

CHAPTER 36: FINANCE AND PURCHASING

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LOCAL CONTRACT REVIEW BOARD RULES

§ 36.01 PURPOSE.

This chapter is promulgated by the Umatilla County Board of Commissioners pursuant to the authority granted to that Board by ORS 279A.060 and 279A.070, for the purpose of establishing the rules and the procedures for contracts entered into by Umatilla County.
(Ord. 76-01, passed 11-24-76; Ord. 2005-03, passed 3-2-2005)

§ 36.02 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

AWARD. The selection of a person or entity to provide goods, services or public improvements under a public contract. The award of a contract is not binding on Umatilla County until the contract is executed and delivered by the Board of Commissioners.

BOARD. The Board of Commissioners of the county acting as the Local Contract Review Board for Umatilla County.

COMPETITIVE QUOTES. Offers from competing vendors. The solicitation may be by advertisement or a request to vendors to make an offer. The solicitation and the offer may be in writing or oral.

PUBLIC CONTRACTING CODE. ORS Chapters 279A, 279B and 279C, as implemented by this Chapter 36.
(Ord. 76-01, passed 11-24-76; Ord. 2005-03, passed 3-2-2005)

§ 36.03 LOCAL CONTRACT REVIEW BOARD.

Except as otherwise provided in this chapter, the powers and duties of the local contract review board under the Public Contracting Code shall be exercised and performed by the Board of Commissioners, and all powers and duties given or assigned to contracting agencies by the Public Contracting Code shall be exercised or performed by the Board of Commissioners or its designee.
(Ord. 2005-03, passed 3-2-2005)

§ 36.04 MODEL RULES.

Except as otherwise provided in this chapter or by rule or order of the Board, the Model Public Contract Rules, Oregon Administrative Rule 137, divisions 46, 47, 48 and 49, (“Model Rules”), adopted by the Oregon Attorney General and from time to time amended, shall be the rules of the Board. Where reference is made in this chapter to any provision of the Public Contracting Code, unless the County rules provide otherwise, the corresponding provisions of the Model Rules shall also apply.
(Ord. 2005-03, passed 3-2-2005)

§ 36.05 PUBLIC CONTRACTS.

All Umatilla County Public Contracts, as defined by ORS 279A.010, will be procured and awarded as provided by the Public Contracting Code as implemented by this chapter. (Ord. 76-01, passed 11-24-76; Ord. 2005-03, passed 3-2-2005)

§ 36.06 EXEMPTIONS.

A. The Board may award a public contract under Public Contracting Code exemptions or as Special Procurement pursuant to the requirements of ORS 279B.085. Such procurements allow Umatilla County to enter into one or more contracts over time without following the requirements of competitive sealed bidding, competitive sealed proposals or intermediate procurements.

B. Exemptions and Class Special Procurements

The Board declares the following as exemptions and/or classes of special procurements:

(1) *Public Contracting Code Exception.* Any contract exempted by the Public Contracting Code and Oregon Administrative Rules, except as set out in this Chapter.

(2) *Small Procurements: Contracts \$5,000 and under.* Contracts for purchase where the amount is \$5,000 and under, except that where contracts are for more than \$1,000, Competitive Quotes may be obtained where practicable.

(3) *Intermediate Procurements: Contracts over \$5,000 and under \$10,000.* Where contracts are for more than \$5,000 and less than \$10,000, at least three Competitive Quotes shall be obtained where practicable. A written record shall be made containing the source and amount of the quotes received.

(4) *Sole Source - Single seller or price of products required.* Contracts for purchase where there is only one seller or product of the quality available.

(5) *Emergency.* If the Board, 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.

(6) *Contracts with public agencies.* Contracts made with, or the cost of which is provided by, other public agencies.

(7) *Contracts with federal programs.* Purchases through federal programs as a procurement made under 10 USC §381, the Electronic Government Act of 2002 (P.L. 107-347) or other federal law that is determined by Board similar to those provisions in effectuating or promoting transfers of property to contracting agencies. Purchases would include those administered by the United States General Services Administration for procurement by local governments.

(8) *Personal service contracts and personal services.* A personal services contract is a contract primarily for the provision of services that require specialized technical, creative, professional or communication skills or talents, unique and specialized knowledge, or the exercise of discretionary judgment skills, 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, the services of architects, engineers, attorneys, auditors and other licensed professionals, artist, designers, computer programmers, performers, consultants and property managers. The Board or its designee shall have discretion to determine whether a particular type of contract or service falls with the foregoing definition and this exemption and if any further procurement requirements will be necessary. Architectural, engineering, and surveying and related services are also subject to ORS Chapter 279B requirements.

(9) *Contracts for price regulated items.* 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.

(10) *Allocated petroleum products.* Contracts for the purchases of petroleum products 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 of such

petroleum products.

(11) *Asphaltic concrete and rock.* Contracts for the purchase of asphaltic concrete and rock where the material is to be used for maintenance. Where practicable, Competitive Quotes shall be obtained.

(12) *Copyrighted or patented materials.* Contracts for the purchase of copyrighted or patented materials where there is only one supplier available for such goods.

(13) *Advertising contracts.* Contracts for the purchase of advertising, including that intended for the purposes of giving public or legal notice.

(14) *Investment contracts.* Contracts for the purpose of investment of public funds or the borrowing of funds.

(15) *Requirements contracts.* Purchases of goods or services from a supplier when the price of the goods and services has been established under a previous competitive bid requirements contract whereby it is agreed to purchase requirements or an anticipated need at a predetermined price.

(16) *Used Personal Property or Equipment.* The County may directly purchase used personal property and equipment that can be purchased for a lower cost than substantially similar new property or equipment. Used property and used equipment is property or equipment that has been placed in use by a previous owner or user for a period of time, and which is recognized in the relevant trade or industry, if there is one, as qualifying the personal property as "used." Used personal property or equipment generally does not include property or equipment if the County was the previous user, whether under a lease, as part of a demonstration, trial or pilot project or similar arrangement. To the extent practicable, competitive bids are to be obtained for such used personal property or equipment.

(17) *Computer Equipment.* Contracts for purchase or acquisition of computer equipment (hardware or software) may be let without competitive bid subject to the following conditions:

(A) Prior to selection of the contractor, reasonable efforts have been made to solicit proposals

from all known vendors. If the amount of the contract exceeds \$10,000, written proposals shall be solicited from appropriate vendors appearing on the list composed by the Computer Information Services or its successor or by publication of an advertisement in a major trade publication of general circulation.

(B) The contractor is selected on the basis of the most competitive offer in both the cost and quality of the product to be purchased or acquired.

(C) Wherever a contract for computer equipment let pursuant to this exemption exceeds \$5,000, a written report shall be submitted to the Board. The report shall include:

1. The name of the company and, if applicable, the name of the retail vendor;

2. The reasons why competitive bidding was not appropriate; and

3. A description of the reasons why the contractor was selected and other proposals rejected.

(18) *Concession Agreements.* Concession Agreement entered into for the Umatilla County Fair that authorizes a private entity or individual to promote or sell, for its own business purposes, specified types of goods or services from all or a portion of the fairgrounds and under which the concessionaire or promoter makes payments to the Umatilla County Fair based, at least in part, on the concessionaire's revenues from sales or the value of such promotion to the sponsor's business, whether on or off the fairgrounds property. A Concession Agreement does not include an agreement which represents a rental, lease, license, permit or other arrangement for the use of public property.

(19) *Insurance contracts.* Contracts for insurance.

(20) *Equipment maintenance.* Contracts for the purchase of services, equipment or supplies for the maintenance, repair or conversion of existing equipment if required for the efficient utilization of the equipment. Where practicable, Competitive Quotes shall be obtained.

(21) *Non-Owned Property.* Contracts or arrangements for the sale or other disposal of

abandoned property or other personal property not owned by Umatilla County.

(22) *Utilities.* Contracts for the purchase of steam, power, heat, water, telecommunications services, and other utilities.

(23) *Contract amendments.* Any contract amendment, including change orders, extra work, field orders, and other change in the original specifications that changes the original contract price or alters the work to be performed, may be made with the contractor subject to the following conditions:

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

(B) The amended contract does not substantially alter the scope or nature of the project; or

(C) If the amendment has the effect of substantially altering the scope or nature 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.

(24) *Additional Goods or Services.* Additional goods or services may purchased even though the original contract did not provide unit prices or allow for additional purchases.

(25) *Contract Extension.* A contract may be extended or renewed for a single term not to exceed one year.
(Ord. 76-01, passed 11-24-76; Ord. 2005-03, passed 3-2-2005)

§ 36.07 PUBLIC IMPROVEMENT CONTRACTS BY COMPETITIVE QUOTES.

A. Public Improvement Contracts estimated by the Board not to exceed \$100,000, or not to exceed \$50,000 in the case of contracts for highways, bridges and other transportation projects, may be awarded in accordance with intermediate level procurement procedures for competitive quotes established by the Model Rules, or if no such rules exist, then by obtaining three Competitive Quotes with the Board

making the determination to award the contract to the prospective contractor whose quote will best serve the interests of Umatilla County.

B. Contracts awarded under this section may be amended as provided by §36.07(2).
(Ord. 2005-03, passed 3-2-2005)

§36.08 METHOD OF OFFER, BID OR PROPOSAL.

A. Unless submitted as a Competitive Quote, only original hard copy bids or proposals will be accepted, and facsimile and electronic offers, bids and proposals will be rejected as non-responsive

B. In lieu of publication in a newspaper of general circulation in Umatilla County, the advertisement for an invitation to bid or request for proposals for a public contract may be published electronically by posting on the Umatilla County website in the location within the website maintained on a regular basis for such posting.
(Ord. 2005-03, passed 3-2-2005)

§ 36.09 PROTESTS.

A. Except as otherwise provided in the Public Contracting Code and Model Rules, a hearing before the Board or its designee (“hereinafter Board”) for any protests allowed or required by the Public Contracting Code, shall be conducted in accordance with the procedures contained in this section.

B. For purposes of this section, “Party” means:

(1) Each person entitled as of right to a hearing before the Board;

(2) Each person named by the County to be a party; or

(3) Any person requesting to participate before the agency as a party or in a limited party status which the County determines either has an interest in the outcome of the County’s proceeding or represents a public interest in such result.

C. Parties may elect to be represented by counsel and to respond and present evidence and argument on

all issues involved.

D. Unless precluded by law, informal disposition may be made of any case by stipulation, agreed settlement, consent order, default or written agreement.

E. The Board shall place on the record a statement of the substance of any written or oral ex parte communications on a fact in issue made to the member or officer during the pendency of the proceeding and notify the parties of the communication and of their right to rebut such communications.

F. The record in support of a decision shall be made at the time set for hearing or any extension thereof approved by the Board. Testimony may be given without oath or affirmation. Cross-examination of witnesses by parties shall not be allowed. Provided however, the Board may question any witness appearing before it. A verbatim oral, written or mechanical record shall be made of all motions, rulings and testimony. The Board shall ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the presiding officer. The record need not be transcribed unless requested for purposes of court review. The party requesting transcription shall pay the cost thereof unless the Board determines on affidavit the indigency of the requesting party.

G. Evidence in contested cases.

(1) In contested cases, irrelevant, immaterial or unduly repetitious evidence shall be excluded but erroneous rulings on evidence shall not preclude action on the record unless shown to have substantially prejudiced the rights of a party. All other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible. The Board shall give effect to the rules of privilege recognized by law. Any part of the evidence may be received in written form.

(2) All evidence shall be offered and made a part of the record in the case, and except for matters stipulated to and except as provided in paragraph (4) of this subsection, no other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. The burden of presenting evidence to support

a fact or position in a case rests on the proponent of the fact or position.

(3) Every party shall have the right to submit rebuttal evidence.

(4) The Board may take notice of judicially cognizable facts. Parties shall be notified at any time during the proceeding but in any event prior to the final decision of material officially noticed and they shall be afforded an opportunity to contest the facts so noticed.

H. The Board will make its decision within the time requirements of the Public Contracting Code and Model Rules. (Ord. 76-01, passed 11-24-76; Ord. 2005-03, passed 3-2-2005)

§36.10 DISPOSITION OF PERSONAL PROPERTY.

Personal property of Umatilla County may be disposed of without competitive bidding under any of the following conditions:

(1) There are specific statutory procedures for the sale of the type of property involved and the property is disposed of according to those procedures.

(2) The property has a value of less than \$500 unless otherwise provided by statute; or

(3) The Board finds that competitive bids would be inappropriate for the type of property involved. A report of all sales made under this division shall be made to the Board and shall include the reasons that competitive bids were deemed inappropriate. (Ord. 76-01, passed 11-24-76; Ord. 2005-03, passed 3-2-2005)

PUBLIC CONTRACTING CODE OF CONDUCT

§ 36.20 PUBLIC CONTRACTING CODE OF CONDUCT.

(A) No employee, officer, or official of the county, or agent thereof, will participate in the selection, or in the award or administration of a

contract, if a conflict of interest, as defined in ORS Chapter 244, real or apparent, will be involved.

(B) No officer or employee of the county, or its designees or agents, no member of the governing body and no other public official of the county, who exercises any functions or responsibilities with respect to any public contract during their tenure, or for one year thereafter, shall have any interest, direct or indirect, in work to be performed in connection with such a contract. All public contracts and subcontracts for the county shall incorporate, or cause to be incorporated, a provision prohibiting such an interest. (Ord. 94-08, passed 5-18-94)

PUBLIC LAND CORNER RESERVATION FUND

§ 36.30 TITLE.

This subchapter shall be referred to as the “Umatilla County Land Corner Preservation Fund and Fee Ordinance.” (Ord. 86-3, passed 5-7-86; Am. Ord. passed 9-23-87)

§ 36.31 FUND.

There shall be established a Fund to be known as the Public Land Corner Preservation Fund. Money in the Public Land Corner Preservation Account shall be used only to pay expenses incurred or authorized by the County Surveyor in the establishment, re-establishment and maintenance of corners of government surveys under ORS 209.070. (Ord. 86-3, passed 5-7-86; Am. Ord. passed 9-23-87)

§ 36.32 FEE.

County Records shall collect a fee of \$10 for recording any instrument under ORS 205.130 and as indicated in § 36.33. Ninety-five percent of the fee collected shall be deposited with the County Finance Director at least once a month to be credited to the Public Land Corner Preservation Fund. (Ord. 86-3, passed 5-7-86; Am. Ord. passed 9-23-87; Ord. 89-6, passed 12-20-89)

§ 36.33 INSTRUMENTS.

Any of the following instruments which convey an interest in real property will be charged the fee indicated in §36.32:

- (A) Bargain and sale deeds;
- (B) Estoppel deed;
- (C) Mineral deed;
- (D) Trustee deed;
- (E) Deed in lieu of foreclosure;
- (F) Quitclaim deed;
- (G) Sheriff's deed;
- (H) Warranty deed;
- (I) Administrator's deed;
- (J) Deed of personal representative;
- (K) Gift deed;
- (L) Grant deed;
- (M) Deed creating estate by the entirety;
- (N) Executor's deed;
- (O) Guardian deed;
- (P) Timeshare deed;
- (Q) Corporation deed;
- (R) Corporate warranty deed;
- (S) Corporate quitclaim deed;
- (T) Corporate grant deed;
- (U) Contract;
- (V) Assignment of contract;

(W) Assignment, release or agreement;

(X) Memorandum of contract;

(Y) Deed for declaration of trust;

(Z) Bankruptcy court orders or decrees;

(AA) Orders and decrees of the U.S. District Court;

(BB) Orders, decrees, and judgments of the state courts (certified copies);

(CC) Easements;

(DD) Leases;

(EE) Licenses;

(FF) Patents or deeds (certified copies);

(GG) Assignments of Sheriff's certificates of sale;

(HH) Documents recorded pursuant to ORS 93.730, 93.750, 93.760, and 93.770; and

(II) Divorce decrees.

(Ord. 86-3, passed 5-7-86; Ord. 89-6, passed 12-20-89)

