

RULES FOR SELECTION OF CONTRACTORS TO PERFORM PERSONAL SERVICES

1 STATUTORY AUTHORITY

1.1 These Rules are adopted and may be amended by the Board of Commissioners of Douglas County, Oregon pursuant to ORS 279.049 (1) and ORS 279.051.

1.2 These Rules are adopted in lieu of model rules prepared by the Attorney General for screening and selection of contractors who perform personal services contracts, including architectural, engineering, and land surveying services. These Rules have been adopted after review of the model rules in effect on June 23, 1999, and they intentionally omit rules regarding protest procedures.

2 DEFINITIONS AND INTERPRETATION

2.1 The following definitions apply to these Rules:

2.1.1 "Applicable Laws" means all codes, statutes, rules, regulations, orders, ordinances, and other legal requirements of federal, state, and local governmental bodies, agencies, and officers that affect the interpretation and implementation of these Rules or Contracts for Personal Services.

2.1.2 "Assignment" means a discrete written agreement between the County and a Contractor that authorizes the Contractor to perform specific Services that are within the general scope of Services covered by a Master Contract and that are subject to all or part of the provisions of the Master Contract.

2.1.3 "Board" means the Board of County Commissioners.

2.1.4 "Claims" means demands, claims, legal actions, arbitrations, and other adversarial proceedings and resulting expenses and liabilities, including damages, judgments, attorney fees, litigation costs, arbitration costs, and mediation costs.

2.1.5 "Compensation Requirements" means a general indication of the cost of an Offeror's Services, including fees and reimbursable expenses, which is submitted by an Offeror in response to an RFP or an RFQ.

2.1.6 "Contract" means the document or documents that govern the contractual rights and obligations of the County and a Contractor.

2.1.7 "Contract Price" means the charges for Services as determined by a Contract.

2.1.8 "Contract Time" means the time during which Personal Services will be performed under a Contract which may be stated as a fixed number of days after the Contract takes effect, a period between certain dates, or a "Contract Term" of part of a year, one year, or multiple years during which Personal Services will be provided on an regular, periodic, or intermittent basis as needed. The Contract Time may incorporate a progress schedule for performance of the Services.

2.1.9 "Contractor" means a person or entity who is an independent contractor under the standards stated in ORS 670.600 and who enters into a Contract with the County to perform Personal Services.

2.1.10 "County" means Douglas County, Oregon.

2.1.11 "County Accountant" means the person appointed by the Board pursuant to ORS Chapter 210 and Douglas County Code Chapter 3.04.

2.1.12 "County Counsel" means an attorney or a paralegal in the Office of the County Counsel established by Douglas County Code Chapter 2.08.

2.1.13 "Department Head" means an appointed or elected head of a County department.

2.1.14 "Entity" means a partnership, joint venture, limited partnership, limited liability company, professional corporation, business corporation, limited liability partnership, nonprofit corporation, or other legal entity or organization.

2.1.15 "Expert Witness" means a person with specialized knowledge, skills, experience, or professional credentials in a particular field who is engaged to provide analysis, advice, assistance, and, if necessary, testimony on any claim, negotiation, mediation, legal action, administrative proceeding, arbitration, or other adversarial proceeding or dispute in which the County is involved, as requested by legal counsel for the County.

2.1.16 "Master Contract" means a Contract for Services with a Contract Term of part of a year, one year, or multiple years during which the Contractor may provide certain Services on a regular or periodic basis and may be authorized intermittently to provide certain Services by Assignments.

2.1.17 "Offeror" means a person or entity who submits a response to an RFP or an RFQ.

2.1.18 "Person" means an individual natural person, including an individual who is in business as a sole proprietor.

2.1.19 "Personal Services" or "Services" means services that require specialized technical, artistic, or professional skills or talent, as more particularly described in Section 3.

2.1.20 "Public Agency" means and includes a city, a county, a special district listed in ORS 198.010 or ORS 198.180, a school district, an educational service district, a community college district, an intergovernmental entity formed under ORS Chapter 190, or other unit of local government as defined in ORS 190.003; an agency of the State or Oregon or another state; the United States or a federal agency or instrumentality; or an American Indian tribe.

2.1.21 "Request for Proposals" or "RFP" means a written document issued by the County pursuant to Section 9 of these Rules which solicits competitive written "Proposals" from Offerors.

2.1.22 "Request for Qualifications" or "RFQ" means a written document issued by the County to Section 7 of these Rules which solicits written "Statements of Qualifications" from Offerors.

2.1.23 "Reviewers" means officers, employees, or agents of the County who are designated to review Proposals or Statements of Qualifications.

2.2 Generally, unless particular provisions of these Rules state otherwise or unless the context indicates otherwise, the following provisions apply to words and phrases used in these Rules:

2.2.1 Words defined in these Rules and references to specific sections and subsections will be capitalized.

2.2.2 Words in the present tense include the future and vice versa. Words and phrases used as nouns include the singular and plural forms.

2.2.3 Words and phrases that are not defined in these Rules will have the definitions stated in Applicable Laws.

2.2.4 "Shall," "will," and "must" signify acts and obligations that are mandatory. "Should" signifies an act that is preferred, but not required. "May" signifies a discretionary or permissive act.

2.2.5 The phrase "without limitation" will be deemed to follow the words "include," "includes," and "including" when referring to a list, class, or group of persons, entities, things, conditions, acts, omissions, events, obligations, rights, remedies, or liabilities.

2.3 The Board reserves exclusive discretion to interpret these Rules. The Board's interpretation of these Rules will be final so long as it is not arbitrary.

3 CLASSIFICATION OF SERVICES

3.1 Personal Services include the services of advertising consultants, accountants, appraisers, arbitrators, architects, artists, attorneys, auctioneers, audiologists, broadcasters, home care providers, chiropractors, clinical social workers, computer programmers, concessionaires, dentists, dental hygienists, dieticians, educators, engineers, entertainers, film makers, landscape architects, land surveyors, marriage and family therapists, mediators, medical doctors, medical laboratories, meeting facilitators, naturopaths, nurses, occupational therapists, optometrists, pharmacists, photographers, physical therapists, psychologists, speech-language pathologists, and speakers.

3.2 Although the word "Services" is used synonymously with "Personal Services" throughout these Rules, not all services, as that word is used generally, are considered Personal Services for purposes of these Rules. Janitorial service, security service, landscape maintenance, laundry service, and other physical services that may be provided by competent workers are not Personal Services. Plumbing, electrical work, carpentry, equipment maintenance, and other skilled physical work that may require special training and licensing are not Personal Services.

3.3 If the primary purpose of a contract is to procure goods, improvements or alterations to real property, computer systems, or other products, it will not be considered a Personal Services Contract even if the vendor or contractor provides some Personal Services in connection with the contract. This provision includes contracts for landscaping work in which the landscaping contractor provides some landscaping architectural services, contracts for acquisition of mechanical systems or computer hardware in which the contractor provides some design services, contracts for acquisition of packaged applications software that will be modified by the vendor to satisfy specific requirements of the user, design/build public improvement contracts, and construction manager/general contractor contracts for public improvements.

4 AUTHORITY OF COUNTY OFFICERS:

4.1 Contracts for Personal Services must be signed by the Board, by the Salmon Harbor Management Committee with respect to Contracts under its jurisdiction, or by a Department Head to whom the Board has delegated specific authority to sign Contracts.

4.2 The Salmon Harbor Management Committee will perform all functions of the Board under these Rules with respect to Contracts within its jurisdiction, and the Harbor Master for Salmon Harbor will perform functions of both the Department Head and the County Accountant, as authorized by the Salmon Harbor Management Committee.

5 INITIATING PERSONAL SERVICES CONTRACTS

5.1 Procurement of Personal Services that will cost of \$75,000 or less may be initiated by a Department Head with the assistance of the County Accountant and the County Counsel. Procurement of Personal Services that may cost more than \$75,000 may be initiated only with the permission of the Board.

5.2 RFQs, RFPs, Contracts, and other procurement documents must be reviewed and approved by the County Counsel. Specific procurement actions may be initiated without the prior approval of the County Counsel if the procurement documents are forms prepared or previously approved by the County Counsel and are used as directed by the County Counsel.

5.3 Procurement of Personal Services may be initiated if using an independent contractor to provide the Services is preferable to having the Services performed by County employees for one or more of the following reasons:

5.3.1 The Services will be needed only on an intermittent, temporary, or otherwise limited basis;

5.3.2 The County does not have employees with the expertise required for the Services;

5.3.3 The County has employees who have the expertise required for the Services, but they cannot perform the Services within an acceptable time; or

5.3.4 An independent opinion or evaluation of County operations is necessary or appropriate.

6 USE OF COMPETITIVE SELECTION PROCEDURES FOR PERSONAL SERVICES

6.1 A Contract for Personal Services must be formed by one of the methods described in this section unless the Contract is exempt from competitive selection under Section 15. In addition to specific factors stated in Subsections 6.2 through 6.5, the selection process should be commensurate with the scope and complexity of the Services that are needed, the expertise required of the Contractor, the budget for the Services, the time by which the Services are needed, and the availability of persons and entities who are qualified to perform the Services.

6.2 If Services are needed for clearly identified tasks and the estimated Contract Price is \$25,000 or less, the County may enter into a Contract without issuing an RFQ or an RFP by selecting any qualified person or entity who is available to perform the Services within the time needed, subject to the following conditions:

6.2.1 The County will consider the volume of Services previously provided by persons or entities under Contracts with the County to effect equitable distribution of Contracts without favoritism among comparably qualified persons and entities without favoritism.

6.2.2 The Department Head who selects the Contractor must document the reasons for the decision on selection.

6.3 If the estimated Contract Price exceeds \$25, 000 but does not exceed \$75,000, the County may enter into a Contract without issuing an RFQ or an RFP by selecting the Contractor from a list that is maintained by the County pursuant to Section 8 or a suitable list that is maintained by another Public Agency through competitive procedures that are comparable to these Rules, subject to the following conditions:

6.3.1 The County will consider the volume of Services previously provided by Offerors under Contracts with the County to effect equitable distribution of Contracts without favoritism among comparably qualified Offerors.

6.3.2 The Department Head who selects the Contractor must document the reasons for the decision on selection, and the Board must concur with the decision of the Department Head;

6.3.3 The Services must be clearly defined; and

6.3.4 The persons who will be assigned to perform the Services, the schedule for the Services, the Contract Price, and other factors that could be addressed in a Statement of Qualifications for specific Services or a Proposal must be established during Contract negotiations with an Offeror.

6.4 If the estimated Contract Price exceeds \$75,000, the County may select a Contractor in accordance with Subsection 6.3 if the Board determines on the record at a public meeting that issuing and administering an RFQ or an RFP would not substantially enhance the number or quality of Offerors who are suitable to perform the Services.

- 6.5 The County will issue a RFQ to select a Contractor to perform Services if:
- 6.5.1 The County does not maintain a list of persons and entities who are qualified to perform the type of Services that are required, and the County cannot use a suitable list maintained by another Public Agency; or
 - 6.5.2 The cost of the Services will not exceed \$75,000 and the Department Head requesting the Services determines that issuing an RFQ would substantially enhance the number and quality of Offerors who are suitable to perform the Services or would be preferable to selection from a list pursuant to Subsection 6.4 for specific reasons related to the Services; or
 - 6.5.3 The cost of the Services may exceed \$75,000 and the Board determines that issuing an RFQ would substantially enhance the number and quality of Offerors who are suitable to perform the Services or would be preferable to selection from a list pursuant to Subsection and Subsection 6.4 for specific reasons related to the Services;
 - 6.5.4 The Services are clearly defined; and
 - 6.5.5 The persons who will be assigned to perform the Services, the schedule for the Services, the Contract Price, and other factors that could be addressed in a Proposal must be established during Contract negotiations with an Offeror.
- 6.6 The County will issue an RFP to select a Contractor to perform Services if:
- 6.6.1 The County wants Proposals to identify the persons who will be assigned to perform the Services; or
 - 6.6.2 The County needs guidance from Offerors regarding the most efficient and effective approach to resolving a problem or executing a Project; or
 - 6.6.3 The County needs guidance from Offerors regarding the methods for achieving particular outcomes desired by the County.

7 REQUESTS FOR QUALIFICATIONS

- 7.1 An RFQ may be issued for one or more of the following purposes:
- 7.1.1 To establish or maintain a list of Offerors who are qualified and available to perform certain types of Services pursuant to Section 8;
 - 7.1.2 To obtain more detailed information regarding the qualifications of persons or entities who are on a list maintained pursuant to Section 8;
 - 7.1.3 To select a Contractor who will provide Services pursuant to a Master Contract;
 - 7.1.4 To select a Contractor who will provide Services needed for a particular problem or project; or

7.1.5 To identify a limited number of Offerors to receive an RFP for a particular problem or project.

7.2 An RFQ should state or describe:

7.2.1 The purpose of the RFQ;

7.2.2 The type Services covered by the RFQ;

7.2.3 The format and content of a responsive Statement of Qualifications;

7.2.4 The procedure for amending a Statement of Qualifications;

7.2.5 The procedure for withdrawing a Statement of Qualifications; and

7.2.6 The date by which Statements of Qualifications must be submitted.

7.3 If an RFQ is being issued to select a Contractor for a Master Contract under Subsection 7.1.3 or a particular project or problem under Subsection 7.1.4 or both, or to identify a limited number of qualified Offerors who will receive an RFP under Subsection 7.1.5, the RFQ should state the projected Contract Time and a copy of the Contract form should be issued with the RFQ.

7.4 An RFQ that will be used to establish and maintain a list of qualified Offerors under Section 8 should require the following information for a responsive Statement of Qualifications:

7.4.1 The Offeror's name and the name, address, and facsimile number;

7.4.2 The name and telephone number of a representative of the Offeror whom the County may contact regarding transactions with the Offeror;

7.4.3 The technical training, education, experience, and other qualifications of the Offeror's personnel for providing the Services;

7.4.4 Resources that the Offeror can use to provide the Services;

7.4.5 A list of clients who have contracted with the Offeror for Services of the type covered by the RFP during the five years preceding the date on which the Statement of Qualifications is submitted;

7.4.6 A description of Claims that have been asserted, filed, prosecuted, or appealed against the Offeror, the principals or key employees of the Offeror, predecessors or affiliates of the Offeror by any person or entity, arising out of Services provided by the Offeror, the principals or key employees of the Offeror, or predecessors or affiliates of the Offeror during the five years preceding the date on which the Statement of Qualifications is submitted; and

7.4.7 The Offeror's current Compensation Requirements.

7.5 If an RFQ is being issued to select a Contractor for a Master Contract under Subsection 7.1.3 or a particular project or problem under Subsection 7.1.4 or both, or to identify a limited number of qualified Offerors who will receive an RFP under Subsection 7.1.5, in addition to the requirements of Subsection 7.4, the RFQ should require the Offeror to:

7.5.1 Either accept the Contract form or propose reasonable alternatives to the provisions of the contract form;

7.5.2 Describe the insurance maintained by the Offeror; and

7.5.3 Address the particular capability of the Offeror to perform the Services effectively; and

7.5.4 Designate the persons who will perform the Services.

8 LISTS OF PROSPECTIVE CONTRACTORS

8.1 The County may establish and maintain on a regular basis lists of persons and entities who are qualified to perform certain types of Services which the County needs intermittently. The County will keep a list current by issuing an RFQ at least annually. The County will allow Offerors to submit Statements of Qualifications and revisions to Statements of Qualifications, in a form approved by the County, at any time while the list is maintained regardless of whether an RFQ is pending.

8.2 The County Public Works Department will maintain lists of engineers, architects, and other consultants who perform services related to construction.

8.3 The County Counsel will maintain lists of attorneys with various expertise which may be needed by the County.

8.4 The County Accountant will maintain lists of potential Contractors for Services other than those identified in Subsections 8.2 and 8.3.

9 REQUESTS FOR PROPOSALS

9.1 An RFP may be issued for one or both of the following purposes:

9.1.1 To select a Contractor who will provide Services under a Master Contract;
or

9.1.2 To select a Contractor who will provide Services needed for a particular project.

9.2 An RFP should state or describe:

9.2.1 The purpose of the RFP;

9.2.2 The type of Services required;

9.2.3 The projected Contract Time;

- 9.2.4 The date by which Proposals must be submitted;
 - 9.2.5 The procedure for amending Proposals;
 - 9.2.6 The procedure for withdrawing Proposals;
 - 9.2.7 The format and content of a responsive Proposal; and
 - 9.2.8 The process for evaluating proposals and awarding the contract.
- 9.3 A copy of the County's Contract form should be issued with an RFP.
- 9.4 A Proposal should contain the following information:
- 9.4.1 All information required by Subsections 7.4 and 7.5;
 - 9.4.2 A statement of the Offeror's understanding of any problems that the Services must resolve;
 - 9.4.3 The Offeror's analysis of the objectives of the Services and a description of the necessary Services;
 - 9.4.4 The Offeror's description and rationale for most efficient and effective approach to resolve the problem or to execute the project described in the RFP;
 - 9.4.5 The manner in which outcomes will be achieved and recognized; and
 - 9.4.6 Any constraints that could affect the Offeror's ability to perform Services promptly and efficiently.

10 PUBLIC RECORDS An Offeror may designate portions of a Statement of Qualification or a Proposal which the Offeror considers confidential. The Offeror must state the basis for confidentiality under ORS 192.501 or 192.502. The County will endeavor in good faith to honor appropriate requests for exemption from disclosure, but the County reserves exclusive discretion to determine whether information qualifies for exemption.

11 NOTICE OF COMPETITIVE SELECTION

11.1 If the County elects to issue an RFQ for a Master Contract or a particular project, the County will provide notice of competitive selection by:

11.1.1 Publishing notice in accordance with Subsection 11.4; or

11.1.2 Sending notice to at least three prospective Contractors on a list that is maintained pursuant to Section 8 or a suitable list that is maintained by another Public Agency through competitive procedures that are comparable to these Rules.

11.2 If the County is issuing an RFQ to establish a list of qualified Offerors under Section 8 or to identify Offerors who will receive a specific RFP pursuant to Subsection 11.3.1, the County must publish notice in accordance with Subsection 11.4.

11.3 If the County is issuing an RFP, the County will provide notice of competitive selection by:

11.3.1 Sending notice to a list of five Offerors that were identified by issuing a preliminary RFQ;

11.3.2 Publishing notice in accordance with Subsection 11.4; or

11.3.3 Sending notice to at least five Offerors on a list that is maintained pursuant to Section 8.

11.4 If the County elects or is required to publish notice of competitive selection it will be published once at least fifteen days before the Statements of Qualifications are due or thirty days before Proposals are due in:

11.4.1 A trade or professional journal,

11.4.2 A newspaper of general circulation in Douglas County,

11.4.3 A newspaper of general circulation in Oregon,

11.4.4 Industry media, or

11.4.5 Any other appropriate publication that is likely to attract the attention of persons or entities who are qualified to perform the Personal Services.

12 REVIEW OF STATEMENTS OF QUALIFICATIONS AND PROPOSALS FOR SPECIFIC SERVICES

12.1 Statements of Qualifications for specific Contracts and Proposals will be reviewed and evaluated to determine the Offeror best suited to perform the Services covered by the RFQ or RFP effectively for a reasonable cost.

12.2 Offerors shall not communicate with officers, employees or agents of the County regarding the selection process, except as allowed by these Rules, an RFQ, or an RFP.

12.3 The Reviewers will consider the information required by the RFQ or RFP and information maintained pursuant to Section 16. The Reviewers may consider information provided in the Statement of Qualifications or Proposal that was not required by the RFQ or RFP, and other pertinent information obtained during the review process including information obtained from prior clients and customers of an Offeror regarding past performance of the Offeror. Compensation Requirements will not be an overriding factor in the review process, but the County will consider differences in the Compensation Requirements of similarly qualified Offerors.

12.4 Statements of Qualifications or Proposals which do not contain all information required by the RFQ or RFP or are otherwise non-responsive may be rejected.

12.5 The County may waive irregularities or deficiencies in a Statement of Qualifications or a Proposal if the Reviewers determine that waiver is in the best interests of the County and the Board concurs with the Reviewers.

12.6 The Reviewers may interview any Offeror, but they are not required to interview all Offerors. In an interview the Offeror may be allowed to expand upon information contained in the Proposal or Statement of Qualifications.

12.7 Reviewers may make such investigations as they deem appropriate to determine whether an Offeror is qualified to provide the Services. An Offeror may be requested to provide supplemental written information concerning the Offeror's ability to perform the Services and provide written authorization for third parties to provide information to the County concerning the Offeror.

12.8 If an Offeror fails to cooperate with an investigation; fails to provide supplemental information; provides false, misleading, or incomplete information; or otherwise materially undermines the selection process, the Offeror may be disqualified.

12.9 The County retains exclusive discretion to determine:

12.9.1 The intent, purpose, and meaning of any provision of an RFQ or RFP;

12.9.2 Whether a Statement of Qualifications or a Proposal is complete and complies with the provisions of an RFQ or RFP;

12.9.3 Whether to waive irregularities or deficiencies in a Statement of Qualification or a Proposal;

12.9.4 Whether an Offeror will be allowed to submit supplemental written information concerning the Offeror's ability to perform the Services;

12.9.5 Whether an Offeror will be interviewed;

12.9.6 Whether an Offeror will be disqualified; and

12.9.7 What information is pertinent to the review process and the importance of information.

12.10 After review of Statements of Qualifications or Proposals is completed the Reviewers will rank the three Offerors most suitable for performing the Personal Services and make a written recommendation on selection of the Contractor to the Board which shall be supported by a statement of the reasons for the recommendation. The Reviewers will document the reasons for their recommendation. The Board will make the final decision on selection of the most suitable Offeror. All Offerors will be notified of the Board's decision.

13 CONTRACT NEGOTIATIONS

13.1 The Board will designate representatives of the County to negotiate a contract with the Offeror selected by the Board pursuant to Section 12.

13.2 Contract negotiations will be directed toward:

13.2.1 Clearly defining the scope of Services;

13.2.2 Designating the persons who will supervise and perform the Services;

13.2.3 Agreeing upon a Contract Price which is fair and reasonable taking into account the scope, complexity, and nature of the Services;

13.2.4 Establishing the Contract Time and a schedule for the Services; and

13.2.5 Settling other essential Contract terms.

13.3 If the County's negotiators fail to negotiate a Contract with the Offeror initially selected by the Board, they may enter into negotiations with the second most suitable Offeror in accordance with this Rule. If negotiations again fail, the negotiators may repeat the process with the next most suitable Offeror.

13.4 If negotiations between the County and an Offeror are effectual, a Contract, signed by the Contractor, will be submitted to the Board for final approval. If the Board does not approve the Contract, the negotiators may proceed with further negotiations.

13.5 A Contract will not be invalid because the RFP or any other aspect of the selection process does not strictly comply with the provisions of these Rules, so long as the procurement process does not encourage favoritism in the award of the Contract or substantially diminish competition.

14 CONTRACT TIME

14.1 If Services will be performed over a Contract Term, the Contract Term may be stated as an initial term of one year or less that is subject to renewal or extension or as multiple years. The total duration of the Contract will not exceed four years.

14.2 If a Contract Term is multiple years, continuation of the Contract will be subject to appropriation of funds for the Services in accordance with the Local Budget Law.

15 EXEMPTIONS FROM FORMAL COMPETITIVE SELECTION PROCEDURES

15.1 A Contract for Personal Services will be exempt from formal competitive selection procedures for one or more of the following reasons:

15.1.1 The Contract is with a Public Agency;

15.1.2 There is only one person or entity within a reasonable service area that can provide Services of the type and quality required;

15.1.3 There is an emergency that necessitates prompt procurement of the Personal Services;

15.1.4 The Contract for Services is subject to selection procedures established by other Applicable Laws that take precedence over these Rules;

15.1.5 The Services are provided by a person who has unique talents or who has sole rights to provide Services that use unique intellectual property;

15.1.6 The Contract is with a person who has been providing Services to the County for a project, as an independent contractor or an employee, and the most efficient way to complete the project is through a Contract with that person;

15.1.7 The Contract is with a private nonprofit corporation or association that is providing charitable services or other services that fulfill a public need which would otherwise be provided by a Public Agency; or

15.1.8 The Contract is with an Expert Witness.

15.1.9 The Contract is signed by the Board. (amended by order 12/26/01; 2/06/02; 3/05/03)

15.2 An exemption from competitive selection under Subsections 15.1.6 to 15.1.9 does not preclude the County from electing to do an RFP or RFQ under these Rules for the Services covered by the exemption. (amended by order 12/26/01)

16 RECORDS ON CONTRACTORS' PERFORMANCE Each Department Head shall document the performance of Contractors used by the Department Head.