April 30, 1981

Julie Lou Tripp
Staff Writer
The Oregonian
1320 S.W. Broadway
Portland, Oregon 97201

RE: Public Records Request

Dear Ms. Tripp:

This letter will serve as an order of the Attorney General in response to your petition for review of a refusal by a state agency to provide access to public records. You requested that the Adult and Family Services Division of the Department of Human Resources provide you copies of the following records:

> "(1) Names of three unsuccessful bidders for the State of Oregon contract to direct mail food stamps to Oregon's 100,000 food stamp households;
>
> "(2) Amounts of the bids submitted by these unsuccessful bidders for the same contract."

The contract in question was awarded under a two step formal advertising process provided for under federal procurement regulations. Those regulations are found in 41 CFR sec 1-2.501 to 1-2.503-2. We find nothing in these regulations which would prohibit disclosure of the name of a bidder and the amount of the bid.

We do not believe that the bidders' name or bid amount constitutes "trade secret" information under ORS 192.500(1)(b), or represents information which would be confidential under the federal regulations. We are aware that the request for proposals issued by the agency contained an invitation for persons responding to the request to identify materials which the bidder does not want publicly disclosed. This invitation was apparently

offered under authoirty of 41 CFR sec 3-1.353, which permits bidders to identify "technical data" which should not be publicly disclosed. This "technical data" provision is similar to the trade secrets exception in the Oregon Public Records Act. We do not believe that technical data may be interpreted to include the amount of a bid made under the 41 CFR sec 1-2.5 two step formal advertising process.

We have also considered whether the invitation in the request for proposal for bidders to identify information they did not wish to have publicly disclosed might provide a basis for refusal to disclose under ORS 192.000(2)(c), which states:

"The following public records are exempt from disclosure under ORS 192.410 to 192.500:

". . . .

"(C) Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure." (Emphasis added.)

We do not believe the information in question (names of bidders and amount of bid) should or would reasonably be considered confidential. For this reason, we do not consider whether any of the other factors required by this provision for confidentiality are present.

Finding no grounds for withholding the requested information from public disclosure, we order it to be disclosed.

Sincerely,

Donald C. Arnold
Assistant Attorney General

DCA/js

cc: Dexter Henderson