

W-10-a

AGENDA COVER MEMO

AGENDA DATE: December 1, 2004

TO: Board of County Commissioners

DEPARTMENT: Lane County Public Contract Task Force
Trina Laidlaw, Facilitator
Gail Murray, Facilitator

PRESENTED BY: Ollie Snowden, Director of Department of Public Works
Karen Gaffney, Assistant Director of Department of Health
and Human Services

AGENDA TITLE: DISCUSSION/POLICY DIRECTION

I. MOTION - Discussion/Policy Direction Only

II. ISSUE OR PROBLEM

It would be helpful for departments to now receive policy direction on the underlying concepts for changes being considered for Lane County's public contracting rules. The purpose of this agenda item is not to propose specific amendments to the rules. After receiving the Board's policy direction, the departments expect to develop rule changes based on that direction, and present these to the Board prior to March 2005, the effective date of the new public contracting statutes.

III. DISCUSSION

A. Background

Last June, the Board considered and approved amendments to Lane Manual Chapter 20 and 21 public contracting rules as an "interim fix", while the departments engaged in a process to re-examine all of its rules by March 2005. The trigger for this effort was the 2003 Legislature adopting HB 2341, which essentially was a rewrite of statutory public contract requirements. The majority of the statutory changes are not effective until March 2005. Lane County's rules need to reflect the changes in the law.

Since last June, the Public Contract Task Force was formed. One the purposes of this Task force is to include as much input as possible from the departments as "users" of the system, and to coordinate and communicate with those serving some "administrative" or oversight function. There are actually four sub-task forces: 1) Goods and Services, 2) Public Improvement/Construction Services (includes Architects, Engineers, and Land Surveyor contracts), 3) Non-Public Contract Code contracts (e.g., grants, etc), 4) General - input on overview of rules and general issues involving all purchases. Department representatives serve on each of these task forces and

meetings are facilitated by Trina Laidlaw, Asst. County Counsel or Gail Murray, Purchasing Manager.

The "Goods and Services" and "Public Improvement/Construction" sub-task forces have been holding meetings together, with a portion of time spent together discussing issues of mutual interest, and a portion of time meeting separately to study and evaluate particular sections of the new law and AG Model Rules. Through this study and discussion emerged issues which are now covered by this agenda item. However, prior to soliciting this guidance from the Board, the sub-task force recommendations were reviewed by an "Administrative/Management" group consisting of the County Administrator, County Counsel, Director of Management Services, and Trina Laidlaw and Gail Murray. The proposals set forth below represent a "majority view" after this discussion and review.

B. Analysis

The proposals which the departments would appreciate policy guidance on include:

1. Increasing Lane County's quote limit for certain contracts including goods and services and public improvement/construction services (excluding highways, bridges and other transportation projects) to \$100,000 or \$150,000 from \$50,000.
2. Increasing contract amendment authority from 20% to 25%.
3. Delegating authority to department directors to make initial purchases of \$5,000 or less and amend to 25%.
4. Increasing the County Administrator's and Director of Management Services authority to execute contracts and purchase orders, respectively, to \$100,000 or \$150,000 to correspond with the increase in quote limits.
5. Direct appointment of professional service contractors up to \$10,000.

Dollar Limit - Quote vs. Formal Bid or RFP (Exclude Professional Services)

Prior to 2003, the Oregon Legislature did not set a specific dollar dividing line between a quote and formal bid/RFP process. It, however, provided a process for local contract review boards to adopt their own dividing line. In utilizing the statutory authority to adopt exemptions to formal bid competition, the Oregon Department of Administrative Services (DAS) established the dividing line at \$75,000 for purchasing goods, materials, and services including construction, maintenance, repair or similar labor and materials contracts for trade-related projects.

Other public entities followed DAS, including for example, Multnomah County which also adopted this \$75,000 dividing line. Other public entities, including Lane County, chose to set different limits: Lane County at \$50,000 and Washington County at \$50,000. Most public entities are now engaged in a process to re-examine their limits.

The new Oregon law (effective March 2005) represents the first time the Oregon Legislature has formally expressed its opinion about the dividing line between quotes and formal bids/RFP's. It has provided local contract review boards such as Lane County with the discretion to use an informal quote process:

1. For goods and services (excluding public improvement/construction contracts) up to and including \$150,000.
2. For public improvement/construction contracts up to and including \$100,000, except
3. For public improvement contracts involving contracts for highways, bridges and other transportation projects where the limit is up to and including \$50,000

Currently, Lane county departments may use a quote competitive process for goods and services, and including building and road construction, maintenance, repair, or similar labor and materials contracts for trade-related projects, up to and including \$50,000. The quote process includes departments contacting at least three prospective contractors in person, by telephone or in writing, which they believe may be able to and want to provide the service/item needed by the department.

Lane County departments processed approximately 630 original contracts and 460 amendments in fiscal year 03-04. The vast majority of these were expense contracts (as opposed to incoming revenue). Based on this data, increasing quote limits from \$50,000 (current Lane County rule) to \$100,000 would probably affect no more than approximately 70 - 75 contracts per year. Also, for purposes of illustration, the approximate cost of a simple, straightforward RFP (not protested) in the Department of Health and Human Services is \$1,800. (For more complicated projects such as LaneCare and Drug Court projects, the cost may be two to three times higher.)

Proposed Solution: Given the County's ability to exercise discretion up to the dollar limits set by the Oregon Legislature and given budget pressures, Lane County should amend its rules to set the quote v.s. bid/RFP dividing line at:

1. **Goods and Services purchases - up to \$100,000* (this is \$50,000 less than the statutory upper limit and \$50,000 more than the current Lane County limit)**
2. **Public Improvement/Construction goods and services purchases - up to \$100,000 (same as statutory limit and \$50,000 greater than current Lane County limit)**
3. **Public Improvement/Construction contracts involving highways, bridges and other transportation projects - \$50,000 (same as statutory and current Lane County limit)**

In addition, the departments would continue to have the discretion to use a formal bid/RFP process for purchases under these limits when they believe a more formal process would be in Lane County's interest.

***Alternative #1 - The limit for "Goods and Services" in 1. above should instead be raised to \$150,000, representing the full amount allowed by the statute**

and a \$100,000 increase from Lane County's current rule. The other limits in 2. and 3. above would remain as proposed.

Based on 03-04 fiscal year data, this would affect no more than approximately 30 contracts per year (# of contracts between \$100,000 and \$150,000)

Dollar Limit - Amending Contracts/Purchase Orders Without Additional Competitive Selection (Exclude Professional Services)

The Oregon Legislature did not previously specify a limit for amending contracts without additional competitive selection, and under the new law still does not specify a limit. As with the quote vs bid/RFP limit, it chose to provide a process (establishing an "exemption") for each local contract review board to set its own dollar limit for amending contracts.

The new AG model rule would allow up to 20% in total aggregate amendments for "small procurements" (\$5,000 and less), and 25% in total aggregate amendments for purchases over \$5,000 and up to and including \$150,000. Adopting this would require more department staff to make additional distinctions which may not be necessary. A more simple approach may be easier for department staff. The current Lane County rule allows amendments up to 20% except for remodeling contracts which can be amended up to 33% without additional competitive selection.

Proposed Amendment: Lane County should amend its rules to allow total aggregate contract amendments up to 25% (a 5% increase from Lane County's current rule) with the exception of contracts for renovation or remodeling of buildings which may have aggregate amendments not exceeding 33% (same as current rule).

Department Directors' Delegated Authority to Make Purchases of Less Than \$5,000, Without Competitive Selection and Amend Up to 25%

Currently, Lane County has not delegated authority to Department Directors to make any purchases independently. They purchase through a purchase order managed by the Director of the Department of Management Services, or through a contract executed by the County Administrator. There is likely a point at which the process, even in a minimal form, is expensive when compared to the dollar amount of the purchase.

As to competitive selection, the new statute states that for purchases of goods and services at \$5,000 or less, "the contract may be awarded in any manner deemed practical or convenient by the contracting agency, including by direct selection", or without competitive selection.

Lane County's current rule for goods, services, and materials is that departments should obtain competitive quotes, where feasible for contracts not exceeding \$5,000. Lane County's rule for professional service contractors is that they may be appointed directly, without competitive selection, for contracts not exceeding \$5,000.

Proposed Amendment: Department directors should be delegated authority to make purchases of up to \$5,000 and 25% in total amendments without

competitive selection, but are encouraged to seek quotes, particularly if the purchase involves a new service or purchase of a new item.

(The County's public contract task forces expect to propose additional guidelines to accompany this delegation. These guidelines would likely propose specific contract language for departments directors to consider, including in circumstances set forth below in 2-5. They plan to continue their work, but preliminarily have discussed the following:

1. The agreement should be for a single project, and is not a component of or related to any other project which exceeds \$5,000.

2. A purpose of the agreement is not to establish a collaborative relationship, joint venture, "partnership," association toward a common goal, including an intergovernmental agreement or with private entities.

3. The agreement does not include at least one of the parties wanting confidential or proprietary information protected, including from the County's perspective, confidential information about clients, customers, or service recipients.

4. The agreement does not include potential environmental impacts, including hazardous waste, asbestos, wetlands, or any other environmental issue, unless the department has addressed environmental issues, e.g. Public Works and its standard practice for right-of-way acquisitions of obtaining permits.

5. The agreement should not include a service which when provided could create a substantial risk of loss or damage to property, or personal injury to staff or a member of the public.

If any of the conditions in 2. - 5. are present, there is a fair risk that the liability to the County may far exceed the minimal dollar amount of the contract.

In addition, it may also be appropriate to establish guidelines regarding a Department Director's authority to execute any document, invoice, or agreement based on standard "boilerplate" type provisions, such as appropriate indemnity and liability provisions.

Delegated Authority

Generally, Oregon law leaves it to each local contract review board to decide which county officials have authority to approve and execute contracts. Lane County's current rule on delegated authority follows the quote v.s bid/RFP dividing line: generally, the County Administrator has delegated authority to execute contracts at \$50,000 or less, and the Director of Department of Management Services has authority to execute purchase orders at \$50,000 or less, but may require a written contract in lieu of purchase order when in the best interests of the county. Purchases exceeding \$50,000 are approved by the Board of County Commissioners (BCC), and the BCC routinely delegates execution authority

Allowing the County Administrator and Director of Management Services to process purchases, including executing transaction documents, does save time. If the Board directed that quote limits be raised, it would be easiest for department staff to also modify the delegated execution authority limits to correspond to that change.

Proposed Amendment: Given the value in the ability to make purchases in as timely a manner as possible, and given the value in making rules as simple as possible, Lane County should amend its delegation of authority rules to allow:

1. * The County Administrator authority to execute contracts valued at over \$5,000 and not more than \$100,000 for goods and services, including professional services.
2. * The County Administrator authority to execute contracts valued at over \$5,000 and not more than \$100,000 for public improvement/construction contracts (excluding highways, bridges and other transportation projects)
3. The County Administrator authority to execute contracts valued at more than \$5,000 and not more than \$50,000 or less for highway, bridge and other transportation contracts.
4. For contracts at \$5,000 or less, the County Administrator would have authority to review if referred by a Department Director based on a belief it is in the best interest of the County.
5. The Board of County Commissioners would retain the authority to approve contracts and delegate authority to execute on a case-by-case basis for contracts which exceed the amounts in 1., 2., and 3.

* If the Board favors raising the quote limit for goods and services covered by 1. above to \$150,000 instead of \$100,000, the delegated authority to the County Administrator could be set at \$100,000 or \$150,000.

Lane County should also amend its rules to allow the Director of Management Services, or designee, to execute purchase orders up to including \$100,000.

The County's public contract task forces, in conjunction with Management Services, wish to continue to work on additional guidelines to clarify the most appropriate use of purchase orders over contracts. For example, purchase orders appear well suited to purchase: a) Tangible items, e.g., office supplies and equipment, b) items offered through the Oregon State Price Agreement or other cooperative purchasing agreements, c) Limited and well defined services, and services or short duration, e.g., hiring a trainer for a workshop. Purchase orders may be less suited to agreements which require different or more complex contract provisions than are pre-printed on the purchase order form, public improvement /construction services, many professional services, intergovernmental agreements not involving simple purchases of tangible items. In addition, the guidelines being developed for department directors' purchasing authority may be suitable for the purchase order system.

Direct Appointment of Professional Service Contractors for \$10,000 and Under

Both the current and new Oregon law (effective March 2005) allow local contract review boards a great deal of flexibility in contracting for professional services. The new AG model rule for selection of architects, engineers, land surveyors and related services provides that such professionals may be "directly appointed" without competitive

selection where the estimated fee does not exceed \$25,000. While there is no corresponding "direct appointment" for other professionals under the AG Model rules, the Legislature appears to have intended that local contract review boards have more flexibility than state agencies in determining selection procedures for such professionals.

Lane County currently does have "direct appointment" (without competitive selection) of professional service contractors at \$5,000 or less. For contracts greater than \$5,000 and up to and including \$50,000, the departments may seek 3 quotes, and for contracts exceeding \$50,000 they are to conduct at least 2 interviews of at least the two most qualified contractors. The current amendment authority which applies is 50% for these professional services.

Given the existing "direct appointment" of up to \$5,000, plus any additional amendment authority up to 50%, totaling \$7,500, County departments request an increase in "direct appointment" authority to \$10,000 plus existing 50% amendment authority, or a total of \$15,000.

Proposed Amendment: Lane County should amend its professional service rule applicable to all professional service contracts to allow "direct appointment" where the contract value is \$10,000* or less (or \$5,000 more than current rule) plus up to 50% in total aggregate amendments (same as current rule).

The rule would also include 3 competitive quotes for contracts exceeding \$10,000 (\$5,000 increase over current rule) and up to and including \$100,000 (proposed increase in quote limit), and contracts exceeding \$100,000 would require interviews of at least two of the most qualified professionals.

***Alternative #1 - Lane County should amend its rule to allow direct appointment of Architects, Engineers, Land Surveyors and providers of related services where the contract value is \$25,000 or less. For other professionals, direct appointment would be at \$10,000 or less as above.**

IV. CONCLUSION

The County departments appreciate the Board's direction as they develop proposed modifications to Lane County's public contract rules to comply with changes in the law. Again, the departments expect to present proposed rules to the Board for their review and which reflect the direction provided by the Board through this agenda item.