

- a. The nature of the particular classes of contracts exempted makes competitive bidding pointless or not cost effective in such cases;
- b. Each exemption requires alternative contracting procedures which will ensure reasonable competition and the best contract price for the public; or
- c. The exemptions are substantially similar to the exemptions adopted by the State of Oregon Department of General Services contained in OAR Chapter 125, Divisions 300, 310, 320, 330, 340, 350 and 360 pursuant to its authority to act as the public contract review agency for the State of Oregon.

Section 3. Fees to Other Jurisdictions.

The fee to be charged other local governments who chose to utilize the Yamhill County Local Contract Review Board pursuant to ORS 279.055(3) shall be \$100 per contract reviewed; provided, however, that the Local Contract Review Board shall be authorized to modify or waive the fee upon a finding that modification or waiver is in the best interests of the public.

Section 4. Repeal of Ordinance 411.

Ordinance 411 is hereby repealed.

Section 5. Severability Clause.

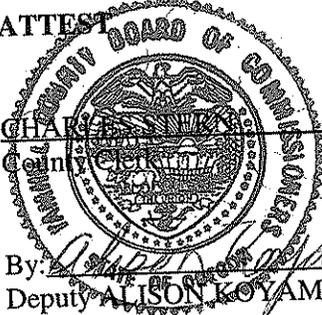
All sections, subsections and paragraphs of this ordinance are severable. If any section, subsection or paragraph is ruled invalid for any reason by the court of last resort, the other portions of this ordinance shall be unaffected.

Section 6. Emergency Clause; Effective Date.

This ordinance, being necessary for the health, safety and welfare of the citizens of Yamhill County, and an emergency having been unanimously declared to exist, shall become effective July 1, 1998.

DONE and adopted at McMinnville, Oregon on June 11, 1998.

ATTEST



By: *Alison Koyama*
Deputy ALISON KOYAMA

YAMHILL COUNTY BOARD OF COMMISSIONERS

Ted Lopuszynski
Chairman TED LOPUZYNSKI

Robert Johnstone
Commissioner ROBERT JOHNSTONE

FORM APPROVED BY:
John M. Gray, Jr.
JOHN M. GRAY, JR.
Yamhill County Counsel

Thomas E. E. Bunn
Commissioner THOMAS E. E. BUNN

**YAMHILL COUNTY, OREGON
LOCAL CONTRACT REVIEW BOARD RULES
(Effective July 1, 1998)**

Section 1. AUTHORITY; PURPOSE.

These rules are promulgated by the Yamhill County Local Contract Review Board under authority granted by Oregon law and county ordinance. (ORS Chapter 279; Yamhill County Ordinance 646, Section 1). The purpose of these Local Contract Review Board Rules is to establish a procedure to be used for public contracts or certain classes of public contracts in order to assure that each contract to which the county is a party has met state and county Competitive Bidding requirements.

Section 2. DEFINITIONS.

The following words and phrases mean:

- A. **Board:** The Board of Commissioners of Yamhill County acting under Ordinance 646 as the Local Contract Review Board for Yamhill County.
- B. **Commission:** The Board of Commissioners of Yamhill County.
- C. **Competitive Bidding:** The solicitation of competitive offers which follow the formal process for advertising, bid and bid opening required by ORS Chapter 279 or applicable rules of the Board.
- D. **Competitive Quotes:** Offers from competing vendors. Solicitation may be by advertisement or by request to vendors to make an offer. Solicitation of the offer may be in writing or oral.
- E. **Public Contracting Officer:** Unless the Board should designate another official as the Public Contracting Officer in the case of a particular contract or class of contracts, the following county officials are the Public Contracting Officers for Yamhill County:
1. The Director of the Department of Administrative Services or his designee for county public contracts in general.
 2. The Director of Public Works or his designee for county public contracts relating to matters within the area of responsibility of the Department of Public Works.
- F. **Public Contract:** Any purchase, lease, or sale of personal property, public improvements, or services other than agreements which are exclusively for personal services.

Section 3. COMPETITIVE BIDS; WHEN NOT REQUIRED.

A. **When Competitive Bids Not Required.** Every contract or class of contracts for the purchase of goods or services shall be based upon Competitive Bidding except for the following:

1. A contract or class of contracts made exempt by Commission or Board action under ORS 279.015; or
2. A contract or class of contracts made exempt by Board action under Sections (4) or (5) of these rules; or
3. A contract or class of contracts which falls under one of the categories listed in Subsection (B) of this Section.

B. **Schedule of Exemptions.** The following categories of contracts are exempt from Competitive Bidding provided the department head or department head's designee identifies the basis for the exemption. In circumstances where the basis for the exemption is not readily apparent, the department head or designee shall consult with county legal counsel:

1. Contracts made with other public agencies or the federal government.
2. Contracts which are exclusively for personal services. Such contracts may include incidental materials such as written reports or opinions, architectural or engineering renderings and other supplemental materials required for providing the services.
3. Contracts for the purchase of goods or services where the rate or price for the goods or services being purchased is established by federal, state or local regulatory authority.
4. Contracts for the purchase of copyrighted materials.
5. Contracts for the purchase of advertising, including legal advertising intended for the purpose of giving public notice.
6. Purchases of goods or services from a supplier when the price of the goods and services has been established under a previously competitive bid requirements contract.
7. Contracts for the purpose of investment of public funds or the borrowing of funds.
8. Contracts for insurance.
9. Contracts for purchase or acquisition of computer hardware or software including telecommunications products and telecommunications services.
10. Contracts for purchase where there is only one seller or price of a product of the quality required available within a reasonable purchase area.

11. Contracts for purchase where the amount does not exceed \$25,000, subject to the following rules:

a. Where contracts are for more than \$5,000, at least three Competitive Quotes shall be obtained. If three quotes are not reasonably available as determined by the public official soliciting the quote, a lesser number will suffice provided that a written record is made of the effort to obtain the quote. Although the contract must not necessarily be awarded based on the lowest Competitive Quote, a written record shall be made containing the source and amount of the quotes received and setting forth the reasons for believing that awarding the contract without Competitive Bidding would result in cost savings.

b. Where contracts are for more than \$1,000 but less than \$5,000, competitive quotes should be obtained where practical, considering cost savings which might otherwise be enjoyed.

12. 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, may be made with the contractor without Competitive Bidding subject to the following conditions:

a. The original contract imposes a binding obligation on the parties covering the terms and conditions regarding the changes in the work; or

b. The amended contract does not substantially alter the character of the project;
or

c. If the amendment has the effect of substantially altering the character of the project, the amount of the aggregate cost change resulting from all amendments creating such new obligations shall not exceed 10% of the initial contract.

13. Contracts for the purchase of services, equipment or supplies for the maintenance, repair or conversion of existing equipment are exempt if required for the efficient utilization of the equipment. Where practicable in the judgment of the department head, competitive quotes shall be obtained.

14. Contracts for the purchase of asphaltic concrete or rock where the material is to be used for maintenance. Where practicable, competitive quotes shall be obtained.

15. Contracts for the purchase of materials where competitive bids for the same materials have been obtained by the State of Oregon, and the contract is to be awarded to the party to whom the contract was awarded by the State so long as the price of the materials is the same or lower than that paid by the State.

16. Contracts for the purchase of food or food supplies.

17. Contracts for the purchase of goods or services made exempt for state agencies under OAR Chapter 125, Division 30.

18. Purchase of items or services of an artistic nature.

19. Contracts for equipment repair or overhaul provided that service and/or parts required for repair or overhaul are unknown and the cost cannot be determined without extensive preliminary dismantling or testing; or service and/or parts required are for sophisticated equipment for which specially trained personnel are required and such personnel are available from only one source.

20. Contracts for periodicals, including journals, magazines, and similar publications.

21. Contracts for the purchase or lease of ballots, ballot pages and ballot cards or equipment necessary to conduct elections.

22. Contracts for the purchase of gasoline, diesel fuel, heating oil, and lubricants.

23. Contracts for removal, cleanup or transport of hazardous materials. As used in this subsection, "hazardous materials" include any material or substance which may pose a present or future threat to human health or the environment, including Hazardous Waste as that term is used in the Resources Conservation and Recovery Act (42 USC 6901 et seq.).

24. Contracts for employee benefits.

25. Contracts for purchase or lease of office photocopiers.

A. The Board may authorize other exemptions from Competitive Bidding not stated in subsection (B) if the exemption is allowed by Oregon Revised Statutes, Oregon Administrative Rules, other applicable law or by judicial action.

Section 4. EXEMPTIONS FOR ADDITIONAL CONTRACTS.

The Board may, by resolution, exempt other contracts from Competitive Bidding if it finds:

A. The lack of bids will not result in favoritism, or substantially diminish competition in awarding the contract; and

B. The exemption will result in substantial cost savings. In making such findings, the Board may consider the type, cost, amount of the contract, number of persons available to bid, and such other factors as the Board may deem appropriate.

Section 5. EMERGENCY CONTRACTS

A. **General Rule.** A contract may also be exempted from Competitive Bidding if the Board or the Commission, by majority vote of members present, determines that emergency conditions require

prompt execution of the contract. A determination of such an emergency shall be entered into the record of the meeting at which the determination is made.

B. Emergency Exemption by Public Contracting Officer. A contract under \$25,000 may also be exempted from Competitive Bidding if the Public Contracting Officer determines that emergency conditions require prompt execution of the contract. A determination of such an emergency shall be entered into the record of the acquisition of the materials or services purchased.

C. "Emergency" Defined. For purposes of this section, an "emergency" consists of circumstances creating a substantial risk of loss, damage, interruption of services or threat to public health, safety, welfare or property that could not have been reasonably foreseen and requires prompt execution of a contract to remedy the condition.

Section 6. CONTRACTS IN RESPONSE TO RFPs

A. General Rules for RFPs. The Board may exempt from Competitive Bidding a contract made in response to an RFP. Subject to subsection (B) of this section, and unless a different process is provided in the Board's order, the following process shall be used by a county department anytime the Board authorizes an RFP process as exempt from Competitive Bidding:

1. Request for Proposal

a. The procurement is advertised and a written solicitation document is issued that invites the submission of sealed, written offers to be opened publicly at a designated time and place;

b. Contractual requirements are stated clearly in the solicitation document;

c. Evaluation criteria to be applied in awarding the contract and the role of an evaluation committee are stated clearly in the solicitation document. Criteria used to identify the proposal that best meets the county's needs may include but are not limited to cost, quality, service, compatibility, product reliability, operating efficiency and expansion potential;

d. The solicitation document clearly states all complaint processes and remedies available; and

e. The solicitation document states the provisions for proposers to comment on any specifications that they feel limit competition.

B. RFP's for Construction Manager/General Contractor Services. The Board may exempt from Competitive Bidding a contract made in response to a RFP for Construction Manager/General Contractor services. Unless a different process is provided in the Board's order, the following process shall be used by a county department anytime the Board authorizes an RFP process for Construction Manager/General Contractor services as exempt from Competitive Bidding:

1. RFP for Construction Manager/General Contractor Services

a. Contractual requirements are stated clearly in the solicitation document. The contract shall describe the methods by which the CM/GC shall competitively select other contractors and subcontractors to perform the work of the improvement. Further, the contract shall describe completely the methods by which the CM/GC and its affiliated or subsidiary entities, if any, may compete to perform the work of the improvement; such methods shall include, at a minimum, public opening of sealed bids at a pre-announced time and place.

b. Evaluation criteria to be applied in selecting the CM/GC firm are stated clearly in the solicitation document. Criteria used to identify the CM/GC firm which best meets the public contracting needs may include but are not limited to cost, quality, experience relevant to the improvement to be constructed, and time required to commence and complete the improvement.

Section 6. BIDDER DISQUALIFICATION.

The Public Contracting Officer may disqualify any person as a bidder on a contract for any reason allowed by applicable Oregon Administrative Rule or if any of the following conditions are met to the satisfaction of the Public Contracting Officer based on objective evidence. For this section, a "person" includes any bidder.

- A. The person does not have sufficient financial ability to perform the contract. Evidence that the person can acquire a surety bond in the amount and type required shall be sufficient to establish financial ability. If no performance bond is required, the Public Contracting Officer may require such information as he deems necessary to determine the bidder's financial ability.
- B. The person does not have equipment available to perform the contract.
- C. The person does not have key personnel of sufficient experience to perform the contract.
- D. The Public Contracting Officer has determined, in the sole judgment of the Public Contracting Officer based on information available, that the person has breached contractual obligations to public or private contracting agencies in two or more instances.
- E. The person receives a "do not hire" recommendation from 2 or more public entities.
- F. The person has been a party to two or more lawsuits filed in the State of Oregon where an issue in the lawsuit involved the person's performance of a public contract.
- G. The person, or principals of a company constituting the person, has or have been convicted of a felony related to the conduct of business within 10 years preceding the date of disqualification.
- H. The person has been disqualified from doing business in the State of Oregon for a period of at least 30 days within the preceding 10 years.

Section 8. MANDATORY PREQUALIFICATION.

A. **Process.** Persons desiring to bid for contracts to perform public improvements where prequalification is determined "mandatory" by the Public Contracting Officer shall submit a completed prequalification statement to the Public Contracting Officer. The prequalification statement shall be submitted, when required, at least ten days prior to the opening of bids of any contract for which the person desires to be considered.

B. **Applications.** Applications for prequalification shall be submitted on the forms provided by the Public Contracting Officer.

C. **Determination; Validity.** The Public Contracting Officer shall, within thirty days of the receipt of the prequalification statement submitted pursuant to this section, notify the prospective bidder as to whether or not the bidder is qualified, the nature and types of contracts that he is qualified to bid on, and the time period for which the prequalification is valid. Prequalifications under this section shall be valid only until the end of the calendar year within which they are issued.

D. **Qualification Statement.** Upon establishment of the applicant's prequalification, the Public Contracting Officer shall issue a qualification statement. The statement shall inform the applicant of any conditions which may be imposed on the qualification and advise the applicant to notify the County promptly if there has been any substantial change of conditions or circumstances which would make any statement contained in the prequalification application (a) no longer applicable, or (b) untrue. If the applicant desires to appeal the conditions of the prequalification, written notice must be given to the Public Contracting Officer within three business days after receipt of the notice.

E. **Adverse Determination.** If the Public Contracting Officer does not qualify an applicant, he shall give written notice to the applicant stating the reasons that prequalification has been denied. If the applicant desires to appeal the denial, written notice must be given to the Public Contracting Officer within in accordance with Section 10.

F. **Revocation of Prequalification.** If a Public Contracting Officer subsequently discovers that a person heretofore prequalified under this section is no longer qualified under these rules, the Public Contracting Officer may revoke the prequalification upon notice to the prospective bidder; provided, however, that such revocation shall be invalid as to any contract for which an advertisement for bids has already been made under ORS 279.065. The notice shall state the reason for revocation. The revocation will be effective ten days from the date of the notice unless a notice of appeal has been filed with the officer within three days of the date of the notice or unless it appears to the officer that the deficiency has been corrected. If the person desires to appeal the revocation, written notice must be given to the Public Contracting Officer within three days of the date of the notice of revocation.

Section 9. PERMISSIVE PREQUALIFICATION.

A. **Timelines.** On public contracts not subject to Mandatory Prequalification under these rules, a prospective bidder may submit a request for prequalification to the Public Contracting Officer not be more than 45 days prior to the opening of the bids. The prequalification request shall be submitted on the forms provided by the Public Contracting Officer. After investigation, the Public

Contracting Officer shall promptly notify the prospective bidder whether or not the bidder is qualified to perform the contract and if not qualified, why the bidder is not qualified.

B. **Alternative Process.** In any case where an investigation is deemed unwarranted by the Public Contracting Officer, the Public Contracting Officer may make such investigation of bids as is deemed necessary to determine whether they are qualified under these Rules. If the investigation is completed prior to the time set for opening the bids, the Public Contracting Officer shall notify each bidder who is not qualified to perform the contract and identify in the notice the subsection of these Rules which he failed to comply with. If the investigation is not completed until after the time set for opening the bids, the Public Contracting Officer shall notify any bidder who appears to be the lowest bidder if he is not qualified to perform the contract and identify in the notice the subsections of these Rules which the bidder failed to comply with.

Section 10. APPEALS.

A. **Standing.** A dissatisfied bidder has standing to appeal a Public Contracting Officer's adverse prequalification determination or disqualification determination. Notices of appeal need not be in any particular form so long as they are in writing addressed to the Public Contracting Officer and comply with subsection (B), below.

B. **Appeal Procedure.** The procedure for an appeal is as follows:

1. Any bidder desiring to appeal under these Rules shall, within three (3) business days after receipt of notice of disqualification, give written notice of appeal to the Public Contracting Officer.
2. Upon receipt of such written notice of appeal, the Public Contracting Officer shall inform the Board.
3. Upon receipt of notice of appeal, the Board shall notify the person appealing of the time and place of a hearing on the appeal.
4. The Board shall conduct a hearing on the appeal according to the provisions of ORS 279.045 and decide the appeal within ten days after receiving the notification. The Board shall set forth in writing the reasons for its decision.

Section 11. RETAINAGE ON PUBLIC CONTRACTS.

A. The approved securities which shall be acceptable in lieu of retainage fees are as follows:

1. Bills, certificates, notes or bonds of the United States.
2. Other obligations of the United States or its agencies.
3. Obligations of any corporation wholly owned by the federal government.

4. Indebtedness of the Federal National Mortgage Association.
 5. General obligation bonds of the State of Oregon or any political subdivision thereof.
 6. Time certificates of deposit or savings account passbooks issued by a commercial bank, savings and loan association or mutual savings bank duly authorized to do business in Oregon.
 7. Corporate bonds rated "A" or better by a recognized rating service.
- B. Deposits in lieu of retaining fees on public contracts shall be allowed as follows:
1. When a contractor elects to deposit securities with Yamhill County or in a bank or trust company in lieu of retainage on public contracts, the securities shall be held by the custodian in fully transferable form and under the control of the County.
 2. Non-negotiable securities so deposited shall have proper instruments attached to enable the County to effect transfer of title should the contractor be unable to fulfill the contract obligations.
 3. The custodian bank or trust company shall issue a safekeeping receipt for the securities to the County. The receipt shall describe the securities, the par value, the name of the contractor, and project number or other project identification.
 4. Unless otherwise mutually agreed, the value placed upon said securities shall be market value.
 5. Securities deposited in the manner described above in a bank or trust company shall be released by the bank or trust company only upon the written instructions and authorization of the County.
 6. In lieu of the above, an escrow agreement mutually acceptable to the contractor and the County and the bank or trust company may be used.
- C. For all projects requiring retainage, the retainage shall be at least five percent of the project cost.

[End of Local Contract Review Board Rules.]