

Columbia River Gorge Commission

Chapter 350

Division 15

Public Contracts

350-15-001. Definitions for 350-15-001 to 350-15-020.

The term "public work" shall include all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the commission, or which is by law a lien or charge on any property within Washington or Oregon, but nothing herein shall apply to the construction, alteration, repair, or improvement of any municipal street railway system. All public works, including maintenance when performed by contract shall comply with the provisions of 350-15-002.

350-15-002. Plans and specifications; estimates; publications; emergencies.

(1) Whenever the commission shall determine that any public work is necessary to be done it shall cause plans, specifications, or both thereof and an estimate of the cost of such work to be made and filed with appropriate officials in Washington and Oregon.

(2) If the commission shall determine that it is necessary or advisable that such work shall be executed by any means or method other than by contract or by a small works roster process, and it shall appear by such estimate that the probably cost of executing such work will exceed the sum of fifteen thousand dollars, then the commission shall at least fifteen days before beginning work cause such estimate, together with a description of the work, to be published at least once in a legal newspaper of general circulation published in or as near as possible to that part of the county in which such work is to be done: Provided, that then any emergency shall require the immediate execution of such public work, upon finding of the existence of such emergency by the authority having power to direct such public work to be done and duly entered of record, publication of description and estimate may be made within seven days after the commencement of the work.

350-15-003. Requirements for advertisement for bids.

(1) An advertisement for bids shall be published at least once in at least one newspaper of general circulation in the area where the contract is to be performed and in as many additional issues and publications as the commission may determine. If the contract is for a public improvement with an estimated cost in excess of \$50,000, the advertisement for bids shall be published in at least one trade newspaper of general state-wide circulation. The commission may, by rule, require an advertisement for bids to be published more than once or in one or more additional publications.

(2) All advertisements shall state:

- (a) If the contract is for public work, that no bid will be received or considered by the commission unless the bid contains a statement by the bidder as a part of its bid that the provisions of prevailing wage rates are to be complied with;
- (b) The date after which bids will not be received, which date shall not be less than five days after the date of the last publication of the advertisement;
- (c) The date that prequalification applications must be filed and the class or classes of work for which bidders must be prequalified if prequalification is a requirement;
- (d) The character of the work to be done or the material or things to be purchased;
- (e) The office where the specifications for the work, materials or things may be seen;
- (f) The name and title of the person designated for receipt of bids;
- (g) The date, time and place that the commission will publicly open the bids; and
- (h) The commission may reject any bid not in compliance with all prescribed public bidding procedures and requirements, and may reject for good cause any or all bids upon a finding of the agency it is in the public interest to do so.

350-15-004. Disqualification of bidder.

(1) The commission may disqualify any person as a bidder on a public contract if the commission finds:

- (a) The person does not have sufficient financial ability to perform the contract. If a bond is required to insure performance of a contract, evidence that the person can acquire a surety bond in the amount and type required shall be sufficient to establish financial ability;
- (b) The person does not have the equipment available to perform the contract;
- (c) The person does not have key personnel available of sufficient experience to perform the contract; or
- (d) The person has repeatedly breached contractual obligations to public and private contracting agencies.

(2) The commission may make such investigation as is necessary to determine whether a person is qualified. If a bidder or prospective bidder fails to supply promptly information as requested by the public contracting agency pursuant to such investigation, such failure is grounds for disqualification.

(3) Any information voluntarily submitted by a bidder or prospective bidder pursuant to an investigation under subsection (2) of this section or in a prequalification statement required by 350-15-005 or in a prequalification request submitted pursuant to 350-15-006 shall be deemed a trade secret if requested by the person submitting the information.

350-15-005. Prequalification of bidder; notification.

(1) The commission may adopt a rule, resolution, ordinance or other regulation requiring mandatory prequalification for all person desiring to bid for public contracts that are to be let by the agency. The rule, resolution, ordinance or other regulation authorized by this section shall include the time for submitting prequalification applications and a general description to the type and nature of the contracts that may be let. The prequalification application shall be in writing on a standard form prescribed by the commission.

(2) The commission shall within 30 days of the receipt of the prequalification application submitted pursuant to subsection (1) of this section, notify the prospective bidder if the prospective bidder is qualified or not, the nature and type of contracts that the prospective bidder is qualified to bid on and the time period for which the prequalification is valid. If the commission disqualified the prospective bidder as to any contracts covered by the rule, resolution, ordinance or other regulation, the notice shall specify which subsections of 350-15-004 the prospective bidder failed to comply with. Unless the reasons are specified, the bidder shall be deemed to have been prequalified in accordance with the application.

(3) If the commission subsequently discovers that a person heretofore prequalified under subsections (1) and (2) of this section is no longer qualified, the commission may revoke the prequalification upon reasonable notice to the prospective bidder; provided, however, that such revocation shall be invalid as to any contract for which an advertisement for bids has already been made under 350-13-003.

350-15-006. Application for prequalification; notification; investigation, revocation or revision.

(1) When the commission permits or requires prequalification of bidders, a person who wishes to prequalify shall submit a prequalification application to the commission on a standard form prescribed by the commission. Within 30 days after receipt of a prequalification application, the commission shall investigate the prospective bidder as necessary to determine if the prospective bidder is qualified. The determination shall be made in less than 30 days, if practical, if the prospective bidder requests an early decision to allow the bidder as much time as possible to prepare a bid on a contract that has been advertised. In making its determination, the commission shall only disqualify a person in accordance with 350-15-004. It shall promptly notify the person whether or not that person is qualified.

(2) If the commission finds that a prospective bidder is qualified, the notice shall state the nature and type of contracts that the person is qualified to bid on and period of time for which the qualification is valid under the rule, resolution, ordinance or other regulation. If the agency disqualifies a prospective bidder as to any contracts covered by the rule, resolution, ordinance or

other regulations, the notice shall specify the reasons found under 350-15-004 for the disqualification.

(3) If the commission has reasonable cause to believe that there has been a substantial change in the conditions of a prequalified person and that the person is no longer qualified or is less qualified, the agency may revoke or may revise and reissue the prequalification after reasonable notice to the prequalified person. The notice shall state the reasons found under 350-15-004 for revocation or revision of the prequalification of the person. A revocation or revision does not apply to any contract for which publication of advertisement for bids, in accordance with 350-15-003, commenced prior to the date the notice of revocation or revision was received by the prequalified person.

350-15-007. Work to be executed according to plans; supplemental plans.

Whenever plans and specifications shall have been filed, the work to be done shall be executed in accordance with such plans and specifications unless supplemental plans and specifications of the alterations to be made therein shall be made and file din the office where the original plans and specifications are filed.

In the event that the probable cost of executing such work in accordance with the supplemental plans and specifications shall be increased or decreased from the estimated cost as shown by the original estimate to an amount in excess of ten percent of such estimate, then a supplemental estimate shall be made of the increased or decreased cost of executing the work in accordance.

350-15-008. Contents of original estimates.

Original estimates shall show in detail the estimated cost of the work; the estimated quantities of each class of work; the estimated unit cost for each class; the estimated total cost for each class; the time limit allowed for the completion of the work and the estimated dates of commencement and completion.

350-15-009. Supplemental estimates.

Supplemental estimates shall show the estimated increase or decrease in the total quantities of each class, in the unit cost of each class, in the total cost for each class and in the total cost of the work as shown by the original estimate, together with any change in the time limit and in the estimated dates of commencing and completing the work.

350-15-010. Account and record of cost.

Whenever the commission shall execute any public work by any means or method other than by contract, it shall cause to be kept and preserved a full, true and accurate account and record of the costs of executing such work.

Such account and record shall show in accurately tabulated form and under appropriate headings the totals of all classes and kinds of work performed, the total cost and unit cost of each

class, together with the costs of executing such work, including, under separate headings, the costs of labor; material; equipment purchased; provisions and supplies; rental of equipment; industrial insurance and medical aid; superintendence; engineering; clerical and accounting service; the reasonable value, including depreciation, of the use of equipment owned by the commission, and all other expenses incurred therein.

350-15-011. Records open to public inspection; certified copies.

All plans, specifications, estimates, and copies of accounts or records and all certificates attached thereto shall, when filed, become public records and shall at all reasonable times be subject to public inspection.

Certified copies of any estimate, account or record shall be furnished by the officer having the custody thereof to any person on demand and the payment of the legal fees for making and certifying the same.

350-15-012. Pollution and preservation of natural resources laws to be included in bidding invitations; change orders, costs, arbitration.

All invitations for bid proposals for public construction projects issued by the commission, shall set further in the contract documents to the extent they are reasonably obtainable by the public awarding authority those provisions of federal, state and local statutes, ordinances and regulations dealing with the prevention of environmental pollution and the preservation of public natural resources that affect or are affected by the projects. If the successful bidder must undertake additional work due to the enactment of new or the amendment of existing statutes, ordinances, rules or regulations occurring after the submission of the successful bid, the commission shall issue a change order setting forth the additional work that must be undertaken, which shall not invalidate the contract. The cost of such a change order to the commission shall be determined in accordance with the provisions of the contract for change orders or force accounts or, if no such provision is set forth in the contract, then the cost to the commission shall be the contractor's costs for wages, labor costs other than wages, wage taxes, materials, equipment rentals, insurance, and subcontracts attributable to the additional activity plus a reasonable sum for overhead and profit: Provided, that such additional costs to undertake work not specified in the contract documents shall not be approved unless written authorization is given the successful bidder prior to his undertaking such additional activity. In the event of a dispute between the commission and the successful bidder, arbitration procedures may be commenced under the applicable terms of the construction contract, or, if the contract contains no such provision for arbitration, then the obtaining rules of the American Arbitration Association.

350-15-013. Commission purchasing; use of recovered resources and recycled material.

The commission, in purchasing supplies, materials, equipment or personal services, shall:

(1) Review its procurement specifications currently utilized to eliminate, wherever economically feasible, discrimination against the procurement of recovered resources or recycled materials.

(2) Provide incentives, wherever economically feasible, in all procurement specifications issued by them for the maximum possible use of recovered resources and recycled materials.

(3) Develop purchasing practices which, to the maximum extent economically feasible, assure purchase of materials which are recycled or which may be recycled or reused when discarded.

(4) Establish management practices which minimize the volume of solid waste generated by them by limiting the amount of materials consumed and discarded.

(5) Use and require persons with whom it contracts to use, in the performance of the contract work, to the maximum extent economically feasible, recycled paper.

350-15-014. Preference of recycled materials.

(1) Notwithstanding other rules requiring the commission to enter into contracts with the lowest responsible bidder and subject to subsection (2) of this section, the commission, in the purchase of materials and supplies for any public use, may, in its discretion, give preference to the purchase of materials and supplies manufactured from recycled materials.

(2) The commission may give preference to materials and supplies manufactured from recycled materials only if:

(a) The bids of the persons or manufacturing concerns supplying the recycled materials, or the prices quoted by them, do not exceed by more than five percent the lowest bid or process quoted by persons and manufacturing concerns offering nonrecycled materials; and

(b) The commission finds that the public good will be served thereby.

350-15-015. Specifications for contracts; exemptions.

(1) Specifications for public contracts shall not expressly or implicitly require any product by any brand name or mark, nor the product of any particular manufacturer or seller unless the product is exempt under subsection (2) of this section.

(2) The commission may exempt certain products or classes of products from subsection (1) of this section upon any of the following findings:

(a) It is unlikely that such exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts;

- (b) The specification of a product by brand name or maker, or the product of a particular manufacturer or seller, would result in substantial cost savings to the commission;
- (c) There is only one manufacturer or seller of the product of the quality required; or
- (d) Efficient utilization of existing equipment or supplies requires the acquisition of compatible equipment or supplies.

350-15-016. Bond required; conditions; retention of contract amount in lieu of bond.

Whenever the commission shall contract with any person or corporation to do any work for the commission, the commission shall require the person or persons with whom such contract is made to make, execute, and deliver to the commission, a good and sufficient bond, with two or more sureties, or with a surety company as surety, conditioned that such person or persons shall faithfully perform all the provisions of such contract and pay all laborers, mechanics, and subcontractors and materialmen, and all persons who supply such person or persons, or subcontractors, with provisions and supplies for the carrying on of such work, and any person or persons performing such services or furnishing material to any subcontractor shall have the same right under the provisions of such bond as if such work, services or material was furnished to the original contractor: Provided, That on contracts of \$25,000 dollars or less, at the option of the contractor the commission may, in lieu of the bond, retain fifty percent of the contract amount for a period of thirty days after date of final acceptance.

350-15-017. Conditions of bond; notice of claim; action on bond; attorney's fees.

The bond mentioned in 350-15-016 shall be in an amount equal to the full contract price agreed to be paid for such work or improvement, and shall be to the commission. All such persons mentioned in 350-15-016 shall have a right of action in his, her, or their own name or names on such bond for work done by such laborers or mechanics, and for materials furnished or provisions and goods supplied and furnished in the prosecution of such work, or the making of such improvements: Provided, That such persons shall not have any right of action on such bond for any sum whatever, unless within thirty days from and after the completion of the contract with an acceptance of the work by the affirmative action of the commission, and the laborer, mechanic or subcontractor, or materialman, or person claiming to have supplied material, provisions or goods for the prosecution of such work, or the making of such improvement, shall present to and file with the commission, notice in writing in substance as follows:

To (here insert the name of the commission):

Notice is hereby given that the undersigned (here insert the name of the laborer, mechanic or subcontractor, or materialman, or person claiming to have furnished labor, materials or provisions for or upon such contractor or work), has a claim in the sum of \$_____ (here insert the amount) against the bond taken from _____ (here insert the name of the principal and surety or sureties upon such bond) for the work of _____ (here insert a brief mention or description of the work concerning which said bond was taken).

(here to be signed)

Such notice shall be signed by the person or corporation making the claim or giving the notice, and said notice, after being presented and filed, shall be a public record open to inspection by any person, and in any suit or action brought against such surety or sureties by any such person or corporation to recover for any of the items herein before specified, the claimant shall be entitled to recover in addition to all other costs, attorney's fees in such sum as shall be adjudged reasonable: Provided, however, That no attorney's fees shall be allowed in any suit or action brought or instituted before the expiration of thirty days following the date of filing of the notice herein before mentioned.

350-15-018 Notice to contractor condition to suit on bond when supplies are furnished to subcontractor.

Every person, firm or corporation furnishing materials, supplies or provisions to be used in the construction, performance carrying on, prosecution or doing of any work for the the commission, shall, not later than ten days after the date of the first delivery of such materials, supplies or provisions to any subcontractor or agent of any person, firm or corporation having a subcontract for the construction, performance, carrying on, prosecution or doing of such work, deliver or mail to the contractor a notice in writing stating in substance and effect that such person, firm or corporation has commenced to deliver materials, supplies or provisions for use thereon, with the name of the subcontractor or agent ordering or to whom the same is furnished and that such contractor and his bond will be held for the payment of the same, and no suit or action shall be maintained in any court against the contractor or his bond to recover for such material, supplies or provisions or any part thereof unless the provisions of this section have been complied with.

350-15-019. Preferences; foreign contractor.

(1) In all public contracts, the commission shall prefer goods or services that have been manufactured or produced in Oregon or Washington if price, fitness, availability and quality are otherwise equal.

350-15-020. Subcontracting to minority or women business enterprise; good faith effort; fee.

(1) Whenever the commission requires a bidder to subcontract some part of the contract or obtain materials to be used in performing the contract to a business enterprise that is a minority or women business enterprise, the commission shall award the contract, if one is awarded, to the lowest qualified bidder who has met the minority business enterprise or women business enterprise goal established by the commission or who has made a good faith effort prior to the time bids are opened to comply with the subcontracting or material supplies requirement.

(2) Performing all of the following actions by a bidder constitute a rebuttable presumption that the bidder has made a good faith effort to satisfy the subcontracting requirement described in subsection (1) of this section:

- (a) The bidder attended any presolicitation or prebid meetings that were scheduled by the commission to inform minority and women business enterprises of contracting and subcontracting or material supply opportunities available on the project;
- (b) The bidder identified and selected specific economically feasible units of the project to be performed by minority and women business enterprises in order to increase the likelihood of participation by such enterprises;
- (c) The bidder advertised in general circulation, trade association, minority and trade oriented, women-focus publications, if any, concerning the subcontracting or material supply opportunities;
- (d) The bidder provided written notice to a reasonable number of specific minority and women business enterprises, soliciting bids for the selected subcontracting or material supply work, in sufficient time to allow the enterprises to participate effectively;
- (e) The bidder followed up initial solicitations of interest by contacting the enterprises to determine with certainty whether the enterprises were interested;
- (f) The bidder provided interested minority and women business enterprises with adequate information about the plans, specifications and requirements for the selected subcontracting or material supply work;
- (g) The bidder negotiated in good faith with the enterprises, and did not without justifiable reason reject as unsatisfactory bids prepared by any minority and women business enterprises;
- (h) Where applicable, the bidder advised and made efforts to assist interested minority and women business enterprises in obtaining bonding, line so credit or insurance required by the commission or contractor; and
- (i) The bidder's efforts to obtain minority and women business enterprise participation were reasonably expected to produce a level of participation sufficient to meet the goals or requirement of the commission.

(3) If a bidder has not met the minority business enterprise or women business enterprise goal established by the commission, the commission shall evaluate the good faith effort of the bidder consistent with subsection (2) of this section. It shall be a rebuttable presumption that a bidder has made a good faith effort to comply with the requirement for subcontracting or material supply described in subsection (1) of this section if the bidder has acted consistently with the actions described in subsection (2) of this section. It shall be a rebuttable presumption that the bidder did not make a good faith effort if the bidder has not acted consistently with the actions described in subsection (2) of this section.

(4) For purposes of this section and for the purposes of certification of minority or women business enterprises by the commission:

- (a) "Minority or women business enterprise" means a business concern which is a least 51 percent owned by one or more minorities or women, as the case may be, or in the case of a corporation, at least 51 percent of the stock of which is owned by one or more minorities or women, and whose management and daily business operations are controlled by one or more of the minority or women stockholder.
- (b) "Minority individual" is a person who is a citizen or lawful permanent resident of the United States, who is a:
 - (A) Black American or person having origins in any of the Black racial groups of Africa.
 - (B) Hispanic American or person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
 - (C) Native American or person who is an American Indian, Eskimo, Aleut or Native Hawaiian.
 - (D) Asian-Pacific American or person whose origin is from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the United States Trust Territories of the Pacific or the Northern Marianas.
 - (E) Asian-Indian American or person whose origin is from India, Pakistan or Bangladesh.

350-15-025. Person Service Contracts.

It is the intent of these rules to establish a policy of open competition for all personal service contracts entered into by the commission, unless specifically exempted under these rules.

- (1) "Commission" or agency means the Columbia River Gorge Commission.
- (2) "Competitive solicitation" means a documented formal process providing an equal and open opportunity to qualified parties and culminating in a selection based on criteria which may include such factors as the consultant's fees or costs, ability, capacity, experience, reputation, responsiveness to time limitations, responsiveness to solicitation requirements, quality of previous performance, and compliance with statutes and rules relating to contracts or services.
- (3) "Consultant" means an independent individual or firm contracting with the commission to perform a service or render an opinion or recommendation according to the consultant's methods and without being subject to the control of the commission except as to the result of the work. The commission monitors progress under the contract and authorizes payment.

(4) "Emergency" means a set of unforeseen circumstances beyond the control of the commission that either:

(a) Present a real, immediate threat to the proper performance of essential functions; or

(b) May result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken.

(5) "Evidence of competition" means documentation demonstrating that the commission has solicited responses from multiple firms in selecting a consultant.

(6) "Personal service" means professional or technical expertise provided by a consultant to accomplish a specific study, project, task, or other work statement. This term does not include purchased services as defined under subsection (8) of this section.

(7) "Personal service contract" means an agreement, or any amendment thereto, with a consultant for the rendering of personal services to the commission.

(8) "Purchased services" means services provided by a vendor to accomplish routine, continuing and necessary functions. This term includes, but is not limited to, services for equipment maintenance and repair; operation of a physical plant; security; computer hardware and software maintenance; data entry; key punch services; and computer time-sharing, contract programming, and analysis.

(9) "Sole Source" means a consultant providing professional or technical expertise of such a unique nature that the consultant is clearly and justifiably the only practicable source to provide the service. The justification shall be based on either the uniqueness of the service or sole availability at the location required.

350-15-026.

All personal service contracts shall be entered into pursuant to competitive solicitation, except for:

(1) Emergency contracts;

(2) Sole source contracts;

(3) Contract amendments;

(4) Contractors between a consultant and the commission of less than ten thousand dollars. However, contracts of two thousand five hundred dollars or greater, but less than ten thousand dollars, shall have documented evidence of competition. The commission shall not structure contracts to evade these requirements; and

(5) Other specific contracts or classes or groups of contracts exempted from the competitive solicitation process by the commission when it has been determined that a competitive solicitation process is not appropriate or cost effective.

350-15-027.

No officer or activity of the commission subject to these rules shall expend any funds for personal service contracts unless the agency has complied with the competitive procurement and other requirements of these rules.

350-15-028.

These rules do not apply to:

(1) Contracts specifying a fee of less than two thousand five hundred dollars if the total of the contracts with the contractor within a fiscal year does not exceed two thousand five hundred dollars;

(2) Contracts awarded to companies that furnish a service where the tariff is established by a utilities and transportation commission or other public entity;

(3) Intergovernmental agreements awarded to any governmental entity, whether federal, state, or local and any department, division or subdivision thereof;

(4) Contracts awarded for services to be performed for a standard fee, when the standard fee is established by the contracting agency or any other governmental entity and a like contract is available to all qualified applicants;

(5) Contracts for services that are necessary to the conduct of collaborative research if prior approval is granted by the funding source;

(6) Contracts for the employment of expert witnesses for the purposes of litigation.

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