

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In Re: Local Contract Review)
Board Ordinance) ORDINANCE
NO. 86-1

Local Contract Review Board Ordinance

AN ORDINANCE ESTABLISHING A LOCAL CONTRACT REVIEW BOARD TO REVIEW PUBLIC CONTRACTS UNDER CHAPTER 279 OF THE OREGON REVISED STATUTES: ADOPTING RULES FOR THE BOARD: REPEALING ORDINANCE NO. 77-2 LOCAL CONTRACT REVIEW BOARD ORDINANCE: AND DECLARING AN EMERGENCY.

The Board of County Commissioners for Columbia County, Oregon, ordains as follows:

Section 1. Contract Review Board. Pursuant to ORS 279.055, the Board of County Commissioners for Columbia County, Oregon is hereby designated as the Local Contract Review Board for Columbia County. Relative to contract concerns of this County, the Board shall have all the powers granted to the State Director of the Department of General Services.

Section 2. Rules. There is hereby adopted by the County for the purpose of establishing rules governing public contracts in the County, the Attorney General's Model Public Contract Rules, Oregon Administrative Rules Chapter 137, Public Contract Exemptions, Oregon Administrative Rules Chapter 125 and Local Rules 1 and 2. One copy of each rule is filed in the Office of the County Clerk. These rules shall remain in effect until such time as the County Contract Review Board amends same pursuant to authority granted it under the laws of this state, or until otherwise amended by the Board of County Commissioners.

Section 3. Repealing Ordinance No. 77-2. Enactment of this ordinance shall repeal Ordinance No. 77-2. However, all public contracting in progress as of the date of enactment of this ordinance shall be governed by Ordinance No. 77-2 and the rules promulgated thereunder.

Section 4. Emergency. This ordinance being necessary for the immediate preservation and protection of the public peace,

health, safety, and general welfare of Columbia County, an emergency is hereby declared to exist and this ordinance shall be in full force and effect upon its passage.

DATED this 22nd day of January, 1986.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

Michael J. Suppes _____ aye _____ nay
Chairman

John R. Peterson _____ aye _____ nay
Commissioner

Vacant _____ aye _____ nay
Commissioner

MEMORANDUM TO AKIN BLITZ

December 31, 1985

FROM: , Richard G. Samuels
RE: Columbia County/Contracts
FILE: 14798-53

After preliminary review of Columbia County's proposed procurement procedures, I believe the County should adopt the state model rules with some alterations.

The state model public contract rules are embodied in Chapters 137 and 125 of the Oregon Administrative Rules. (OARs) Chapter 137 deals with public bidding and Chapter 125 deals with exemptions which are permitted under ORS 279.015 and ORS 279.017. Columbia County's proposed rules have sections which are analogous to some of the OAR sections, they have sections which are not included in the OARs, and they do not address many areas addressed by the OARs.

There are some specific problems in the proposed rules which should be addressed even if the County does not adopt the state model rules. Section 6 of the proposed rules has many parallels to OAR Chapter 125.

Section 6(a) parallels ORS 279.015(1)(a) in its first part. The second part, which states, "contracts the cost of which is provided by other public agencies or the federal government" are exempt from competitive bidding probably violates the statute. Just because another agency pays the cost of a contract, there is no reason the contract should be exempt from the public bidding rules.

Section 6(b) parallels ORS 279.015(b) and is therefore superfluous.

Section 6(c) through 6(k) parallel various provisions of OAR Ch 125. Section 6(g) does not, and probably should, include a time limit for requirements contracts. OAR 125-310-300, which is the analogous OAR section, has a three-year time limit.

Section 6(l) does not seem warranted. This could be dealt with with a requirements contract which would be subject to competitive bidding. It could lead to the possibility of sweetheart deals or other improprieties. The materials involved are fungible and there is no reason they should not be obtained by competitive bidding.

Section 6(j) should define "reasonable purchase area." I would imagine there are many items which might only have one seller in Columbia County but might have many sellers in Portland with resultant lower prices.

I do not understand the purpose of Section 6(m). It abrogates responsibility to the state. This may not be desirable. It also leaves open the possibility of impropriety.

Section 6(n) is probably too broad. OAR 125-310-135 provides a procedure for letting food service contracts. There is no reason why food service contracts for the jail should be exempt from competitive bidding regulations.

The exemptions for purchase of data processing equipment embodied in Section 6(o) are probably adequate.

However, OAR 125 Division 120, which provides exemptions for information systems including data processing and telecommunication systems, is, I think, a better thought out section. Chapter 125 also provides a process for soliciting proposals which conforms with private industry practice for this type of purchase.

Section 12 on mandatory prequalification contains several redundant sections. Sections 12(c) to (e) are redundant of ORS 279.039(2) and need not be included. Section 12(f) is redundant of ORS 279.039(3). In Section 13, ORS 279.065 should be ORS 279.025.

Section 14 deals with protests. This is not covered explicitly in the statute or the OARs. I think it is a good addition to any rules adopted by the County. Section 14(j) is not consistent with ORS 279.067, which permits an adversely affected bidder to sue in Circuit Court and permits the court to grant equitable relief. I do not think the Board can limit the relief available.

Section 15 is in addition to the OARs and also, I think, useful.

A major failing of the proposed rules is they fail to address most of the areas covered in Chapter 137 of the Attorney General's model rules. They deal primarily with exemptions, which are covered in Chapter 125 of the OARs. For that reason, rather than try to rewrite the rules to incorporate the area covered in the model rules, I would

recommend adoption of the model rules with appropriate changes to makes the rules applicable specifically to Columbia County. This would be probably more efficient than to try to modify the draft rules.

The draft rules are a revision of the rules adopted pursuant to Ordinance 77-2 which were modelled on prior state rules. Rather than adopting a modification of a modification, the county would be better off adopting the model rules.

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the public contracting officer. After investigation, the public contracting officer shall promptly notify the prospective bidder whether or not he is qualified to perform the contract and if not qualified, identify what sections of these rules with which the bidder has failed to comply. Appeals shall be in accord with Section 12(g).

Section 14. Protests. A protest is a written complaint concerning the solicitation or award of a contract. It must be filed with the public contracting officer by a party with a direct financial interest adversely affected by the procurement action. Upon filing with the public contracting officer, the public contracting officer shall review each protest to determine whether it is appropriate to defer the protested procurement action.

(a) A party with a financial interest which is adversely affected by the procurement decision may file a protest appeal with the Board. A recipient of a subcontract may only file a protest appeal for issues which relate to the award of the subcontract by a contractor.

(b) Protest appeals must be filed with the Supervisor of the Fiscal Department, Columbia County, Oregon, as the public contracting officer designated by the Board.

(c) Protest appeals must (1) be written; (2) include a copy of the public contracting officer's determination of the protest; (3) state the basis for the appeal; and (4) request a determination under this section.

(d) On filing of the protest appeal with the public contracting officer, the party filing the protest appeal must concurrently transmit a copy of all protest documents and the attachments to all other parties with direct financial interest which may be adversely affected by the determination of the protest appeal.

(e) The Board will only consider written protest appeals received by the public contracting officer within seven (7) calendar days after the adversely affected party receives the adverse determination.

(f) Any party which submits a document to the Board during the course of a protest appeal must simultaneously furnish all other affected parties with a copy of the document.

(g) If the Board does not receive the protest before bid opening or the closing date for receipt of proposals, the Board may dismiss as untimely any protest appeal based upon alleged improprieties in the solicitation which were clearly apparent before bid opening or before the deadline for receipt of initial proposals.

(h) In cases not involving improprieties in solicitation, the Board may dismiss as untimely a protest appeal where the adversely affected party did not file the initial protest within seven (7) calendar days of the date the basis for the protest was known or should have been known, whichever is earlier.

(i) The Board will determine the briefing schedule and the submission of evidence to determine the appeal. The Board shall have discretion to determine if oral testimony or argument will be heard.

See OES 279.067

(j) All decisions of the Board shall be in writing and shall be reviewable only upon a petition for writ of review in the Circuit Court of Columbia County filed within fifteen (15) days after the date of the decision of the Board.

Section 15. Standards of Conduct. The following applies to all officers, employees and agents of Columbia County:

(a) No employee, officer or agent of Columbia County shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- (1) The employee, officer or agent,
 - (2) Any member of his or her immediate family,
 - (3) His or her partner, or,
 - (4) An organization which employs, or is about to employ,
- any of the above, has a financial or other interest in the firm selected for award.

(b) Columbia County officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements.

(c) Penalties, sanctions or other disciplinary actions for violations of these standards of conduct by Columbia County officers, employees, or agents, or by contractors or their agents shall be to the extent permitted by State or local laws or regulations.

(d) Nothing in these standards of conduct is intended to prohibit any Columbia County employee, officer or agent from accepting an unsolicited gift where the financial interest is not substantial (under \$25.00) or where the gift has nominal intrinsic value.