1. Bidder/Proposer IS or IS NOT (check one) a “Resident Bidder/proposer” as set forth above.
- 2. If a Resident Bidder/proposer, enter your Oregon Business address below:

- 3. If a Non-resident Bidder/proposer, enter state of residency:

Bidder/Proposer hereby certifies that the information provided is true and accurate.

Signature: _____ Date: _____

Printed or Typed Name: _____

Title: _____

Firm: _____

Telephone: _____

KLAMATH COUNTY
INVITATION TO BID/REQUEST FOR PROPOSALS

CERTIFICATE OF NON-DISCRIMINATION

Pursuant to ORS 279A.110, discrimination in subcontracting is prohibited. Any contractor who contracts with a public contracting agency shall not discriminate against minority, women or emerging small business enterprises in the awarding of contracts.

By signature of the authorized representative of the bidder/proposer, the bidder/proposer hereby certifies to Klamath County that this bidder/proposer has not discriminated against minority, women, or emerging small business enterprises in obtaining any subcontracts; and, further, that if awarded the contract for which this bid or proposal is submitted, shall not so discriminate.

Date: _____

Signature: _____

Printed or Typed Name: _____

Name of Firm: _____



CERTIFICATE OF COMPLIANCE WITH ORS 305.380 B 305.385

The undersigned, as provider or potential provider of goods, services or real estate space to Klamath County, hereby certifies under penalty of perjury that to the best of my knowledge, the undersigned is not in violation of any Oregon tax described in ORS 305.380(4).

Date: _____

Signature: _____

Printed or Typed Name: _____

Name of Firm: _____

KLAMATH COUNTY
INVITATION TO BID/REQUEST FOR PROPOSALS

CERTIFICATE OF WRITTEN DRUG-TESTING POLICY

Pursuant to ORS 279C.505, Contractor certifies to Klamath County that it has a written drug-testing program in place for Contractor's employees that includes, at a minimum, the following:

- Drug testing for all new Subject Employees or alternatively, required testing of all Subject Employees every 6 months on a random selection basis, and
- Testing of a Subject Employee when Contractor has reasonable cause to believe the Subject Employee is under the influence of drugs, and
- Testing of a Subject Employee when the Subject Employee is involved in an incident causing injury requiring treatment by a physician, or damage to property or equipment.

"SUBJECT EMPLOYEE" is an employee working on the Project job site.

Date: _____

Signature: _____

Printed or Typed Name: _____

Name of Firm: _____

AGENDA REPORT
BOARD OF COUNTY COMMISSIONERS

Agenda Category:	Item No.
------------------	----------

ORIGINATING DEPARTMENT:

DATE ACTION REQUESTED: ACTION TAKEN:

ISSUE:

BACKGROUND & CONCLUSIONS:

FISCAL IMPACT:

RECOMMENDED MOTION:

Department Head Approval: _____

Contract Specialist/Fiscal Manager Approval: _____

County Counsel Approval: _____

Commissioner Liaison Approval: _____

<p><i>APPROVED THIS ____ DAY OF</i> _____ <i>by the Klamath County Board</i></p> <p><i>of Commissioners.</i> <i>(SEAL)</i></p> <p>CERTIFIED By _____ <i>Nancy Bodkin</i> <i>Deputy County Clerk</i></p>	<p><i> DISTRIBUTION:</i> <i> ORIGINAL - CLERK</i> <i> ORIGINAL – CONTRACTOR</i> <i> Other: _____</i> <i> 1 - Proceedings</i> <i> 1 - Contract Specialist</i> <i> 1 - Department</i> <i> 1 - File</i> <i> 1 -</i> <i> TOTAL ____</i></p>
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Klamath County

Request for Determination of Sole Source Contract

A contracting agency may award a contract for goods or services without competition when the Local Contract Review Board (BOCC) determines in writing that the goods or services are available from only one source.

The Determination must be based on written findings that may include:
The efficient utilization of existing goods requires the acquisition of compatible goods or services;
The goods or services require the exchange of software or data with other public or private agencies and are available from only one source;
Are for use in a pilot or experimental project or other findings to support the conclusion that goods and services are available from only one source

To the extent reasonably practical, the contracting agency shall negotiate with the sole source to obtain terms advantageous to the contracting agency.

Public Notice: Department shall give public notice of the Contract Review Board's Determination that the Goods or Services are available from only one source at least seven (7) days prior to contract award pursuant to OAR 137-047-0275(2).

An affected person may protest the Contract Review Board's determination in accordance with OAR 137-047-0710.

Instructions

Complete the Sole Source Determination Request Form and forward to the Contract Specialist along with the Agenda Report (bluesheet). It will be added to the next available public meeting agenda for approval. If approved you must provide public notice in the Herald and News and may submit the contract for approval no sooner than seven (7) days after publication of your notice to allow time to receive protests.

[The brackets contain instructions or examples for this Form. Please delete all brackets, and all italicized/underlined words after completing this Form.]

**KLAMATH COUNTY REQUEST FOR
SOLE-SOURCE DETERMINATION FOR GOODS AND SERVICES**

Memo to Local Contract Review Board (Board of County Commissioners):

From: [Agency, department/division/office]

Date:

Re: Sole Source Determination pursuant to Oregon Revised Statute (ORS) 279B.075 for [Describe the subject of the Contract]

Authority to enter into a Sole-Source Contract: ORS 279B.075(1)

Background:

[For examples:

Agency is preparing to purchase..... It's the Agency's intent to, by [date].

This sole source justification applies to the purchase of ...

Provide a brief description of the Contract or Contracts to be covered including _____ contemplated future purchases.]

Describe the product or service to be purchased.

The estimated cost is.....]

[Describe the reasons the agency is seeking this procurement method.]

[Identify the prospective Contractor in your background statement.]

Findings:

[The findings below must include factual information supporting the determination].

Market Research Overall finding. [Pursuant to ORS 279B.075, the County Department must address the market research conducted that demonstrates there is only one source that can provide the goods or services. This would include research of the Internet, trade journals, agency vendor lists, professional organizations, studies, catalogs/industrial periodicals, vendor sources, yellow pages, etc. For Information Technology Contracts any ownership or proprietary issues should be fully addressed and there must be written documentation to support facts.]

[ORS 279B.075 provides examples of findings that should be addressed. The County Department should select at least one of the findings and prepare the determination as it specifically relates to the good or service being procured. More than one finding can be addressed. The findings are as follows.]

Pursuant to ORS 279B.075 (2)(a): Provide findings supporting your determination that the efficient utilization of existing goods requires the acquisition of compatible goods or services from only one source. [Provide clear and concise information to support this determination.]

Pursuant to ORS 279B.075 (2)(b): Provide findings supporting your determination 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. [Provide clear and concise information to support this determination.]

Pursuant to ORS 279B.075 (2)(c): Provide findings supporting your determination that the goods or services are for use in a pilot or an experimental project. [Provide clear and concise information to support this determination.]

Pursuant to ORS 279B.075 (2)(d): Any other findings that support the conclusion that the goods or services are available from only one source. [Provide clear and concise information to support this determination. If there is more than one finding that supports this determination, please address them independently.]

[If a Brand Name is involved, the Authorized Agency must also satisfy the requirements of the Brand Name Rule, ORS 279B.215(2), and the Brand Name determination may be included within this Sole-Source Determination. Please identify the Brand Name determination and the appropriate Rule sections.]

Approved this _____ day of _____, 20_____.

Klamath County Board of Commissioners:

Chairman

Approved as to Form and
Legal Sufficiency:

Commissioner

County Counsel

Commissioner