Accountability in Public Contracting

Industry Coalition

- Oregon Concrete and Aggregate Producers Association
- Asphalt Pavement Association of Oregon
- Northwest Utility Contractors Association
- Oregon-Columbia Chapter of the Associated General Contractors of America
- Associated Builders and Contractors
- Associated Wall and Ceiling Contractors
- Oregon-Columbia Chapter of the National Electrical Contractors Association

Accountability in Public Contracting

- Current law
- Problems
- Proposed statutory change
- Examples

Current Law

- State policy is LEAST COST
- Public Improvement Projects (PIPs)
 - -NOT Maintenance
 - -NOT Emergencies
- Agencies must
 - -Send list of PIPs to BOLI
 - -State on list whether will hire contractor
 - Have cost accounting system

Current Law

If agency intends to perform PIP of more than \$125K with own forces, must

- SHOW how decision complies with least cost policy
- Prepare plans and specifications
- Estimate unit cost for each work classification – include equipment
- Keep an accounting of all costs

Problems

- Agencies ignore the law
- Agencies do not use actual costs
- Agencies do not know how to show least cost
- No apples-to-apples comparison
 - Contractors pay prevailing wage rates
 - Contractors hire DBEs
 - Contractors do quality testing
 - Contractors warrant work
 - Contractors have safe traffic control
 - Contractors must finish on time or pay LDs
 - Contractors must provide bonds
- Remedies ineffective, costly, and dangerous

Current Remedies

 Any bidder or trade association may sue in court

 Damages: bid prep costs or agency's costs if agency wins

Proposed Statutory Change

- NO CHANGE IN POLICY
- Clarify how to show least cost
 - Add detail on what to include in analysis
 - Use actual costs
 - Compare apples-to-apples
- Give BOLI authority to enforce law
- Confirm road maintenance treatments (e.g., chip seals) not subject to requirements, but extensive paving is

Proposed Statutory Change

- Estimated agency cost must include:
 - Actual labor costs (including benefits)
 - Equipment including ownership cost
 - Administrative and overhead costs
 - Materials
 - Subcontracted portions
 - Warranty & quality control if would require of a contractor
 - Other costs that agency would incur

Addressed Concerns

- Account for actual benefits to public employees instead of prevailing wage rates for labor
- Confirm chip seals and other maintenance work not subject to law
- First offense warning letter only
- Second offense BOLI will try to negotiate settlement
- Reasonable time limits on enforcement
- Threshold

Construction of a city street

- Original road was gravel
- Project included sidewalks, curbs, drainage structures, utilities, and pavement





City's response to public records request:

- "Having reviewed your request, we are able to inform you that the City of [redacted] does not possess the requested public records."
- "No formal plans, specifications, or cost estimates have been prepared for this project to date."

- Paving of a major road in an urban area
- Two public agencies performed the work
- Agency estimated the cost to be \$328,000

Response to public records request:

- "The [location] project was developed inhouse concurrently with the contracted out projects for two reasons."
- "The first reason is that [agency] staff responsible for developing contracts were at capacity developing the 14 projects that contracted out."
- "The second reason is that [agency] strives to complete some projects with maintenance staff to maintain their paving skills."

Paving 11 miles of a major road in a rural area

- Public maintenance staff performed the work
- Agency cost records: \$1,026,000
- Agency response called project mere "maintenance" and confirmed no quality control

- Agency's records described work as "major surface repair" – not maintenance
- Workers worked substantial overtime – not typical for maintenance
- Cost records did not include ANY overhead or admin costs

Examples 4 and 5

Paving 2 multi-lane roads in high traffic commercial area of city

- No least cost showing
- Job 1: \$702,000 (according to city)
- Job 2: \$300,000 (according to city)
- No overhead or admin costs
- Workers: \$13 per hour (no burden included)
- Paver cost: \$500 per day (actual about \$1,440 per day)

County and city worked together to complete major resurfacing

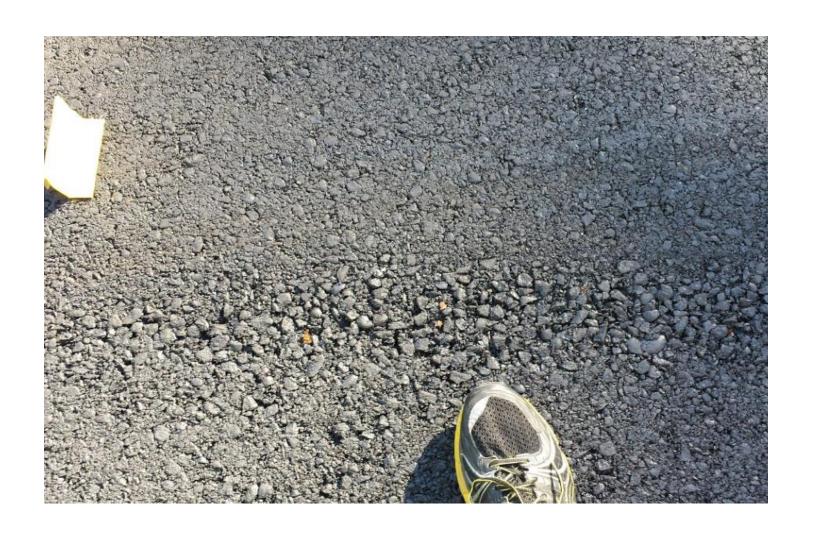
- Sent public records requests to both city and county
 - -City sent records showing the budgeting for its entire road maintenance program
 - -Impossible to determine costs for individual project

- -County documents listed laborers at \$32/hour and a truck at \$4/hour
- Different project, county charged contractor \$72/hour for laborers and \$11/hour for a truck
- No documents showed true costs or least cost analysis



22







Summary

- Current law
- Problem
- Proposed statutory change
- Examples