

IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of an Ordinance Reestablishing)
the Local Contract Review Board; Adopting)
Certain Model Public Contract Rules; Adopting) ORDINANCE No. 761
Alternative Public Contract Rules; Declaring an)
Emergency; Effective March 1, 2005.)

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON ("the Board") sat for the transaction of county business in formal session on February 28, 2005, commissioners Mary P. Stern, Leslie Lewis and Kathy George being present.

THE BOARD MAKES THE FOLLOWING FINDINGS:

A. On June 11, 1998 the Board adopted Ordinance 646 to reestablish the Local Contract Review Board for Yamhill County and adopt Local Contract Review Board Rules. Ordinance 646 was amended by Ordinance 744 to revise rules.

B. In 2003, HB 2341 became law. (Or Laws 2003, ch 794.) HB 2341 created a new Public Contracting Code to become operative March 1, 2005. Beginning March 1, 2005, ORS Chapter 279 is replaced by ORS Chapters 279A, 279B and 279C. Among other provisions of HB 2341, the Model Public Contract Rules promulgated by the Department of Justice apply to local governments acting as contracting agencies unless the contracting agency specifically opts out of the rules or a particular rule. ORS 279.065A(5)(a).

C. The purpose of this ordinance is to reestablish the Board of Commissioners as the Local Contract Review Board for Yamhill County, adopt public contract rules to comply with the new Public Contracting Code, and opt out of certain model rules. NOW, THEREFORE,

THE YAMHILL COUNTY BOARD OF COMMISSIONERS HEREBY ORDAINS AS FOLLOWS:

Section 1. **Local Contract Review Board.**

(i) The Yamhill County Board of Commissioners is hereby reappointed to serve as the Local Contract Review Board for Yamhill County government. The Local Contract Review Board is vested with all authority and power authorized by the laws and constitution of the State of Oregon, including authority to make rules prescribing public contracting consistent with the Public Contracting Code.

(ii) Except as expressly delegated under this ordinance or the Yamhill County Public Contracting Rules, the Board reserves to itself the exercise of all the duties and authority of the Local Contract Review Board under Oregon law, including, but not limited to, the power and authority to:

- (1) Solicitation Methods Applicable to Contracts. Approve the use of contracting methods and exemptions from contracting methods for a specific contract or classes of contracts;
- (2) Brand Name Specifications. Exempt the use of brand name specifications for public improvement contracts;
- (3) Waiver of Performance and Payment Bonds. 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) Electronic Advertisement of Public Improvement Contracts. Authorize the use of electronic advertisements for public improvement contracts in lieu of publication in a newspaper of general circulation;
- (5) Appeals of Debarment and Prequalification Decisions. Hear properly filed appeals of the Public Contracting Officer or Department Head's determination of debarment, or concerning prequalifications;
- (6) Rulemaking. Adopt contracting rules under ORS 279A.065 or 279A.070 including, without limitation, rules for the procurement, management, disposal and control of goods, services, personal services and public improvements; and
- (7) Delegation. Delegate to any employee of Yamhill County any of the duties or authority of a contracting agency.

Section 2. Adoption of Rules.

The Board hereby adopts the "Yamhill County Public Contracting Rules" as shown in the attached Exhibit "A" as the rules to govern the Local Contract Review Board with the exception of the rules for Contracts for Personal Services established in Section 3. Exhibit "A" is incorporated into this ordinance by reference. In adopting the rules of procedure and specific exemptions contained in Exhibit "A," the Board finds that the exemption of certain contracts or classes of contracts from formal competitive bidding requirements as set forth in Exhibit "A" are either expressly authorized by law or will not encourage favoritism in public contracts or substantially diminish competition and will result in cost savings to the county because:

- a. The nature of the particular classes of contracts exempted makes competitive bidding pointless or not cost effective in such cases; or
- b. The exemption requires alternative contracting procedures that will ensure reasonable competition and the best contract price for the public; or
- c. The exemption is substantially similar to exemptions adopted by the State of Oregon; or
- d. The exemption is otherwise supported by the findings and conclusions set forth in Section 6 of Exhibit "A."

Section 3. Contracts Exempt from the Oregon Public Contracting Code and County Rules.

a. In accordance with ORS 279A.025, the Yamhill County Public Contracting Rules and the Oregon Public Contracting Code do not apply to the classes of contracts stated in this section unless specifically provided otherwise.

(i) Between Governments. Contracts between Yamhill County and a public body or agency of the State of Oregon or its political subdivisions or municipalities, or between Yamhill County and an agency of the federal government.

(ii) Grants. A grant contract is an agreement under which Yamhill County is either a grantee or a grantor of moneys, property or other assistance, including loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets, for the purpose of supporting or stimulating a program or activity of the grantee 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.

(iii) Real Property. Acquisitions or disposals or real property or interests in real property.

(iv) Textbooks. Contracts for procurement or distribution of textbooks.

(v) Oregon Corrections Enterprises. Procurements from an Oregon Corrections Enterprises program.

(vi) Exempt under State Law. Any other public contract specifically exempted from the Oregon Public Contracting Code by another provision of law.

(vii) Federal Law. Except as otherwise specifically provided in ORS 279C.800 to 279C.870, applicable federal statutes and regulations govern when federal funds are involved and the federal statutes or regulations conflict with any provision of this ordinance, the Oregon Public Contracting Code or the Yamhill County Public Contracting Rules, or require additional conditions in public contracts not authorized by this ordinance, the Oregon Public Contracting Code or the Yamhill County Public Contracting Rules.

Section 4. Contracts for Personal Services.

a. Authority. Personal Service Contracts are not Public Contracts for purposes of ORS Chapters 279A, 279B, 279C, and these Rules. This section is intended to comply with ORS 279A.055 to create procedures for the screening and selection of persons to perform Personal Services. Contracts for personal services other than Architectural, Engineering and Surveying services are governed by rules established by this section.

b. Scope.

(i) The following are Personal Service Contracts:

(1) Contracts for services performed as an independent Contractor in a professional capacity, including but not limited to, the services of an accountant, attorney, architectural or land use planning consultant, physician or dentist, registered professional engineer, appraiser or surveyor, passenger aircraft pilot, aerial photographer, timber cruiser, data processing consultant or broadcaster.

(2) Contracts for services as an artist in the performing or fine arts, including but not limited to, persons identified as photographer, filmmaker, painter, weaver or sculptor.

(3) Contracts for services of a specialized, creative and research-oriented, noncommercial nature.

(4) Contracts for services as a consultant.

(5) Contracts for educational and human custodial care services.

(ii) The following are not Personal Services Contracts:

(1) Contracts, even though in a professional capacity, if predominately for a product, e.g., a Contract with a landscape architect to design a garden is for Personal Services, but a Contract to design and supply all the shrubs and trees, is predominately for a tangible product.

(2) A service Contract to supply labor which is of a type that can generally be done by any competent worker, e.g., janitorial, security guard, laundry and landscape maintenance service contracts.

(3) Contracts for a trade-related activity, even though a specific license is required to engage in the activity. Examples are repair and/or maintenance of all types of equipment or structures.

c. Procedure for Competitive Process. Unless exempted from a Competitive Process by this ordinance, Personal Services Contracts must be made by an RFP or RFQ process as provided in this subsection if the total amount to be expended in a fiscal year exceeds \$10,000.

(i) RFP (Request for Proposals): The solicitation of competitive proposals to be used as the basis in making an acquisition or entering into a contract when criteria other than specification and pricing may be the predominant factor for award recommendation.

(ii) RFQ (Request for Quotation): An informal written or verbal solicitation for pricing of goods or services.

d. Personal Services Contracts not requiring Competitive Process. Unless the Department Head determines a Competitive Process is appropriate under the circumstances, a Competitive Process is not required for the following categories of Personal Services Contracts.

(i) Employee benefits plans.

- (ii) The following types of Personal Services Contracts relating to litigation.
 - (1) Litigation Services. Contracts for legal services approved by County Counsel.
 - (2) Litigation support and related contracts approved by County Counsel or the District Attorney for the following services:
 - (a) Court Reporters
 - (b) Expert Witnesses
 - (c) Arbitrators and Mediators
 - (d) Trial Consultants
 - (e) Investigators
- (iii) The following types of Personal Services Contracts.
 - (1) Contracts in which the rates for the services being purchased are established by federal, state, county or other local regulatory authority, or an alternate process for soliciting and approving qualified Contractors is approved in advance by the Public Contracting Officer or Department Head.
 - (2) Contracts for which a non-County funding source, e.g. grant, federal or state, identifies the Contractor or Contractors.
- (iv) Contracts for the purpose of the investment of public funds or the borrowing of funds by the County when such investment or borrowing of funds is contracted pursuant to duly enacted statute, ordinance, charter, or constitution.
- (v) Contracts for hospitalization, medical and dental services.
- (vi) Contracts for software maintenance services.

Section 5. Fees to other Jurisdictions.

The fee to be charged to other local governments who chose to utilize the Yamhill County Local Contract Review Board 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 6. Repeal of Ordinance 646, as amended.

Ordinance 646, as amended by Ordinance 744, is hereby repealed.

Section 7. 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 remain valid.

Section 8. Effective date; emergency clause.

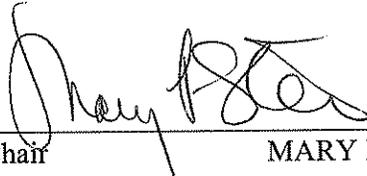
The first and second readings of this ordinance were made February 28, 2005. To carry out the intent of this ordinance an emergency is hereby declared to exist. In accordance with ORS 203.045(4) this ordinance shall take effect on March 1, 2005.

DONE at McMinnville, Oregon on February 28, 2005.

ATTEST

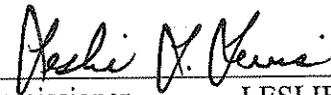
YAMHILL COUNTY BOARD OF COMMISSIONERS

JAN COLEMAN
County Clerk


Chair MARY P. STERN

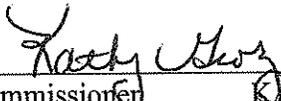
By: 
Deputy ANNE BRATT




Commissioner LESLIE LEWIS

FORM APPROVED BY


JOHN M. GRAY, JR.
Yamhill County Legal Counsel


Commissioner KATHY GEORGE

whitec\lrb\2004amendments\ycordinance761.wpd

EXHIBIT "A" TO ORDINANCE 761
Yamhill County Public Contracting Rules
(Effective March 1, 2005)

Section 1. AUTHORITY; PURPOSE. These rules are promulgated by Yamhill County, Oregon as the Yamhill County Public Contracting Rules under authority of Ordinance 761 and the Public Contracting Code of the State of Oregon codified as ORS Chapters 279A, 279B and 279C. The purpose of these Public Contracting Rules is to establish procedures to assure that every public contract or class of public contracts to which the county is a party has met state and county requirements.

Section 2. APPLICABLE RULES. Except as provided to the contrary in these Yamhill County Public Contracting Rules, the Division 46, 47, 48 and 49 Model Public Contract Rules ("MCR") of the Department of Justice set forth in Oregon Administrative Rules chapter 137, 2004, are adopted as the Yamhill County Public Contracting Rules ("YCR"). The following Yamhill County Public Contracting Rules are adopted in lieu of the identified Model Public Contract Rules of the Department of Justice.

- a. The following YCR -047-0270 is adopted in lieu of MCR 137-047-0270.

YCR-047-0270. Unless the procurement is exempted in the Schedule of Exemptions adopted under Section 3(b) of the Yamhill County Public Contracting Rules, MCR 137-047-0270 shall apply to procurements for goods or services greater than \$5,000. If the procurement is exempted under Section 3(b) of these rules, MCR 137-047-0270 shall not apply to the procurement.

- b. The following YCR -047-0300 is adopted in lieu of MCR 137-047-0300.

YCR-047-0300. Unless the procurement is exempted in the Schedule of Exemptions adopted under Section 3(b) of the Yamhill County Public Contracting Rules, MCR 137-047-300 shall apply to procurements for goods or services greater than \$5,000. If the procurement is exempted under Section 3(b) of these rules, MCR 137-047-0300 shall not apply to the procurement.

Section 3. DEFINITIONS. The Board adopts the definitions set forth in ORS Chapters 279 a, 279B and 279C and OAR Chapter 137 together with the following definitions; provided, however, that the definitions set forth in this section supercede terms defined elsewhere:

- a. **Board:** The Board of Commissioners of Yamhill County acting under Ordinance 761 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 required by ORS Chapter 279A, 279B or 279C 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 written 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 Administrative Services or his designee for county public contracts in general.
 2. The Director of Public Works or his designee for county public works contracts.
- 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 action under ORS 279A.025, 279C.335 or other applicable provisions of ORS Chapter 279A, 279B or 279C or applicable rules of the Board; 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 the Schedule of Exemptions set forth 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, or with professional associations representing public agencies or the federal government, including but not limited to the Association of Oregon Counties and the National Association of Counties.
2. Contracts which are exclusively for personal services as provided in Ordinance 761, as may be amended from time to time.
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, or for banking.

8. Contracts for insurance.

9. Contracts for purchase or acquisition of computer hardware or software including telecommunications products and telecommunications services (including cable, video and television products).

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 procurement or construction 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, liquid asphalt products 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 applicable law.
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.
26. Contracts for the purchase of advertising, including legal advertising intended for the purpose of giving public notice.
27. Contracts for the purchase of all utilities including, but not limited to, electric power, gas, water, sewage, internet, telephone and cable television access.
28. Contracts with qualified non-profit agencies otherwise made exempt by state law.
29. Contracts for the purchase of ammunition or other law enforcement equipment determined necessary by the Sheriff for use by county employees or agents.

30. Contracts for the disposition of surplus county personal property so long as the contract complies with other applicable county ordinance requirements regarding disposition of surplus county personal property.

Section 4. EXEMPTIONS FOR OTHER CONTRACTS. The Board may 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 and notice of intent to award requirements set forth in ORS 279B.135 and ORS 279C.410(7), if the Board, by a 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 as well as the method used for the selection of the particular contractor. The determination shall be made before any contract exempted hereunder is executed.

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. FINDINGS IN SUPPORT OF EXEMPTIONS FROM COMPETITIVE BIDDING.

- a. The Board makes the following findings in support of the exemptions established by these rules.

Contracts Under Certain Dollar Amounts

1. The County incurs costs in awarding contracts under a formal competitive bidding or formal competitive proposal process.
2. While competitive bidding or competitive proposals can result in cost savings for large projects, the cost of the process can exceed the cost savings for smaller contracts.
3. State law creates exemptions for contracts under specified dollar amounts, and the County's exemption implements state law rather than creating a new or special exemption.
4. The rules require an informal competitive process (solicitation of quotes) in most situations, assuring competition. Even when a direct appointment is possible, the County cannot use a higher priced source if a lower priced source is known to be available. The rule against fragmentation of

contracts prevents misuse of this exemption.

5. The requirement to obtain at least three quotes for intermediate contracts discourages favoritism by requiring the County to check with several sources.

6. It is unlikely that this exemption will encourage favoritism or diminish competition because it still provides for competition in most circumstances and requires the County to consider alternate sources.

7. The exemption will lead to cost savings by avoiding the cost of a formal process when that cost would outweigh any likely cost savings.

8. The exemption is in the public interest because it allows the County to reduce internal costs while controlling contract expenditures. This could not be achieved otherwise.

Price Regulated Items

9. If prices are regulated, a competitive process would not result in a lower-cost contract and the costs of the process would increase the County's overall costs.

10. Price-regulated items are typically available only from a single or limited number of sources, so exempting price-regulated items is unlikely to encourage favoritism.

11. The exemption is in the public interest because it results in cost savings for the County that could not be achieved without the exemption.

Periodicals

12. The purchase of most periodicals is within the small contract dollar amount.

13. A substantial amount of market competition exists for periodicals, which results in competitive prices in the market.

14. The costs of a formal competitive process are greater than the amount of any likely savings from a competitive process.

15. The prohibition on use of higher priced sources when lower priced sources are known to be available discourages favoritism.

Advertising Contracts

16. Most entities that provide a forum for advertisers have set prices that cannot be negotiated.

17. The County has legal requirements for advertising public notices that can only be met by a small number of sources and all possible sources can be contacted without the need for an invitation to bid or request for proposals.

18. The correct advertising medium is important for the success of any advertising, so the specific medium needs to be selected based on considerations that are difficult to quantify. Therefore, selecting advertising media by bid is inappropriate and selecting by proposals may also result in a proliferation of proposals that do not meet the County's needs.

19. Advertising often must be placed on a short time schedule that does not permit the use of a formal competitive process.

20. The costs of a formal competitive process would likely be greater than the savings resulting from using that type of process to place advertising.

21. This exemption will not encourage favoritism because the County is still able to use informal processes to compare media and choose the best outcome for the County.

22. The exemption is in the public interest because it will result in cost savings to the County without encouraging favoritism and those purposes could not be met with existing rules.

Equipment Maintenance Repair and Overhaul

23. It is often impossible to determine the cost of equipment repair or overhaul without testing the equipment. It is not cost effective to have one contractor test the equipment and another perform the repairs.

24. Equipment repair often is needed to be performed without delay and in less time than a competitive process would take.

25. The only way to have a competitive process for equipment repair or overhaul, other than by creating price agreements, would be to have a separate entity test the equipment to determine what is wrong with the equipment.

26. Without knowing the extent of repairs needed, competition is not possible because different entities could quote only their hourly rates, with no prediction as to the amount of time the repairs would take.

27. The exemption is unlikely to encourage favoritism because it is to be used only in rare occasions where the County does not have established price agreements, reached by a competitive process without favoritism.

28. This exemption serves the public interest by providing a simple process for obtaining equipment repair when needed.

29. The exemption for maintenance does not apply to routine or scheduled maintenance, unless there is only one entity capable of providing the service.

Purchases Under Established Price Agreements

30. Purchases under existing price agreements are unlikely to encourage favoritism or diminish competition because they are based on price agreements entered into after an open competitive process.

31. This exemption furthers the public interest by ensuring that price agreements will function properly and the same results would not be achievable if this exemption were not granted.

Gasoline, Diesel Fuel, Heating Oil, Lubricants and Asphalt

32. The exemption encourages competition and discourages favoritism by requiring an informal competitive process and requiring the County to use the least expensive source of those providing quotes.

33. The purchases under this exemption are likely to be at levels that qualify as small or intermediate contracts and the process is similar to the process required for intermediate contracts. The exemption is provided because over a period of time the total dollar amount of goods purchased from a single source may exceed the dollar maximum for intermediate contracts.

34. This exception is in the public interest because it allows the County to reduce costs while maintaining competition. The same result could not be achieved within existing rules because a costly formal process might otherwise be required.

Investment Contracts

35. Investment of County funds is closely regulated by state statutes.

36. Protecting the County's financial resources is in the public interest and awarding investment contracts to low bidders creates a risk of the security of the County's funds. The County needs to have a relationship of trust with those entities or institutions the have demonstrated the ability to safely maintain public finances.

37. The exemption for investment contracts or contracts to borrow funds is not likely to restrict competition or encourage favoritism because the County will investigate a range of potential contractors to assure the security of the County's funds.

38. The exception is in the public interest because it protects the County's financial resources in a way that could not be achieved without the exception.

Insurance Contracts

39. This exception provides for a competitive process for appointing agents of record or obtaining specific insurance, although the process does not necessarily conform to the standard RFP or ITB process. The competitive nature of the process promotes competition and does not encourage favoritism. The public interest would not be served by reliance on other regulations because of the specific nature of insurance contracts.

Employee Benefit Insurance

40. The Public Contracting Code creates an exemption for employee benefits contracts and the County's regulations implement that exemption.

Office Copier Purchases

41. This exemption requires a comparison of products and prices and so is a competitive process.

42. The exception is not likely to discourage competition or encourage favoritism because it does require the County to compare and choose the best combination of goods and price. It also results in a cost savings by being a less costly process than a formal competitive bidding or proposal process.

43. The exemption is in the public interest because it allows the County to reduce procedural costs while maintaining competition, and other regulations do not provide the same combination of cost savings and competitive process.

Single Seller of Product or Service

44. In some cases, there is only one possible supplier of the goods or services needed by the County. If there is only one supplier, a competitive process would be both unnecessary and costly.

45. This exception does not discourage competition, it simply recognizes that in some situations competition does not exist and that having a competitive process would not result in competition. It also does not encourage favoritism because no one would be disfavored by choosing the only possible source. The regulation contains sufficient safeguards to assure that it will be used only when other sources are not available.

46. The exception is in the public interest because it results in cost savings that would not be possible if the exception did not exist.

Contract Amendments

47. At times the County's needs change during the course of a contract and more goods, services, or work is needed to meet the County's needs. It would not be cost-effective to require a new contracting process for additional work closely related to an existing contract.

48. This exemption contains limitations to prevent abuse and to limit the extent of contract amendments. These limitations discourage favoritism by requiring a new competitive process for major amendments.

49. The exemption does not discourage competition because it applies only when the existing contract was awarded by a competitive process.

50. The exemption is in the public interest because it saves the cost of a competitive process to make minor amendments to an existing contract.

Purchases using Contract of Other Public Agencies

51. Contracts by public agencies often allow other public agencies to make purchases on the same terms.

52. This exemption promotes competition and does not encourage favoritism because it may be used only if the original contract was awarded after a competitive process.

53. The exemption is in the public interest because it allows the County to take advantage of other competitive processes and avoid duplication of costly processes.

54. The exemption is in the public interest because it results in cost savings while maintaining competition. The same results could not be achieved without this exemption.

Oil or Hazardous Material Removal

55. This exemption is limited to situations in which the County must comply with a DEQ order. The exemption is needed to ensure compliance with environmental laws and protection of the environment in a timely manner and applies only if a competitive process cannot be completed in time to comply with the DEQ order.

56. The exception promotes competition by requiring the County to use an informal competitive process by obtaining informal solicitations or quotes from potential suppliers.

57. This exemption is in the public interest and the public interest in environmental cleanup would not be served if this exemption were not adopted.

Contracts With Qualified Non-Profit Agencies

58. This exemption implements an exemption required by state law.

Ammunition and Law Enforcement Equipment

59. The County uses specialized ammunition and law enforcement equipment, including special training ammunition. The ammunition and equipment meeting the County's requirements is often available only for short time periods, insufficient to allow a competitive process.

60. The general requirement to attempt to find the lowest price goods or services will ensure that the County does not add to the County's costs. Providing this exemption will give the County the flexibility to purchase ammunition and equipment when available and needed. Not providing this exemption could endanger public safety.

61. The public interest is served by this exemption because it allows the County to ensure that its public safety personnel are adequately armed and trained.

Emergencies

62. In emergencies, the County is often required to take action in less time than it would take to complete a formal competitive process.

63. The exemption promotes competition and discourages favoritism by requiring the County to use an informal competitive process and by limiting the exemption to those contracts needed to avoid a substantial risk of loss, damage or interruption of services.

64. The exemption promotes the public interest by allowing the County to respond quickly to emergencies that threaten loss, damage or interruption of services. The public interest would not be served by requiring a formal competitive process to respond to an emergency.

b. Based on the findings set forth above, the Board makes the following conclusions as to the exemptions contained in these rules:

1. It is unlikely that any of the exemptions will encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts. It is unlikely that the rules as a whole, including all exemptions, will encourage favoritism in the awarding of public contracting or substantially diminish competition for public contracts.

2. The awarding of public contracts pursuant to any of the exemptions will result in substantial cost savings to the County. The exemptions have been prepared to allow less expensive selection processes to be used when a more expensive process would not result in sufficient contract cost reduction to justify a more expensive process.

3. For those provisions allowing public improvement contracts to be awarded by a means other than formal competitive sealed bids, the exemptions will result in cost savings by allowing the use of cost control measures throughout the development process.

4. Each exemption supports the public interest and each exemption is needed to provide a comprehensive approach to public contracting that would not be achieved if any of the exemptions were not provided.

[End Yamhill County Public Contracting Rules]

whitec\lcrb\2004amendments\ycord761exa.wpd