

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**

Example 1

Construction of a city street

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

Example 1



Example 1



Example 1

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.”**

Example 2

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

Example 2

Response to public records request:

- **“The [location] project was developed in-house 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.”**

Example 3

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**

Example 3

- **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)**

Example 6

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**

Example 6

- 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**

Example 7



Example 7



Example 7



Example 7



Summary

- **Current law**
- **Problem**
- **Proposed statutory change**
- **Examples**