

**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
LINCOLN COUNTY, WASHINGTON**

**IN THE MATTER OF AMENDING  
CHAPTER 3 OF THE LINCOLN  
COUNTY CODE PURCHASING  
POLICY**

**RESOLUTION 23-12**

**WHEREAS**, the Board of County Commissioners of Lincoln County having convened in Regular Session, in their office at the Lincoln County Courthouse this 20<sup>th</sup> day of March 2023, with all members present; and

**WHEREAS**, Section 3.25, of the Purchasing Policy establishes procurement and purchasing standards for Title 3 of the Lincoln County Code; and,

**WHEREAS**, the State Auditor's Office testing found the County complied with federal requirements for competitive solicitations, however, the County's policies did not conform to Uniform Guidance; and,

**WHEREAS**, the State Auditor's Office considered this control deficiency to be a material weakness, failed to report it to the County in the prior audit, for correction; and,

**WHEREAS**, the County is subject to an audit on its federal spending in 2022; and,

**WHEREAS**, the County is committed to making the changes necessary to update its written procurement policies and procedures to conform to Uniform Guidance for all procurement activities to avoid future audit findings; and,

**WHEREAS**, the Auditor and Public Works Director recommends approval of the revised Purchasing Policy;

**NOW, THEREFORE, BE IT RESOLVED** that the attached Policy for Purchasing and Contracting, incorporated herein, and consisting of 37 pages, is hereby adopted as the Lincoln County Code Title 3 – Chapter 3.25 – Purchasing Policy.

**IT IS FURTHER RESOLVED** that this revised Title 3 – Chapter 3.25 shall be codified and amend the current Title 3 of the Lincoln County Code.

**DATED** at Davenport, Lincoln County, Washington, this 20<sup>th</sup> day of March 2023.



**ATTEST**

*Tara Holden*

Clerk of the Board - Tara Holden

**BOARD OF COUNTY COMMISSIONERS  
OF LINCOLN COUNTY, WASHINGTON**

*Scott M. Hutsell*

Chairman – Scott M. Hutsell

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Vice Chairman – Rob Coffman

*Jo M. Gilchrist*

Member – Jo M. Gilchrist

## Chapter 3.25

### PURCHASING POLICY

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The purpose of this policy is to establish the purchasing procedures for Lincoln County in accordance with the requirements of the Local, State, and Federal Laws. This policy supersedes any previous policy regarding purchasing and procurement policies for any County department including the Public Works Department.

For the purpose of this Policy “County Representative” shall be construed to include all supervisors, managers, and department heads, both elected and appointed.

### **3.25.010 PURCHASING AND CONTRACTING - GENERAL**

Municipal Research and Services Center (MRSC) developed an online tool to help local government officials in Washington State identify and understand legal requirements for purchasing and contracting.

<http://mrsc.org/Home/Research-Tools/Contracting-Requirements.aspx>

This tool will determine contracting requirements based on Project type, Agency type (if applicable), and County name (if applicable).

All departments should verify this policy prior to awarding any contracts or purchasing goods or services.

Determining the Purchasing or Contracting Type (**6 types**).

#### **1. Public Work: (not to be confused with the Public Works Department)**

Public Work, regardless of department or agency is “all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the state or of any municipality, or which is by law a lien or charge on any property therein. (RCW 39.04.010 (4)).

(1)(a) The term “public work” shall include:

- (i) All work, construction, alteration, enlargement, improvement, repair, and/or demolition that is executed by contract, purchase order, or any other legal agreement and that is executed at the cost of the State of Washington or of any municipality.
- (ii) All work, construction, alteration, enlargement, improvement, repair, and/or demolition which, by law, constitutes a lien or charge on any property of the state or of a municipality.
- (iii) All work, construction, alteration, repair, or improvement, other than ordinary maintenance that the state or a municipality causes to be performed by a private party through a contract to

rent, lease, or purchase at least fifty percent of the project by one or more state agencies or municipalities, pursuant to RCW 39.04.260;

- (iv) Maintenance, except ordinary maintenance as defined by (b)(iii) of this subsection, when performed by contract. Maintenance is defined as keeping existing facilities in good usable, operational condition;
- (v) Janitorial and building service maintenance as defined by WAC 296-127-023, when performed by contract, on public buildings and/or assets; and
- (vi) The fabrication and/or manufacture of nonstandard items produced by contract specifically for a public works project as defined by (a)(i) through (v) of this subsection.

(1)(b) The term "public work" shall not include:

- (i) Work, construction, alteration, enlargement, improvement, repair, demolition, and/or maintenance for which no wage or salary compensation is paid, consistent with the requirements of RCW 35.21.278;
- (ii) The construction, alteration, repair, or improvement of any municipal street railway system;
- (iii) Ordinary maintenance which is defined as work not performed by contract and that is performed on a regularly scheduled basis (e.g., daily, weekly, monthly, seasonally, semiannually, but not less frequently than once per year), to service, check, or replace items that are not broken; or work not performed by contract that is not regularly scheduled but is required to maintain the asset so that repair does not become necessary.

(WAC 296-127-010 (8) – Contract definition

"Contract" means a contract, purchase order, or any other legal agreement in writing for public work to be performed for a fixed or determinable amount, which is duly awarded after advertisement and competitive bid. A contract that is awarded from a small works roster, or under the emergency provisions of state law, need not be advertised.

**2. Purchase of goods, equipment, supplies or materials not connected with a public works project:**

This section involves the purchasing of goods, equipment, supplies or materials not connected with a public works type project. However, if the purchase is directly connected to construction, alteration, repairs or improvements, other than ordinary maintenance, it is considered to be part of a public works project and subject to public works contracting and prevailing wage requirements.

Examples: Purchase of office supplies, office furniture, fire trucks, road graders, vehicles, cell phones, etc.

3. **Architecture, engineering, landscape architecture or surveying services:**  
Professional services provided by a consultant are those that fall under the general statutory definitions of architecture (RCW 18.08), engineering and land surveying (RCW 18.43), or landscape architecture (RCW 18.96).  
Examples: Architectural blueprints, road design, sewer, and water system design.
4. **Personal services:**  
Technical expertise provided by a consultant to accomplish a specific study, project, task or other work statement, not including professional architecture, engineering, surveying, or landscape architecture services. Examples: Meeting facilitation, strategic plan development, economic development study, rate setting study.
5. **Purchased services:**  
Services provided by vendors for the routine, necessary and continuing functions of a local agency, mostly related to physical work. Examples: Courier service, landscape maintenance, recycling pickup, vehicle maintenance, custom-made software.
6. **Acquisition of Electronic Data Processing and Telecommunications Systems:**  
  
RCW 39.04.270 authorizes local governments to use a "competitive negotiation" process as an alternative to the competitive bid process when purchasing and installing electronic data processing or telecommunication equipment, software, or services.

State and Federal Funding:

If your project uses any state and/or federal funding, you must follow both state and federal competitive requirements, using the most stringent standards of the two.

### **3.25.020 DEFINITIONS**

For the purposes of this policy the words set out in this section shall have the following meanings:

**“Award”** means the formal decision by the County notifying a responsible bidder with the lowest responsive bid of the County’s acceptance of the bid and intent to enter into a contract with the bidder.

**“BOCC”** refers to the Lincoln County Board of Commissioners

**“Clerk of the Board”** is the clerk of the Lincoln County Board of Commissioners.

**“CFR”** means Code of Federal Regulations.

**“Contract”** means a contract, purchase order, or any other legal agreement in writing for public work to be performed for a fixed or determinable amount, which is duly awarded after advertisement and competitive bid. A contract that is awarded from a small works roster, or under the emergency provisions of state law, need not be advertised.

**“County”** means Lincoln County.

**“E-Bidding”** means that Lincoln County can process bids electronically. All procurement policies must be followed and only MRSC Bidding software may be utilized.

**“Emergency”** is defined as “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 the material loss or damage to property, bodily injury, or loss of life if immediate action is not taken.”

**“Federal Simplified Acquisition Threshold”** means the dollar amount below which a non-Federal entity may purchase property or services using small purchase methods.

**“Interlocal Agreement”** means an agreement between two or more agencies or subdivisions of the state, municipalities, or other public agencies, to contract with that public agency to perform any function which that agency is authorized by law to perform, including services and purchase of assets.

**“Lease”** means a contract that conveys control of the right to use another entity’s nonfinancial asset (the underlying asset) as specified in the contract for a period of time in an exchange or exchange-like transaction.

**“Micro-Purchase Threshold”** refers to purchases of supplies or services using simplified acquisition procedures, not to exceed an established amount pursuant to the Office of Management and Budget (OMB) Government-wide guidance for grants and agreements in the Code of Federal Regulations (C.F.R) at 2 C.F.R. The Federal threshold for micro-purchases is \$10,000.

**"Piggybacking"** means to be "carried" by another in a contracting sense is to participate in a cooperative purchasing arrangement in which one party does most of the work (such as advertising, bid opening, and tabulating bids).

**"Public work"** means all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the state or of any municipality, or which is by law a lien or charge on any property therein. All public work, including maintenance when performed by contract, shall comply with prevailing wages requirements. It does not refer to the department.

**"Responsible Bidder"** means a bidder that conforms to the criteria in RCW 39.04.350.

**"SAO"** means the Washington State Auditor's Office.

**"Small-Purchase Threshold"** refers to purchases of supplies or services using simplified acquisition procedures, not to exceed an established amount pursuant to the Office of Management and Budget (OMB) Government-wide guidance for grants and agreements at 2 C.F.R. The Federal threshold for small purchases is \$250,000.

**"Small works roster"** is a list of qualified contractors who can bid for an eligible project. The county's official small works roster shall be kept by MRSC. MRSC shall add responsible vendors to the vendor list roster at any time when a vendor completes the online application provided by MRSC and meets minimum State requirements for roster listing.

**"Sole Source"** means solicitation of formal bids, informal bids/quotes, and/or a "Request for Proposal" (RFP) may be dispensed with when the purchases are clearly and legitimately limited to a single source of supply or which involve special facilities or market conditions.

**"Vendor list"** is a list kept by the County Auditor of available vendors in Lincoln County or any list of available vendors kept on file in a statewide database for use by counties in Washington.

### **3.25.030 IDENTIFYING RESPONSIBLE BIDDERS/CONTRACTORS AND RESPONSIVE BIDS.**

The County shall purchase materials, supplies or equipment from the lowest responsible/qualified bidder. Also, the County may only award contracts to the lowest responsible/qualified bidder. If there is reason to believe that the lowest acceptable bid is not the best interest of the County or is not the best price attainable, all bids may be rejected. The County may call for new bids. The County, in determining the lowest responsible/qualified bidder, in addition to price, shall give the following "supplemental criteria" consideration:



- The ability, capacity and skill of the bidder to perform the contract or provide the service;
- The character, integrity, reputation, judgement, experience or efficiency of the bidder;
- Whether the bidder can perform the contract within the time specified;
- The quality of performance of the bidder on previous contracts or services to Lincoln County or other Washington entities;
- Compliance by the bidder with laws related to the contracts, services or purchasing;
- Life Cycle Costs of the product—Not always is the lowest bid price the lowest long-term cost solution;
- Whether the bidder is debarred or suspended by the Federal or State government, disqualifying the bidder from government business;
- Such other information as may be secured having a bearing on the decision to award the contract;
- Whether or not the vendor or contractor owes the County money.
- Have a certificate of registration in compliance with RCW 18.27 at time of bid submittal.
- Have a current state unified business identifier number.
- If applicable, have industrial insurance coverage for employees working in Washington as required in Title 51 RCW, employment security department number as required in Title 50 RCW, and state excise tax registration number as required in Title 82 RCW.

In addition to the criteria listed previously and prior to the award of a Public Work Contract, a bidder must also meet the responsibility criteria as outlined in RCW 39.04.350 to be considered a "Responsible Bidder" and qualified to be awarded a public works project by Lincoln County.

The County's Estimates, contractor's bids and/or quotes shall remain confidential prior to awards of contracts and/or purchasing agreements. In addition, a bid must substantially comply with the applicable procedures or specifications if it is to be considered. If it does not, the bid must be rejected. However, an "insubstantial variance" from certain specifications or procedures will not prevent a county from considering a bid, however, consultation with the Prosecuting attorney prior to awarding the contract is prudent.

The County must provide in writing the reasons why a contractor is determined to not be responsible. The contractor may appeal the determination within the time period specified in the bidding documents by presenting additional information to the County. The County must consider the additional information before issuing its final determination. If the final determination affirms that the contractor is not responsible, the County may not execute a contract with any other contractor until two business days after the contractor determined to be not responsible has received the final determination.

In addition, the County may adopt relevant supplemental criteria for determining contractor responsibility applicable to a particular project which the contractor must meet. Supplemental criteria for determining contractor responsibility, including the basis for evaluation and the deadline for appealing a determination that a contractor is not responsible, must be provided in the invitation to quote or quote documents. A potential bidder may request that the County modify the supplemental criteria if the request is done in a timely manner before the quote submittal deadline. The County must evaluate the information submitted by the potential contractor and respond before the quote submittal deadline. If the evaluation results in a change of the criteria, the County must issue an addendum to the quote documents identifying the new criteria. If the contractor fails to supply information required concerning responsibility within the time and manner specified in the quote documents, the County may base its determination of responsibility upon any available information related to the supplemental criteria or may find the contractor not responsible.

### **3.25.040 – ESTABLISHING AND MAINTAINING VENDOR, CONTRACTOR, AND CONSULTANT ROSTERS**

MRSC Rosters. The county has contracted with the Municipal Research and Services Center of Washington (MRSC) to have their official rosters hosted in the online database for county use for small public works contracts, consulting services, and vendor services developed and maintained by MRSC through MRSC Rosters and authorizes county staff to sign that contract.

- A.** Publication. At least once a year, MRSC shall, on behalf of the county, publish in a newspaper of general circulation within the municipality's jurisdiction a notice of the existence of the small works roster and solicit the names of contractors for the small works roster. MRSC shall add responsible contractors to the small works roster at any time that a contractor completes the online application provided by MRSC, and meets minimum State requirements for roster listing.
- B.** Other Rosters/Interlocal Cooperation Act. In addition to locally developed written and/or electronic vendor rosters, the County may also use state-wide electronic databases developed and maintained jointly by the Daily Journal of Commerce (DJC) and the Municipal Research and Services Center of Washington (MRSC Rosters), Intergovernmental Cooperative Purchasing Agreements (ICPA), including

Washington State Department of Enterprise Services (DES) and vendor lists published by the federal government.

Counties may sell, transfer, exchange, lease or otherwise dispose of any real or personal property or property rights to another government entity without regard to bid laws. RCW 39.33.010 authorizes such transactions "on such terms and conditions as may be mutually agreed upon by the proper authorities." However, because of the requirements of RCW 43.09.210, intergovernmental transactions authorized by RCW 39.33.010 should be based on the "full value" of the property, although "full value" has a flexible meaning depending on the circumstances of the transfer.

The Interlocal Cooperation Act, authorizes one public agency to contract with another public agency to perform any function which each agency is authorized by law to perform. Under this statute, a county may act as agent or contractor for one or more other public entities. This exchange of good or services must be authorized through an "Interlocal Agreement" approved by the Board of County Commissioners.

"Piggybacking", RCW 39.34.030, another section of the Interlocal Cooperation Act, authorizes cooperative action, including joint purchases by different governmental entities. The 2004 legislature clarified what is procedurally required when one public agency purchases or contracts through a bid awarded by another public agency. State Purchasing Contracts, Counties may also use the authority granted in RCW 39.34.030 to make purchases through state contracts. As of June 30, 2013, a county may do so by signing a Master Contracts Usage Agreement (MCUA) with the Department of Enterprise Services.

### **3.25.050 – USED EQUIPMENT**

The purchase of used equipment from private vendors is considered to be a purchase falling within the exceptions set forth as Single Source or Special Facilities purchases. The County shall be responsible to determine what used equipment is available on the market and properly record this search. Any purchase request must fully justify the acquisition of used equipment.

### **3.25.060 – AUCTIONS/SURPLUS PROPERTY**

RWC 39.30.045 authorizes a county to acquire supplies, materials, or equipment at auctions conducted by the government of the United States or any agency thereof, any agency of Washington State, any municipality or other government agency, or any private party without being subject to formal bidding requirements, if the items can be obtained at a competitive price.

### **3.25.070 – LEASES**

Rental and Leases of Personal Property. A county may rent or lease personal property by following the procedures outlined in this section. Any leases over \$5,000 must be sent to the Finance Department for report tracking. Leases will be reported in total if the cumulative threshold of \$200,000.00 is met for lease balance outstanding.

Leases of Real Property. There are no competitive bidding requirements for leases of real property. Any leases over \$5,000 must be sent to the Finance Department for report tracking. Leases will be reported in total if the cumulative threshold of \$200,000.00 is met for lease balance outstanding

### **3.25.080 – EXEMPTIONS**

Purchasing Exemptions. If a purchase falls into one of the categories below, it may be exempt from normal competitive bidding requirements with proper documentation:

- Emergency purchase (RCW 39.04.280)
- Sole source purchase (RCW 39.04.280)
- Special facilities or market conditions (RCW 39.04.280)
- Purchase of insurance or bonds (RCW 39.04.280)
- Auction (RCW 39.30.045)
- Electronic data processing or telecommunications purchase (See Section below)

### **3.25.090 – 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.

### **3.25.100 – PURCHASE OF GOODS, EQUIPMENT, SUPPLIES, OR MATERIALS (ONLY).**

Competitive Bidding Requirements (Including Renting and Leasing). Sales tax is to be included in all cost estimates and applies to the bid limit rules.

Small Purchases Less than \$10,000.

- May use small purchases process, vendor list or formal competitive bidding.
- County Representative will attempt to obtain the lowest practical price.
- Small Purchases Process:
  - a. May seek quotes directly from individual vendors/businesses, not required to be on the Counties vendor list.
  - b. No requirement to seek multiple quotes.
  - c. No requirement to prepare purchase orders/agreements.
  - d. **It is the intent that County Officials have flexibility and discretion for the expenditure of funds for minor purchases.**

Vendor List Process—Estimated purchase is between \$10,000 and \$50,000.

- May use a vendor list or formal competitive bidding.
- Vendors List Process:
  - a. A quotation request form (Attachment A) shall be completed by the County representative overseeing or making the request for quotation.
  - b. Requires a written description of the specific materials, supplies or equipment to be purchased, including the number, quantity, quality and type desired, the proposed delivery date and any other significant terms of purchase;
  - c. Requires a good faith effort to contact at least three (3) of the vendors on the roster to obtain "written" quotations from the vendors;
  - d. Prohibits sharing quotes or "shopping around" for a revised quotation;
  - e. Requires a written record of each vendor's bid on the material, supplies or equipment, and of any conditions imposed on the bid by the vendor. The County representative shall document the quotes received on the quotation request form.
  - f. Present all quotations and a recommendation to the Board of County Commissioners for award of the contract to the lowest responsible, qualified bidder;
  - g. Purchase order for Department Head to sign and submit to Vendor;
  - h. Immediately after the award, all bid quotations received must be recorded and made open to public inspection.

Formal Competitive Bidding—Estimated purchase is more than \$50,000.

- Must use Competitive Bid Process.
- Competitive Bid Process:
  - a. Requires a written description of the specific materials, supplies or equipment to be purchased, including the number, quantity, quality and type desired, the proposed delivery date and any other significant terms of purchase;
  - b. Bid notice must be advertised in the official county newspaper for at least 13 days before the submittal deadline;
  - c. Sealed bids are required and the Board of Commissioners must conduct a public bid opening;
  - d. A purchase bid award recommendation by the Department Head is submitted for BOCC approval.

Other Purchasing Situations.

Prevailing Wages. Prevailing Wage requirements do not typically apply to the purchase of goods, equipment, supplies or materials. However, the production and delivery of sand, gravel, crushed rock, concrete, asphalt and other similar materials may require the payment of prevailing wage rates when that work is executed under a public works contract depending on the specific nature of the work performed and its relationship to the project. If uncertain as to the requirements, contact Washington State Labor and Industries (L&I) for a specific determination.

Road Maintenance Materials. When calling for competitive bids for the purchase of road maintenance materials, a county may award contracts "to multiple bidders for the same commodity when the bid specifications provide for the factor of haul distance to be included in the determination of which vendor is truly the lowest price to the county." The county may re-advertise for additional bidders and vendors "if it deems it necessary in the public interest."

### **3.25.110 – PUBLIC WORKS CONTRACTING – GENERAL (INCLUDING PREVAILING WAGE RULES).**

#### **County Forces Allowed (Agency Force Work)**

Lincoln County may use its own employees to perform both "non-County Road" public work projects and "County Road" projects. There are no dollar limits on county forces "non-County Road" related public work projects. On "County Road" related projects (work performed on Lincoln County Roads) the total annual cost may not exceed the following annual county forces limit total:

- RCW 36.77.065 – For counties with a population that is less than thirty thousand people, the total amount of road construction project costs one county may perform annually with count forces shall be no more than the total of the following amounts:

Eight hundred thousand dollars (1 + last year's MVTF factor) as provided for in RCW 46.68.124

Example:  $(\$800,000)(1 + 2021 \text{ MVFT factor of } 3.0572\%)$   
 $= (\$800,000 * 1.030572) = \$828,576.$

- The annual county forces limit is calculated each year as part of the annual construction program. The annual construction program is submitted to the County Road Administration Board on or before December 31st each year for the upcoming year's construction program.

Competitive Bidding Overview. The County is not required to contract for public works projects of any size. If you choose to contract for public works, you are required to comply

with the competitive bid requirements. Prevailing wages are required for all public works projects, regardless of size or amount. However, the following shall apply to all County Public Works Projects that are to be performed by contract:

- For contracts of \$10,000 or less, competitive bidding is not required, and quotes are allowed. Public Works Contracts may be awarded to individual contractors chosen from the County's Small Works Roster, Shared Rosters with other agencies, MRSC Roster or Vendor's List. There is no requirement to seek multiple quotes.
- For contracts of \$50,000 or less, and more than \$10,000, the Limited Public Works Contracting Process, Small Public Works Contracting Process (less than \$40,000 through small works roster, RCW 36.32.250) or Formal Competitive Bidding (sealed bids) may be utilized.
- For contracts of \$350,000 or less, and more than \$50,000, you may use a Small Public Works Roster, Limited Public Works contracting process or formal competitive bidding (sealed bids).
- For contracts over \$350,000, you must use formal competitive bidding (sealed bids).

RCW 39.04.290 allows local governments to award contracts of any value for the design, fabrication, and installation of "building engineering systems" by using a competitive bidding process or Request for Proposals process (RFP). Some examples are fire alarm systems, HVAC systems, building sprinkler systems, security systems, pneumatic tube systems, extensions of heating, ventilation, or air conditioning control systems, chlorination and chemical feed systems, emergency generator systems, building signage systems, pile foundations, and curtain wall systems.

State statute does not specify whether sales tax is included in competitive bidding limits, however, sales tax is to be included in all cost estimates and applies to the bid limits rules.

**Prevailing Wage Rules for Public Work Projects.** Prevailing wages must be paid on all public work projects and on maintenance projects performed by contract. Prevailing wages must also be paid on some contracts which can be considered purchased services. Generally speaking, prevailing wages are required for all work upon any public work. Prevailing wages can apply to work which is not performed by a "contract" as defined by RCW 39.04.010(2). Nowhere in the definition of "public work" is there a requirement that the work be performed under a contract as defined by RCW 39.04.010(2), however, per RCW 39.12.020, if it is a public work, prevailing wages are to be paid regardless of whether or not a written contract exists.

To have a prevailing wage requirement, the work taking place needs to be the work of a "laborer, worker, or mechanic", and the work needs to be at a cost to the public. If there is

no cost to the public, such as private grant funding only or volunteer work, prevailing wages are not required.

### **3.25.120 - PUBLIC WORKS CONTRACTING – LIMITED PROCESS**

For projects under \$50,000, RCW 39.04.155(3) establishes an alternative limited public work contracting process that agencies may use. The following procedures shall be utilized:

1. Prepare a brief description of the work requested. Written plans and/or specifications detailing the scope and nature of the work to be performed is optional. The time for the work to be completed should be included.
2. Solicit "written" bids/quotes from at least three (3) contractors on the appropriate small works roster who are capable of performing the work, in a manner that will equitably distribute the opportunity among the qualified contractors. Sealed bids are not required. Document which contractors were solicited and keep records of all informal bids received. Also document if a contractor declines to quote, or if there are less than three (3) contractors on the roster in the applicable category. Immediately after an award is made, the bid quotations obtained shall be recorded, opened to public inspection, and available by telephone inquiry.
3. The County may not favor certain contractors on the small works roster and must "equitably distribute" opportunities for the work.
4. ???Bid guarantees are optional.
5. Prepare Notice of Award to the lowest responsible bidder.
6. Prepare duplicate contracts for signature. Obtain Contractor signature and present to the BOCC for approval and execution of the contract. BOCC may delegate authority for contracts entered into by the Public Works Department for amounts less than \$50,000.
7. Unless otherwise noted in the Solicitation, Retainage and Performance and Payment Bonds may be waived.
8. Public Work projects are subject to prevailing wage requirements.
9. Provide the Contractor with Notice to Proceed.
10. Within two (2) months of award, post project award information to the Small Works Roster Annual List of Projects.

### **3.25.130 – SMALL WORKS ROSTER**



For Public Work projects under \$350,000, RCW 39.04.155 specifically authorizes the use of a small works roster process, provided the agency adopts the requirements by BOCC resolution. The following process shall be utilized:

1. Prepare documents, plans and/or specifications detailing the scope and nature of the work to be performed as well as materials and equipment to be furnished and a timeline for the work to be completed. Detailed plans and specifications need not be prepared.
2. Present a cost estimate for Board Approval prior to seeking quotes.
3. Solicit "written" bids/quotes from at least five (5) contractors on the appropriate small works roster who have indicated the capability of performing the kind of work being contracted, in a manner that will equitably distribute the opportunity among the available contractors. Sealed bids are not required, however, document which contractors were solicited and keep records of all informal bids received, not just the lowest bid. Note if a contractor declines to give a quote or if there are less than 5 companies on the roster in the applicable category. Immediately after an award is made, document the bid quotations and make them open to public inspection, and available by telephone inquiry.
4. For projects costing \$250,000 or more, if you solicit bids from less than all the appropriate contractors on the appropriate small works roster, you are required to notify the remaining contractors on the roster that quotations on the work are being sought. The County has the sole option of determining whether this notice to the remaining contractors is made by: Notice in Paper, Mail, Fax or other electronic means.
5. "Equitably distribute" means that the County may not favor certain contractors on the appropriate small works roster over other contractors on the appropriate small works roster who perform similar services. At the time bids are solicited, the county representative shall not inform a contractor of the terms or amount of any other contractor's bid for the same project.
6. Bid guarantees are required.
7. Prepare Notice of Award for the BOCC.
8. Prepare duplicate contracts for signature. The contract must be awarded to the lowest responsible bidder. Only the Board of County Commissioners may approve Public Work Contracts. Obtain Contractor signature and present to the Board for approval and execution of the contract.
9. Retainage and performance and payment bonds are required. In accordance with RCW 39.08.10 Contractor shall secure a payment and performance bond equal to the contract amount. On contracts of two hundred fifty thousand dollars or less, at

the option of the contractor or the general contractor/construction manager as defined in RCW 39.10.210, the respective public entity may, in lieu of the bond, retain ten percent of the contract amount for a period of thirty days after date of final acceptance, or until receipt of all necessary releases from the department of revenue, the employment security department, and the department of labor and industries and settlement of any liens filed under RCW 60.28, whichever is later.

In accordance with RCW 60.28.015, Except as provided below in this subsection, public improvement contracts must provide, and public bodies must reserve, a contract retainage not to exceed five percent (5%) of the moneys earned by the contractor as a trust fund for the protection and payment of: (i) The claims of any person arising under the contract; and (ii) the state with respect to taxes, increases, and penalties imposed pursuant to RCW Titles 50, 51, and 82 which may be due from such contractor.

Public improvement contracts funded in whole or in part by federal transportation funds must rely upon the contract bond as referred to in RCW 39.08 for the protection and payment of: (i) The claims of any person or persons arising under the contract to the extent such claims are provided for in RCW 39.08.010; and (ii) the state with respect to taxes, increases, and penalties incurred on the public improvement project under RCW Titles 50, 51, and 82 which may be due. The contract bond must remain in full force and effect until, at a minimum, all claims filed in compliance with RCW 39.08 are resolved.

10. Public Work projects are subject to normal prevailing wage requirements.
11. Provide the Contractor with Notice to Proceed.
12. Within two (2) months after award, post project to the Small Works Roster Annual List of Projects.

### **3.25.140 – FORMAL BID PROCESS**

For Public Work projects greater than \$350,000, the County must use the Formal Competitive Bid Process. The following process shall be utilized:

1. Formal bid process requires contract documents and specifications to be utilized. They may be modified as necessary to fit project specific requirements.
2. Prepare appropriate written plans and/or specifications detailing the scope and nature of the work to be performed as well as materials and equipment to be furnished and a timeline for the work to be completed.
3. Present a cost estimate for BOCC approval prior to seeking quotes or bids.

4. Publish notice of the call for bids/invitation to bid, in the official newspaper, or a newspaper of general circulation most likely to bring responsive bids, at least 13 days prior to the last date upon which bids will be received.
5. If applicable, prepare and distribute addendums prior to the last date of bid acceptance, preferably one week prior.
6. Open Bids in accordance with the instructions to bidders (Invitation to Bid).
7. Review Bids for consideration of award and determine the lowest responsible bidder.
8. Present a Notice of Award, along with a recommendation for award or rejection of all bids, to the BOCC for consideration.
9. Prepare duplicate contracts for signature. The contract must be awarded to the lowest responsible bidder. Only the BOCC may approve Public Works Contracts.
10. Obtain Contractor signature, Prosecuting Attorney signature (if required) and present to the BOCC for approval and execution of the contract.
11. Unless otherwise noted in the Specifications, Retainage and performance and payment bonds are required.
12. Public Work projects are subject to normal prevailing wage requirements.
13. Verify that required documentation and submittals have been completed by the Contractor.
14. Provide the Contractor with Notice to Proceed.

### **3.25.150 - SERVICES – ARCHITECTURAL/ENGINEERING (A/E)**

Competitive Process Overview. All local governments must follow the uniform requirements of chapter 39.80 RCW when procuring professional A/E contracts. Unlike other types of contracts which are awarded to the lowest responsible bidder, A/E contracts are awarded primarily based on qualifications, rather than cost, a process known as "qualifications-based selection" (QBS).

Consultants must submit statements of qualifications and/or a request for non-cost proposals to the County for consideration, prior to award of any A/E Contracts. The County will evaluate the expertise of the competing firms, select the most highly qualified firm and negotiate the final project scope and associated fee.

If the agency and most highly qualified firm cannot reach an agreement on project scope, schedule and budget, the agency then clearly terminates negotiates with the first firm, then initiates negotiations with the next most highly qualified firm. QBS recognizes that the lowest price should not be a factor for selecting highly skilled design services for essential public facilities and infrastructure.

State statutes do not establish formal competitive requirements, so you have some flexibility in determining how to solicit competition. However, if the project includes grant funding, the grant conditions may require a specific solicitation process. Generally, the more complex or expensive the project is anticipated to be, the more rigorous the solicitation process should be.

**Notification Requirements.** You must advertise your agency's requirements for professional services in advance, concisely stating the general scope and nature of the work and providing the address of a representative of your agency who can provide more detailed information. The County may publish an announcement for each project or a publish a general announcement of its anticipated requirements for any category(s) of professional services, typically referred to as a "Consultant Roster". The County should encourage firms to submit annual statements of qualification and performance data for inclusion in the Consultant Roster.

The need for consultant services must be advertised at least one day per week for two consecutive weeks (14-day minimum) in the area newspaper used for publication of legal notices. A three-week minimum response time from the initial date of publication should be provided to consultants. These advertisements may be supplemented by additional advertisements in special interest publications such as the Daily Journal of Commerce, trade magazines or publications utilized by disadvantaged business enterprises.

**Women, Minority, and Veteran-Owned Businesses.** All local governments seeking A/E services must develop a plan to give maximum opportunities to women, minority and veteran-owned firms, making sure that their participation levels are consistent with their general availability within each given field (RCW 39.80.040).

**Title VI State and Federal Requirements.** In order to be compliant with both state and federal requirements, advertisements for Consultant Services, should include the following Title VI language:

"The (Local Agency) in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, subtitle A, Office of the Secretary, Part 21, nondiscrimination in federally assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises as defined at 49 CFR Part 26 will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin or sex in consideration for an award."

**Request for Qualifications.** Requests for Qualifications (RFQs) ask for a firm's professional capabilities, including: List of principals, previous projects, number of employees, professional licenses, areas of expertise, representative projects completed, and sometime references. The goal of an RFQ is to determine which firm or firms are best qualified for a particular project. An RFQ should never include pricing information.

Local governments may distribute RFQs for a services roster or as part of a formal competitive solicitation. In the case of a formal competitive solicitation, the RFQ can be combined with a non-price-based Request for Proposals (RFP), or it could be distributed as the first step in the review process prior to distributing RFPs.

**Request for Proposals.** Requests for Proposals (RFPs) ask respondents to submit qualifications, if not already on file, and a proposed scope of services in response to the agency's specific needs. At a minimum, every RFP request should include:

- **Statement of need (scope).** This should be well-written and clear, with an adequate level of detail describing the project deliverables. Include terms and conditions, if applicable.
- **Estimated schedule.**
- **Consultant evaluation criteria.**
- **Submittal requirements.** List all the information that interested firms should submit, including the firm's general approach to the project, a list of key personnel who would work on the project with their qualifications/experience and availability, and general scope and deliverables. Consider minimum requirements and page limitations.
- **Submittal deadline.** Allow an adequate response time of 3-4 weeks. Note whether or not the County will accept electronic submittals.
- **Other common RFP elements include:** Background on the project (including budget), reference documents, interviews are mandatory as part of the selection process (by phone or in person), the pre-proposal conference schedule (include any mandatory site meetings), public disclosure guidance, notice that costs incurred in the development of proposals and the selection process will be assumed by the proposers, any formal certification by the proposer of its authorization to submit the proposal, time validity of the proposal, non-collusion, etc., and notice that the County reserves the right to reject any and all proposals and costs will not be reimbursed. **Evaluating Proposals Evaluation Criteria.** Each County department may establish its own criteria for evaluating proposals (RCW 39.80.040). Potential evaluation criteria may include, but are not limited to:
  - Experience in designing/surveying the type of project contemplated.
  - Performance on other similar projects.

- Ability to meet design deadlines.
- Responsiveness to submittal requirements.
- Compliance with statutes and rules relating to contracts or services.
- References.
- Staff availability for the project.
- Licensing and certification.
- History of errors and omissions.
- Construction change order history.

Contract Negotiations. After evaluating proposals, County staff or the review committee typically recommend a single A/E firm for contract award, subject to contract negotiations. Negotiations with the recommended firm include refining the scope of work, schedule, deliverables and price, with the objective of obtaining the best value for the agency. Agencies may wish to develop a checklist of standard contract terms that can be modified for individual projects.

The agency must determine if the final scope is consistent with the services described in the formal solicitation document. A substantial change in the scope may lead to protests from unsuccessful firms, especially if it is accompanied by a substantial cost increase over and above the original projections. When determining whether the cost is fair and reasonable, agencies should consider the nature of the work, the risk assumed by the consultant, the management of any sub-consultants and the project timeline.

If the agency is unable to negotiate a fair and reasonable price with the most highly qualified firm, it may terminate negotiations with that firm and initiate negotiations with the second-most qualified firm. This process continues until a suitable agreement is reached with one of the firms, or the process is terminated (RCW 39.80.050).

Intergovernmental Architecture and Engineering Contracts. Two or more agencies may enter into an intergovernmental contract providing for the joint utilization of architecture and engineering services - see RCW 39.34.030(6). The primary agency must comply with all the requirements of chapter 39.80 RCW, and the services provided to other agencies must be related to and within the general scope of the work the firm was originally selected to perform.

Emergency Exemption. If your project qualifies as an emergency contract, you may be exempt from the normal QBS consultant selection requirements.

### **3.25.160 - SERVICES – (NON A/E)**

Personal Services. Personal services involve technical expertise provided by a consultant to accomplish a specific study, project, task, or other work. These activities and products are mostly intellectual in nature, and they do not include architecture and engineering services, which have their own requirements. Examples of personal services include, but are not limited to:

- Comprehensive/Land Development Planning
- Legal services
- Management analyses
- Accounting Services
- Audit Services
- Medical Services

Certain personal services may require licensing or certification by state agencies, such as accounting, legal or medical services. Personal services should not be confused with purchased services, which are generally routine, repetitive or mechanical in nature and support an agency's day-to-day operations.

**Personal Services Statutory Requirements.** Only port districts and public facilities districts have statutory requirements for personal services contracts. No other local government agencies in Washington have statutory requirements. Although not required by the statute, the following process shall be utilized when contracting for personal services. Note that there is no required procedure for contracting for public defender services.

**Personal Services Bid Limits and Processes.** All contract awards for Personal Services shall be documented, including the services to be provided, selection criteria, names of the firms considered, responses received, the basis for the award decision and a copy of the final contract or purchase order. The following bid limits and processes shall apply:  
Minimal Competition \$10,000 or less.

- Contact 1-3 qualified firms or individuals that offer the desired services. Review quoted prices, schedules and qualifications. You may or may not receive a quote from all firms contacted. Document which firms were contacted and whether they responded or declined to quote.
- Negotiate a contract or purchase order with the lowest responsible/qualified bidder. Informal Competition \$50,000 or less.
- Prepare a written solicitation document (quote request) including a description of the requested services, schedule, the consultant's qualifications, associated costs/fees, and due date for responses.
- Send the solicitation to 3-5 firms selected from the appropriate consultant roster list, asking for proposals.
- Evaluate the proposals and negotiate a contract with the lowest responsible/qualified bidder.

#### Formal Competitive Bidding - Over \$50,000

- Follow the Competitive process outlined in 1.10 - Services Architectural/Engineering (AE).

**Personal Services Emergency Exemption.** The Board of County Commissioners may, at its discretion, determine that an emergency exists which requires contracting for Personal Services, or in which it is determined a sole source need exists, or for any other compelling reason. The Board may determine such contract to be considered exempt and waive any or all requirements of this section. The Board shall by Resolution, make said determination and appropriately document the need for the exempt determination.

**Purchased Services.** Purchased services are those provided by vendors for routine, necessary and continuing functions of a local government agency, mostly relating to physical activities. These services are usually repetitive, routine or mechanical in nature, support the agency's day-to-day operations, involve the completion of specific tasks or projects and involve minimal decision-making. Examples of purchased services include, but are not limited to:

- Delivery/courier service
- Herbicide application
- Recycling/disposal/litter pickup service
- Vehicle inspection, lubricating, and repair services

However, the state Department of Labor and Industries considers some services, such as HVAC maintenance or road striping, to be public works (see below). Purchased services should not be confused with personal services, which are mostly intellectual in nature.

**Purchased Services Competitive Bidding Overview.** State law does not prescribe any thresholds or processes for purchased services contracting, unless the contract requires prevailing wages as discussed below. This means that the state has not established bid limits or advertising requirements, and that bonds and retainage are not required. However, the following process shall be utilized when contracting for purchased services.

**Purchased Services Bid Limits and Processes.** All contract awards for Purchased Services shall be documented for the public record, including the selection criteria, the names of firms considered, all responses received, the basis for the award decision and a copy of the final contract. The following bid limits and processes shall apply:

Minimal Competition \$10,000 or less

- Place calls to 1-3 qualified firms or individuals describing the desired services. Request prices, schedules and qualifications. You may not receive a quote from all firms you solicit. Document that they were contacted and either did not respond or declined to bid.
- Negotiate a contract with the lowest responsible bidder.

Informal Competition \$50,000 or less and more than \$10,000



- Prepare a written solicitation document including, at a minimum: a description of required services, the project schedule, a request for the consultant's qualifications and costs/fees and due date for the responses.
- Send the solicitation to 3-5 firms selected from the appropriate consultant roster or other list and ask for proposals.
- Evaluate the proposals and negotiate a contract with the lowest responsible bidder.

#### Formal Competitive Bidding - Over \$50,000

- Follow the Competitive process outlined in 1.10 - Services Architectural/Engineering (A/E).

Purchased Services Prevailing Wages. Some purchased services, such as building maintenance services, are not subject to public work bidding requirements but still require prevailing wages under chapter 39.12 RCW. If it is uncertain whether a particular task is subject to prevailing wages, browse L&I's Prevailing Wage Policies and Determinations or contact the department directly. There are also examples in MRSC's Contracting for Services publication.

Purchased Services Emergency Exemption. The Board of County Commissioners may, at its discretion, determine that an emergency exists which requires contracting for Purchased Services, or in which it is determined a sole source need exists, or for any other compelling reason. The Board may determine such contract to be considered exempt and waive any or all requirements of this section. The Board shall by Resolution, make said determination and appropriately document the need for the exempt determination.

### **3.25.170 - ACQUISITION OF ELECTRONIC AND TELECOMMUNICATIONS SYSTEMS**

The provisions of this section may be used when purchasing (and installing) electronic data processing or telecommunications equipment, software or services. The following "competitive negotiation" process may be utilized in accordance with RCW 39.04.270:

- A request for proposals (RFP) must be prepared and submitted to an adequate number of qualified sources, as determined by the County, to permit reasonable competition consistent with the goals of this procurement policy.
- Notice of the RFP must be published in a newspaper of general circulation in the county at least 13 days before the last date on which proposals will be received per RCW 36.32.245(1).
- The RFP must identify significant evaluation factors, including price, and their relative importance.

- The County must provide reasonable procedures for technical evaluation of the proposals received, identification of qualified sources and selection for awarding the contract.

The award must be made to the qualified bidder whose proposal is “most advantageous” to the County, with price and other factors considered. The County may reject any and all proposals for good cause and request new proposals.

### **3.25.180 – JOINT POWERS PURCHASING**

The provision of this section may be used when purchasing goods or services through what is commonly referred to as "Joint Powers Purchasing". The following guidelines may be used in accordance with RCW 39.04.270:

- Any power or powers, privileges or authority exercised by a public agency of Washington State may be exercised and enjoyed jointly with any other public agency of the state or of any other state or of the United States.
- Appropriate action by ordinance, resolution or otherwise pursuant to law of the governing bodies of the participating public agencies is necessary before any agreement may be used.
- The agreement needs to specify its duration, the organization(s) involved, composition and nature of any entity created thereby along with the powers delegated to it, its purpose(s), the manner of financing, the method to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon termination, and any other necessary and proper matters.
- In the event that the agreement does not establish a separate legal entity, it must contain a provision for an administrator or a joint board responsible for administration, and the manner of acquiring, holding and disposing of real and personal property used in the undertaking.
- This section does not relieve the County of any obligation or responsibility imposed upon it by law except that: with respect to one or more public agencies purchasing or otherwise contracting through a bid, proposal, or contract awarded by another public agency or group of public agencies, the competitive bids or proposal requirements are satisfied if the agency that awarded the bid, proposal, or contract complied with its own statutory requirements and either posted the bid or solicitation notice on a web site established and maintained by a public agency, or provided an access link on the state's web portal to the notice.
- Any two or more public agencies may enter into a contract providing for the joint utilization of architectural or engineering services if the agency contracting with the architectural or engineering firm complies with the

requirements for contracting for such services under chapter RCW 39.80; and the services to be provided to the other agency or agencies are related to, and within the general scope of, the services the architectural or engineering firm was selected to perform.

- See also "Piggybacking" Section **3.25.220**, below.
- Financing of joint projects by agreement shall be as provided by law.

### **3.25.190 – STANDARDS OF CONDUCT**

Lincoln County must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts (2 CFR 200.318(c)(1)). These standards are:

1. No employee, officer, elected official, or agent may participate in the selection, award, or administration of a contract if they have a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, elected official, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial interest or other interest in or a tangible personal benefit from a firm considered for a contract.
2. The officers, employees, elected officials, and agents may not solicit gratuities, favors or anything of monetary value from contractors or parties to subcontracts.
3. Unsolicited gifts received within the requirements of RCW 42.52.150 are allowable. For the purpose of this policy, all reference in RCW 42.52.150 to state officer or state employee is replaced with Lincoln County employee, officer, elected official, or agent.

Failure to comply with these standards of conduct shall result in disciplinary action up to and including termination.

### **3.25.200 – FEDERAL FUNDS AWARDING STANDARDS**

The purpose of this section is to establish and maintain internal controls that provide reasonable assurance that Federal awards are being managed in compliance with applicable Federal regulations and with the terms and conditions of the award. If using Federal Government awards, you need to refer to CFR 200.318 through CFR 200.326 as well as County and State procurement policies. Any procurement activity using Federal awards shall follow the most restrictive rules of either County, State or Federal Government policy. You are encouraged to research the current Federal guidance to see if new

requirements have been created since this code was written or are specific to the fund source you wish to use.

**Federal Funds Internal Controls.** The County will maintain effective internal control over the Federal award providing reasonable assurance that the County is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. County personnel will:

- Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings.
- Take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or pass-through entity designates as sensitive.

The County will require all contractors to fill out a Debarment, Suspension, Ineligibility or Voluntary Exclusion Certification Form. The County will not award, subaward, or contract with any supplier that is debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities for those. [2 C.F.R. § 200.213]

### **SMALL AND MINORITY OWNED BUSINESS ENTERPRISES**

The County shall not discriminate against small and minority firms, women-owned business enterprises, labor surplus area firms, or veteran-owned firms. Such entities shall be afforded the maximum practicable opportunity consistent with applicable law to compete for and obtain public contracts for services, and the County will encourage participation consistent with such business's general availability within the professional communities involved.

### **CONTRACT COST AND PRICE**

Lincoln County must perform a cost or price analysis in connection with every procurement action in excess of \$250,000 including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, Lincoln County must make independent estimates before receiving bids or proposals.

### **Federal Funds – Certification**

County personnel will take measures to assure that:

- Expenditures are proper and in accordance with the terms and conditions of the Federal award and approved project budgets.
- The annual and final fiscal reports or vouchers requesting payment under the agreements must include a certification, signed by an official who is authorized to legally bind the non-Federal entity, which reads as follows: "By signing this report, I certify to the best of my knowledge and belief that the

report is true, complete, and accurate, and the expenditures, disbursements, and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil, or administrative penalties for fraud, false statements, false claims or otherwise."

## Federal Funds - Payments

### Advance Payments and Reimbursements:

- Payment methods must minimize the time elapsing between the transfer of funds from the United States Treasury or the pass-through entity and the disbursement by the County.
- No electronic transfer fund payments will be authorized by Lincoln County.
- Advanced payments must be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the County to carry out the purpose of the approved program or project.
- The County shall minimize the time elapsed between receipt of Federal aid funds and subsequent payment of incurred costs.
- Be consistent with policies and procedures that apply uniformly to both Federally-financed and other activities of the County.
- Be accorded consistent treatments. A cost may not be assigned to Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.
- Not be included as cost or used to meet cost sharing or matching requirements of any other Federally-financed program in either the current or a prior period.
- Be adequately documented.
- A project agreement end date will be established in accordance with 2 CFR § 200.309. Any costs incurred after the project agreement end date are not eligible for Federal reimbursement.

Federal Funds - Procurement. When procuring property and services under a Federal award the County will follow 2 CFR § 200.318 General procurement standards through § 200.326 Contract provisions, State provisions or County procedure, whichever is more restrictive.

- Contracts for more than the simplified acquisition threshold currently set at \$250,000 must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide for such sanctions and penalties as appropriate.

- Contracts and sub-grants of amounts in excess of \$250,000 requires that the County will comply with all applicable standard, orders or regulations issued pursuant to the Clean Air Act and the Federal Water Pollution Control Act.
- Verify and document that vendors are not suspended or debarred from doing business with the Federal government. Federal guidelines require grant recipients to ensure vendors with contracts or purchases exceeding \$25,000 are not suspended or debarred from participating in Federal Programs. All County purchases and contracts issued from Federal resources that exceed \$25,000 are subject to these guidelines.
- Before initiating any purchases or contracts with Federal funds that exceed, or may potentially exceed \$25,000 within the County's fiscal year, the responsible administrator shall verify that the vendor is not listed on the System for Award Management (SAM) Exclusions list by checking at: <https://www.sam.gov/SAM/pages/public/searchRecords/search.jsf> . If the vendor is listed on the Excluded Parties List System (EPLS) the Federal award administrator shall not complete the purchase or contract with the vendor. If the EPLS shows no records for the vendor, print the screen, retain a copy in the department files and proceed to process a requisition.
- Micro-Purchases No required quotes. However, the County must consider the purchase price as reasonable, and to the extent practical, distribute the opportunity equitably among suppliers. For goods and services, the County must use the more restrictive \$10,000 Federal Threshold.
- Small Purchase Procedures (Informal) - The County must obtain and document quotes from a reasonable number of qualified sources (at least three). For goods and services, the County must use the more restrictive \$250,000 Federal Threshold.

Federal Funds Single Audit Act. As a recipient of Federal funds, the County shall adhere to the Federal regulations outlined in 2 CFR § 200.501 as well as all applicable Federal and State statutes and regulations, whichever are most stringent.

### **3.25.210 – SOLE SOURCE CONTRACTING**

Sole Source Purchases: Solicitation of formal bids, informal bids/quotes, and/or an RFP may be dispensed with when the purchases are clearly and legitimately limited to a single source of supply or which involve special facilities or market conditions, RCW 39.04.280. Terms may be established by direct negotiation. Sole source is not intended to limit a purchase to a particular brand or vendor unless no other brand/vendor is able to supply goods or services that meet specifications of a business nature required by the County. Used materials, supplies, or equipment may be purchased using this section. Sole Source Contracting should not be used to purchase a Public Work.

Sole Source Purchase Examples. Licensed, copyrighted, or patented products or services that only one vendor provides, new equipment or products that must be compatible with existing equipment or products, proprietary or custom-built software or information systems that only one vendor provides, products or services where only one vendor meets the required certifications or statutory requirements.

Sole Source Purchasing Approval - BOCC. County officials or Department heads requesting approval of a purchase as sole source are required to appear before the Board of County Commissioners and with the completed Sole Source Funding Form with Prosecuting Attorney approval. They must also submit a resolution outlining the reason for the sole source purchase. The approval of a purchase of goods or services as sole source does not alter contract requirements and will be objectively reviewed by the Board of County Commissioners.

Sole Source Purchasing - Federal Grants. Any sole/single source utilizing Federal Grant money must also include 1) Written responsibility determination for the successful contractor and; 2) Basis for contract price. Each Grantee must evaluate and state its justification for the contract cost or price. Sole source purchases with Federal Grant money should be avoided if at all possible.

### **3.25.220 – USING OTHER AGENCY’S CONTRACTS – PIGGYBACKING**

Piggybacking - General. Lincoln County employees responsible for procurement can refer to this guidance when considering using the bid awards of others, also known as "piggybacking". Piggybacking is an "alternative" procurement process which means to be "carried" by another in a contracting sense, to participate in a cooperative purchasing arrangement in which one party does most of the work (such as advertising, bid opening, and tabulating bids).

Piggybacking Washington Law. Washington allows this alternative to a competitive bidding process, provided for in RCW 39.34.030. Lincoln County is allowed by state law to use another's bid award for public works projects. Some requirements of piggybacking are:

- The project of the awarding entity and the project of the participating government must be essentially the same.
- The County should ensure the labor paid is consistent with the labor price contained within the bid documents, after compensating for any changes in product size or differences in prevailing wage rates that might vary by region.
- The County should ensure they keep adequate documentation to address the items above and support using another's bid award for public work. This documentation needs to include the project specifications to demonstrate the projects were essentially the same.

Piggybacking - Lead Entity Responsibilities. The awarding entity must (in accordance with RCW 39.34.030(5(b))):

- Comply with its own bid requirements.
- Advertise in accordance with its own statutory requirements. If these requirements are satisfied, the advertising requirements for other participating governments are also satisfied even if they differ from those of the awarding entity.
- Post the bid or solicitation notice on its website or provide an access link on the state's web portal to the notice.
- Ensure that its request for bids and final contract allows for the eventual contract to be used by more than one local government. This obligates the vendor to provide its product or service to other participating governments at the same price and terms.

Piggybacking - Participating Entity Responsibilities. Lincoln County must ensure it complies with its own policies and procedures. In addition, a local government that desires to rely on another's procurement and bid award process must:

1. Read the awarding entity's contract. The County should confirm the awarding entity's contract with the prospective vendor has not expired and will be open and active for the time period desired. The County should ensure the original solicitation and resulting contract specifically allows for others to use it post-award (may be referred to as an assignability clause).
2. Evaluate whether the awarding entity qualifies as a public agency and meets the criteria, which allows for flexibility in being able to use the award. If the awarding entity does not qualify as a public agency, then the County needs to make sure it complies with its own bid requirements. State law was amended to allow any public agency to use the bid of another public agency for its own purposes so long as the awarding public agency met its own bid law requirements (as opposed to also having to meet the participating government's bidding requirements, RCW 39.34.030). The County must ensure the awarding entity meets the statute's definition of a public agency under RCW 39.34.020. "Public agency" means any agency, political subdivision, or unit of local government of this state including, but not limited to, municipal corporations, quasi municipal corporations, special-purpose districts, and local service districts; any agency of the state government; any agency of the United States; any Indian tribe recognized as such by the federal government; and any political subdivision of another state. The County must be able to demonstrate the bid or solicitation notice was posted on a website of a public agency, purchasing cooperative or similar service provider, for purposes of posting public notice of bid or proposal solicitations;



or that there was an access link provided on the state's web portal to the notice.

The County should review the documentation of the other public agency to make sure that it complied with its own bidding requirements. For audit purposes, governments have the option to retain this documentation or after reviewing the documentation, obtain a signed certification from the public agency attesting that it met its own bid law requirements. The signed certification option is for procurement of purchases only; for public work projects, additional documentation must be retained.

3. If the awarding entity did not meet the criteria above, the County must then ensure the bid award meets its own bid law requirements and document the results. The County should keep documentation of the bid process to demonstrate its own bid laws were satisfied by the awarding entity. This is best accomplished by keeping copies of the awarding entity's bid documents. These documents might include: advertisement/affidavit of publication, bid tabulation or summary of bids received, competitive negotiation scoring for professional services, and governing body approval of the contract in meeting minutes.
4. Enter into an interlocal agreement or contract for the procurement. Lincoln County must enter into interlocal agreements (BOCC agreement) or contracts to use another's bid award, unless they are already a member of the cooperative and all requirements are met with the membership agreement.

Piggybacking - Purchasing Cooperatives. Lincoln County can purchase through contracts procured by cooperatives. To do this, the County must first become a member of the cooperative or enter into an interlocal agreement. To use a membership agreement, the County department shall consult with County legal counsel to ensure it satisfies all the interlocal agreement act requirements found in RCW 39.34.030(2). The State Auditor's Office does not evaluate cooperatives or provide an approved list. Lincoln County must evaluate cooperatives and make its own determination.

#### Piggybacking - Miscellaneous Requirements.

- Complying with the various advertising requirements - The awarding entity will advertise in accordance with its requirements or if it qualifies as a public agency, it will follow the requirements outlined in RCW 39.34.030. If the awarding entity's advertising requirements are satisfied, the advertising requirements for all participating governments are satisfied even if they are different. It is not necessary for participating governments relying on the bid award to ensure it is advertised locally. However, the County should keep evidence that advertisement occurred.

- The County may want to change contract specifications (i.e., exercise contract options). If the desired contract options were awarded in the original bid, this is acceptable. The circumstance may arise in cases like buying a dump truck, in which the County might want different add-ons or options than were included in the awarding entity's bid award. State law does not provide for this scenario. If the County has questions in this area, it should consult its legal counsel.
- Contracts can be extended as long as the awarding entity's original contract language allows for extensions.
- The County can "piggyback" on the small works roster of another entity. The County would need to follow the requirements outlined above when relying on the bid award process of another. The County would need to ensure that the roster of the other entity had been established and maintained in accordance with RCW 39.04.155. Documentation should be kept to support this for audit purposes. The County may use the Municipal Research and Services Center (MRSC) small works roster so long as it is a member.

Piggybacking - Using Federal Funds. The Uniform Guidance, Code of Federal Regulations (CFR) 2 CFR 200.318 (e) - General Procurement Standards provides an option for piggybacking to foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal government. The non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. Piggybacking using Federal funds should be avoided or minimized.

Federal grantors might have procurement guidelines or limitations within specific awards that must be followed. County personnel are encouraged to carefully review Federal Grant award documentation and program guidance. If piggybacking is allowable under the terms of a Federal Grant, and absent any specific guidance from the "grantor" on piggybacking, the County should also consider the following:

- More restrictive requirements: Any local government using federal funding must ensure it follows the most restrictive of federal, state, or local procurement laws. In many cases, federal procurement requirements are more restrictive.
- Plan ahead if you might want to use federal funds. Occasionally the County might unexpectedly receive federal dollars that it could use to cover some contract costs. However, if a contract has already been awarded, and federal requirements were not considered or followed during the procurement process, then project costs cannot be charged to federal funds at any point in the future.

- Federal contract provisions: Any government using federal funding must ensure the contract with its vendor contains the applicable provisions described in the Uniform Guidance, 2 CFR Section 200.326 - Contract provisions. Examples include prevailing wages clauses (Davis-Bacon Act) and termination for cause.
- Suspension and debarment: This requirement is to ensure payment is not made to any parties excluded from doing business with the federal government. It requires checking a website of excluded parties, obtaining a certification, or including language in the contract. If the awarding entity verified that the vendor was not suspended or debarred, this would not fulfill the local government's requirement to do its own verification because it is entering into a contract with the vendor itself. It is the sole responsibility of the local government to comply with this requirement.
- Use of a consultant's roster: For qualification-based procurements, requests for proposals must be publicized and identify all evaluation factors and their relative importance.

### **3.25.230 – CODE OF ETHICS**

Proper operation of the purchasing functions of the County requires that:

- Actions of County employees be impartial and fair.
- Government decisions and policies be made in the proper channels of government structure.
- Public employment not be used for personal gain.
- County employees may neither solicit, accept, nor agree to accept any gratuity for themselves, their families or others that results in their personal gain which may affect their impartiality in making decisions on the job. Discounts or concessions realistically available to the general population, items received that do not result in personal gain, and samples to the County used for general County use are examples of items that are not gratuities.
- Personal judgment should be used and questions regarding particular problems/events should be referred to the employee's manager.

Procurement and Purchasing Goals:

- To protect and enhance the reputation of the Lincoln County and its employees.

- To treat all citizens equally with courtesy and impartiality, and refrain from granting any special advantage to any citizen beyond what is available to all citizens.
- To give efficient, productive, and economic service to the public.
- To avoid real or potential conflicts between private and public duties, remembering that the public interest must be the principal concern.
- To keep confidential all information acquired by reason of one's position, which may be used for personal or financial gain for the employee or other persons.
- To refrain from securing special privileges or exemptions for oneself or other persons that are not available to all citizens.
- To avoid receiving, soliciting or otherwise obtaining anything of value that is greater than nominal intrinsic value from any other public official, employee or citizen which is intended to influence the performance of official duties.
- To disclose to the appropriate authority the nature and extent of any financial or personal interest in a County contract, legislation, or in any type of transaction involving the County, when participating in the development of or giving an official opinion on the matter.

### **3.25.240 – TITLE VI – PROVISIONS OF THE CIVIL RIGHTS ACT OF 1964**

Lincoln County, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination. Lincoln County, in accordance with Federally-assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises as defined at 49 CFR Part 23 will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, or sex in consideration for an award

## Attachment A

## PURCHASE QUOTATION REQUEST FORM

<b>Date:</b>		<b>County Representative:</b>		
<b>Category:</b>		<b>Item Quoted:</b>		
<b>Specifications:</b>				
<b>Date Quotes Due:</b>		<b>Time Due:</b>		
<b>Request for Quotes Made by:</b>	<b>Phone</b>	<b>Fax</b>	<b>Mail</b>	<b>Hand</b>
<b>Vendor:</b>	<b>Contact:</b>	<b>Unit Price</b>	<b>Units</b>	<b>Total Price</b>
<b>Lowest and Best Quote Meeting all Specifications:</b>				
<b>Recommendation: Date:</b>				
I hereby recommend that Lincoln County purchase the above identified item from the vendor identified above as supplying the lowest and best quote. I further certify that all considered quotes were received prior to the stated due date and time.				
<b>Signed:</b>		<b>Title:</b>		
<b>Recommendation Approved: Date:</b>				
The above recommendation is hereby approved for the purchase of the item(s) identified.				
<b>Signed:</b>		<b>Title:</b>		

<b>Purchase Order Issued:</b>		<b>Expected Delivery Date:</b>

**Upon completion of this form and notification of award to the vendor, copies of this form shall be delivered to all signatories and also to the Clerk of the Board of County Commissioners.**