



BOARD OF COUNTY COMMISSIONERS FOR COLUMBIA COUNTY, OREGON

Wednesday, January 27, 2016
10:00 a.m. - Room 308

BOARD MEETING AGENDA

CALL TO ORDER/FLAG SALUTE

MINUTES:

- Minutes, January 20, 2016 Board meeting;
- Minutes, January 20, 2016 Staff meeting.

VISITOR COMMENTS - 5 MINUTE LIMIT

MATTERS:

- 1) Matt Graves, Pauly Rogers: County Audit Update

CONSENT AGENDA:

- (A) Ratify the Select to Pay for week of 1/25/16.

AGREEMENTS/CONTRACTS/AMENDMENTS:

- (B) Columbia County Jail Shower Replacement Contract with Pacific Stainless Products, Inc.

DISCUSSION ITEMS:

COMMISSIONER HYDE COMMENTS:

COMMISSIONER HEIMULLER COMMENTS:

COMMISSIONER FISHER COMMENTS:

EXECUTIVE SESSION:

Pursuant to ORS 192.640(1), the Board of County Commissioners reserves the right to consider and discuss, in either open session or Executive Session, additional subjects which may arise after the agenda is published.

COLUMBIA COUNTY JAIL
SHOWER REPLACEMENT CONTRACT

This Agreement is made and entered into by and between Columbia County, a political subdivision of the State of Oregon, hereinafter referred to as "Owner," and Pacific Stainless Products, Inc., hereinafter referred to as "Contractor."

WITNESSETH:

IT IS HEREBY AGREED by and between the parties above-mentioned for and in consideration of the mutual promises hereinafter stated as follows:

1. Effective Date. This Agreement will be effective when it has been executed by both Owner and Contractor, and shall be retroactive to **December 4, 2015.**
2. Completion Date. The completion date for this Agreement shall be no later than **December 31, 2015.**
3. Contractor's Services. Contractor agrees to provide the services described in the scope of work and drawings which are attached hereto as Exhibit "A", and are incorporated herein by this reference.
4. Consideration. Owner shall pay Contractor an amount not to exceed \$82,900 which shall be the complete compensation to Contractor for the services performed under this Agreement. Unless otherwise stated herein or agreed to in writing by the parties, payments shall be made upon completion of the project. This Agreement is subject to the appropriation of funds by Owner, and/or the receipt of funds from state sources. In the event sufficient funds shall not be appropriated, and/or received by Owner for the payment of consideration required to be paid under this Agreement, Owner may terminate this Agreement without penalty in accordance with Section 18 of this Agreement.
5. Contract Representatives. Contract representatives for this Agreement shall be:

For the Owner:

Casey Garrett, Building Services Manager
Land Development Services
Columbia County
230 Strand Street
St. Helens, OR 97051

For the Contractor:

President
Pacific Stainless Products, Inc.
58500 McNulty Way
St. Helens, Oregon 97051
503-397-1277

All correspondence shall be sent to the above addressees when written notification is necessary. The Contractor understands and agrees that only the Owner's Contract Representative is authorized to give Contractor work authorizations, issue written approvals and notices to proceed. If any work is done by Contractor without prior written authorization by the Owner's Contract Representative, the Owner will not be obligated to pay for such work. Contract representatives can be changed by providing written notice to the other party at the address listed.

6. Permits; Licenses; Bonds; Qualifications. Unless otherwise specified, Contractor shall procure all permits, licenses and bonds, pay all charges and fees and give all notices necessary for performance of this Agreement prior to commencement of work. Contractor, by entering into this Agreement represents, that all personnel assigned to the work required under this Agreement are fully qualified to perform the work to which they will be assigned in a skilled and workmanlike manner and, if required to be registered, licensed or bonded by the state of Oregon, are so registered, licensed or bonded.
7. Compliance with Codes and Standards. Contractor shall at all times observe and comply with all federal and state laws, administrative rules and regulations issued there under, and with all applicable ordinances, and building, health and sanitation laws and codes. Contractor shall engage in no activity which creates an actual conflict of interest or violates the Code of Ethics as provided by ORS Chapter 244.
8. Reports. Contractor shall provide Owner's Contract Representative with periodic reports about the progress of the project as requested by Owner.
9. Ownership of Documents. Owner will own the documents and data prepared and/or compiled by Contractor pursuant to this agreement, including working papers, drawings, and other material necessary for complete understanding of the plans. Contractor hereby conveys, transfers, and grants to Owner all copyrights and rights of reproduction to all such documents. Owner agrees not to assign or transfer the drawings which would duplicate the work product represented in the drawings at another location without the written consent of the Contractor. Contractor shall retain the right to reproduce the documents for purposes related to this project, for Contractor's archival records, and for marketing purposes. Within 120 days of the completion of the project, the Contractor will provide to the Owner one reproducible set of as-built drawings based on mark-ups by the Contractor, which are reviewed for general conformance by the Contractor and appropriate consultants. In addition, Contractor will provide to the Owner digital copies of AutoCAD formatted construction documents and MS Word formatted specifications in CD-ROM format.
10. Guarantee. Contractor guarantees all work under this Agreement against all defects in materials and workmanship. This guarantee shall extend from the date of completion by the Owner for the period of a **minimum of one year**, or longer, if so specified in the Contract Documents. Contractor shall promptly make all necessary repairs or replacements to correct any defects in workmanship or materials for which notice in writing has been sent to the Contractor from the Owner's Contract Representative within the guarantee period. In the event Contractor fails to take any action to correct conditions covered by this guarantee promptly after notice of such condition, Owner may do so, and Contractor and its surety shall be liable for the cost thereof. Normal wear and tear and the results of accidents not chargeable to Contractor or its agents are excluded from the above requirements.
11. Independent Contractor. Contractor is engaged hereby as an independent contractor and shall not be considered an employee, agent, partner, joint venturer or representative of Owner for any purpose whatsoever. Owner does not have the right of direction or control over the manner in which Contractor delivers services under this Agreement and does not exercise any control over the activities of the Contractor, except the services must be performed in a manner that is consistent with the terms of this Agreement. Owner shall have no obligation with respect to Contractor's debts or any other liabilities

of Contractor. Contractor shall be responsible for furnishing all equipment necessary for the performance of the services required herein. In addition:

- A. Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Agreement.
- B. This Agreement is not intended to entitle Contractor to any benefits generally granted to Owner's employees. Without limitation, but by way of illustration, the benefits which are not intended to be extended by this Agreement to the Contractor are vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, social security, workers' compensation, unemployment compensation, or retirement benefits (except insofar as benefits are otherwise required by law if the Contractor is presently a member of the Public Employees Retirement System).
- C. The Contractor is an independent contractor for purposes of the Oregon workers' compensation law (ORS Chapter 656) and is solely liable for any workers' compensation coverage under this Agreement. If the Contractor has the assistance of other persons in the performance of the Agreement, the Contractor shall qualify and remain qualified for the term of this Agreement as a carrier-insured or self-insured employer under ORS 656.407. If the Contractor performs this Agreement without the assistance of any other person, unless otherwise agreed to by the parties, Contractor shall apply for and obtain workers' compensation insurance for itself as a sole proprietor under ORS 656.128.

12. Statutory Provisions. Pursuant to the requirements of ORS 279C.500 through 279C.530 and Article XI, Section 10 of the Oregon Constitution, the following terms and conditions are made a part of this Agreement:

- A. Contractor shall:
 - (1) Make payment promptly, as due, to all persons supplying to Contractor labor or material for the prosecution of the work provided for in this Agreement.
 - (2) Pay all contributions or amounts due the Industrial Accident Fund from the Contractor or any subcontractor incurred in the performance of this Agreement.
 - (3) Not permit any lien or claim to be filed or prosecuted against County on account of any labor or material furnished.
 - (4) Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.
 - (5) Demonstrate that an employee drug testing program is in place.
- B. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person in connection with this Agreement as the claim becomes due, the proper officer or officers representing County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due Contractor by reason of this Agreement.

If the Contractor or a first-tier subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with this Agreement within 30 days after receipt of payment from the Owner, the Contractor or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279C.580(4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to the Contractor or first-tier subcontractor on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is 30 days after the date when payment was received from the Owner or from Contractor, but the rate of interest may not exceed 30 percent. The amount of interest may not be waived.

If the Contractor or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with this Agreement, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.

- C. No person may be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services as defined in ORS 279C.100, the employee shall be paid at least time and a half pay:
- (1) For all overtime in excess of eight hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or
 - (2) For all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and
 - (3) For all work performed on Saturday and on any legal holiday specified in ORS 279C.540.

Contractor and any employer under this Agreement must give notice in writing to employees who work under this Agreement, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week, that the employees may be required to work.

- D. Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness and injury, to the employees of Contractor, of all sums that Contractor agrees to pay for the services and all moneys and sums that Contractor collects or deducts from the wages of employees under any law, contract or agreement for the purpose of providing or paying for such services.
- E. All subject employers working under this Agreement, including Contractor, shall comply with ORS 656.017 and provide the required Workers' Compensation

coverage, unless such employers that are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements.

- F. Contractor shall include in each subcontract for property or services entered into by the Contractor and a first-tier subcontractor, including a material supplier, for the purpose of performing a construction contract:
- (1) A payment clause that obligates the Contractor to pay the first-tier subcontractor for satisfactory performance under its subcontract within 10 days out of such amounts as are paid to the Contractor by Owner under this Agreement; and
 - (2) An interest penalty clause that obligates the Contractor, if payment is not made within 30 days after receipt of payment from Owner, to pay to the first-tier subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract under paragraph (1) of this subsection. Contractor or any first-tier subcontractor may not be obligated to pay an interest penalty if the only reason that Contractor or the first-tier subcontractor did not make payment when payment was due is that Contractor or first-tier subcontractor did not receive payment from Owner or Contractor when payment was due. The interest penalty shall be:
 - (a) For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and
 - (b) Computed at the rate specified in ORS 279C.515(2).
- G. Contractor shall include in each of Contractor's subcontracts, for the purpose of performance of such contract condition, a provision requiring the first-tier subcontractor to include a payment clause and an interest penalty clause conforming to the standards of subsection F of this section in each of the first-tier subcontractor's subcontracts and to require each of the first-tier subcontractor's subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.
- H. The clauses required by subsections F and G of this section are not intended to impair the right of Contractor or a subcontractor at any tier to negotiate, and to include in the subcontract, provisions as allowed by ORS 279C.580(5). Such clauses and provisions are subject to the provisions of ORS 279C.580(6) through (10).
- I. The specifications to this Agreement include the prevailing rate of wage that must be paid to workers in each trade or occupation required for the public works employed in the performance of this Agreement either by the Contractor or any subcontractor or other person doing or contracting to do the whole or any part of the work contemplated by this Agreement. All workers shall be paid not less than the specified minimum hourly rate of wage.

- J. A fee is required to be paid to the Commissioner of the Bureau of Labor and Industries as provided in ORS 279C.825(1). The fee shall be paid to the Commissioner under the administrative rule of the Commissioner.
 - K. This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10 of the Oregon Constitution, and is contingent upon funds being appropriated therefor. Any provisions herein which would conflict with law are deemed inoperative to that extent.
13. Non-Discrimination. Contractor agrees that no person shall, on the grounds of race, color, creed, national origin, sex, marital status, handicap or age, suffer discrimination in the performance of this Agreement when employed by Contractor. Contractor certifies that it has not discriminated and will not discriminate, in violation of ORS 279A.110, against any minority, women or emerging small business enterprise or against a business enterprise that is owned or controlled by or that employs a disabled veteran in obtaining any required subcontract.
14. Assignment; Subcontracts. Contractor shall not assign, subcontractor delegate the responsibility for providing services hereunder to any other person, firm or corporation without the express written permission of the Owner. Any attempted assignment or subcontract by Contractor without the written consent of Owner shall be void. Contractor shall be fully responsible for the acts or omissions of any assigns or subcontractors and of all persons employed by them, and the approval by Owner of any assignment or subcontract shall not create any contractual relation between the assignee or subcontractor and Owner.
15. Nonwaiver. The failure of the Owner to enforce any provision of this Agreement shall not constitute a waiver by the Owner of that or any other provision of the Agreement.
16. Indemnity. Contractor shall indemnify, defend, save, and hold harmless the Owner, its officers, agents and employees, from any and all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature, resulting from, arising out of, or relating to the activities of the Contractor or Contractor's officers, employees, subcontractors, or agents under this Agreement.

Contractor shall cause all subcontractors to indemnify, defend, save, and hold harmless the Owner, its officers, agents and employees from any and all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature, resulting from, arising out of, relating to the activities of the subcontractor or subcontractor's officers, employees, subcontractors, or agents for the work described herein.

17. Insurance.
- A. Contractor shall purchase and maintain, and shall require its subcontractors to purchase and maintain under this Agreement the following policies of insurance to protect Owner and its officers, agents and employees:
 - (1) Commercial general liability insurance coverage from an insurance company authorized to do business in Oregon in an amount not less than \$2,000,000 per occurrence for bodily injury and property damage.
 - (2) Automobile liability insurance covering each automobile utilized in the performance of this Agreement from an insurance company authorized to

do business in Oregon in an amount not less than \$2,000,000 per occurrence for bodily injury and property damage.

(3) Workers' Compensation and Employer's liability meeting statutory limits mandated by State and federal laws.

B. Contractor and any subcontractors shall provide Owner a certificate or certificates of insurance in the amounts required which names Columbia County, its officers, agents and employees. The certificates shall be accompanied by additional insured endorsements identifying Columbia County, its officers, agents and employees as additional insureds. Coverage will be primary and non-contributory with any other insurance and self-insurance. Contractor agrees to provide, and shall require its subcontractor to provide, Owner at least thirty (30) days prior written notice that any insurance coverage required by this paragraph will be canceled, not renewed, modified in any material way, or changed to make the coverages no longer meet the minimum requirements of this Contract. In the event of any discrepancy in the various provisions of this Agreement as to the amount and types of insurance required, the highest policy limits specified and all of the coverage types specified shall be required.

C. Coverage shall be carried for the duration of the applicable statute of repose in Oregon. All of Contractor's and subcontractor's liability insurance policies, with the exception of worker's compensation, shall contain a waiver of subrogation against the County.

18. Termination. Reserved.

19. Time of the Essence. The parties agree that time is of the essence in this Agreement. Contractor shall commence work under this Agreement upon receipt of a Notice to Proceed from the Owner's Contract Representative and shall prosecute the work diligently, so as to proceed with and complete the work in this Project in a timely manner. Any failure of the Contractor to perform work on time is a material breach of this Agreement.

20. Mediation. In the event of a dispute between the parties arising out of or relating to this Agreement, the parties agree to submit such dispute to a mediator agreed upon by both parties as soon as practicable after the dispute arises, and preferably before commencement of litigation or any permitted arbitration. The parties agree to exercise their best efforts in good faith to resolve all disputes in mediation.

21. Choice of Law. This Agreement shall be governed by the laws of the State of Oregon.

22. Venue. Venue relating to this Agreement shall be in the Circuit Court of the State of Oregon for Columbia County, located in St. Helens, Oregon.

23. Attorneys Fees. In the event an action, suit or proceeding, including appeal therefrom, is brought for failure to observe any of the terms of this Agreement, each party shall be responsible for its own attorneys fees, expenses, costs and disbursements for said action, suit, proceeding or appeal.

24. Severability. Should any provision or portion thereof of this Agreement at any time be in conflict with any law, ruling or regulation, or be unenforceable for any reason, then such provision shall continue in effect only to the extent that it remains valid. In the event any

provision of this Agreement becomes less than fully operative or is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and the remaining portion of that provision and all other provisions of this Agreement shall, nevertheless, remain in full force and effect.

25. Third Party Beneficiaries. There are no other third party beneficiaries to this Agreement.
26. Prison Rape Elimination Act (PREA). The Columbia County Sheriff's Office maintains a zero tolerance for any form of sexual misconduct between staff members, volunteers, contract employees or other agency representatives and inmates. Sexual Misconduct means any behavior or act of a sexual, sexually suggestive or romantic nature directed toward any person by an employee, whether visitor, contractor or inmate. Sexual misconduct includes, but is not limited to, acts or attempts to commit acts of sexual assault, sexual abuse, rape, sexual harassment, sexual or intimate or otherwise inappropriate or unnecessary contact, conduct of a sexual nature or implication, obscenity and unreasonable invasion of privacy. Sexual misconduct includes conversations, correspondence or other actions suggesting an interest in a romantic or sexual relationship, jokes of a sexual nature, suggestive looks or leering and physical behavior such as pats or squeezes or brushing against someone's body. Sexual misconduct includes acts that may not be directed at any particular individual or group, but which create a sexually charged workplace. Sexually explicit talk, actions, e-mails, posted cartoons, jokes or unprofessional dress characterize a sexually charged work environment. A sexually charged work environment severely erodes the professional boundaries between staff and consequently between staff (including contracted employees) and inmates. Contractor agrees to comply with the Sheriff's Office zero tolerance policy for sexual misconduct and all applicable requirements of the Prison Rape Elimination Act. Notwithstanding the generality of the foregoing, Contractor agrees, as follows:
 - A. Neither Contractor nor its employees, agents, or representatives, will disregard allegations of sexual misconduct, regardless of who is making the reports. Contractor will report any allegation of sexual misconduct to the Columbia County Sheriff or Columbia County Human Resources Director immediately and shall cooperate with the investigation of such allegations.
 - B. Contractor shall not harass, intimidate, discipline, discharge or otherwise interfere with any person because they have reported an incident or suspected incident of sexual misconduct.
 - C. During an investigation of sexual misconduct of an employee, agent, or representative of Contractor, Contractor shall ensure that such person does not enter the facility for any reason. Following an investigation of sexual misconduct Contractor will implement appropriate corrective action, up to and including permanent preclusion of an investigated person from the Columbia County Jail at the direction of the Columbia County Sheriff or Human Resources Director.
 - D. Contractor shall make all reasonable efforts to keep confidential, personal or other confidential information related to an allegation of sexual misconduct.
 - E. Contractor will incorporate into its personnel policies, policies and procedures on expected professional behavior and prohibited sexual misconduct consistent with the Sheriff's PREA policy. Contractor shall train its employees, agents and

representatives on the requirements of PREA and shall instruct all such persons that failure to meet their obligations as employees, agents or representatives will lead to discipline, up to and including discharge and possible criminal penalties.

27. ENTIRE AGREEMENT. THIS AGREEMENT (INCLUDING EXHIBITS) CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT. CONTRACTOR, BY THE SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE(S) BELOW, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

IN WITNESS WHEREOF, the parties hereto have executed, or have caused to be executed by their duly authorized officials, this Agreement between Owner and Contractor in duplicate on the respective dates indicated below.

CONTRACTOR:

OWNER:

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

By: _____

By: _____
Anthony Hyde, Chair

Title: _____

By: _____
Henry Heimuller, Commissioner

Date: _____

By: _____
Earl Fisher, Commissioner

Date: _____

Approved as to form by

By: _____
Office of County Counsel