



AGENDA COVER MEMO

Memorandum Date: November 15, 2023

Order Date: December 5, 2023

TO: Board of County Commissioners

DEPARTMENT: Public Works

PRESENTED BY: Dan Hurley, Public Works Director
Keir Miller, Land Management Division Manager

AGENDA ITEM TITLE: ORDER / In the Matter of Awarding a Contract to Kent Howe and Jim Mann in the Amount of \$60,000 to conduct a Barriers to Affordable Housing Study and Directing the County Administrator to Execute the Contract.

I. MOTION

Move to award a Contract to Kent Howe and Jim Mann in the Amount of \$60,000 to conduct a Barriers to Affordable Housing Study and Directing the County Administrator to Execute the Contract.

II. AGENDA ITEM SUMMARY

The proposed contract is to conduct a comprehensive review of systems and processes that are within the jurisdiction and control of Lane County to understand what Lane County Government can do to increase of the availability and affordability of housing in rural Lane County. The Board is being asked to consider and possibly approve the attached Order directing the County Administrator to execute the contract with the selected consultants.

III. BACKGROUND/IMPLICATIONS OF ACTION

A. Board Action and Other History

On February 2, 2023, the Board assigned staff to solicit for a consultant to conduct a comprehensive review on barriers to housing that are within the jurisdiction and control of Lane County. Concerns raised by the Board included a lack of affordable housing; a lack of inventory; and the difficulty, cost, and time it takes to obtain approvals and permits under Lane County jurisdiction. The Board wanted an evaluation to determine if Lane County is doing everything legally possible to assist in increasing the stock of affordable housing available in rural Lane County. Commissioner Ceniga and Commissioner Buch agreed to work with staff to develop an appropriate scope of work for a Request for Proposals (RFP).

Commissioner Ceniga and Commissioner Buch met with staff in March 2023 and again in May 2023 to develop the scope of work. In the interest of time, staff issued a Request for Quotes (RFQ) in June 2023 using a clearly defined limited scope of work rather than returning to the Board to review a lengthier RFP as originally requested.

The RFQ closed on June 23, 2023. Two quotes were received prior to the deadline, and one was received shortly after the deadline that could not be considered. Commissioner Ceniga and Commissioner Buch met with staff again and decided to reissue the RFQ in an effort to get more proposals. The RFQ closed the second time on July 24, 2023. The County received five quotes ranging from \$29,320 to \$249,454.

On August 17, 2023, Commissioner Ceniga and Commissioner Buch met with staff a final time to review and select the vendor. Consistent with standard practice, staff supported the selection of the lowest-priced qualified consultant, which was Morant McLeod. However, previous Board direction was to bring the information back to the Board for decision-making.

At a work session on September 26, 2023, staff presented the five RFQs to the Board and forwarded a recommendation to award the contract to Morant-McLeod. The Board discussed qualifications of the respondents, quality of the proposals, and specific concerns about potential conflicts with Mr. Howe and Mr. Mann. The Board voted 3-2 to conditionally award the contract to Howe and Mann with the understanding that County Counsel would work with the selected consultant to obtain appropriate assurances that their work for the County would not pose any actual or perceived conflicts of interest.

On September 28, 2023, Mr. Howe and Mr. Mann provided letters to County Counsel. These letters, which are included as Attachments 2 and 3, are intended to address concerns regarding possible conflicts of interest.

On October 2, 2023, Assistant County Counsel Rebekah Dohrman sent a letter to Mr. Howe and Mr. Mann identifying assurances the county would find acceptable prior to entering into a contract. The letter, included as Attachment 4, requests that Mr. Howe and Mr. Mann sign an acknowledgment that while working under contract they would be working in the capacity of public officials and subject to ethical standards for public officials.

In lieu of the signed acknowledgment Mr. Howe and Mr. Mann were informed that the County would accept as assurances an opinion from the Oregon Government Ethics Commission that finds they would not be considered public officials working under a contract with Lane County. This correspondence is included as Attachment 4.

On October 12, 2023, Stephen Dingle, an attorney representing Mr. Howe and Mr. Mann, provided a letter to Ms. Dohrman. In part, the letter argues against

the County's request for Howe and Mann to sign the letter and opines that such a letter would not be legally binding. This letter is included as Attachment 5.

On October 17, 2023, Ms. Dohrman contacted Mr. Dingle and requested that he ask his clients to either provide the assurances requested by the County or provide a statement that explains why they decline to provide those assurances. Mr. Dingle indicated he would provide a response by November 1, 2023.

As of the date of this memo Mr. Dingle has not responded.

B. Policy Issues

Policies and procedures relevant to this proposal relate to procurement requirements and are contained in Lane Manual, Chapter 20. In evaluating a Request for Quotes, Lane County typically selects the lowest priced quote from the vendors deemed qualified to do the work. Lane County may contract based on other criteria deemed to be in the best interest of the County.

C. Board Goals

The Strategic Plan contains the following objective within the "Vibrant Communities" strategic priority:

"Invest in the Land Management Division to ensure adequate and sustainable staffing levels and resources are available to be responsive and agile in meeting current and future housing needs and customer service expectations."

An external review will assist in determining if the Land Management Division is adequately staffed and determine if structural or process changes are needed to support the development of more housing in Lane County.

D. Financial and/or Resource Considerations

The contract will be paid for using State awarded Video-Lottery funds.

E. Health Implications

Housing issues are closely linked to community health due to of the positive effects that available and affordable housing have on human health and well-being. By conducting an external review of policies and structures, the County may be able to improve health outcomes for county residents by identifying barriers to affordable housing and working to address these barriers.

F. Analysis

As explained above, the selection of Howe and Mann was conditioned with the

understanding that the County would be provided reasonable assurances that their work would not result in ethical conflicts or otherwise result in some form of future monetary benefit to them. Mr. Howe and Mr. Mann have provided statements intended to address these concerns, but the County has not received the binding assurances that have been requested.

Additional analysis on all RFQ responses received by the County is included in the meeting materials of the Board's September 26, 2023, discussion, available at:

https://www.lanecountyor.gov/UserFiles/Servers/Server_3585797/File/Government/BCC/2023/2023_AGENDAS/092623agenda/T.10.B.pdf

G. Alternatives/Options

- 1) Provide additional time to Mr. Howe and Mr. Mann to provide the assurances requested by the County.
- 2) Accept the letters provided by Mr. Howe and Mr. Mann and approve the attached Order directing the County Administrator to execute the contract.
- 3) Direct staff to award the contract to Morant-McLeod, the respondent providing the lowest priced quote.
- 4) Direct staff to reject the quotes and issue a new RFQ or RFP.

IV. RECOMMENDATION

Staff previously recommended awarding the contract to Morant-McLeod.

Following the Board's direction on September 26, 2023, staff have attempted to obtain appropriate assurances from Mr. Howe and Mr. Mann that their work for the County would not pose any actual or perceived conflicts of interest. Staff is looking to the Board to determine if the letters received from Mr. Howe and Mr. Mann are sufficient in this regard or if additional time should be granted for them to provide the assurances requested by the County Counsel's office.

V. TIMING/IMPLEMENTATION

If the attached Order is approved the County Administrator will execute the contract.

VI. FOLLOW-UP

If selected, the consultant will complete the review and present findings to the Board in accordance with the scope of work.

VII. ATTACHMENTS

- 1) Order
- 2) Letter from Kent Howe to Erin Pettigrew dated 9/28/23
- 3) Letter from Jim Mann to Erin Pettigrew dated 9/28/23
- 4) Letter from Rebekah Dohrman to Kent Howe and Jim Mann, dated 10/2/23
- 5) Letter From Stephen Dingle to Rebekah Dohrman, dated 10/12/23

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO: 23-12-05-08

IN THE MATTER OF AWARDED A
CONTRACT TO KENT HOWE AND JIM
MANN IN THE AMOUNT OF \$60,000 TO
CONDUCT A BARRIERS TO AFFORDABLE
HOUSING STUDY AND DIRECTING THE
COUNTY ADMINISTRATOR TO EXECUTE
THE CONTRACT

WHEREAS, the Board of Commissioners deems it necessary to study possible barriers to affordable housing within Lane County; and

WHEREAS, a request for quotes for this work was published in July 2023; and

WHEREAS, the Board of Commissioners evaluated responses to the request for quotes on September 26 and December 5, 2023 and has elected to award the contract to consultants Kent Howe and Jim Mann; and

WHEREAS, funding has been identified and is available for this project;

NOW, THEREFORE, the Board of County Commissioners of Lane County **ORDERS** as follows:

1. A contract in the amount of \$60,000 is to be awarded to Kent Howe and Jim Mann to conduct a barriers to affordable housing study.
2. The County Administrator is directed to execute the contract,

ADOPTED this 5th day of December 2023.

Pat Farr, Chair
Lane County Board of Commissioners

September 28, 2023

Erin Pettigrew
Lane County Office of Legal Counsel
125 E. 8th Avenue
Eugene, OR 97401

Re: Sept. 26th Board's Discussion on Selecting a Consultant to Assess Barriers to
Affordable Housing in Lane County – Request for Conditional Letter

I worked for Lane County for 35 years which included the last 17 years as Planning Director. As a working supervisor I processed land use applications and I managed a staff of up to 16 professionals processing land use applications in addition to working on a wide spectrum of projects and responsibilities involving long-range planning projects of local and statewide significance. During this time, Jim Mann was a Senior Planner in the Planning Program and we were in a position to look for ways to constantly improve the Land Management Division's provision of services. We both were also involved in two audits that were studying ways to improve application processing.

During the Board discussion on September 26, 2023, an issue of potential conflict of interest came up. To address the Board's concern, I retired from Lane County in June 2013, after which I did provide consulting land use services in Lane County. My last involvement representing a land use applicant was in February of 2020. I currently have no land use applications in process in the Land Management Division. This assures that I will have no ethical challenges or conflicts of interest if awarded the contract.

Sincerely,


Kent Howe, LLC
221 E. 3rd Avenue
Eugene, OR 97401
(541)520-0844
KentHowePlanning@gmail.com

Copies to: Dan Hurley, Public Works Director
Keir Miller, Land Management Division Manager

Jim Mann
P.O. Box 51081
Eugene, Oregon 97405-0902
Telephone: (541) 514-3051
Email: jamannllc@comcast.net

September 28, 2023

Erin Pettigrew
Lane County Office of Legal Counsel
125 East 8th Ave.
Eugene, Oregon 97401

Re: In the Matter of Selecting a Consultant to Assess Barriers to Affordable
Housing in Lane County

Dear Ms. Pettigrew:

On September 26, 2023 the Lane County Board of Commissioners conditionally hired me and Kent Howe "to conduct a comprehensive review of systems and processes within the jurisdiction and control of Lane County to gain understanding of what Lane County can do to increase the availability and affordability of housing in Lane County, subsequent to a conditional letter of conflicts or challenges they may have, that they would not use if awarded the contract." The Board directed that a certified copy of this conditional letter be submitted to you.

About a year I retired from doing all new land use application work. Since then, I have not accepted any new land use application work and have worked to complete the work which I already had. Now, there is just one consolidated group of applications which I worked on that are still in process with Lane County. I have arranged with the owner of that application to no longer be involved with that application, and the owner now has other assistance. Furthermore, in the course of performing the work on this project, I will avoid and not have contact with the planning staff assigned to process that application. When necessary, Kent Howe will be the person who will have contact with the assigned staff.

I have maintained a high ethical work standard during my 51 years of work as a land use planner and intend to maintain it in the course on my work on this project.

Sincerely,



Jim Mann
James A. Mann LLC

Copies to: Dan Hurley, Public Works Director
Keir Miller, Land Management Division Manager



LANE COUNTY

Attachment 4

LANE COUNTY OFFICE OF LEGAL COUNSEL / PUBLIC SERVICE BUILDING. / 125 EAST 8TH AVE. / EUGENE, OR 97401 / 541-682-4442 / FAX 541-682-3803 / www.lanecounty.org

County Counsel

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Miranda C. Rollins, Workers'
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Deeni Leake, Risk Specialist
deeni.leake@lanecountyor.gov

October 2, 2023

VIA Email: kenthoweplanning@gmail.com; jamannllc@comcast.net

Re: RFQ: Analysis on Barriers to Affordable Housing

Dear Sirs:

Thank you for the letters that you submitted after the September 26, 2023, Board of County Commissioners meeting, wherein the Board voted 3-2 to conditionally award the above-referenced contract to you. The “assurances” needed before moving forward with a contract to perform the scope of work is your acknowledgement of the applicable ethical standards and your commitment to complying with those ethical standards through performance of the contract and beyond, as may be required. Please know that your commitment to high ethical standards is not in question. This is intended to address public concern for potential ethical issues and/or the appearance of any ethical issues.

Please review the following and sign below to acknowledge your understanding of, and agreement with, the County’s expectations.

Once you have entered into the contract with Lane County, you will become an agent for the County and a public official subject to the government ethics statutory provisions in ORS chapter 244. As a public official you must not:

- Take any action or make any decision or recommendation which will result in private pecuniary benefit or detriment to you, your relatives, or any business with which you or your relatives are associated;
- Use or attempt to use official position or office to obtain financial gain or avoidance of financial detriment for yourself, a relative, or any business with which you or a relative are associated, if the financial gain or avoidance of financial detriment would not otherwise be available but for the public official’s holding of the official position or office;
- Solicit or receive, either directly or indirectly (and a person may not offer or give to any public official) any pledge or promise of future employment, based on any understanding that the vote, official action, or judgment of the public official would be influenced by the pledge or promise;



- Attempt to further or further the personal gain of the public official through the use of confidential information gained in the course of or by reason of holding position as a public official or activities of the public official;
- As a former public official, attempt to further or further the personal gain of any person through use of confidential information gained during or by reason of holding position as a public official or the activities of the person as a public official;
- Attempt to represent or represent a client for a fee before the governing body of a public body of which the person is a member.

The foregoing is not intended to be an exhaustive list of all the ethical standards that apply to public officials. The County expects that you will familiarize yourself with the ethical standards that apply to you as an agent of the County and adhere to all ethical standards that apply. Failure to do so may result in termination of the contract as will be specified in the terms of the contract.

I understand the County's expectations and agree to adhere to these ethical standards.

Kent Howe

Date: _____

Jim Mann

Date: _____

Alternatively, the County would accept as "assurances" an opinion solicited by you from the Oregon Government Ethics Commission that finds that you will not become public officials through the contract and its scope of work. If you choose this option, we will wait for receipt of a copy of that opinion before entering into the contract with you.

Thank you for your interest in working with Lane County. If you have any questions, feel free to reach out.

Best regards,

Rebekah Dohrman



STEPHEN E. DINGLE
sdingle@arnoldgallagher.com
541·484·0188

October 12, 2023

VIA EMAIL ONLY

rebekah.dohrman@lanecountyor.gov

Rebekah L. Dohrman
Assistant County Counsel
Lane County Office of Legal Counsel
125 West 8th Avenue
Eugene, OR 97401

Re: RFQ – Affordable Housing in Lane County

Dear Ms. Dohrman:

This letter is to advise you that I have been retained to represent Mr. Mann and Mr. Howe in the above captioned matter. We are prepared to move the process forward as directed by the Lane County Board of Commissioners (BOC) in their September 26, 2023, meeting. To facilitate the Board's direction, could you please forward all information you believe is relevant to the concerns expressed about the RFQ, including but not limited to, the August 21, 2023, Jim Chaney e-mail? I have reviewed the video of the September 26, 2023, BOC meeting and some, but not all, of the correspondence between you and my clients.

First and foremost, my clients understand the importance to the residents of rural Lane County of the work associated with the RFQ and are anxious to get it underway as soon as possible. My clients are also willing to provide the "assurances" necessary to address concerns about alleged/potential conflicts of interest as set forth in their letters of September 28, 2023.

The proposed form in your letter dated October 2, 2023, is not the way to address these concerns. Your October 2, 2023, letter appears to "make" my clients "public officials" for purposes of ORS Chapter 244. I am not aware of any legal authority to grant a party the status of "public official": simply put they are, or they are not, and the answer does not depend on what status a person "agrees" to be. Put another way a contract term that purported to make a person not a "public official" would not be binding on the Oregon Government Ethics Commission (OGE) and would not be a defense to the opposite finding by the OGE. The request in the October 2, 2023, letter is legally superfluous. The OGE has repeatedly stated public officials are individually responsible for their own ethics not the public body/employer. Ethical risks, if any, will be borne by my clients.

Rebekah L. Dohrman
October 12, 2023
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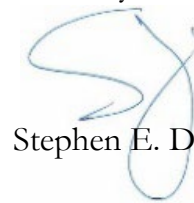
On the other hand, the requested language could create unnecessary problems in the future for my clients. For example, if my clients were to come up with a way to shorten the application process and their recommendation was ultimately adopted by the BOC, and a relative of my client (a grandchild) wanted to use the new process, anyone opposing the application could claim this as a violation of the agreement and a reason to deny the application or make claim against my client directly. Presumably all Lane County residents will benefit from any recommendations made by my clients and adopted by the BOC.

The only theoretical potential conflict of interest involves a matter with Mr. Mann and we are confident the screening mechanisms outlined in his September 28, 2023, letter are more than adequate to address any concerns related to that matter. As you noted in your comments to the BOC on September 26th, any potential conflict of interest is completely theoretical at this point and any recommendations made will need to be adopted by a majority of the BOC offering plenty of opportunities for transparency in the process, the recommended changes, and the rationale behind them.

Finally, as a matter of fact, my clients are independent contractors, and the contract will make it clear my clients are independent contractors. Lane County has contracted with many individuals in the past to provide services, including advice, without any of the concerns being raised here or the contractors being required to execute an agreement like the one requested here. Concern has also been raised that my clients will become employees of Lane County if they perform the work of the County. I must say I have never heard of this as a possibility – legally or factually. In fact, County Counsel is currently contracting out legal services and I doubt those attorneys are now considered employees of Lane County. Lane County has entered into a myriad of contracts for other reviews and audits (e.g., Short Mountain) and has never required the type of agreement being requested here. A standard condition of these contracts is the independent contractor agrees to comply with all applicable local, state, and federal laws and regulations, which would include ORS Chapter 244 if applicable.

Please feel free to contact me if you have any questions. I thank you in advance for your timely response and your professional courtesies in this matter.

Sincerely,



Stephen E. Dingle

SED:lms

cc: Clients

jamannllc@comcast.net, kenthoweplanning@gmail.com