

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of Amending Local Public Contracting Rules and Personal Services Contracting Rules Related to Federal Grant Compliance)
)
)
) ORDINANCE NO. 2017-1

SECTION 1. TITLE.

This Ordinance shall be known as Ordinance No. 2017-1, Amending Ordinance No. 2015-2, the Columbia County Public Contracting Ordinance, and Order No. 38-2006, the Columbia County Personal Services Contracting Rules.

SECTION 2. APPLICABILITY.

This Ordinance applies to the procurement of goods and services paid for in part or in full with a Federal award, by all public contracting agencies for which the Board of County Commissioners is the Local Contract Review Board (LCRB). Such public contracting agencies are hereinafter referred to as "County".

This Ordinance applies to the procurement of public goods and services under Ordinance No. 2015-2 as well as to the procurement of personal services contracts as defined in Order No. 38-2006, as amended by Order No. 121-2007.

SECTION 3. PURPOSE.

A. Pursuant to ORS 203.035, the Board of County Commissioners may, by ordinance, exercise authority within the County over matters of County concern, which includes the authority to adopt rules governing the letting of public contracts by County Agencies.

B. Pursuant to ORS 279A.070, in addition to adopting model rules, a contracting agency may, in the exercise of authority granted under ORS 279A.050, adopt rules necessary to carry out the provisions of the Public Contracting Code, including but not limited to rules for the procurement, management, disposal and control of goods, services, personal services and public improvements under the Public Contracting Code.

C. Pursuant to 2 CFR Part 200.317, the County is required to follow 2 CFR Part 200.318 through 200.326 when procuring property and services under a Federal award, and is required to update its procurement rules consistent with such Uniform Grant Guidance ("UGG"), not later than June 30, 2017. In addition, Community Development

Block Grant requirements include required procurement procedures giving preference to Section 3 Business Concerns.

D. The purpose of this Ordinance is to amend the Columbia County Public Contracting Rules and the Columbia County Personal Services Contracting Rules to implement the Uniform Grant Guidance procurement requirements (2 CFR 200.318 through 200.326), and Section 3 Procurement Procedures.

SECTION 4. AUTHORITY.

This Ordinance is adopted pursuant to ORS 203.035, 279C.105, and 2 CFR 200.317 through 2 CFR 200.326.

SECTION 5. HISTORY.

The Board of County Commissioners adopted Ordinance No. 2015-2, effective August 5, 2015. The Ordinance adopted rules of procedure for public contracting related to public goods and services, created a local contract review board, and exempted certain classes of public contracts, products and services from brand name restrictions and competitive bidding, bid security and/or performance bond requirements. The Board of County Commissioners adopted Order No. 38-2006 on May 10, 2006, and amendments thereto by Order No. 121-2007 on June 27th, 2007. These Orders adopted rules of procedure for procurement of personal services.

On December 26, 2014, the United States Office of Management and Budget (OMB) issued its Uniform Grant Guidance (“UGG”), which includes procurement standards applicable to the procurement of goods and services under a Federal award. All recipients of federal funds are required to have procurement standards in place consistent with the UGG requirements by June 30, 2017. Columbia County is a recipient of federal award funds and therefore must provide the written standards adopted herein.

SECTION 6. ADOPTION.

The Board of County Commissioners hereby adopts amendments to the Columbia County Public Contracting Rules and the Personal Services Contracting Rules, as set forth in Attachment 1, which is attached hereto, and is incorporated herein by this reference.

SECTION 7. AMENDMENTS.

The Board of County Commissioners may, by order, amend Attachment 1, as may be necessary to comply with changes to Federal or Oregon law, or to correct scrivener's errors.

SECTION 8. SEVERABILITY.

If any provision of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holdings shall not affect the validity of the remaining portions hereof.

SECTION 9. EMERGENCY CLAUSE.

This Ordinance being immediately necessary to maintain the public health, safety and welfare, an emergency is declared to exist and this Ordinance shall take effect immediately upon its adoption.

Adopted this 31st day of May, 2017.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

By: [Signature]
Henry Heimuller, Chair

By: [Signature]
Margaret Magruder, Commissioner

By: [Signature]
Alex Tardif, Commissioner

Attest:
By: [Signature]
Jan Greenhalgh, Recording Secretary

Approved as to form

First Reading: 5-31-17
Second Reading: 5-31-17
Effective Date: 5-31-17

By: [Signature]
Office of County Counsel

COLUMBIA COUNTY CONTRACTING RULES
FOR FEDERAL AWARDS

1. The Personal Services Contracting Rule, Order No. 38-2006, as amended by Order No. 121-2007, is further amended to add Section XVIII, to read as set forth in Paragraph 3, below.
2. The Columbia County Public Contracting Rules, adopted by Ordinance No. 2015-2, are amended to add Section H.8, to read as set forth in Paragraph 3, below.
3. Procurement Requirements for Federal Awards.
 - A. General Procurement Standards:
 - i. When procuring goods or services under a Federal award, the County will generally follow the applicable policies and procedures for the procurement under it's rules, and Oregon law, except as provided in this Section.
 - ii. For all purchases under a Federal award, the County shall maintain oversight to ensure that contractors perform in accordance with the terms and conditions, and specifications of their contracts or purchase orders.
 - iii. The County will follow its written standards covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts, Order No. 24-2016, as amended. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties above, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the County may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts, except as otherwise provided in County rules.
 - iv. The County will avoid acquisition of unnecessary or duplicative items. The County will consider consolidating or breaking out procurements to obtain a more economical purchase in accordance with Oregon law. Where appropriate an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

- v. To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the general government, the County will enter into state and local intergovernmental agreements where appropriate for procurement or use of common or shared goods and services.
- vi. The County will use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
- vii. The County will use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions.
- viii. The County will only award contracts to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources in accordance with 2 CFR 200.213, Suspension and Debarment.
- ix. The County will maintain a procurement file with records sufficient to detail the history of each procurement. Records must include the rationale for the procurement method selected, the selection of contract type, contractor selection or rejection, and the basis for the contract price.
- x. The County will only use a time and materials type contract after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. If a time and materials contract is used, the contract must include a not to exceed amount that the contractor exceeds at its own risk. In addition, the County must provide a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

B. Competition.

- i. All procurements must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for

such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

- a. Placing unreasonable requirements on firms in order for them to qualify to do business;
 - b. Requiring unnecessary experience and excessive bonding;
 - c. Noncompetitive pricing practices between firms or between affiliated companies;
 - d. Non-competitive contracts to consultants that are on retainer contracts;
 - e. Organizational conflicts of interest;
 - f. Specifying only a brand name product instead of allowing an equal product to be offered and describing the performance or other relevant requirements of the procurement;
 - g. Any arbitrary action in the procurement process.
- ii. The County must conduct procurements in a manner that prohibits the use of statutorily or administratively state, local or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where Federal statutes expressly mandate or encourage geographical preference. When contracting for architectural and engineering services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
 - iii. The County will follow its written procedures for procurement transactions including that all solicitations incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a brand name or equivalent description

may be used as a means to define the performance or other salient requirements of the procurement. The specific features of the named brand which must be met by offerors must be clearly stated. In addition, the procurement must identify all requirements which the offeror must fulfill and all other factors to be used in evaluating bids or proposals.

- iv. The County will routinely update any prequalified lists of persons, firms, or products which are used in acquiring goods and services to ensure maximum open and free competition. The County will not preclude potential bidders from qualifying during the solicitation period.

C. **Methods of Procurement.** The County will use one of the following methods of procurement when procuring goods or services under a Federal award:

- i. **Micro-purchases.** The aggregate dollar amount is set forth in 48 CFR Subpart 2.1 (currently \$3500/\$2000). To the extent practicable, the County must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the County considers the price to be reasonable.
- iii. **Small Purchase Procedures.** Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold set forth in 48 CFR Subpart 2.1 (currently \$150,000). If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.
- iii. **Sealed Bids.** Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitations for bids, is the lowest price. The sealed bid method is the preferred method for procuring construction, if the following conditions exist:
 - a. In order for sealed bidding to be feasible, the following conditions should be present: A complete, adequate and realistic specification or purchase description is available; two or more responsible bidders are willing and able to compete effectively for the business and the procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

- b. If sealed bids are used, the following requirements apply: Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, the invitation for bids must be publicly advertised; the invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond, all bids will be opened at the time and place prescribed in the invitation for bids, the bids must be opened publicly; and a firm fixed price contract award will be made in writing to the lowest responsible and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and any or all bids may be requested if there is a sound documented reason.

- iv. Competitive Proposals. Competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply: Requests for proposals must be publicized and identify all evaluation factors and their relative importance; Any response to publicized requests for proposal must be considered to the maximum extent practical; Proposals must be solicited from an adequate number of qualified sources; The County must have a written method for conducting technical evaluations of the proposals received and for selecting recipients; Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered. The County may use competitive proposal procedures for qualifications-based procurement of architectural/ engineering (A/E) professional services whereby competitors' qualification are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. This method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

- v. Non-competitive proposals. Procurement by non-competitive proposals is through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply: The item is available only from a single source;

the public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation; the Federal Agency or pass-through agency expressly authorizes noncompetitive proposals in response to a written request from the County; or after solicitation of a number of sources, competition is determined inadequate.

D. Contract Cost and Price.

- i. The County must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the County must make independent estimates before receiving bids or proposals.
- ii. The County must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
- iii. Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the County under its cost principles. (Order No. 29-2016).
- iv. The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

E. Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

- i. The County must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
- ii. Affirmative steps must include:
 - a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

- b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- e. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- f. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (a) through (e) of this section.

F. Procurement of Recovered Materials. The County and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

G. Grantor Review.

- i. The County must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the County desires to have the review accomplished after a solicitation has been

developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

- ii. The County must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:
 - a. The County's procurement procedures or operation fails to comply with the procurement standards in this part;
 - b. The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
 - c. The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;
 - d. The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
 - e. A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.
 - iii. The County may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third party contracts are awarded on a regular basis.
 - iv. The County may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the County that it is complying with these standards. The County must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.
- H. Bonding. For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency

or pass-through entity may accept the bonding policy and requirements of the County provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

- i. A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
 - ii. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
 - iii. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.
- H. **Contract Provisions.** The County's contracts must contain the applicable provisions described in Appendix II to Part 200- Contract Provisions for non-Federal entity Contracts Under Federal Awards in addition to all other applicable contract provisions required by the Federal award.
- I. **HUD Section 3 Procurement Procedures.** In addition to the foregoing UGG Procurement requirements, the County will follow the following additional requirements for Section 3 Contracting preferences when contracting results from HUD funding:
- i. Each bidder/proposer must include a Section 3 Opportunities Plan and Certification or a separate schedule which indicates its commitment to meet the Section 3 resident requirements.
 - ii. If a bidder/proposer fails to submit a Section 3 Opportunities Plan and Certification or a separate schedule and the related data along with the bid/proposal, such bid/proposals will be declared to be "non-responsive".
 - iii. The Section 3 Clause (24 CFR Part 135.38) will be incorporated into all covered solicitations and contracts.

- iv. For solicitations by telephone, letter, or other informal procedure, the solicitation must provide for participation by a reasonable number of competitive sources. At the time of solicitation, the parties must be informed of the Section 3 covered contract to be awarded with sufficient specificity, including the time within which quotations must be submitted and the information that must be submitted with each quotation.
- v. When a Section 3 covered contract is to be awarded based on the lowest price, the contract shall be awarded to the qualified section 3 business concern with the lowest responsive quotation, if it is reasonable and no more than 10 % higher than the quotation of the lowest responsive quotation from any qualified source.
- vi. When a Section 3 covered contract is to be awarded based on factors other than price, a request for quotations shall be issued by developing the solicitation, including a rating system for the assignment of points, including points within a range of 15 to 25 percent of the total number of available rating points to be set aside for the Section 3 preference. The contract shall be awarded to the responsible firm whose quotation is the most advantageous, considering price and all other factors specified in the rating system.
- vii. When a Section 3 covered contract is awarded under a sealed bid process, bids shall be solicited from all businesses. An award shall be made to the qualified Section 3 business concern with the highest priority ranking and with the lowest responsive bid if that bid is within the maximum total contract price established in the contracting party's budget for the specific project for which bids are being taken, and there is no more that 5% higher than the total bid price of the lowest responsive bid from any responsible bidder.
- viii. When a Section 3 covered contract is awarded under a competitive proposal process (RFP), the RFP shall identify all evaluation factors and their relative importance to be used to rate proposals. One of the evaluation factors shall address both the Section 3 preference and the acceptability of the strategy for meeting the Section 3 preference. Points shall be given in the range of 15-25 percent of the total number of points to be set aside for the Section 3 preference. A determination of the contractor's responsibility will include the submission of an acceptable Section 3 strategy. The contract award shall be made to the responsible firm whose proposal is determined most advantageous, considering price and all other factors specified in the RFP.