

WASCO COUNTY, OREGON  
COMMISSIONER'S JOURNAL

CJ2013-000085

FILED  
WASCO COUNTY

2013 FEB 21 A 9:09

LINDA BROWN  
COUNTY CLERK

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IN THE BOARD OF COMMISSIONERS OR THE STATE OF OREGON  
IN AND FOR THE COUNTY OF WASCO

IN THE MATTER OF THE ADOPTION OF AMENDED)  
RULES GOVERNING PUBLIC CONTRACTS IN ) RESOLUTION  
WASCO COUNTY, OREGON ) #13-005

NOW ON THIS DAY, the above-entitled matter having come on regularly for consideration, said day being one duly set in term for the transaction of public business and a majority of the Board being present; and

WHEREAS, On March 24, 1976, this Board adopted an Ordinance pursuant to ORS 279.055 designating this Board as the Local Contract Review Board for Wasco County; and adopting temporary rules for governing public contracts in Wasco County; and

WHEREAS, on May 26, 1976, this Board adopted permanent rules to govern public contracts in Wasco County, Oregon; and

WHEREAS, on November 21, 2001, February 16, 2005, and August 5, 2005, this Board adopted Resolutions amending the rules governing public contracts in Wasco County, Oregon; and

WHEREAS, additional changes to the County's rules governing public contracts are now being proposed in order to more closely align with Oregon State contracting rules.

NOW, THEREFORE, IT IS HEARBY RESOLVED: That after thorough consideration this Board adopts the attached and by this reference incorporated herein amended rules governing public contracts in Wasco County, Oregon; and

IT IS HEREBY FURTHER RESOLVED: That it is the Board's findings that these amended rules, which include the exemption of certain classes of public contracts, will unlikely encourage favoritism in the award of public contracts and the awarding of public contracts pursuant to the exemptions will result in substantial cost savings to Wasco County.

DATED this 20<sup>th</sup> day of February, 2013

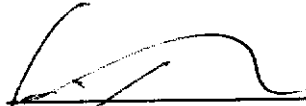
Wasco County  
Board of County Commissioners

  
\_\_\_\_\_  
Rod Runyon, Commission Chair

  
\_\_\_\_\_  
Scott Hege, County Commissioner

  
\_\_\_\_\_  
Steve Kramer, County Commissioner

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Eric J. Nisley  
Wasco County District Attorney

**WASCO COUNTY**

**LOCAL CONTRACT REVIEW BOARD**

**PUBLIC CONTRACTING REGULATIONS**



# WASCO COUNTY

## LOCAL CONTRACT REVIEW BOARD

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## **GENERAL PROVISIONS**

### **1. Introduction**

This document defines the purchasing policies and procedures for Wasco County and establishes guidelines for public procurements and contracting. The policies and procedures in this document are established in accordance with the applicable Local Contract Review Board Rules and the Oregon State Revised Statutes.

The provisions of this document and all rules adopted under this document may be cited as the Wasco County Public Contracting Regulations.

### **2. Purpose**

It is the policy of Wasco County in adopting the Public Contracting Regulations to utilize public contracting practices and methods that maximize the efficient use of public resources and the purchasing power of public funds by:

(1) Promoting impartial and open competition;

(2) Using solicitation materials that are complete and contain a clear statement of contract specifications and requirements; and

(3) Taking full advantage of evolving procurement methods that suit the contracting needs of Wasco County as they emerge within various industries.

### **3. Interpretation**

In furtherance of the purpose of the objectives set forth above, it is Wasco County's intent that the Wasco County Public Contracting Regulations be interpreted to authorize the full use of all contracting powers and authorities described in ORS Chapters 279A, 279B and 279C.

### **4. Authority**

Except as expressly delegated under these regulations, the Wasco County Board of Commissioners reserves to itself the exercise of all duties and authority of a Local Contract Review Board and a contracting agency under state law, including but not limited to, the power and authority to:

(1) Approve the use of contracting methods and exemptions from contracting methods for a specific contract or certain classes of contracts;

(2) Exempt the use of brand name specifications for public improvement contracts;

(3) Approve the partial or complete waiver of the requirement for the delivery of a performance or payment bond for construction of a public improvement;

(4) Authorize the use of electronic advertisement for contracts in lieu of publication in a newspaper of general circulation;

(5) Hear properly filed appeals of Wasco County's determination of prequalification, debarment or contract award;

(6) Adopt contract rules under ORS 279A.065 and ORS 279A.070 including, without limitation, rules for procurement, management, disposal and control of goods, services, personal services and public improvements;

(7) Award all contracts;

(8) Review the Attorney General's Model Rules to determine whether any modifications to those regulations need to be adopted by Wasco County to ensure compliance with statutory changes; and

(9) Delegate to any employee or agent of Wasco County any of the duties or authority of a contracting agency.

#### **5. Model Rules**

The model rules adopted by the Oregon Attorney General under ORS 279A.065 do not apply to the contracts of Wasco County, except for those rules that are specifically referenced and adopted in these regulations. However, the model rules should serve as a reference guide on public contracting issues if those issues are not addressed or provided for in these regulations.

#### **6. Delegated Authority**

The following officials of Wasco County are designated as Public Contracting Officers and are hereby authorized to conduct solicitations, enter into small and intermediate procurements and recommend award of public contracts for which there is an appropriation, subject to the provisions of this document:

- (1) Department Heads; and
- (2) Directors or their designees

#### **7. Severability**

The provisions in this document are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, or provision, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this document, or the validity of its application to other persons or circumstances.

## 8. Definitions

The following words and phrases mean:

(1) Addendum or Addenda – An addition or deletion to, material change in, or general interest explanation of a solicitation document.

(2) Competitive bidding or Competitive proposals – The solicitation of competitive offers which follow a formal process by which contracting agencies advertise and issue a written solicitation document, receive, open and award bids or proposals.

(3) Competitive quotes – The solicitation of offers from competing vendors. The solicitation may be by advertisement or a request to vendors to make an offer. The solicitation and the offer must be written, signed and dated by the vendors. The solicitation shall be clear and written to ensure that all quotes are treated equally. The solicitation should also include written specifications.

(4) Contracting agency – A public body authorized by law to conduct procurement. Contracting agency includes, but is not limited to, the Wasco County Board of Commissioners, public contracting officers and any other agents or officials authorized by the Commissioners to conduct procurements on their behalf.

(5) Contract Review Board – The Wasco County Board of Commissioners.

(6) Cooperative procurements – Also referred to as “piggy-backing”, these are procurements conducted by or on behalf of one or more contracting agencies. A cooperative procurement includes but is not limited to multiparty contracts and price agreements. Typically, a contracting agency may establish a contract or price agreement through a cooperative procurement if:

(a) The administering contracting agency’s solicitation and award process for the original contract is an open and impartial competitive process;

(b) The administering contracting agency’s solicitation and the original contract allow other contracting agencies to establish contracts or price agreements under the terms, conditions and prices of the original contract;

(c) The contractor agrees to extend the terms, conditions and prices of the original contract to the purchasing contracting agency; and

(d) No material change is made in the terms, conditions or prices of the contract or price agreement between the contractor and the purchasing contracting agency from the terms, conditions and prices of the original contract between the contractor and the administering contracting agency.

(7) Electronic Procurement - A contracting agency may conduct all phases of a procurement by electronic methods without limitation, including the electronic posting of advertisements or public notice of bids or proposals, receipt of electronic offers, and electronic notice of award.

(8) Emergency – Any circumstances that could not have been reasonably foreseen and create a substantial risk of loss, damage or interruption of services or the substantial threat to property, public health, welfare or safety and requires prompt execution of a contract to remedy the condition, or any other situation as determined by the Wasco County Board of Commissioners as an emergency.

(9) Goods and services – Supplies, equipment, materials and services other than personal services and any personal property, including tangible, intangible and intellectual property and rights and licenses in relation thereto, that a contracting agency is authorized by law to procure.

(10) Grants – An agreement under which a contracting agency receives moneys, property or other assistance, including but not limited to federal assistance that is characterized as a grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets, from a grantor for the purpose of supporting or stimulating a program or activity of the contracting agency and in which no substantial involvement by the grantor is anticipated in the program or activity other than involvement associated with monitoring compliance with the grant conditions; or

An agreement under which a contracting agency provides moneys, property or other assistance, including but not limited to federal assistance that is characterized as a grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets, to a recipient for the purpose of supporting or stimulating a program or activity of the recipient and in which no substantial involvement by the contracting agency is anticipated in the program or activity other than involvement associated with monitoring compliance with the grant conditions.

A grant does not include a public contract for a public improvement, for public works, as defined in ORS 279C.800, or for emergency work, minor alterations or ordinary repair or maintenance necessary to preserve a public improvement, when under the public contract a contracting agency pays, in consideration for contract performance intended to realize or to support the realization of the purposes for which grant funds were provided to the contracting agency, moneys that the contracting agency has received under a grant.

(11) Findings – The justification for a contracting agency conclusion. Most commonly used for contract exemptions. Findings may include, but are not limited to, information regarding operation, budget and financial data, public benefits, cost savings, competition in public contracts, quality and aesthetic considerations, value engineering, specialized expertise needed, public safety, market conditions, technical complexity, availability, performance and funding sources.

(12) Invitation to bid (ITB) – All documents, whether attached or incorporated by reference, used for publicly soliciting competitive sealed bids.



(13) Model Rules – The public contracting rules adopted by the Attorney General under ORS 279A.065.

(14) Personal services contract, other than (A/E) Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying and Related Services – A contract or member of a class of contracts whose primary purpose is to acquire specialized skills, knowledge and resources in the application of technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment, and for which the quality of the service depends on attributes that are unique to the service provider. Such services include, but are not limited to attorneys, auditors, accountants and other licensed professionals, medical personnel including physicians, nurses and therapists, artists, designers, data processing consultants, performers, property managers, educators and investigators.

The procedures that a contracting agency creates to screen and select consultants to provide these services and to select a candidate under this section are at the contracting agency's sole discretion.

(15) Personal services contract for (A/E) Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying and Related Services – A contract or member of a class of contracts whose primary purpose is to acquire specialized skills, knowledge and resources in the application of technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment, and for which the quality of the service depends on attributes that are unique to the service provider. Such services include, but are not limited to, architects, engineers, land surveyors, transportation planners, landscape architectural services, facilities planning services, energy planning services, space planning services, hazardous substances or hazardous waste or toxic substances testing services, cost estimating services, appraising services, material testing services, mechanical system balancing services, commissioning services, project management services, construction management services and owner's representation services or land-use planning services.

A contracting agency shall select consultants to provide architectural, engineering, photogrammetric mapping, transportation planning or land surveying services on the basis of the consultant's qualifications for the type of professional service required. A contracting agency may solicit or use pricing policies and proposals or other pricing information, including the number of hours proposed for the service required, expenses, hourly rates and overhead, to determine consultant compensation only after the contracting agency has selected a candidate.

(16) Procurement – The act of purchasing, leasing, renting or otherwise acquiring goods or services. It includes each function and procedure undertaken or required to enter into a public contract, administer a public contract and obtain the performance of a public contract.

(17) Public contract – 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.

(18) Public contracting officer – The person or persons designated by the Wasco County Board of Commissioners charged with the responsibility for conducting solicitations, entering into small and intermediate procurements and making recommendation on the award of public contracts to the Wasco County Board of Commissioners.

(19) Public improvement – Projects for construction, reconstruction or major renovation on real property by or for a public agency. Public improvement does not include projects for which no funds of Wasco County are directly or indirectly used, emergency work, minor alteration, ordinary repair or maintenance necessary in order to preserve a public improvement.

(20) Request for proposals (RFP) – All documents, whether attached or incorporated by reference, used for publicly soliciting competitive proposals.

(21) Responsive bid or Responsive proposal – A bid or proposal that substantially complies with the solicitation documents and prescribed procurement procedures and requirements.

(22) Solicitation documents – An invitation to bid, request for proposals, call for competitive quotes or other documents issued to invite offers from prospective contractors.

(23) Specifications – Any description of the physical or functional characteristics, or the nature of a supply, service or construction item, including any requirement for inspecting, testing or preparing a supply, service or construction item for delivery and the quantities or qualities of materials to be furnished under contract. Specifications generally will state the result to be obtained and describe the method and manner of the work to be performed.

(24) Surplus property – Personal property owned by Wasco County which is no longer needed for use by the department to which such property has been assigned.

## PURCHASING PROCESS

### 9. Types of Purchases

What types of procurement activities are covered by this document?

#### *The purchase of goods and services*

These are defined as a contract for any supplies, equipment, materials and services - other than personal services. These types of purchases can also include entering into a lease or rental agreement, the procurement process is the same.

#### *Contracts for personal services*

These are defined as a contract to acquire specialized skills, knowledge, or professional, technical or scientific expertise. Such services usually include consultants, designers and other licensed professionals. State statute requires a qualification based selection process for personal service contracts with architects, engineers, land surveyors and related services. Selection for other types of personal services is based on the public agency's process.

#### *Contracts for public improvement projects*

These are defined as contracts for projects that perform construction, reconstruction or major renovation work on real property by or for a public agency. These contracts do not include projects where no public agency funds are directly or indirectly used, emergency work, minor alteration, ordinary repair or maintenance.

### 10. Purchasing Procedure

Generally, most purchases do not require using a formal competitive selection process. However, it is the responsibility of the purchasing agent to verify what procedure to use for their procurement.

Before determining whether to call for price quotes, advertise a notice inviting bids or request for proposals, take the following steps:

**Classify what is being procured.** Is the purchase for supplies, equipment or other general goods and services? Would this purchase result in a public improvement? Are you seeking services that are professional or technical in nature? Once the purchase has been classified;

**Determine the expected cost.** Be fair in the pricing assessment. What would you expect to pay for this good or service on the open market with no deals or discounts? It is permissible to call prospective vendors and ask for estimated costs or pricing for budgetary purposes. Check with other agencies for comparative pricing on personal or professional services contracts. Many public improvement project costs will be available or posted on the internet and make good pricing samples, depending on the project relevance.

Note: Public agencies are not allowed to artificially divide one purchase into two or more to try and drive down the estimated price.

Once the expected cost has been established, check the purchasing thresholds to determine what procurement process to use.

## **PURCHASING THRESHOLDS**

### **11. Procurement of goods and services:**

\$0 - \$5,000	Any procurement of goods or services not exceeding \$5,000 is considered a Small Procurement and may be awarded in any manner deemed practical or convenient by the contracting agency, including direct selection or award.
\$5,000 - \$150,000	<p>Any procurement of goods or services exceeding \$5,000 but not exceeding \$150,000 is considered an Intermediate Procurement. When conducting an intermediate procurement, a contracting agency shall seek at least three (3) competitive quotes from prospective contractors. The contracting agency shall keep a written record of the sources of the quotes received. If three (3) competitive quotes are not reasonably available, fewer will suffice, but the contracting agency shall make a written record of the effort made to obtain the quotes.</p> <p>If a contract is awarded, the contracting agency shall award the contract to the contractor whose offer will best serve the interests of Wasco County, taking into account price as well as considerations including, but not limited to, experience, expertise, product functionality, suitability for a particular purpose and contractor responsibility.</p>
\$150,000 +	Any procurement of goods or services exceeding \$150,000 requires the solicitation of competitive offers which follow a formal process. The contracting agency shall advertise and issue written solicitation documents, then receive, open and award either bids or proposals. (Refer to the Invitation to Bid or Request for Proposal procedures)

A purchase may not be artificially divided or fragmented so as to constitute a small or intermediate procurement.

## 12. Contracts for public improvement projects:

These are contracts for projects that perform construction, reconstruction or major renovation work on real property for a public agency. These contracts do not include projects where no public agency funds are used, or emergency work, minor alteration, ordinary repair or maintenance.

\$0 - \$5,000	The public improvement contract may be awarded in any manner deemed practical or convenient by the contracting agency, including direct selection or award.
\$5,000 - \$100,000	<p>For public improvement contracts exceeding \$5,000 but not exceeding \$100,000, the contracting agency shall seek at least three (3) competitive quotes from prospective contractors. The contracting agency shall keep a written record of the sources of the quotes received. If three (3) competitive quotes are not reasonably available, fewer will suffice, but the contracting agency shall make a written record of the effort made to obtain the quotes.</p> <p>If a contract is awarded, the contracting agency shall award the contract to the contractor whose offer will best serve the interests of Wasco County, taking into account price as well as considerations including, but not limited to, experience, expertise, product functionality, suitability for a particular purpose and contractor responsibility.</p>
\$100,000 +	Any public improvement contract exceeding \$100,000 requires the solicitation of competitive offers which follow a formal process. The contracting agency shall advertise and issue written solicitation documents, then receive, open and award either bids or proposals. (Refer to the Invitation to Bid or Request for Proposal procedures)

Note: The purchasing thresholds for public improvements are lower than the thresholds for procurement of goods and services or personal services contracts. These thresholds are set by Oregon State statute.

### **13. Contracts for personal services, other than (A/E) Architectural & Engineering:**

If the contract is for personal services other than architectural, engineering, photogrammetric mapping, transportation planning, land surveying and related services, then the process to screen and select these consultants are at the contracting agency's sole discretion and price may be used as a selection criteria.

There are no specific dollar limits or purchasing thresholds for these types of personal services contracts.

Contracting agents need to refer to Exemptions from Competitive Selection: 21. Personal Services Contracts, other than (A/E) Architectural, Engineering, Photogrammetric mapping, Transportation Planning or Land Surveying and Related Services for the approved selection method.

### **14. Contracts for personal services, (A/E) Architectural & Engineering:**

If the contract for personal services is for architectural, engineering, photogrammetric mapping, transportation planning, land surveying and related services, then the process to screen and select these consultants shall be on the basis of the consultant's qualifications for the type of professional service required.

A contracting agency may solicit or use pricing policies to determine the consultant's compensation only after the contracting agency has selected a candidate. The process to screen and select these consultants are at the contracting agency's sole discretion as long as the process is qualification based.

Contracting agents need to refer to Exemptions from Competitive Selection, 22. Personal Services Contracts for (A/E) Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying and Related Services for the approved selection method.

Once the purchasing thresholds have been established, the purchasing agent can then determine if a contract exemption is allowed for their procurement. There are several types of goods, services and classes of contracts that are exempt from the competitive selection process, regardless of price.

## EXEMPTIONS FROM COMPETITIVE SELECTION

The following is a list of contracts that are exempt from the competitive selection process.

### 15. General Class Exemptions

These are general contract exemptions listed in Oregon State statute and can be utilized with no additional findings or action by the local contract review board.

In accordance with ORS 279A.025, the following classes of contracts shall be exempt from competitive selection:

- (1) Contracts between contracting agencies or between contracting agencies and the federal government;
- (2) Insurance and service contracts as provided for under ORS 414.115 - Medical assistance by insurance or service contracts; 414.125 - Rates on insurance or service contracts; requirements for insurer or contractor, 414.135 and 414.145 - Contracts relating to direct providers of care and services, for purposes of source selection;
- (3) Grants; "Grant" means:
  - (a) A Public Contract under which an agency receives money, property or other value from a grantor for the purpose of supporting or stimulating an agency program or activity, and in which no substantial involvement by grantor is anticipated in the contemplated program or activity other than activities associated with monitoring compliance with grant conditions; or
  - (b) A Public Contract under which an agency provides money, property or other value to a recipient for the purpose of supporting or stimulating a program or activity of the recipient, and in which no substantial involvement by agency is anticipated in the contemplated program or activity other than activities associated with monitoring compliance with grant conditions.
- (4) Contracts for professional or expert witnesses or consultants to provide services or testimony relating to existing or potential litigation or legal matters in which a public body is or may become interested;
- (5) Acquisitions or disposals of real property or interest in real property;
- (6) Sole-source expenditures when rates are set by law or ordinance for purposes for source selection;
- (7) Procurements by a contracting agency from an Oregon Corrections Enterprises program;
- (8) Energy savings performance contracts;
- (9) Contracts, agreements or other documents entered into, issued or established in connection with:

(a) The incurring of debt by a public body, including but not limited to the issuance of bonds, certificates of participation and other debt repayment obligations, and any associated contracts, agreements or other documents, regardless of whether the obligations that the contracts, agreements or other documents establish are general, special or limited;

(b) The making of program loans and similar extensions or advances of funds, aid or assistance by a public body to a public or private body for the purpose of carrying out, promoting or sustaining activities or programs authorized by law; or

(c) The investment of funds by a public body as authorized by law, and other financial transactions of a public body that by their character cannot practically be established under the competitive contractor selection procedures of ORS 279B.050 to 279B.085;

(10) Contracts for employee benefit plans as provided in ORS 243.105 (1), 243.125 (4), 243.221, 243.275, 243.291, 243.303 and 243.565.

#### **16. Federal Purchasing Programs Exemption**

When the price of goods or services has been established by an agency of the federal government, the county may purchase those goods and services without a subsequent competitive process.

(1) As authorized by ORS 279A.180, a contracting agency may make procurements without competitive selection under a local government purchasing program administered by the United States General Services Administration (GSA) as provided in this section:

(a) The procurement must be made in accordance with procedures established by GSA for procurements by local governments and approved by the contract review board. The contracting agency shall provide the contract review board a copy of the documentation from GSA establishing permission to purchase under the federal program.

(b) The price of the goods or services must be established under price agreements between the federally approved vendor and GSA.

(c) The price of the goods or services must be less than the price at which such goods or services are available under state or local cooperative purchasing programs that are available.



## **17. Use or Disposal of Personal Property Exemption**

(1) As authorized by ORS 279A.185, a contracting agency may dispose of personal property upon a determination made by the contracting agency that the method of disposal is in the best interest of the county. Factors that may be considered include costs of the sale, administrative costs and public benefits. The contracting agency shall maintain a record of the reason for the disposal method selected and the manner of the disposal. Personal property may be used or disposed of by any of the following methods:

(a) Without competition, transfer or sell to another public agency.

(b) By publicly advertised auction to the highest bidder.

(c) By publicly advertised invitation to bid.

(d) By liquidation sale using a commercially recognized third-party liquidator.

(e) Establish a fixed sale price based upon an independent appraisal or published schedule of values generally accepted by the insurance industry, schedule and advertise a sale date, and sell to the first buyer meeting the sales terms.

(f) By trade-in, in conjunction with the acquisition of other price-based items.

(g) By donation to any organization operating within or providing a service to residents of Wasco County.

(2) Personal property which has an estimated value of less than \$5000, or for which the costs of sale are likely to exceed the sale proceeds, may be disposed of by any means determined to be cost effective. Personal property of this nature cannot be given to any employee of the county, or their immediate relatives.

## **18. Cooperative Procurement Exemption**

Also referred to as "piggy-backing", cooperative procurements are purchases conducted by or on behalf of one or more contracting agencies. A cooperative procurement includes but is not limited to multiparty contracts and price agreements. Typically, a contracting agency may establish a contract or price agreement through a cooperative procurement if:

(a) The administering contracting agency's solicitation and award process for the original contract is an open and impartial competitive process;

(b) The administering contracting agency's solicitation and the original contract allow other contracting agencies to establish contracts or price agreements under the terms, conditions and prices of the original contract;

(c) The vendor agrees to extend the terms, conditions and prices of the original contract to the purchasing contracting agency; and

(d) No material change is made in the terms, conditions or prices of the contract or price agreement between the vendor and the purchasing contracting agency from the terms, conditions and prices of the original contract between the vendor and the administering contracting agency.

(1) As provided by ORS 279A.200 to 279A.225, cooperative procurements may be made without competitive solicitation.

(2) A contracting agency may participate in, sponsor, conduct or administer a cooperative procurement for the purchase of any goods or services, but not for public improvements.

#### **19. Sole-source Procurements Exemption**

(1) As authorized by ORS 279B.075, a contracting agency may award a contract for goods or services without competition when the local contract review board determines in writing that the goods or services, or classes of goods or services, are available from only one source. The local contract review board shall have the authority to determine the geographic parameters when utilizing a sole-source exemption. Typically, the sole-source determination will be within the boundaries of the state of Oregon, but a broader geographic area can be utilized.

(2) The determination of a sole-source must be based on written findings that include, but are not limited to:

(a) That the efficient utilization of existing goods requires the acquisition of compatible goods or services;

(b) 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;

(c) That the goods or services are for use in a pilot or an experimental project;

(d) Other findings that support the conclusion that the goods or services are available from only one source.

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

#### **20. Emergency Procurements Exemption**

(1) As authorized by ORS 279B.080, a contracting agency may make or authorize others to make emergency procurements of goods or services in an emergency. The contracting agency shall document the nature of the emergency and describe the method used for the selection of the particular contractor.

**21. Personal Services Contracts, other than (A/E) Architectural, Engineering, Photogrammetric mapping, Transportation Planning or Land Surveying and Related Services Exemption**

As authorized by ORS 279A.055, the local contract review board may designate certain service contracts or classes of service contracts as personal services contracts.

(1) Pursuant to the authority granted by ORS 279A.055, the following service contracts or classes of service contracts are designated as personal service contracts:

(a) Contracts whose primary purpose is to acquire specialized skills, knowledge and resources in the application of technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment, and for which the quality of the service depends on attributes that are unique to the service provider. Such services include, but are not limited to attorneys, auditors, accountants and other licensed professionals, medical personnel including physicians, nurses and therapists, artists, designers, data processing consultants, contracts for services of a specialized, creative or research-oriented nature, performers, property managers, educators and investigators.

(b) Personal services include incidental materials such as written reports or opinions and other supplemental materials required for providing the services.

(2) As authorized by ORS 279A.070 the local contract review board shall create procedures for screening and selection of persons to perform personal services and architectural, engineering and land surveying or related services.

(3) Pursuant to the authority granted by ORS 279A.070 the procedures for screening and selection of persons to perform personal services shall be by one of the following methods:

(a) Direct appointment. The criteria for when this selection process may apply include:

(i) When the type of work needed has been substantially described, planned or otherwise previously studied or rendered in an earlier contract with the consultant and the new contract is a continuation of that work; or

(ii) An emergency exists.

(b) Informal solicitation of competitive quotes from three (3) prospective consultants. If three (3) competitive quotes are not reasonably available, fewer will suffice, but the contracting agency shall make a written record of the effort made to obtain the quotes; or

(c) Formal solicitation of competitive sealed proposals.

(4) The evaluation of any quotes or proposals may include, but is not limited to the consideration of:

(a) Specialized experience, capabilities and technical competence that may be demonstrated by the proposed approach and methodology to meet the project requirements;

(b) Resources available to perform the work and the proportion of the candidate staff's time that would be spent on the project, including any specialized services, within the applicable time limits;

(c) Record of past performance, including but not limited to price and cost data from previous projects, quality of work, ability to meet schedules, cost control and contract administration;

(d) Ownership status and employment practices regarding minority, women and emerging small businesses or historically underutilized businesses;

(e) Availability to the project locale;

(f) Familiarity with the project locale; and

(g) Proposed project management techniques.

## **22. Personal Services Contracts for (A/E) Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying and Related Services Exemption**

As authorized by ORS 279C.105, a contracting agency may enter into a contract for architectural, engineering, photogrammetric mapping, transportation planning or land surveying services and related services.

A contracting agency that is authorized to enter into a contract for architectural, engineering, photogrammetric mapping, transportation planning or land surveying services and related services shall adopt procedures to screen and select persons to perform such services under ORS 279C.110 or 279C.120.

A local contract review board by ordinance, resolution, administrative rule or other regulation may designate certain personal services contracts or classes of personal service contracts as contracts for architectural, engineering, photogrammetric mapping, transportation planning or land surveying services or related services.

(1) A contracting agency shall select consultants to provide architectural, engineering, photogrammetric mapping, transportation planning or land surveying services on the basis of the consultant's qualifications for the type of professional service required.

A contracting agency may solicit or use pricing policies and proposals or other pricing information, including the number of hours proposed for the service required, expenses, hourly rates and overhead, to determine consultant compensation only after the contracting agency has selected a candidate.

(2) The procedures that a contracting agency creates to screen and select consultants and to select a candidate under this section are at the contracting agency's sole discretion.

(3) Subject to the requirements of the provisions of subsection (1) of this section, the contracting agency may adjust the procedures to accommodate the contracting agency's scope, schedule or objectives for a particular project if the estimated cost of the architectural, engineering, photogrammetric mapping, transportation planning or land surveying services for the project does not exceed \$250,000.

A contracting agency's screening and selection procedures under this section, regardless of the estimated cost of the architectural, engineering, photogrammetric mapping, transportation planning or land surveying services for a project, may include considering each candidate's:

(a) Specialized experience, capabilities and technical competence, which the candidate may demonstrate with the candidate's proposed approach and methodology to meet the project requirements;

(b) Resources committed to perform the work and the proportion of the time that the candidate's staff would spend on the project, including time for specialized services, within the applicable time limits;

(c) Record of past performance, including but not limited to price and cost data from previous projects, quality of work, ability to meet schedules, cost control and contract administration;

(d) Ownership status and employment practices regarding minority, women and emerging small businesses or historically underutilized businesses;

(e) Availability to the project locale;

(f) Familiarity with the project locale; and

(g) Proposed project management techniques.

(4) If the screening and selection procedures results in the contracting agency's determination that two or more candidates are equally qualified, the contracting agency may select a candidate through any process the contracting agency adopts that is not based on the candidate's pricing policies, proposals or other pricing information.

(5) The contracting agency and the selected candidate shall mutually discuss and refine the scope of services for the project and shall negotiate conditions, including but not limited to compensation level and performance schedule, based on the scope of services. The compensation level paid must be reasonable and fair to the contracting agency as determined solely by the contracting agency. Authority to negotiate a contract under this section does not supersede any provision of ORS 279A.140 or 279C.520.

(6) If the contracting agency and the selected candidate are unable for any reason to negotiate a contract at a compensation level that is reasonable and fair to the contracting agency, the contracting agency shall, either orally or in writing, formally terminate negotiations with the selected candidate. The contracting agency may then negotiate with the next most qualified candidate. The negotiation process may continue in this manner through successive candidates until an agreement is reached or the contracting agency terminates the consultant contracting process.

(7) Notwithstanding the provisions of subsection (1) of this section, a contracting agency may directly appoint a consultant if the estimated cost of the architectural, engineering, photogrammetric mapping, transportation planning or land surveying services for the project do not exceed \$100,000.

(8) Notwithstanding the provisions of subsections (1) and (7) of this section, a contracting agency may directly appoint a consultant for architectural, engineering, photogrammetric mapping, transportation planning or land surveying services in an emergency.

### **23. Public Improvement Exemptions**

(1) All contracts for public improvements shall be based upon competitive sealed bidding or competitive sealed proposals except:

(a) Contracts made with qualified nonprofit agencies providing employment opportunities for disabled individuals under ORS 279.835 to 279.855.

(b) A contract for goods or services if the value of the contract is less than \$5,000.

(c) Privately-constructed public improvements. A contracting agency may contribute funding to a privately-constructed public improvement project without subjecting the project to competitive selection requirements if the following conditions are met:

(i) The contribution may not exceed 25% of the total cost of the project;

(ii) The contracting agency must comply with all applicable laws concerning the reporting of the project to the Bureau of Labor and Industries as a public works project;

(iii) The general contractor to the project must agree in writing to comply with all applicable laws concerning reporting and payment of prevailing wages for the project;

(iv) The funds contributed to the project may not provide a financial benefit to the owner of the development for which the project is being constructed, other than benefits shared by all members of the community; and

(v) The contract for construction of the project must be amended, as necessary, to include all contractual terms and conditions required by the contracting agency.

(2) The contract review board may exempt a public improvement contract or a class of public improvement contracts from the competitive selection process upon approval of the following findings submitted by the contracting agency seeking the exemption:

(a) It is unlikely that the exemption will encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts; and

(b) The awarding of public improvement contracts under the exemption will result in substantial cost savings to the contracting agency or the public. In making the finding, the local contract review board may consider the type, cost and amount of the contract, the number of persons available to bid and other such factors as may be deemed important.

(3) In granting exemptions for public improvement contracts, the local contract review board shall:

(a) Direct the use of alternative contracting methods that take account of market realities and modern practices and are consistent with the public policy of encouraging competition.

(b) Require and approve or disapprove written findings that support the awarding of a particular public improvement contract or class of public improvement contracts, without competitive selection.

(c) Before final adoption of the findings, the contracting agency shall hold a public hearing.

(d) Notification of the public hearing shall be published in at least one trade newspaper of general statewide circulation a minimum of fourteen (14) days before the hearing.

(e) The notice shall state that the public hearing is for the purpose of taking comments on the draft findings for an exemption from the competitive selection process. At the time of the notice, copies of the draft findings shall be made available to the public.

(f) At the public hearing, the contracting agency shall offer an opportunity for any interested party to appear and present comment.

(4) A public improvement contract may be exempted from the requirements of this section if emergency conditions require prompt execution of the contract. A contracting agency may declare that an emergency exists. If an emergency is declared, any contract awarded under this emergency must be awarded within 60 days following the declaration.

## 24. Special Procurements Exemption

A special procurement can be either a class-special procurement or a contract-specific special procurement.

A class-special procurement is a contracting procedure that does not utilize a competitive selection process for the purpose of entering into a series of contracts over time for the acquisition of a specified class of goods or services.

A contract-specific special procurement is a contracting procedure that does not utilize a competitive selection process for the purpose of entering into a single contract or a number of related contracts for the acquisition of specified goods or services on a one-time basis or for a single project.

(1) To seek approval of a special procurement, the contracting agency shall submit a written request to the local contract review board. The written request shall describe the proposed contracting procedure, the goods or services or the class of goods or services to be acquired and the circumstances that justify the use of a special procurement.

(2) The local contract review board may approve a special procurement if the board finds that the written request demonstrates that the use of a special procurement will:

- (a) Be unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts; and
- (b) Result in substantial cost savings to the contracting agency or to the public; or
- (c) Otherwise substantially promote the public interest in a manner that could not practically be realized by complying with requirements for a competitive selection process.

(3) Public notice of the approval process for a proposed special procurement must be published at least once in at least one newspaper of general circulation in the area where the contract is to be performed, and in as many additional issues and publications as the contracting agency may determine.

(4) If a contract is awarded through a special procurement, the contracting agency shall award the contract to the contractor whose offer the contracting agency determines in writing to be the most advantageous to the contracting agency.



## 25. Wasco County Special Exemptions

A local contract review board is authorized to exempt certain public contracts or classes of contracts from the competitive selection process but in doing so, must approve findings of fact.

The findings to be approved in order to grant such exemptions include:

- (1) That it is unlikely that the exemption will encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts; and
- (2) The awarding of public improvement contracts under the exemption will result in substantial cost savings to the contracting agency or the public. In making the finding, the local contract review board may consider the type, cost and amount of the contract, the number of persons available to bid and other such factors as may be deemed important.
- (3) Additional information used to justify the contracting agency's conclusion includes:
  - (a) Operational, budget and financial data;
  - (b) Public benefits;
  - (c) Value engineering;
  - (d) Specialized expertise required;
  - (e) Public safety;
  - (f) Market conditions;
  - (g) Technical complexity; and
  - (h) Funding sources.

The purpose of the findings and conclusions included herein is to update Wasco County's existing rules to reflect the current business environment and the specific needs of the county departments, while recognizing the value of open and fair competition.

Except where otherwise provided, the contracting agency utilizing an exemption shall make a record of the method of award.

Adoption of these exemptions herein is supported by the listed *Findings* for public contract exemptions, included with each listed exemption and those applicable sections of ORS 279 chapters A, B and C.

The following classes of contracts may be awarded in any manner in which the contracting agency deems appropriate, including by direct appointment or purchase, subject to the specific exemption criteria:

**Small procurement** – Any procurement of goods or services not exceeding \$5,000.

(a) The procurement may be awarded in any manner deemed practical or convenient by the contracting agency, including direct selection or award.

(b) The procurement may not be artificially divided or fragmented so as to constitute a small procurement.

*Finding* – This exemption would raise the direct purchase limit to \$5,000, which is also the current limit for the State of Oregon.

This exemption allows contracting agencies flexibility and would not delay or encumber simple or everyday type purchases. Larger purchases could not be divided up so as to constitute a small procurement.

**Intermediate procurement** – Any procurement of goods or services exceeding \$5,000 but not exceeding \$150,000.

(a) The procurement may not be artificially divided or fragmented so as to constitute an intermediate procurement.

(b) When conducting an intermediate procurement, a contracting agency shall seek at least three (3) competitive quotes from prospective contractors. The contracting agency shall keep a written record of the sources of the quotes received. If three (3) competitive quotes are not reasonably available, fewer will suffice, but the contracting agency shall make a written record of the effort made to obtain the quotes.

(c) If a contract is awarded, the contracting agency shall award the contract to the contractor whose offer will best serve the interests of Wasco County, taking into account price as well as considerations including, but not limited to, experience, expertise, product functionality, suitability for a particular purpose and contractor responsibility.

*Finding* - This exemption changes the lower end of the competitive quote limit to \$5,000 and the upper limit for competitive quotes would be \$150,000. These are also the current intermediate procurement limits for the State of Oregon. This exemption does not encourage favoritism or diminish competition in the awarding of public contracts because competitive quotes are used. This exemption would also result in substantial cost savings by not delaying or encumbering this size of procurements. Larger purchases could not be divided up so as to constitute an intermediate procurement.

**Advertising** – Contracts for the purchase of advertising, including that intended for the purpose of giving public notice.

*Finding* – Advertising contracts are usually limited to specific companies in given geographic locations and is further limited by the needs of the contracting agency. Additionally, state law requires the designation of an official newspaper for public notices. The rates for legal notices in many cases are regulated by statute. It may be necessary to target certain geographic areas or classes of members of the audience.

**Contract amendment or change order** – Any contract amendment, including change orders, extra work, field orders, or other change in the original specifications which changes the original contract price or alters the work to be performed. Before utilizing this exemption, the following should be considered:

(a) The amended contract does not substantially alter the scope or nature of the project, subject to extraordinary or unforeseen conditions.

(b) The original contract imposes a binding obligation on the parties covering the terms and conditions regarding changes in the work.

(c) The amount of the aggregate cost change resulting from all amendments creating new obligations does not exceed 100% of the initial contract price.

*Finding* – This exemption allows for change orders and extra work on projects already awarded by competitive selection. This exemption encourages competition from quality contractors by allowing for additional work or goods or services without further competitive selection where additional work may not have been anticipated, where work is in progress, and allowing the contractor to complete performance without justifiable delay. The cost savings are substantial due to the time saved in project or performance completion, within dollar limitations. Any contract amendments or change orders, singularly or in total, above 100% of the original contract price would require additional competitive selection, subject to emergency, extraordinary or other unforeseen circumstances.

**Equipment maintenance** – Contracts for the purchase of service, equipment or supplies for the maintenance, repair or conversion of existing equipment if required for the efficient utilization of the equipment.

*Finding* – Purchases under this exemption allow the contracting agency to obtain materials or services necessary for the maintenance, repair or conversion of existing equipment. The parts or service are often unknown and the cost cannot be determined without extensive dismantling or testing. Time is also a factor for utilization of the equipment.

Additionally, work performed under this exemption is often in support of maintenance agreements or warranties that are obtained as part of a purchase process for new equipment. This maintenance is required in order to maintain warranty coverage. Warranty work is unique to the manufacturer of the equipment. Use of a competitive selection would invalidate the warranty and cost the county more for maintenance work in the future. This exemption would encourage competitors to deliver good quality products and to stand behind their products for the benefit of the public.

**Price regulated items** – Contracts for the purchase of goods or services where the rate or price is established by federal, state or local regulatory authority.

*Finding* – The contracting agency has no authority to alter prices established by federal or state law. Using a competitive selection process would not provide useful information since each would be the same price. The contracting agency would incur unnecessary expenses with little or no benefit. Since federal and state contracts are subject to similar public contracting requirements, any established price would have presumably arisen from a competitive selection process.

**Copyrighted materials** – Contracts for the purchase of copyrighted materials where there is only one supplier available for such goods.

*Finding* – By definition, there is no alternate vendor and no competition for copyrighted items. The contracting agency shall ensure that all purchases are in accordance with federal and state laws protecting copyrighted or trademarked items.

**Data processing** – Contracts for the purchase or acquisition of data processing hardware or software, including maintenance contracts or support contracts specific to that hardware or software.

*Finding* – The materials included within this exemption are specialty items that must be compatible with existing equipment. It is also important to keep data processing materials consistent by maintaining existing purchasing programs with existing vendors. Due to the technical complexity of these materials, there are only a limited number of vendors. In addition, the need to rely on the most dependable vendor is critical. Therefore, the purchase of data processing hardware and software does not lend itself to a competitive selection process.

**Allocated petroleum products** – Contracts for the purchase of petroleum products and their transportation if such purchase is required to be made from a particular supplier as a result of a federal allocation or if purchase from other than an established supplier could jeopardize an allocation or future supply or transport of such petroleum products.

*Finding* – Prices for these items are highly volatile. The suppliers' long term customers are provided regular and consistent service, even in times of very high demand. The same argument is true for the haulers. New customers have trouble acquiring these products at reasonable prices, because many companies serve only their preferred accounts during these times of high demand.

In the past, when these products were not available as scheduled, the county had crews waiting on the job, at tremendous public expense. The oiling season, when the county utilizes these products, is a very short time duration. Every day that is lost, for whatever reason, is a day that cannot be regained. The county has been using the current supplier and current hauler long enough to receive preferred customer service.

The county will continue to monitor product prices and delivery rates, primarily using the State of Oregon bid prices and other contracting agency price quotes for comparison.

**Asphalt concrete and rock, for maintenance** – Contracts for the purchase of asphalt concrete and rock where the material is to be used for maintenance.

*Finding – (asphalt concrete for maintenance)* Currently, there are only two suppliers of asphalt concrete in our geographic area. When the county needs asphalt concrete for maintenance purposes, competitive quotes are solicited from both suppliers. Since there are a limited number of suppliers in our area, using a formal competitive selection process would not encourage more competition and the use of quotes does not create favoritism.

This exemption also results in a substantial cost savings to the county. If a formal competitive selection process instead of quotes were required to purchase this maintenance material, the same suppliers would bid, but the time, effort and money spent on the process would be considerable.

This exemption also gives the county necessary flexibility. Many times when the county needs asphalt concrete one of the suppliers is busy or committed to selling their product to other purchasers. This exemption ensures that the county can acquire materials when needed and prevents downtime for maintenance crews.

*Finding – (rock for maintenance)* Wasco County owns several small rock pits. These pits are located throughout the county and were acquired to provide maintenance rock for roads in those geographic areas. The county's need for maintenance rock varies from area to area and from year to year.

Because of the small quantities that are needed and the fact that many of the county pits have limited access and are located in remote areas, there are very few contractors that will bid on these jobs. When the county does have need for maintenance rock, competitive quotes are solicited from a list of contractors with small, portable crushers. The use of a less formal selection process allows more flexibility in selecting a contractor. Prospective bidders can be contacted, visit the work site, check their schedules and submit quotes. Meaningful competition is still achieved through this method of procurement.

This exemption is also of great benefit because it allows the county to purchase maintenance rock from farmers or other landowners that own rock pits. The ability to purchase this material directly from landowners as opposed to using a formal competitive selection process and having the rock trucked in, results in a substantial cost savings to the county.

#### **Wasco County special exemptions conclusion**

Based on the aforementioned findings, it is unlikely that the subject class exemptions will encourage favoritism in the awarding of public contracts and would not substantially diminish competition. The special exemptions would result in substantial cost savings to Wasco County and the public and awarding such contracts pursuant to these exemptions would also substantially promote the public interest in a manner that could not otherwise be realized.