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02/22/05

Ordinance 710

Repealing and replacing CCC 3.12, Purchasing, Contracts, and Bonds

BE IT ORDAINED BY THE BOARD OF CLALLAM COUNTY COMMISSIONERS:

Chapter 3.12

PURCHASING, CONTRACTS, AND BONDS

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3.12.010 Definitions.

For purposes of this chapter, the following terms, phrases, words, and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and vice versa.

- (1) "Agency" means any department, agency, commission, bureau, or other unit in the county government using supplies or procuring contractual services as provided for in this chapter.
- (2) "County" means the County of Clallam.

- (3) "Board" means the Board of Clallam County Commissioners.
- (4) "County Official" means Elected Officials, the County Administrator, Department Heads, and County Road Engineer appointed by the Board of County Commissioners, or their designees.
- (5) "Purchase" means, in addition to acquisition of an ownership interest of goods, materials, supplies and equipment, the lease or rental of such property, those services identified by the Board by policy or required to be bid by state law and contracting for public works.
- (6) "Supplies" means goods, supplies, materials, and equipment.
- (7) "Purchase price" means the cost of the item or service, taxes, shipping, and all other fees.
- (8) "Public Work" means those projects contemplated by RCW Title 39.

3.12.020 Exemptions.

The following are exempt from the bidding provisions of this chapter:

- (1) Services except as otherwise provided by the Board by policy and those services required to be bid by state law;
- (2) The purchase of insurance and bonds;
- (3) Those purchases of goods, materials, supplies, and equipment to be made at a public or private auction where the items can be obtained at a competitive price.

3.12.030 Provisions mandatory.

Except as provided herein, it shall be unlawful for any County Official to make any purchase within the scope of this chapter contrary to the provisions thereof and any such purchase shall be *ultra vires* and the County shall not be bound thereby unless so approved by the Board.

3.12.040 Multiyear contracts authorized.

In no event shall contracts for purchases exceed five (5) years in length. Contracts which are let for a term less than five (5) years may be extended, for a total period not to exceed five (5), years without the necessity of complying with the bid solicitation processes contained therein but only if the additional years were requested to be bid in the bid specifications.

3.12.050 Purchases under \$25,000.

(1) All purchases estimated to have a purchase price in an amount less than \$2,500, and public works estimated to involve less than \$10,000, may be made without observing a bid solicitation process. It is the intent of this Chapter that County Officials have flexibility and discretion for the expenditure of funds for minor purchases and public works.

(2) For all purchases estimated to have a purchase price in an amount between \$2,500 and \$25,000 inclusive, the County Official shall secure written bids from at least three (3) different vendors whenever possible to assure that a competitive price is established and for awarding the contract for the purchase to the lowest responsible bidder. The solicitation of bids may be made by telephone, mail, electronic facsimile, or electronic mail. Bids shall be in writing, which includes prices published by vendors such as catalogs and/or advertisements, electronic facsimile, and electronic mail.

Immediately after the award is made, the solicitation and written bids shall be recorded in the records of the office or department, open to public inspection and made available by telephone inquiry.

A copy of the record or written bid shall be attached to the voucher submitted to the County Auditor for payment, along with a copy of any contract, invoice, or purchase order and shall clearly

identify that the purchase was made pursuant to this section. Alternatively, the Board may establish procedures for the recording of bids and/or indexing of contracts.

(3) At least twice each year, the Clerk of the Board shall publish in the County's legal newspaper a notice of the existence of vendor lists and shall solicit the names of vendors for the lists. For purchases, solicitations for bids shall be made to those on the vendor lists. Nothing herein shall preclude the direct solicitation of bids from vendors not on the vendor list in addition to the use of the vendor lists.

(4) A list of the contracts awarded or purchases made pursuant to subsection (2) shall be posted at least once every two months by the Auditor upon information provided by County Officials. The list shall contain the name of the vendor awarded the contract or purchase, the amount of the contract or purchase, a brief description of the items purchased, the date of award, and the location where the bids for these contracts or purchases are available for public inspection.

3.12.060 Formal purchasing procedures.

(1) For all purchases estimated to have a purchase price in an amount in excess of \$25,000 or \$10,000 for public works, sealed bids shall be solicited by notice published at least one time each week for two (2) consecutive weeks in the legal newspaper for the County. The first publication shall occur at least thirteen (13) calendar days prior to the last date upon which bids will be received and the latest publication shall occur at least five (5) calendar days prior to bid opening.

(2) For purchases hereunder, it shall be the duty of each County Official to implement those provisions by:

(a) Preparing specifications, quantity requirements, and bid forms and initiating the requested bid procedures;

(b) Preparing advertisements and calls for bids for Board consideration establishing:

(i) The date, hour, and manner of bid acceptance and the time after which bids will not be received;

(ii) The character of the work to be done, or the materials, supplies, equipment or services to be purchased; and

(iii) Where the specifications may be seen or obtained.

(c) Filing a copy of bid specifications with the Clerk of the Board and providing copies of bid documents for vendors;

(d) Ensuring the Clerk of the Board receives and holds bids for the Board until time of opening. Bids shall be submitted sealed to the Clerk of the Board and shall be identified as bids on the envelopes and shall further identify the project for which the bid or qualification is submitted and the bid opening date. Bids shall be opened and read in public at a meeting of the Board at the time and place stated in the public notices;

(e) Tabulating, evaluating, and submitting recommendations of award, and preparing and transmitting notification of award to successful bidders upon approval of the Board;

(f) Maintaining records on bid solicitation and submissions, and the contractor's performance of its contract responsibilities.

(3) No bids shall be submitted by electronic facsimile or electronic mail.

(4) Nothing herein shall be construed to apply to public works projects subject to the small works roster.

3.12.070 Awarding of bids/lowest responsible bidder.

(1) Contracts may be awarded to the lowest responsible bidder or any or all bids may be rejected for good cause after bid opening, and further calls for bids may be made in the same manner as the original call. Immaterial irregularities in bid proposals may be waived. Timely receipt of bids by the Clerk of the Board is deemed material and bids not received by the Clerk of the Board by the time specified shall not be considered by the Board. When determining "lowest responsible bidder," in addition to price, the following shall be considered;

- (a) The ability, capacity, and skill of the bidder to perform the contract;
- (b) Whether the bidder can perform the contract promptly, or within the time specified, without delay or interference;
- (c) The bidder's ability to perform the contract in a manner that is conducive to the prudent use of energy and natural resources;
- (d) The quality of performance of previous contracts with the County or with other contractees;
- (e) The sufficiency of financial resources. If it is known that a contractor is in default on the payment of taxes or other public monies due the County, state, or federal government it shall not have its bid accepted;
- (f) The quality, availability, and adaptability of the supplies or contractual services to the particular use required;
- (g) The ability of the bidder to provide future maintenance and service for the subject of the contract;
- (h) The number and scope of conditions attached to the bid;
- (i) The contractor's character, integrity, judgment, and reputation in the community and industry;

(2) When bids are not rejected and a contract is not awarded to the lowest bidder, a full and complete statement of the reasons therefore shall be prepared by the County Official and retained with any other papers relating to the transaction.

(3) If two (2) or more lowest responsible bids are essentially equivalent in quality, cost, and ability to perform, the contract shall be awarded to one of the lowest responsible bidders by drawing lots in public view.

(4) "Good cause" as used in subsection 1 means, but is not limited to:

- (a) Unavailable, inadequate, ambiguous specifications, terms, conditions, or requirements were cited in the solicitation;
- (b) Specifications, terms, conditions, or requirements have been revised;
- (c) The supplies or services being contracted for are no longer required;
- (d) The solicitation did not provide for consideration of all factors of cost to the agency;
- (e) Bids received indicate that the needs of the agency can be satisfied by a less expensive article differing from that for which the bids were solicited;
- (f) All otherwise acceptable bids received are at unreasonable prices or only one bid is received and the agency cannot determine the reasonableness of the bid price;
- (g) No responsive bid has been received from a responsible bidder; or
- (h) The bid process was not fair or equitable.

(5) Negotiations can be entered into exclusively with the lowest responsible bidder in order to determine if the lowest responsible bid may be improved. This negotiation opportunity shall not be used to permit a bidder to change a non-responsive bid into a responsive bid.

(6) A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same purchase or project if a second or subsequent call for bids is made for the purchase or project.

3.12.080 Single source vendors

(1) Solicitation of bids may be dispensed with where the purchases are clearly and legitimately limited to a single source of supply or which involve special facilities or market conditions. Terms may be established by direct negotiation.

(2) Any contract let under the provisions of this chapter shall be supported by a report setting forth the factual basis for not soliciting bids which report shall be open to public inspection.

(3) Used goods, materials, supplies, or equipment may be purchased under this section due to the uniqueness of the condition, features, and wear and tear of the item.

3.12.090 Specifications.

(1) Unless otherwise specifically provided in the bid specifications, reference to any goods, materials, supplies, or equipment by trade name, make, or catalog number shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. All bids that offer a different trade name, make, or catalog number shall state whether the item offered is equal to the specification or an alternate and shall supply literature, if available, along with the bid. Bid specifications shall include a summary of this section. The County Official soliciting the bid shall determine whether the item is equal or alternate and such determination is final.

(2) In the event of discrepancies or omissions in the bid specifications, or ambiguity as to their meaning, the bidder shall immediately notify the County Official soliciting the bid who may issue written instructions and/or addenda and provide copies thereof to all those prospective bidders to whom specifications have been provided. Oral representations shall not be made and bidders shall not rely upon them except when made in a pre-bid conference that all prospective bidders may attend.

(3) Options to be exercised by the County to extend the term of a contract or increase the quantity of the goods, materials, supplies, equipment, or services to be purchased shall, if desired, be included in the specifications.

3.12.100 Dollar limit adjustments.

The dollar limits set forth in this ordinance shall be adjusted automatically to reflect changes in limits established by the state legislature in RCW 36.32.245, RCW 36.32.250, and RCW 39.04.155, as now or hereafter amended, and those limits are incorporated herein by reference as if fully set forth.

3.12.110 Small works roster – Public works.

(1) A small works roster shall be maintained for public work projects and shall be comprised of all contractors requesting inclusion and who are, where required by law, properly licensed or registered to perform work in the State of Washington. Whenever possible, participation by women and minority contractors shall be actively solicited. Bids provided in response to a solicitation hereunder shall be in writing and may include prices published by vendors such as catalogs and advertisements, electronic facsimile, and electronic mail.

(2) At least once a year, a notice of the existence of the roster shall be published in a newspaper of general circulation and names of contractors shall be solicited for the roster. In

addition, responsible contractors may be added to the roster at any time they submit a written request and necessary records. As a condition of being placed on the roster, eligible contractors shall complete forms prescribed by the County and file information and certifications as determined by the County.

(3) The solicitation of bids may be made by telephone, mail, electronic facsimile, or electronic mail. Solicitations for bids shall include the date, hour and manner of bid submissions, the time after which bids will not be received, and an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished. Detailed plans and specifications need not be included in the solicitation. Immediately after the award is made, the bids shall be recorded in the records of the office or department, open to public inspection, and made available by telephone inquiry. A copy of the record or written bid shall be attached to the voucher submitted to the County Auditor for payment, along with a copy of any contract, invoice, or purchase order and shall clearly identify that the purchase was made pursuant to this chapter.

(4) Whenever projects are done by contract for which the estimated cost is greater than \$10,000 but less than \$200,000, in lieu of utilizing formal bid procedures, proposals from appropriate contractors on the small works roster may be invited. Whenever possible, not less than five (5) separate appropriate contractors shall be requested to submit proposals on any individual contract. Solicitations may be invited from all appropriate contractors. However, if the estimated cost of the work is from \$100,000 to \$200,000, contractors not contacted by the County shall be notified that bids on the work are being sought. Such notice to the remaining contractors may be made by:

(a) Publishing notice in a legal newspaper in general circulation in the area where the work is being done;

(b) Notice by first class mail or;

(c) Notice by electronic facsimile or electronic mail.

(5) Whenever public works projects are done by contract for which the estimated cost is greater than \$10,000 but less than \$35,000, in lieu of utilizing the procedures contained in subsection 4, bids may be solicited from a minimum of three (3) contractors on the small works roster. A list of contractors contacted for projects and the contracts awarded during the previous 24 months under this subsection shall be maintained including the name of the contractor, the contractor's registration number, the amount of the contract, a brief description of the type of work performed, and the date of contract award.

(6) Once a contractor on the small works roster has been offered an opportunity to submit a proposal, that contractor shall not be offered another opportunity on any contract until all other appropriate contractors, including minority and women contractors, have been afforded an opportunity to submit a proposal on a contract.

(7) When considering awarding a public work contract under this section, the contract shall be awarded or bids rejected in conformance with the process set forth in section 3.12.070, except insofar as inconsistent with the provisions herein.

(8) A list of the contracts awarded hereunder, except for limited public works projects, shall be posted at least once every year. The list shall contain the name of the vendor awarded the contract, the amount of the contract, a brief description of the items purchased, the date of award, and the location where the bids for these contracts are available for public inspection.

(9) Every effort shall be made to equitably distribute the available work among all contractors on the roster so that no contractor or contractors are favored.

3.12.120 Bid deposit.

(1) In addition to those bids requiring a deposit pursuant to state law, the county may require a bid deposit in an amount not less than 5 percent of the total bid for purchases made hereunder. If required, such requirement shall be included in the bid specifications.

(2) Bid deposits shall be in one or more of the same forms authorized by state law for public works contracts.

(3) If the bidder to whom a contract is awarded fails to enter into a contract consistent with the bid proposal or fails to furnish a required contractor's bond, within ten (10) days after the notice of award, the bid deposit may be forfeited to the County and the contract may be awarded to the next lowest responsible bidder. Furthermore, a low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same purchase or public work if a second or subsequent call for bids is made for the purchase or public work.

(4) Bid deposits may be returned, except for the apparent three (3) lowest responsible bidders, at any time after bid opening.

(5) The bid deposits of all unsuccessful bidders shall be returned after the contract is awarded, the contract is executed by the successful bidder, and the contractor's bond is furnished and accepted by the County.

3.12.130 Contractor's bond.

All performance and payment bonds provided pursuant to state law shall be issued by a surety company as surety who must agree to be bound by the laws of the State of Washington and subject to its jurisdiction. No bonds issued by individual sureties shall be accepted. Bonds shall be in a form consistent with state law.

3.12.140 Contract execution.

(1) The Board shall execute any contract, but may, by policy, delegate signing authority to County Officials, excluding their designees, for any such contracts and/or change orders hereunder. Notwithstanding a delegation of signing authority by the Board, nothing herein is intended to preclude County Officials from presenting the contract to the Board for its action.

(2) Where the Board has executed the contract and the contract provides for an option to extend the term of the contract or increase the quantities to be purchased, the County Official responsible for the management of that contract shall have the authority to exercise the option and execute any documents necessary to do so.

(3) All purchases and/or services shall be evidenced by a purchase order, invoice, contract of sale or the like. The Board shall establish, by policy, the requirements for written contracts.

3.12.150 Bond sale procedures.

Bonds shall be sold or refunded in the manner provided in state law.

3.12.160 Subdivisions prohibited.

No purchase shall be subdivided for the purpose of having a lesser dollar limit and, consequently, less formal procedure apply. Simultaneous purchases which, though similar, are unrelated or otherwise not constituent parts of a separate project, do not constitute subdivisions for purposes of this section.

3.12.170 Insurance and official bonds.

The purchase of insurance or official bonds may be made by direct negotiation without soliciting bids and the Board shall award purchases based upon the following:

- (1) Cost;
- (2) Company rating by A.M. Best, Standard and Poor, Moody and/or such other rating service recognized and relied upon in the insurance industry;
- (3) Loss control services;
- (4) Claims administration;
- (5) Any other factors that a prudent person would consider when acquiring insurance or faithful performance bonds.

Records of all proposals, communications, and investigations leading to the award shall be retained.

3.12.180 Policies authorized.

The County Administrator or his designee shall have authority to promulgate any rules, procedures, or policies necessary to implement:

- (1) This ordinance that are not inconsistent herewith;
- (2) State statutes, as now or hereafter amended, authorizing direct or competitive negotiation which are not inconsistent therewith including, but not limited to, RCW 39.04.270 (Electronic Data Processing and Telecommunications Systems); RCW 39.80 (Architectural and Engineering Services); RCW 39.04.155 (Small Works Roster); or such other statutes as the legislature may adopt or amend now or in the future.

3.12.190 Architects and engineers.

The services of architects and engineers who are licensed to practice under the authority of RCW 18.08, RCW 18.43, or RCW 18.96 shall be acquired pursuant to the procedures set forth in RCW 39.80, as now or hereafter amended, and any rules, procedures or policies promulgated in compliance with this chapter.

3.12.200 Electronic data processing and telecommunications systems.

Electronic data processing and telecommunications equipment, software or services shall be acquired pursuant to the procedures set forth in RCW 39.04.270, as now or hereafter amended, and any rules, procedures, or policies promulgated in compliance with this chapter.

3.12.210 Emergencies.

(1) An emergency means unforeseen circumstances beyond the control of the County that either:

- (a) Present a real, immediate threat to the proper performance of essential functions or
- (b) Will likely result in material loss or damage to property, bodily injury or loss of life if immediate action is not taken.

(2) If an emergency exists, the Board of Commissioners may declare an emergency and award all necessary contracts for purchases or public works on behalf of the County to address the emergency without complying with any of the other provisions of this chapter. In situations requiring an immediate declaration of emergency, the County Administrator may, after making a reasonable attempt to contact each available Commissioner, declare the existence of an emergency. If the County Administrator is unavailable, the Public Works Director, Sheriff, Prosecuting

Attorney, Public Health Officer, or Director of the Department of Community Development, in that order, may, after making a reasonable effort to contact each available Commissioner, declare such emergency. All emergencies declared by other than the Board of Commissioners shall be before the Board of Commissioners at their next regular meeting for ratification.

(4) If a contract is awarded under the authority of this section, a written finding of the existence of the emergency shall be made by the County Official and filed in the records of that official's office or department no later than two (2) weeks following the award of the contract.

(5) Any contract entered into hereunder shall contain provisions allowing the County to terminate the contract for convenience or because of the conclusion of the emergency. Such contract termination provisions shall provide that the County shall pay to the contractor only that portion of the contract price corresponding to work completed to the County's satisfaction prior to termination, together with costs necessarily incurred by the contractor in terminating the remaining portion of the work, less any payments previously made.

3.12.220 Cooperative purchasing.

(1) The County may join with other units of local, state, or federal government in cooperative purchasing plans pursuant to RCW 39.34 or any other authorizing statute to the extent permitted by state law.

(2) Any such plan shall provide that each of the participating units of government shall be separately invoiced by the vendors or service providers for purchases made under such plans and that the County shall not be obligated for any purchases other than those required for its own use and supplied pursuant to the request of the County.

(3) Any proposed plan shall be approved by the Board.

3.12.230 Intergovernmental purchases.

Purchases or services may be obtained from local, state, or federal entities upon direct negotiation without complying with the procedures specified herein.

3.12.240 State law.

Except as provided for herein, the provisions of state law control the purchase of goods, material, supplies, equipment, services, and the contracting for public works.

3.12.250 Repealer

The following resolution and ordinances are repealed and of no force or effect: Resolution 1, 1977; Ordinance No. 79, 1977; No. 165, 1982; No. 226, 1984; No. 355, 1989; No. 441, 1991; No. 562, 1995; and No. 695, 2000.

3.12.260 Severability

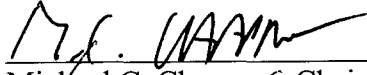
If any section, sub-section, paragraph, sentence, clause, or phrase of this chapter is for any reason held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this chapter; it being herein expressly declared that this chapter and each section, sub-section, paragraph, sentence, clause and phrase thereof would have been adopted irrespective of the fact that one (1) or more other sections, sub-sections, paragraphs, sentences, clauses, or phrases be declared invalid or unconstitutional.

3.12.270 Effective date.

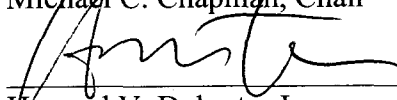
This chapter shall take effect ten (10) days after adoption.

ADOPTED this 22nd day of February 2005

BOARD OF CLALLAM COUNTY COMMISSIONERS

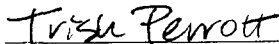


Michael C. Chapman, Chair

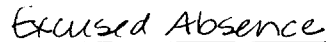


Howard V. Doherty, Jr.

ATTEST:



Trish Perrott, CMC, Clerk of the Board



Stephen P. Tharinger