

Jefferson County
Board of Commissioners
Agenda Request

To: Board of Commissioners
Philip Morley, County Administrator

From: Frank Gifford, Public Works Director *FG*

Agenda Date: March 28, 2011

Subject: Oak Bay Road Culvert Replacement, M.P. 8.947
Co. Rd. No. 569908, CR1843

Statement of Issue:

The issue is requesting execution of the Contract document for County Road project CR1843 with 2 GRADE, LLC, for the bid amount of \$50,610.94.

Analysis/Strategic Goals/Pros & Cons:

This project is included in the officially adopted 2011-2016 Transportation Improvement Program as item No. 6. This project is also included in the adopted 2010 Annual Construction Program as item No. 5.

Bids for this project were obtained using the Jefferson County Small Works Roster process. The lowest responsive bidder being 2 GRADE, LLC of PORT ANGELES, WA. The Contract now needs to be executed for this project to proceed.

Fiscal Impact/Cost Benefit Analysis:

This project is included in the 2011 adopted road budget and is funded with local road funds.

Recommendation:

The Board is asked to sign all three (3) original Contracts where indicated, and return two (2) signed originals to Public Works (attn. John Wayand).

Department Contact: Monte Reinders, County Engineer, 385-9242

Reviewed By:

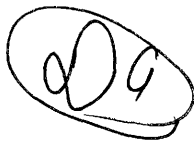
 3/23/11
Philip Morley, County Administrator

Questions posed by County Admin. Phil Morley:

With responses from David Alvarez, with assistance of Frank Gifford, PW Director

Question	Response
Is this the County's standard construction contract	Yes. This is a blank contract that the winning bidder and the County will execute. Note well that the 2 nd full ¶ under §1 serves to incorporate "the Standard Specifications of the Washington State [DOT] which are by this reference incorporated herein and made a part hereof."
Where is Attachment "A"	Only used for small works roster contracts, thus included here.
Where is scope of work	This contract is going out for bid and the Request for Bids will describe the work that needs to be done.
Why no description of the term of the contract	<ul style="list-style-type: none">• See Section 1 of the contract, here winning firm must finish w/in 20 working days.
Why no description of rights/obligations surrounding possible termination.	See State DOT Specs 1-08.10, p. 1-85 to 1-89, inclusive.
Why no mention in contract of bonds and debarment statement	Sworn to by bidder in bid response.
Why no mention of prevailing wage requirement.	See ¶5 of contract and State DOT Specs at §1-07.9, p. 1-50.
Why no reference to County's ability to inspect and accept/reject the work	See State DOT Specs at §1-05 and §1-06, pages 1-27 to 1-43, inclusive.

END OF DOCUMENT



**CONTRACT
JEFFERSON COUNTY, WASHINGTON**

THIS AGREEMENT, made and entered into this _____ day of _____, 2011, between the COUNTY OF JEFFERSON, acting through the Jefferson County Commissioners and the Director of Public Works under and by virtue of Title 36, RCW, as amended and 2 GRADE, LLC of PORT ANGELES, WASHINGTON hereinafter called the Contractor.

WITNESSETH:

That in consideration of the terms and conditions contained herein and attached and made a part of this agreement, the parties hereto covenant and agree as follows:

1. The Contractor agrees to furnish all labor and equipment and do certain work, to-wit: That the Contractor herein will undertake and complete the following described work:

**OAK BAY ROAD CULVERT REPLACEMENT
M.P. 8.947
County Road Project No. CR1843
County road No. 569908**

for the total sum of FIFTY THOUSAND SIX HUNDRED AND TEN DOLLARS AND NINETY FOUR CENTS (\$50,610.94) in accordance with and as described in the attached plans and specifications and the Standard Specifications of the Washington Department of Transportation which are by this reference incorporated herein and made a part hereof. The Contractor shall perform any alteration in or addition to the work provided in this contract and every part thereof.

The Contractor shall complete the described work as follows: WITHIN 20 WORKING DAYS.

The Contractor shall provide and bear the expense of all equipment, work and labor of any sort whatsoever that may be required for the transfer of materials and for constructing and completing the work provided for in this contract and every part thereof.

2. The County of Jefferson hereby promises and agrees with the Contractor to employ, and does employ the Contractor to furnish the goods and equipment described and to furnish the same according to the attached specifications and the terms and conditions herein contained, and hereby contracts to pay for the same according to the attached specifications and the schedule of unit or itemized prices hereto attached, at the time and in the manner and upon the condition provided for in this contract. The County further agrees to employ the Contractor to perform any alterations in or additions to the work provided for in this contract that may be ordered and to pay for the same under the terms of this contract and the attached specifications at the time and in the manner and upon the conditions provided for in this contract.

3. The Contractor for himself, and for his heirs, executor, administrators, successors, and assigns, does hereby agree to the full performance of all the covenants herein contained upon the part of the Contractor.

4. Prior to commencing work, the Contractor shall obtain at its own cost and expense the following insurance from companies licensed in the State with a Best's rating of no less than A: VII. The Contractor shall provide to the County Risk Manager certificates of insurance with original endorsements affecting insurance required by this clause prior to the commencement of work to be performed.

The insurance policies required shall provide that thirty (30) days prior to cancellation, suspension, reduction or material change in the policy, notice of same shall be given to the County Risk Manager by

CR1843
OAK BAY ROAD CULVERT REPLACEMENT, M.P. 8.947

registered mail, return receipt requested, for all of the following stated insurance policies.

If any of the insurance requirements are not complied with at the renewal date of the insurance policy, payments to the Contractor shall be withheld until all such requirements have been met, or at the option of the County, the County may pay the renewal premium and withhold such payments from the moneys due The Contractor.

All notices shall name the Contractor and identify the agreement by contract number or some other form of identification necessary to inform the County of the particular contract affected.

A. Workers Compensation and Employers Liability Insurance. The Contractor shall procure and maintain for the life of the contract, Workers Compensation Insurance, including Employers Liability Coverage, in accordance with the laws of the State of Washington.

B. General Liability(1) - with a minimum limit per occurrence of one million dollars (\$1,000,000) and an aggregate of not less than two million dollars (\$2,000,000) for bodily injury, death and property damage unless otherwise specified in the contract specifications. This insurance coverage shall contain no limitations on the scope of the protection provided and indicate on the certificate of insurance the following coverage:

1. Broad Form Property Damage with no employee exclusion;
2. Personal Injury Liability, including extended bodily injury;
3. Broad Form Contractual/Commercial Liability including completed operations (contractors only);
4. Premises - Operations Liability (M&C);
5. Independent Contractors and Subcontractors; and
6. Blanket Contractual Liability.

(1)Note: The County shall be named as an additional insured party under this policy.

C. Automobile (2) - with a minimum limit per occurrence of \$1,000,000 for bodily injury, death and property damage unless otherwise specified in the contract specifications. This insurance shall indicate on the certificate of insurance the following coverage:

1. Owned automobiles;
2. Hired automobiles; and,
3. Non-owned automobiles.

(2) Note: The County shall be named as an additional insured party under this policy.

Any deductibles or self-insured retention shall be declared to and approved by the County prior to the approval of the contract by the County. At the option of the County, the insurer shall reduce or eliminate deductibles or self-insured retention or The Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

The Contractor shall include all subcontractors as insured under its insurance policies or shall furnish separate certificates and endorsements for each subcontractor. All insurance provisions for subcontractors shall be subject to all of the requirements stated herein.

Failure of The Contractor to take out and/or maintain any required insurance shall not relieve The Contractor from any liability under the Agreement, nor shall the insurance requirements be construed to conflict

with or otherwise limit the obligations concerning indemnification.

It is agreed by the parties that insurers shall have no right of recovery or subrogation against the County (including its employees and other agents and agencies), it being the intention of the parties that the insurance policies so affected shall protect both parties and be primary coverage for any and all losses covered by the above described insurance. It is further agreed by the parties that insurance companies issuing the policy or policies shall have no recourse against the County (including its employees and other agents and agencies) for payment of any premiums or for assessments under any form of policy. It is further agreed by the parties that any and all deductibles in the above described insurance policies shall be assumed by and be at the sole risk of The Contractor.

It is agreed by the parties that judgments for which the County may be liable, in excess of insured amounts provided herein, or any portion thereof, may be withheld from payment due, or to become due, to The Contractor until such time as The Contractor shall furnish additional security covering such judgment as may be determined by the County.

The County reserves the right to request additional insurance on an individual basis for extra hazardous contracts and specific service agreements.

5. The Contractor shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done under this Agreement. This Agreement shall be interpreted and construed in accord with the laws of the State of Washington and venue shall be in Jefferson County, WA.

The Contractor shall indemnify and hold the County, and its officers, employees, and agents harmless from and shall process and defend at its own expense, including all costs, attorney fees and expenses relating thereto, all claims, demands, or suits at law or equity arising in whole or in part, directly or indirectly, from the Contractor's negligence or breach of any of its obligations under this Agreement; provided that nothing herein shall require a Contractor to indemnify the County against and hold harmless the County from claims, demands or suits based solely upon the conduct of the County, its officers, employees and agents, and; provided further that if the claims or suits are caused by or result from the concurrent negligence of: (a) the Contractor's agents or employees; and, (b) the County, its officers, employees and agents, this indemnity provision with respect to claims or suits based upon such negligence, and/or the costs to the County of defending such claims and suits, etc., shall be valid and enforceable only to the extent of the Contractor's negligence, or the negligence of the Contractor's agents or employees.

Claims against the County shall include, but not be limited to assertions that the use and transfer of any software, book, document, report, film, tape, or sound reproduction of material of any kind, delivered hereunder, constitutes an infringement of any copyright, patent, trademark, trade name, or otherwise results in an unfair trade practice or an unlawful restraint of competition.

The Contractor specifically assumes potential liability for actions brought against the County by Contractor's employees, including all other persons engaged in the performance of any work or service required of the Contractor under this Agreement and, solely for the purpose of this indemnification and defense, the Contractor specifically waives any immunity under the state industrial insurance law, Title 51 R.C.W. The Contractor recognizes that this waiver was specifically entered into pursuant to provisions of R.C.W. 4.24.115 and was subject of mutual negotiation.

6. The Contractor's relation to the County shall be at all times as an independent Contractor, and nothing herein contained shall be construed to create a relationship of employer-employee or master-servant, and any and all employees of the Contractor or other persons engaged in the performance of any work or service required of the Contractor under this Agreement shall be considered employees of the Contractor only and any claims that may arise on behalf of or against said employees shall be the sole obligation and responsibility of the

Contractor.

7. The Contractor shall not sublet or assign any of the services covered by this contract without the express written consent of the County or its authorized representative. Assignment does not include printing or other customary reimbursable expenses that may be provided in an agreement.

8. Nothing in the foregoing clause shall prevent the County, at its option, from additionally requesting that the Contractor deliver to the County an executed bond as security for the faithful performance of this contract and for payment of all obligations of The Contractor.

For contracts of \$35,000 or less, the County and the Contractor may agree that in-lieu of the Bond; the County will withhold 50% of the Contract amount in accordance with RCW 39.08.010. The Contractor will indicate this option on Exhibit A.

9. The Contractor will declare management option of the statutory retained percentage on Exhibit B.

IN WITNESS WHEREOF, the Contractor has executed this instrument on the day and year first below written, and the Board of County Commissioners has caused this instrument to be executed by and in the name of said County of Jefferson the day and year first above written.

Executed by the Contractor 3/18, 2011

2 Grade LLC
Contractor

By: [Signature]

2 GRADGL923 JH.
State of Washington, Contractor Registration Number

COUNTY OF JEFFERSON
BOARD OF COMMISSIONERS

John Austin, Chair

Phil Johnson, Member

David W. Sullivan, Member

Approved as to form only this 2nd
day of MARCH, 2011.

[Signature]
Deputy Prosecuting Attorney

[Signature]
Frank Gifford
Public Works Director

**CERTIFICATION REGARDING
DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION**


The Contractor certifies to the best of its knowledge and belief, that it and its principals:

- (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (2) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
- (4) Have not within a 3-year period preceding this contract had one or more public transactions (Federal, State, or local) terminated for cause or default.

Where the Contractor is unable to certify to any of the statements in this certification, such Contractor shall attach an explanation.

2 Grade, LLC
Name of Contractor

Greg Hopf - Member / Owner
Name and Title of Authorized Representative


Signature of Authorize Representative

I am unable to certify to the above statement. An explanation is attached.

**CONTRACT BOND
JEFFERSON COUNTY, WASHINGTON**

KNOW ALL MEN BY THESE PRESENTS:

That 2 GRADE, LLC, of PORT ANGELES, WA., as Principal, and RLI

Insurance Company, as Surety, are jointly and severally held and

bound unto the COUNTY OF JEFFERSON, the penal sum of FIFTY THOUSAND SIX HUNDRED AND TEN DOLLARS AND NINETY FOUR CENTS (\$ 50,610.94), for the payment of which we jointly and severally bind ourselves, or heirs, executors, administrators, and assigns, and successors and assigns, firmly by these presents.

The condition of this bond is such that WHEREAS, on the 18th day of March, A.D., 2011, the said 2 GRADE, LLC, Principal herein, executed a certain contract with the County of Jefferson, by the terms, conditions and provisions of which contract the said 2 GRADE, LLC, Principal herewith, agrees to furnish all materials and do certain work, to-wit: That the said Principal herein will undertake and complete the following described work:

OAK BAY ROAD CULVERT REPLACEMENT, M.P. 8.947, COUNTY ROAD PROJECT No. CR1843, COUNTY ROAD No. 569908 in Jefferson County, Washington, as per maps, plans and specifications made a part of said contract, which contract as so executed, is hereunto attached, and is now referred to and by this reference is incorporated herein and made a part hereof as full for all purposes as if here set forth at length.

NOW THEREFORE, if the Principal herein shall faithfully and truly observe and comply with the terms, conditions and provisions of said contract, in all respects and shall well and truly and fully do and perform all matters and things by the said Principal undertaken to be performed under said contract, upon the terms proposed therein, and within the time prescribed therein, and until the same is accepted, and shall pay all laborers, mechanics, subcontractors and materialmen, and all persons who shall supply such contractor or subcontractor with provisions and supplies for the carrying on of such work, and shall in all respects faithfully perform said contract according to law, then this obligation to be void, otherwise to remain in full force and effect.

WITNESS our hands this 16th day of March, 2011.

2 GRADE, LLC
PRINCIPAL

By: [Signature]

RLI Insurance Company
SURETY COMPANY

By: [Signature]

By: Christopher A. Fix
Attorney-in-fact

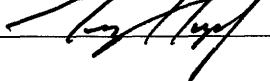
Address of local office and agent
of surety company:
c/o CB&MS of WA., INC.
PO Box 75715
Seattle, WA 98175

EXHIBIT A

**CONTRACTOR'S DECLARATION OF OPTION FOR CONTRACTS FOR LESS THAN
\$35,000**

A. A Contract Bond will be provided as required.

Date 3/18/2011

Signed 

B. In lieu of providing a Contract Bond, the County will withhold 50% of the Contract amount.


Date _____

Signed _____

EXHIBIT B

**CONTRACTOR'S DECLARATION OF OPTION FOR MANAGEMENT OF
STATUTORY RETAINED PERCENTAGE**

A. I hereby elect to have the retained percentage of this contract held in a fund by the Owner until (30) days following final acceptance of the work.

Date 3/18/2011 Signed 

B. I hereby elect to have the Owner deposit the retained percentage of this contract in an interest bearing account, not subject to withdrawal until after final acceptance of the work.

Date _____ Signed _____

C. I hereby elect to have the Owner invest the retained percentage of this contract from time to time as such retained percentage accrues.

I hereby designate _____ as the repository for the escrow of said funds.

I hereby further agree to be fully responsible for payment of all costs or fees incurred as a result of placing said retained percentage in escrow and investing it as authorized by statute. The Owner shall not be liable in any way for any costs or fees in connection therewith.

Date _____ Signed _____