



BOARD OF COMMISSIONERS
Agenda Item Summary

Agenda Category: **Resolution** Item No:

Meeting Date: March 21, 2023

Originating Department: COUNTY COUNSEL/RISK MANAGEMENT

Issue: Resolution Adopting the revisions to the Klamath County Contracting Policies and Procedures Chapter 1 section 1.15 (1), County Procedure Prior to Contract Award, clarifying all MOU's, MOA's, IGA's and Letters of Agreement (LOA) will require Board approval through a regular Business meeting and Chapter 3 section 3.15, Selection for Architect or Engineering Services, will align appointment procedures for specified services with OAR's 137-048-0200 through 137-048-0220.

Background: Chapter 279 of the Oregon Revised Statutes (ORS) establishes rule and authority pertaining to the procurement of goods and services by public agencies and provides for public contracting agencies to adopt their own rules of procedure for public contracting. Klamath County has contracting policies and procedures in place that incorporate both the Attorney General's Model rules (Oregon Administrative Rules, Chapter 137) and the rules developed by the Department of Administrative Services (Oregon Administrative Rules, Chapter 125). A public contracting agency must review their contracting rules each time the Attorney General adopts a modification of the model rules to ensure compliance with statutory changes pursuant to ORS 279.A065(6)(b). The Revised Klamath County, Oregon Contracting Policies and Procedures have been reviewed and updated by the Contract & Risk Manager and Klamath County Counsel. The revisions to the Klamath County Contracting Policies and Procedures Chapter 1 section 1.15 (1), County Procedure Prior to Contract Award, clarifying all MOU's, MOA's, IGA's and Letters of Agreement (LOA) will require Board approval through a regular Business meeting and Chapter 3 section 3.15, Selection for Architect or Engineering Services, will align appointment procedures for specified services with OAR's 137-048-0200 through 137-048-0220. Chapter 3 revisions were discussed during the January 3, 2023 Administrative Meeting.

Recommended Motion: That the Klamath County Board of Commissioners approve and sign the attached Resolution that adopts the revisions to the Klamath County Contracting Policies and Procedures Chapter 1 section 1.15 (1)(b), and Chapter 3.15 Selection for Architect or Engineering Services as discussed above. No fiscal impact.

DONE AND DATED this _____ day of _____, 20__.

Chair
Approved
Denied

Vice-Chair
Approved
Denied

Commissioner
Approved
Denied

CHAPTER 1 - PUBLIC CONTRACTING POLICIES AND PROCEDURES

PUBLIC CONTRACTS GENERALLY

1.10 Application of the Public Contracting Code; Exceptions

- (1) Except as set forth in this section, the County shall exercise all rights, powers and authority in accordance with the Public Contracting Code.
- (2) Nothing stated in this Chapter shall be construed contrary to the Public Contracting Code.
- (3) The Public Contracting Code does not apply to the Contracts or the classes of Contracts described in ORS 279A.025(2), which are as follows:
 - (a) Contracts between the County or between public agencies and the federal government;
 - (b) Insurance and service Contracts as provided for under ORS 414.115, 414.125, 414.135 and 414.145 for purposes of source selection;
 - (c) Contracts for professional or expert witnesses or consultants to provide services or testimony relating to existing or potential litigation or legal matters in which the County is or may become interested;
 - (d) Acquisitions or disposals of real property or interest in real property;
 - (e) Sole-source expenditures when rates are set by law or ordinance for purposes of source selection;
 - (f) Contracts for the procurement or distribution of textbooks;
 - (g) Procurements by the County from an Oregon Corrections Enterprises program;
 - (h) Contracts for employee benefit plans as provided in ORS 243.860 to ORS 243.886; or
 - (i) Any other public contracting of a public body specifically exempted from the Code by another provision of law.
- (4) When federal funds are involved, applicable federal statutes and regulations take precedence over the rules in Chapters ORS 279A, 279B, and ORS 279C.005 through 279C.670, except as expressly provided in ORS 279C.800 through 279C.870.

1.11 Organization of Public Contracting Rules

- (1) Public Contracting involving the procurement of Goods and Services is subject to this Chapter and Chapter 2.
- (2) Public Contracting involving Personal/Professional Services Contracts is subject to this Chapter and Chapter 3.
- (3) Public Contracting involving Public Improvements is subject to this Chapter and Chapter 4.
- (4) Disposal of surplus personal property is subject to Chapter 5.

1.12 Application of the Model Rules

Unless otherwise stated, the Model Rules promulgated by the Attorney General in Oregon Administrative Rule Chapter 137, Divisions 46, 47, 48, and 49 are not adopted as rules for Klamath County.

1.13 Previous Rules Repealed

All previous orders, resolutions, and policies adopted by Klamath County relating to public contracting are repealed and shall have no effect.

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1.14 Definitions

Unless the context of a specifically applicable definition in the Code requires otherwise, capitalized terms used in these Rules will have the meaning set forth and if not defined, the meaning set forth in the Code. The following terms, when capitalized in these Rules, shall have the meaning set forth below:

- (1) “**Addenda**” means an addition or deletion to, a material change in, or general interest explanation of a Solicitation Document.
- (2) “**Affected Person**” or “**Affected Offeror**” means a Person whose ability to participate in a Procurement is adversely affected by a County decision.
- (3) “**Alternative Contracting Methods**” means techniques for obtaining Public Improvement Contracts, utilizing processes other than the traditional method of Design- Bid-Build, with Award based solely on price. In industry practice, such methods commonly include variations of Design-Build contracting, CM/GC forms of contracting and ESPCs, general “performance contracting” and “cost plus time” contracting.
- (4) “**Amendment**” means a written modification to the terms and conditions of a Contract, other than by Changes to the Work, within the general scope of the original Procurement that requires mutual agreement between the County and the Contractor.
- (5) “**Award**” means, as the context requires, either the act or occurrence of the County’s identification of the Person with whom the County will enter into a Contract following the resolution of any protest of the County’s selection of that Person, and the completion of all Contract negotiations.
- (6) “**Bid**” means a response to an Invitation to Bid.
- (7) “**Board**” means the Klamath County Board of Commissioners which act as the local Contract Review Board.
- (8) “**Catalog of Federal Domestic Assistance Number**” or “**CFDA Number**” means the number that is assigned by federal government when federal funds are directly or indirectly distributed to the County for domestic assistance programs.
- (9) “**Change orders**” mean changes in the scope of work agreed to by the public body, contractor, and architect or engineer. A change order is work that is added to or deleted from the original scope of work of an existing contract.
- (10) “**Competitive Sealed Bidding (ITB)**” means the solicitation by the County of competitive Bids which follow the formal process for advertising, bid and bid opening set forth in ORS 279B.055 for Goods and Services and ORS 279C.360 to ORS 279C.395 for Public Improvements. When utilizing the Invitation to Bid process, award must be given to the lowest responsible bidder. Bids may not be evaluated for experience, specific expertise, availability, project understanding, Contractor capacity and similar factors.
- (11) “**Closing**” means the date and time announced in a Solicitation Document as the deadline for submitting Offers.
- (12) “**Code**” means the Public Contracting Code in ORS Chapters 279A, 279B, and 279C.
- (13) “**Competitive Sealed Proposals (RFP)**” means the solicitation by the County of competitive Proposals which follow the formal process of advertising and evaluation set forth in ORS 279B.060 for Goods and Services and in ORS 279C.400 through ORS 279C.410 for Public Improvements. When utilizing the Request for Proposals, the proposal may be evaluated with a combination of price, experience, specific expertise, availability, project understanding, Contractor capacity and similar factors. A review committee must be used when evaluating the RFP.
- (14) “**Competitive Process**” means the procurement by Competitive Sealed Bidding, Competitive Sealed Proposals, or Quotes when permitted by these Rules.

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- (15) “**Competitive Range**” means the Proposers with whom the County will conduct discussions or negotiations if the County intends to conduct discussions or negotiations.
- (16) “**Consent Calendar**” Items to be approved by the Board that are submitted for ratification or items that are not expected to be substantially opposed, and are therefore scheduled for a vote without debate.
- (17) “**Contract**” means a "Public Contract," as defined in ORS 279A.010.
- (18) “**Contract Price**” means, as the context requires, (i) the maximum payments that the County will make under a Contract, including bonuses, incentives and contingency amounts, if the Contractor fully performs under the Contract, (ii) the maximum not-to- exceed amount of payments specified in the Contract, or (iii) the unit prices for Goods or Services or Personal Services set forth in the Contract.
- (19) “**Contractor**” means the Person with whom the County enters into a Contract
- (20) “**Department Head**” means the appointed head of a County department or office, or their Designee, or the person appointed to fill a vacancy in such a position, but does not include Commissioners.
- (21) “**Elected Official**” means the elected head of a County office or the person appointed to fill a vacancy in such a position, but does not include Commissioners.
- (22) “**Emergency**” means circumstances that:
- (A) Could not have been reasonably foreseen;
 - (B) Create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and
 - (C) Require prompt execution of a contract to remedy the condition.
- (23) “**Goods and Services**” has the meaning set forth in ORS 279A.010(1)(i)&(kk).
- (24) (A) “**Grant**” means:
- (i) An agreement under which the County receives moneys, property or other assistance, including but not limited to federal assistance that is characterized as a grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets from a grantor for the purpose of supporting or stimulating a program or activity of the County 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; or
 - (ii) An agreement under which the County provides moneys, property or other assistance, including but not limited to federal assistance that is characterized as a grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets, to a recipient for the purpose of supporting or stimulating a program or activity of the recipient and in which no substantial involvement by the County is anticipated in the program or activity other than involvement associated with monitoring compliance with the grant conditions.
- (B) “**Grant**” does not include a public Contract for a Public Improvement, for Public Works, as defined in ORS 279C.800, or for emergency work, minor alterations or ordinary repair or maintenance necessary to preserve a public improvement, when under the public Contract the County pays, in consideration for contract performance intended to realize or to support the realization of the purposes for which grant funds were provided to the contracting agency, moneys that the County has received under a grant.
- (25) “**Invitation to Bid**” or “**ITB**” means all documents used for soliciting Bids in accordance with either ORS 279B.055, or ORS 279C.335.

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- (26) **“Lowest responsible bidder”** means the lowest bidder who:
- (A) Has substantially complied with all prescribed public contracting procedures and requirements;
 - (B) Has met the standards of responsibility as set forth in ORS 279B.110 or 279C.375;
 - (C) Has not been debarred or disqualified by the County under ORS 279B.130 or 279C.440; and
 - (D) If the advertised contract is a Public Improvement Contract, is not on the list created by the Construction Contractors Board under ORS 701.227.
- (27) **“Offeror”** means a Person who submits an Offer. An offer can be either a Bid or a Proposal.
- (28) **“Opening”** means the date, time and place announced in the Solicitation Document for the public opening of Written Sealed Offers.
- (29) **“Multistep Sealed Bids”** is a phased process that seeks necessary information or unpriced technical Bids in the initial phase and regular competitive sealed bidding, inviting Bidders who submitted technically eligible Bids in the initial phase to submit competitive sealed price bids on the technical bids in the final phase. The contract shall be awarded to the lowest responsible bidder.
- (30) **“Multistep Sealed Proposals”** means a phased Procurement process that seeks necessary information or un-priced technical Proposals in the initial phase and invites Proposers who submitted technically qualified Proposals in the initial phase to submit competitive sealed price Proposals on the technical Proposers in the final phase. The Contract shall be awarded to the Responsible Proposer submitting the most Advantageous Proposal in accordance with the terms of the Solicitation Document applicable to the final phase.
- (31) **“Personal/Professional Services Contract”** means a Contract, or member of a class of Contracts, whose primary purpose is to acquire specialized skills, knowledge and resources in the application of technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment, including, without limitation, a Contract for the services of an accountant, physician or dentist, educator, information technology or other consultant, broadcaster or artist (including a photographer, filmmaker, painter, weaver or sculptor), as more specifically defined in Chapter 3, Section 3.210.
- (32) **“Procurement”** means the act of purchasing, leasing, renting or otherwise acquiring goods or services. “Procurement” includes each function and procedure undertaken or required to be undertaken by a contracting agency to enter into a public contract, administer a public contract and obtain the performance of a public contract under the Public Contracting Code.
- (33) **“Proposer”** means a person that submits a Proposal in response to a Request for Proposals.
- (34) **“Proposal”** means a response to a Request for Proposals.
- (35) **“Public Improvement”** means a project for construction, reconstruction or major renovation on real property by or for the County. “Public improvement” does not include:
- (A) Projects for which no funds of a contracting agency are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection; or
 - (B) Emergency work, minor alteration, ordinary repair or maintenance necessary to preserve a public improvement.
- (36) **“Public Works”** includes, but is not limited to, roads, highways, buildings, structures and improvements of all types, the construction, reconstruction, major renovation or painting of which is carried on or contracted for by any public agency to serve the public interest but does not include the reconstruction or renovation of privately owned property that is leased by a public agency.

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- (37) **“Quotes”** means the informal process of obtaining either Bids or Proposals. Selection criteria may be price or a combination of other factors. The County shall use written requests for at least three (3) Quotes whenever practicable and shall keep a written record of the Quotes.
- (38) **“Requirements Contract”** means a Contract in which the Contractor agrees to supply some or all of the County’s requirements that arise for item(s) or service within a specified time period.
- (39) **“Request for Proposals”** or **“RFP”** means all documents used for soliciting Proposals in accordance with ORS.279B.060 (for Goods and Services), 279C.400 through ORS 279C.410 (for Public Improvements) or Attorney General Model Rules OAR 137-049- 0650 for Alternative Contracting Method.
- (40) **“Rules”** means the local rules adopted by the Board governing all Contracts or purchases entered into by the County.
- (41) **“Scope”** means the range and attributes of the Goods or Services described in the applicable Procurement document.
- (42) **“Solicitation Document”** means an Invitation to Bid, Request for Proposals or other document issued to invite offers from prospective contractors pursuant to ORS Chapter 279B or 279C.
- (43) **“Specification”** means any description of the physical or functional characteristics, or of the nature of a supply, service or construction item, including any requirement for inspecting, testing or preparing a supply, service or construction item for delivery and the quantities or qualities of materials to be furnished under a Contract. Specifications generally will state the result to be obtained and may, on occasion, describe the method and manner of doing the Work to be performed.
- (44) **“Work”** means the furnishing of all materials, equipment, labor and incidentals necessary to successfully complete any individual item in a Contract and successful completion of all duties and obligations imposed by the Contract.
- (45) **“Written”** or **“Writing”** means conventional paper documents, whether handwritten, typewritten or printed, or their electronic counterparts, in contrast to spoken words.

The following sets forth by position the Department Head or Elected Official with respect to each County department and office:

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| (1) Animal Control: | Sheriff |
| (2) Assessor’s Office: | Assessor |
| (3) Community Corrections: | Director |
| (4) Community Development Dept.: | Manager |
| (5) County Clerk’s Office: | County Clerk |
| (6) County Counsel’s Office(Contracts/Risk): | County Counsel |
| (7) Developmental Disability Dept.: | Director |
| (8) District Attorney’s Office: | District Attorney |
| (9) Emergency Management: | Sheriff |
| (10) Fairgrounds: | Manager |
| (11) Finance Department: | Director |
| (12) Human Resources: | Director |
| (13) Information Technology Department: | Director |
| (14) Justice Court: | Justice of the Peace |

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(15) Juvenile Department:	Director
(16) KBREC:	Director
(17) Library:	Director
(18) Maintenance Department:	Director
(19) Museum:	Museum Manager
(20) On-Site Dept.:	Manager
(21) Parks Department:	Manager
(22) Planning Department:	Manager
(23) Public Health:	Director
(24) Public Works Dept.:	Director
(25) Sheriff's Office:	Sheriff
(26) Solid Waste Department:	Manager
(27) Surveyor's Office:	Surveyor
(28) Tax Department:	Tax Collector
(29) Treasurer's Office:	Treasurer
(30) Veteran's Service Office:	Officer/Director

COUNTY PROCEDURES

1.15 County Procedure Prior to Contract Award

- (1) The Board has the sole authority to award or amend all County Contracts unless expressly delegated by the Board pursuant to Section 1.19. The department's liaison commissioner has the authority to approve change orders and unit price overruns not exceeding \$100,000 or 25% of the total project, previously approved by the Board during a public business meeting, whichever is less, and declare vehicles as "surplus" if the wholesale value is less than \$10,000 as determined by the Kelly Blue Book. The Board must approve change orders and declaration of surplus property in excess of these amounts during a public business meeting. Departments must submit all items not budgeted for in the current fiscal year, to a public business meeting for Board approval prior to the beginning of the process.
 - (a) Departments requesting to apply for a grant exceeding \$3,000.00, a request to issue a formal Request for Quotes (RFQ) if the estimated cost of the products or services will exceed \$10,000.00, a request to issue an Invitation to Bid and/or a request to issue a Request for Proposals (RFP) must submit all documentation to the "Counsel Review" group prior to beginning the process. The Board must approve accepting the lowest bid or highest rated proposal and finally approve all resulting contract(s) and any subsequent amendments during a public business meeting. Departments requesting to apply for a grant exceeding \$250,000 must submit all applicable documents to a public business meeting prior to beginning the process. The Board must approve accepting any grant funds awarded and finally approve all resulting contract(s) and any subsequent amendments during a public business meeting.

~~(b) — Additionally, Departments shall submit all MOU's, MOA's, IGA's and Letters of Agreement (LOA) to the "Business Meeting Agenda" for a public business meeting for approval. Additionally, Departments must submit all MOU's, IGA's and Letters of Intent to either the "Counsel Review" group or a public business meeting for~~

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~~approval.~~

- (2) Local Preference: The County shall endeavor to utilize local suppliers of materials and services whenever practical and feasible while seeking to obtain the lowest and best responsible bid, quotation or proposal.
- (3) The County will endeavor to follow the procedures set forth in these Rules.
- (4) For Competitive Sealed Bidding for Goods, Services, Personal/Professional Service Contracts, or Public Improvements:
 - (a) The Department Head or Elected Official or Designee shall provide the Contract Specialist/Risk Manager's Office with the following information to be included in the Bid Package:
 - (A) Name of the project;
 - (B) Contact person for Department;
 - (C) Scope of Work for Services; or Specifications of Goods;
 - (D) Special conditions to the Contract, if any;
 - (E) Location of the project for Services; or place of delivery for Goods;
 - (F) Start date for work;
 - (G) Completion date for Services; or Date of delivery for Goods;
 - (H) Target date for the Award of the Contract.
 - (b) The Contract Specialist/Risk Manager's Office, in coordination with the appropriate County Department, will prepare the Bid Package and coordinate the Bid Opening.
 - (c) Prior to the Contract/Risk Manager submitting the Bid information for advertising, the Department Head or Elected Official or Designee must approve the Bid Package.
 - (d) The Contract Specialist/Risk Manager's Office will provide the Bid Package information to the local newspaper for advertisement.
 - (e) The Department Head or Elected Official or Designee will notify the Contract Specialist/Risk Manager of all interested persons who have submitted a request, and maintain a record thereof.
 - (f) At Bid Opening, the Department Head or Elected Official shall submit to the Contract Specialist/Risk Manager's office a list of all persons who provided a Bid Package.
 - (g) At Bid Opening, the Bid Package will be reviewed by the Contract Specialist/Risk Manager and Department designee(s) to determine compliance with all prescribed procedures and requirements as set out in the Bid Package.
 - (h) Copies of Bid will be distributed to the Department Head or Elected Official or Designee.
 - (i) Upon request from the Department Head or Elected Official or Designee, Contract Specialist/Risk Manager's Office and/or County Counsel may review the Bid Package for:
 - (A) Substantial compliance with Oregon law;
 - (B) Application of any preferences;

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- (C) In the case of Public Improvement contracts, whether the Bidder has been Disqualified by the Construction Contractor's Board or has been Disqualified under ORS 279C.440;
 - (D) In the case of Public Works contracts, whether the Bidder has been declared ineligible by the Commissioner of Bureau of Labor and Industries; and
 - (E) Whether to recommend to the Department Head or Elected Official and Board for an investigation to determine if the Bidder is a Responsible Bidder.
- (5) For Competitive Sealed Proposals for Goods, Services, Personal/Professional Service Contracts, or Public Improvements:
- (a) The Department Head or Elected Official or Designee shall provide the County Contract Specialist/Risk Manager's Office with the following information to be included in the Proposal Package:
 - (A) Name of the project;
 - (B) Contact person for Department;
 - (C) Scope of Work for Services, and/or Specifications of Goods;
 - (D) Special conditions to the Contract, if any;
 - (E) Location of the project for Services, and/or place of delivery for Goods;
 - (F) Start date for work;
 - (G) Completion date for Services and/or Date of delivery for Goods;
 - (H) Target date for the Award of the Contract.
 - (b) The Contract Specialist/Risk Manager will help prepare the Proposal Package and coordinate the Proposal Opening with the Department.
 - (c) Prior to the Contract/Risk Manager submitting the Proposal information for advertising, the Department Head or Elected Official or Designee must approve the Proposal Package.
 - (d) The Contract Specialist/Risk Manager's Office will work with the department to ensure Bid/Proposal Package information is submitted to the local newspaper/trade journals for advertisement, if required.
 - (e) The Department Head or Elected Official or Designee will notify the Contract Specialist/Risk Manager of all interested persons who have submitted a request, and maintain a record thereof.
 - (f) At Proposal Opening, the Department Head or Elected Official or Designee shall submit to the Contract Specialist/Risk Manager a list of all persons who provided a Request for Proposal.
 - (g) At Proposal Opening, the name of the persons/firms submitting Proposals will be read by Contract Specialist/Risk Manager. The Contract Specialist/Risk Manager will retain the original proposal forms and all required bonds.
 - (h) Copies of Proposals will be distributed to the Department Head or Elected Official or Designee.
 - (i) Upon request from the Department Head or Elected Official or Designee, Contract Specialist/Risk Manager's Office and/or Counsel may review the Proposals for:
 - (A) Substantial compliance with Oregon law;
 - (B) Application of any preferences;

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- (C) In the case of Public Improvement contracts, whether the Offeror is Disqualified under ORS 279C.440;
 - (D) In the case of Public Works contracts, whether the Offeror has been declared ineligible by the Commissioner of Bureau of Labor and Industries; and
 - (E) Whether to recommend to the Department Head or Elected Official and Board for an investigation to determine if the Offeror is a Responsible Offeror.
- (6) Formal process to obtain Quotes for Goods, Services, Personal/Professional Services Contracts, or Public Improvements:
- (a) Prior to obtaining Quotes, the Department shall determine and maintain written documentation of the specifications and selection criteria for the Quote. The selection criteria may be limited to price or some combination of price, experience, specific expertise, availability, project understanding, Contractor capacity and similar factors.
 - (b) Prior to obtaining Quotes, the Department shall consult with the Contract Specialist/Risk Manager to determine the applicable insurance requirements for the Contract.
 - (c) The Department shall utilize written requests for Quotes whenever reasonably practicable. Written request for Quotes shall include the selection criteria to be utilized in selecting a Contractor and, if the criteria are not of equal value, their relative value or ranking. The County must describe substantially the same specifications to each of the prospective contractors. When requesting Quotes orally, prior to requesting the price quote the County shall document any additional selection criteria and, if the criteria are not of equal value, their relative value.
 - (d) The Department shall document the names of all vendors contacted and the price and/or specifications quoted by each vendor.
 - (e) Upon request from the Department, Contract Specialist/Risk Manager and/or Counsel may review the Quotes for:
 - (A) Substantial compliance with Oregon law;
 - (B) Application of any preferences;
 - (C) In the case of Public Improvement contracts, whether the Bidder has been Disqualified by the Construction Contractor's Board or has been Disqualified under ORS 279C.440;
 - (D) In the case of Public Works contracts, whether the Bidder has been declared ineligible by the Commissioner of Bureau of Labor and Industries; and
 - (E) Whether to recommend to the Department Head or Elected Official and Board for an investigation to determine if the Bidder is a Responsible Bidder.
- (7) Informal process to obtain Quotes for Goods and/or Personal/Professional Services Contracts:
- (a) The Department shall consult with the Contract Specialist/Risk Manager to determine the applicable requirements for the Solicitation Document.
 - (b) The Department Head or Elected Official shall determine and maintain written documentation of the specifications and selection criteria. The selection criteria may be some combination of price, experience, specific expertise, availability, project understanding, Contractor capacity and similar factors.
 - (c) The Department shall utilize written requests for Quotes whenever reasonably practicable. Written request for Quotes shall include the selection criteria to be utilized in selecting a Contractor and, if the criteria are not of equal value, their relative value or ranking. The

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Department must describe substantially the same specifications to each of the prospective contractors. When requesting Quotes orally, prior to requesting the Quotes, the Department shall document the selection criteria, and their relative value.

- (d) The Department shall document the names of all entities contacted and the price and/or specifications quoted by each.
 - (e) All items requiring a contract, agreement, an authorized signature to accept terms and conditions etc. are required to be submitted to a public business meeting for Board approval.
- (8) Purchase of vehicles:
- (a) Departments with authority to purchase a vehicle in the current fiscal year as approved by the BOCC during budget hearings:
 - (A) With the help of the Contract Specialist, the department must solicit a minimum of, three (3) written quotes, preferably from local dealers, without requesting prior BOCC approval.
 - (B) The Department shall recommend the Award of Purchase to the Board by preparing an agenda item cover sheet and include all appropriate and required solicitation documents then submit the packet as one document to the County's online program with a future public business meeting agenda date of 14 days minimum from submission.
 - (b) Departments without authority to purchase a vehicle in the current fiscal year as approved by the BOCC during budget hearings:
 - (A) The Department shall request approval by the Board, to solicit quotes for the purchase, by preparing an agenda item cover sheet and include all appropriate and required solicitation documents then submit the packet as one document to the County's online program with a future public business meeting agenda date of 14 days minimum from submission
 - (B) With the help of the Contract Specialist, the Department must solicit a minimum of, three (3) written quotes, preferably from local dealers.
 - (C) The Department shall recommend the Award of Purchase to the Board by preparing an agenda item cover sheet and include all appropriate and required solicitation documents then submit the packet as one document to the County's online program with a future public business meeting agenda date of 14 days minimum from submission.
- (9) Failed Procurement(s): If, after issuing a competitive solicitation with no responsible response is received, the County may enter into a "Contract-Specific Special Procurement" for the purpose of entering into a single contract on a one-time basis or for a single project. The procedures set forth in ORS 279B.085 must be followed prior to entering into a contract under this provision.

1.16 County Procedure for Contract Award or Amendment

The following procedure shall be followed whenever a Contract is submitted to a public business meeting, for the Board's approval of award, ratification or amendment, unless another procedure has been adopted by the Board concerning a specific class of contracts.

- (1) Prior to execution of the Contract or Amendment of Contract by any party, the Department shall determine whether federal funding is indirectly or directly involved. If federal funding is involved, the Department shall:
 - (a) Identify the applicable Catalog of Federal Domestic Assistance Number.

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- (b) Determine the percentage of federal funding of the overall funding and disclose that percentage on the contract summary form.
 - (c) Determine any special conditions to the federal funding which includes, but is not limited to, records retention, audits, or other reporting.
 - (d) If the Department subcontracts a portion of the Contract, the Department shall disclose the CFDA number to the subcontractor and how much of the funds disbursed are federal funds.
 - (e) For Contract Amendments, determine whether the funding source has changed.
- (2) Prior to the submission of the Contract to the Board, the Department shall obtain all necessary signatures of the contracting parties except in the case of a federal or state Contract where the County must sign prior to the contracting party.
- (3) The Department shall recommend the Award of Contract to the Board by preparing an agenda item cover sheet and include all appropriate and required solicitation documents then submit the packet as one document to the County's online program with a future public business meeting agenda date of 14 days minimum from submission.
- (4) If the Board Awards the Contract, then:
- (a) The Contract Specialist/Risk Manager shall draft the necessary contract documents and forward to the Department for comment, review and obtaining of required signatures.
 - (b) Upon obtaining signatures of the contracting party, the Department shall prepare an agenda-item cover sheet along with the contract and submit the item(s), for review and approval through the County's online program with a future public business meeting agenda date of 14 days minimum from submission.
- (5) After the contract is signed by the Board of County Commissioners:
- (a) The Board's staff files the original with the County Clerk and returns other originals, if any, to the Department. Copies are provided to the Department, Contract Specialist/Risk Manager's Office and County Counsel.
 - (b) The Department shall make copies of the contract for their own files and, if necessary, provide any originals to the Contractor.
 - (c) The Contract Specialist/Risk Manager returns any bid or proposal bond, if any, upon the execution of the Contract.
- (6) The Contract Department shall maintain records of bids, quotes and proposals received as a result of procurement activity, which shall include the solicitation document, notification list, all Board approval documents, any addenda issued, affidavit of publication, records of bids, quotes and proposals received as a result of procurement activity, justification for rejection of higher scoring proposals or for rejecting lowest bid, the completed evaluation forms, correspondence and resulting contract (OAR 137-030-0125). Contract originals shall be filed in the County Clerk's office as part of the Board of County Commissioner's Journal. Copies of all active contracts shall be maintained in the Contract/Risk Manager's Office, the Board of County Commissioner's office and the affected department. The Contractor shall be provided a fully executed original by the department. Bid documents for Public Improvements must be maintained for 10 years, all others for 6 years.

DELEGATION OF CONTRACT AUTHORITY

1.17 Delegation of Authority

- (1) The Board has authority to delegate its contract and contract amendment authority. Delegated authority shall be in writing and adopted by Resolution.

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- (2) Notwithstanding the following delegations of the Board's authority, all County delegates are governed by the Public Contracting Code and these Rules.
- (3) In the following delegations, where the Contract is signed by the Department, the Department shall send a copy of the Contract to the County Commissioners Office and Contract Specialist/Risk Manager within seven (7) days of execution.

1.18 Procedure for Delegated Contract Authority

- (1) Prior to execution of the Contract or Amendment of a Contract, the Department delegated authority to execute contracts shall determine whether federal funding is indirectly or directly involved. If federal funding is involved, the Department shall:
 - (a) Identify the applicable Catalog of Federal Domestic Assistance Number.
 - (b) Determine the percentage of federal funding of the overall funding and disclose that percentage on the agenda item sheet.
 - (c) Determine any special conditions to the federal funding which includes, but is not limited to, records retention, audits, or other reporting.
 - (d) If the Department subcontracts a portion of the Contract, the Department shall disclose the CFDA number to the subcontractor and how much of the funds disbursed are federal funds.
 - (e) For Contract Amendments, determine whether the funding source has changed to include federal funding.
- (2) If requested, the Contract Specialist/Risk Manager in conjunction with County Counsel will provide advice on source selection and contracts.
- (3) The Department shall obtain ratification from the Board as follows:
 - (a) The Department shall submit the agenda item cover sheet, together with the contract documents, and all appropriate and required solicitation documents for review and approval through the County's online program with a future public business meeting agenda date of 14 days minimum from submission.

1.19 Departmental Spending Authority

- (1) Notwithstanding any of the below provisions, a Department Head or Elected Official as defined in Section 1.14 is required to consult with the Contract Specialist/Risk Manager's Office regarding required procurement procedures and contracts for all purchases regardless of the amount.
- (2) Department Heads or Elected Officials, after conferring with the Contract Specialist/Risk Manager, have the authority to make current fiscal year budgeted purchases of goods and services in an amount up to \$10,000 per purchase.
- (3) All purchases and spending outside of a department's current fiscal years approved budget, and all transfers within a department's budget, require prior approval by the Board of Commissioners.
- (4) All purchases valued at \$10,000 or more must be submitted to the Board of Commissioners for approval, during a regular public business meeting, prior to execution. All solicitation documents for procurements with an estimated valued over \$150,000 must be submitted to the Contract Specialist/Risk Manager for review prior to commencing the solicitation process.
- (5) The following departments have additional special spending authority as specified:
 - (a) The Board of Commissioners is authorized to adopt forms, computer software, procedures and administrative policies and procedures for all County purchases consistent with these policies. All contracting by departments must be done in accordance with the procedures and policies adopted by the County Board of Commissioners.

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- (b) The Board of Commissioners may acquire or dispose of real property or interest in real property in any way they deem to be in the best interest of the citizens of Klamath County.
 - (c) The Building Official may enter into all project-specific contracts with plan review/inspection firms not exceeding \$5,000 and shall be brought before the BOCC at weekly work sessions as needed and put on the public business meeting schedule as “prior approved”.
 - (d) Pursuant to Resolution No. 2019-005, County Counsel may enter into contracts for legal and investigator services not to exceed \$50,000 annually for any single provider.
 - (e) The Klamath County Surveyor is authorized to execute contracts with private surveyors, within available funds, on an as-needed basis to reestablish public land corners without obtaining BOCC approval. The Surveyor shall utilize forms of contract approved by County Counsel.
 - (f) Each department must operate within its current fiscal years approved budget, or seek supplemental budget authority from the County Board of Commissioners.
- (6) Delegation of authority to Department Heads or Elected Officials does not preclude the Board of Commissioners from holding Department Heads or Elected Officials accountable for unwise or irresponsible use of such authority.
 - (7) The Board of Commissioners may at any time require that a particular spending item, or categories thereof, be subject to additional or lesser oversight; provided, however, then any such change that is to be applicable other than in a specific instance should be reduced to writing and incorporated into the applicable rules and procedures.

1.20 Departmental Contracting Authority

- (1) Notwithstanding any of the below provisions, all contracts, including intergovernmental agreements (IGAs), etc., the Department shall recommend the Award of Contract to the Board by preparing an agenda item cover sheet and include all appropriate and required solicitation documents then submit the packet as one document to the County’s online program with a future public business meeting agenda date of 14 days minimum from submission.
- (2) Counsel’s Office shall determine whether the approval of the Board of Commissioners is required for a particular changes based on the nature of the change and the level of risk it presents as follows:
 - (a) Grant agreements with a dollar value change no greater than 5% (not to base contract) or \$50,000 annually (not to base contract), whichever is less, provided they are still within budget and will not have a significant impact on departmental programs or staffing, do not require Board of Commissioners approval. Department Heads or Elected Officials have the authority to execute such changes after review and approval by Counsel’s Office.
 - (b) Grant agreements with a dollar value change greater than 5% or \$50,000, whichever is less, or which have a significant impact on departmental programs or staffing require prior approval by the Board of Commissioners.
- (3) Department Heads or Elected Officials may not further delegate their contracting authority to employees within their department.
- (4) Delegation of authority to Department Heads or Elected Officials does not preclude the Board of Commissioners from holding Department Heads or Elected Officials accountable for unwise or irresponsible use of such authority.
- (5) The Board of Commissioners may at any time require that a particular contract, or categories

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thereof, be subject to additional or lesser oversight; provided, however, that any such change that is to be applicable other than in a specific instance should be reduced to writing and incorporated into the applicable rules and procedures.

1.21 Emergency Authority

- (1) In the event of an Emergency, as defined in ORS 279A.010(f), when an emergency board meeting is impracticable, the Chair of the Board is granted authority to approve purchases and sign contracts in an amount not to exceed \$25,000. If the Chair is not available, the following positions are delegated authority, in descending order, only if the preceding positions are unavailable:
 - (a) The Vice Chair of the Board of Commissioners;
 - (b) Remaining Commissioner;
 - (c) The Department Head or Elected Official for whom the Contract is let only upon consultation with Counsel's Office.
- (2) The Department shall prepare all necessary documentation as required in Chapter 2 Section 2.111 and Chapter 4 Section 4.320.
- (3) As soon as practicable, the full Board shall consider the purchase or contract and, upon finding that an Emergency existed as defined in ORS 279A.010(f), ratify the Emergency purchase or contract. In such cases, Department Heads or Elected Officials shall make a report regarding all such purchases or contracts and submit to the Board at the next scheduled public business meeting with the Board of Commissioners.

AMENDMENTS AND MISTAKES

1.22 Contract Amendments

- (1) Any Contract amendment for additional work may be entered without the Competitive Process subject to the following conditions:
 - (a) The original Contract was let by the Competitive Process and imposes a binding obligation on the parties covering the terms and conditions of the additional work; or
 - (b) If the amendment has the effect of creating a new Contract, the amount of the aggregate cost increase resulting from all amendments shall not exceed ten (10%) percent of the initial Contract, or twenty (20%) percent of the initial Contract when the initial Contract is for a face amount not exceeding \$100,000 and is for the remodeling, repair, or rehabilitation of a building or buildings. Amendments made pursuant to (a) of this Rule will not be included in computing the aggregate amount under this section.
 - (c) All amendments are required to be submitted to a public business meeting for Board approval.

1.23 Mistakes

- (1) County's Treatment of Mistakes. The County shall not allow a Bidder or Proposer to correct or withdraw an Offer for an error in judgment. If the County discovers certain mistakes in an Offer after Opening, but before Award of the Contract, the County may take the following action:
 - (a) The County may waive, or permit an Offeror to correct, a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the Offer, or an insignificant mistake that can be waived or corrected without prejudice to other Offerors.
 - (b) The County may correct a clerical error if the error is evident on the face of the Offer or other

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documents submitted with the Offer, and the Offeror confirms the County's correction in writing. A clerical error is an Offeror's error in transcribing its Offer.

- (c) The County may permit an Offeror to withdraw an Offer based on one or more clerical errors in the Offer only if the Offeror shows with objective proof and by clear and convincing evidence:
 - (A) The nature of the error;
 - (B) That the error is not a minor informality under this subsection or an error in judgment;
 - (C) That the error cannot be corrected or waived under subsection (b) of this section; That the Offeror acted in good faith in submitting an Offer that contained the claimed error and in claiming that the alleged error in the Offer exists;
 - (D) That the Offeror acted without gross negligence in submitting an Offer that contained a claimed error;
 - (E) That the Offeror will suffer substantial detriment if the County does not grant the Offeror permission to withdraw the Offer;
 - (F) That the County's or the public's status has not changed so significantly that relief from the forfeiture will work a substantial hardship on the County or the public it represents; and
 - (G) That the Offeror promptly gave notice of the claimed error to the County.
- (2) Rejection for Mistakes. The County shall reject any Offer in which a mistake is evident on the face of the Offer and the intended correct Offer is not evident or cannot be substantiated from documents submitted with the Offer.

COOPERATIVE PROCUREMENTS

1.24 Cooperative Procurements

- (1) The County may participate in, sponsor, conduct or administer Cooperative Procurements as follows:
 - (a) The County may participate in, sponsor, conduct or administer Joint Cooperative Procurements to establish Contracts or Price Agreements for Goods or Services or Personal/Professional Services, that use source selection methods substantially equivalent to those set forth in ORS 279B.055, 279B.060, or 279B.085 or to establish Contracts for Public Improvements that use a competitive bidding process substantially equivalent to that set forth in ORS 279C.005 through 279C.870.
 - (b) The County may participate in, sponsor, conduct or administer Permissive Cooperative Procurements to establish contracts or Price Agreements for the acquisition of Goods or Services or Personal/Professional Services that use source selection methods substantially equivalent to those set forth in ORS 279B.055 or 279B.060.
 - (c) The County may participate in, sponsor, conduct or administer Interstate Cooperative Procurements to establish contracts or Price Agreements for the acquisition of Goods or Services or Personal/Professional Services that use source selection methods substantially equivalent to those set forth in ORS 279B.055 or 279B.060.
- (2) A solicitation and award process uses source selection methods substantially equivalent to those identified in ORS 279B.055, 279B.060 or 279B.085 when it has the characteristics set forth in ORS 279A.200(2).

**CHAPTER 3 – PERSONAL & PROFESSIONAL SERVICE
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3.10 Statutory Authority

ORS 279A.055 requires all public agencies to adopt procedures for the screening and selection of persons to perform personal services.

3.11 Scope of Personal/Professional Service Contracts

- (1) The following are types of Personal and/or Professional Services Contracts:
 - (a) Contracts for Services performed as an independent contractor in a professional capacity, including but not limited to, the Services of an accountant, attorney, engineering, architectural or land use planning consultant, physician or dentist, registered professional engineer, appraiser or surveyor, or data processing consultant.
 - (b) Contracts for Services as an artist in the performing or fine arts, including but not limited to, persons identified as a photographer, filmmaker, painter, weaver, musician or sculptor.
 - (c) Contracts for Services of specialized, creative and research-oriented, noncommercial nature.
 - (d) Contracts for Services as a consultant.
 - (e) Contracts for education and human custodial care services.
- (2) The following are not Personal/Professional Service Contracts:
 - (a) Contracts, even though in a professional capacity, if predominately for a product. For example, a Contract with a landscape architect to design a garden is a Professional Service Contract, but a contract to design and supply all the shrubs and trees is a Goods and Services Contract.
 - (b) A service Contract to supply labor, which is of a type that can generally be done by any competent worker would be considered a Goods or Services Contract. For example, Contracts for janitorial, security guard, or laundry services are not Personal or Professional Service Contracts but are a goods or Services Contract.
 - (c) Contracts for a trade-related activity, even though a specific license is required to engage in the activity. For example, a Contract for the repair and maintenance of equipment or structures is not a Personal or Professional Service Contract.

SELECTION

3.12 Competitive Process for Personal/ Professional Services Contracts; Exceptions

- (1) Except as otherwise provided in subsection (4) or otherwise provided by law, the County shall select and award all personal/professional services by the Competitive Sealed Proposal process set forth in ORS 279B.060.
- (2) The Department shall submit all contracts, agreements and/or amendments along with an agenda-item cover sheet for the County's official contract review process and BOCC approval.
- (3) The Proposals submitted by the Competitive Sealed Proposal process may be evaluated by one of the following methods to be determined by the County on an individual project basis:
 - (a) Negotiation with the highest ranked Proposer;
 - (b) Discussions leading to best and final offers as set forth in Chapter 2, Section 2.36;
 - (c) Serial negotiations, beginning with the highest ranked Proposer, as set forth in Chapter 2, Section 2.36;
 - (d) Competitive simultaneous negotiations, as set forth in Chapter 2, Section 2.36; or
 - (e) A Multistep Sealed Proposals, as set forth in Chapter 2, Section 2.37.

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- (4) The County shall select and award all Personal and Professional Services Contracts by the Competitive Sealed Proposal process set forth in ORS 279B.060, except as follows:
- (a) The County may purchase Personal Services without Competitive Process if the estimated fee is less than \$150,000.
 - (b) The County may purchase Personal Services using the Informal Selection Procedure in Section 3.13 if the estimated fee is less than \$150,000;
 - (c) Personal services contracts for legal services may be entered into directly by County Counsel subject to Chapter 1, Section 1.19(5)(d);
 - (d) The County may purchase litigation and legal services Contracts without Competitive Process, which includes attorney, court reporters, expert witnesses, arbitrators, mediators, trial consultants, or investigators upon approval by the Board;
 - (e) The County may purchase Personal Services without Competitive Process when the County declares that Emergency circumstances exist as defined by ORS 279A.010(1)(f). This declaration shall be by a written declaration that describes the circumstances creating the Emergency, and the anticipated harm from failure to enter into an Emergency Contract.
- (5) If the requirements of ORS 279C.110(2) are met for the selection of architectural, engineering or surveying services for ORS 279C.110(1), which provides that pricing policies and other pricing information may only be used after the County has selected a candidate pursuant to ORS 279C.110(3).

3.13 Informal Selection Procedure for Personal/Professional Service Contracts

- (1) The County, prior to contacting prospective Proposers will determine in writing the selection criteria for the Personal/Professional Service Contract. The selection criteria may be limited to price or some combination of price, experience, specific expertise, availability, project understanding, Contractor capacity, responsibility and similar factors.
- (2) The County will contact a minimum of three prospective Proposers with which it has had previous successful experience or which are known by the County to be qualified for a Quote to offer the sought-after services. The County shall utilize written requests for Quotes whenever reasonably practicable. The County must describe substantially the same specifications to each of the prospective contractors. Written request for Quotes shall include the selection criteria to be utilized in selecting a Contractor and, if the criteria are not of equal value, their relative value or ranking, and include the applicable insurance requirements. When requesting quotations orally, prior to requesting the price quote the County shall state any additional selection criteria and, if the criteria are not of equal value, their relative value.
- (3) If three Quotes are not reasonably available, fewer will suffice, but the County shall make a written record of the effort made to obtain the Quotes.
- (4) If a Contract is awarded, the County shall award the Contract to the Proposer that will best serve the interests of the County considering price as well as considerations including but not limited to, experience, expertise, product functionality, suitability for a particular purpose and Contractor responsibility.

3.14 Multi-Year Personal/Professional Service Contracts

The County may appoint a contractor as an Agent of Record for a multi-year Contract if the selection of the Agent of Record was done by Competitive Process. Subsequently, the County may enter into multi-year Contracts for Personal/Professional Service with an Agent of Record without Competitive Process for up to five years or such other length of time as the Board of Commissioners may determine is necessary for a particular project. The Board of Commissioners may extend the term of an Agent of Record as it determines is necessary to complete a project.

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**CHAPTER 3 – PERSONAL & PROFESSIONAL SERVICE
CONTRACTS GENERALLY**

3.15 Selection for Architect or Engineering Services

- (1) Use Direct Appointment (OAR 137-048-0200) if estimated fee is less than ~~\$5~~100,000.
- (2) Use Informal Selection Procedure (OAR 137-048-0210) if estimated fee is over ~~\$5~~100,000 but less than ~~\$2~~150,000.
- (3) Use Formal Selection Procedure (OAR 137-048-0220) if estimated fee exceeds ~~\$2~~150,000.

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BEFORE THE BOARD OF COUNTY COMMISSIONERS
KLAMATH COUNTY, OREGON

IN THE MATTER OF ADOPTING KLAMATH)
COUNTY CONTRACTING POLICY REVISION) RESOLUTION NO. _____
OF CHAPTER 1 SECTION 1.15 (1);)
COUNTY PROCEDURE PRIOR TO)
CONTRACT AWARD AND)
OF CHAPTER 3 SECTION 3.15 (1))
SELECTION FOR ARCHITECT OR)
ENGINEERING SERVICES)
_____)

WHEREAS, Chapter 279 of the Oregon Revised Statutes (ORS) establishes rule and authority pertaining to the procurement of goods and services by public agencies; and

WHEREAS, ORS 279A.065(6)(a) provides for public contracting agencies to adopt their own rules of procedure for public contracting; and

WHEREAS, the Klamath County Board of Commissioners (BOCC) serves as the Local Contract Review Board pursuant to Klamath County Code Chapter 101; and

WHEREAS, the BOCC has determined that the procurement of goods, materials and services shall be conducted in the most cost effective and legally compliant manner; and

WHEREAS, Klamath County has contracting policies and procedures in place that incorporate both the Attorney General's Model rules (Oregon Administrative Rules, Chapter 137) and the rules developed by the Department of Administrative Services (Oregon Administrative Rules, Chapter 125); and

WHEREAS, a public contracting agency must review their contracting rules each time the Attorney General adopts a modification of the model rules to ensure compliance with statutory changes pursuant to ORS 279.A065(6)(b); and

WHEREAS, The BOCC desires to revise Klamath County's Contracting Policies and Procedures updating areas throughout as directed by the Board to help ensure proper practices, procedures and policies are utilized and followed; and

WHEREAS, adopting the revisions to the Klamath County Contracting Policies and Procedures Chapter 1 section 1.15 (1), County Procedure Prior to Contract Award, will clarify all MOU's, MOA's, IGA's and Letters of Agreement (LOA) will require Board approval through a regular Business meeting.

WHEREAS, adopting the revisions to the Klamath County Contracting Policies and Procedures Chapter 3 section 3.15, Selection for Architect or Engineering Services, will align appointment procedures for specified services with OAR's 137-048-0200 through 137-048-0220.

NOW, THEREFORE, BE IT HEREBY RESOLVED, that the BOCC approves the revisions to the Klamath County Contracting Policies and Procedures Chapter 1 section 1.15 (1)(b), County Procedure Prior to Contract Award and Chapter 3 section 3.15, Selection for Architect or Engineering Services, as directed by the Board during the January 17, 2023 Administrative Meeting.

APPROVED AND DATED this _____ day of March, 2023.

Chair

Commissioner

Commissioner